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Dissolution, Legal Separation, and Nullity* Product Details

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§3.1 I. SCOPE OF CHAPTER

This chapter introduces and compares the three types of marital actions: dissolution (whether regular or summary), legal separation, and nullity. Specifically, the chapter compares standard dissolution, legal separation, and nullity with respect to grounds, statutory residency requirements, whether the respondent's consent or default is

required, the effect of the judgment on the parties' marital status, and the availability of other orders. It also provides a complete discussion of summary dissolution and indicates important considerations in choosing among the available alternatives in a given case.

§3.1A II. APPLICATION OF CHAPTER TO REGISTERED DOMESTIC PARTNERS

As of January 1, 2005, provisions for dissolution, legal separation, and nullity of registered domestic partnerships became operative. The rights and obligations of these partners under California law are generally the same as those of spouses, but federal law does not recognize the domestic partnership. See generally Fam C §297.5. But see *Rabin v Schoenmann (In re Rabin)* (9th Cir BAP 2006) 359 BR 242 (domestic partners must use joint homestead exemption under California law rather than two separate exemptions).

The statutory scheme for registered domestic partnership includes a method of terminating a domestic partnership without court action that largely parallels procedures for summary dissolution of marriage, except that the termination is handled through the office of the Secretary of State. See Fam C §299(a)–(b). For discussion, see §3.34A. However, if the parties do not meet requirements for this administrative termination, they must utilize the judicial procedures established for married couples in dissolving or nullifying their partnership, or in obtaining a legal separation. See Fam C §299(d).

Couples who are registered as domestic partners only with a city (or city and county) and not with the State of California are not subject to this statutory scheme and therefore cannot dissolve their domestic partnerships in family court. *Velez v Smith* (2006) 142 CA4th 1154, 1169, 48 CR3d 642. One appellate court has, however, held that the doctrine of a putative spouse applies to domestic partners, and criticized *Velez* to the extent that it is inconsistent with that finding. *Domestic Partnership of Ellis & Arriaga* (2008) 162 CA4th 1000, 1009, 76 CR3d 401. See §3.19.

NOTE □ In May 2008, the California Supreme Court held that the California Constitution guarantees the right to marry to all individuals and couples, without regard to their sexual orientation. *In re Marriage Cases* (2008) 43 C4th 757, 820, 76 CR3d 683. The court held Fam C §§300 and 308.5 unconstitutional insofar as their provisions distinguish between opposite-sex couples and same-sex couples, excluding the latter from access to the designation of marriage. In November 2008, however, California voters passed Proposition 8, an initiative measure that amended the state Constitution to declare that only

marriages between one man and one woman are valid and recognized in California. See Cal Const art I, §7.5. The validity of Proposition 8 was challenged and upheld by the supreme court as a permissible constitutional amendment rather than an impermissible constitutional revision. The court held, however, that it was not retroactive, thereby letting stand same-sex marriages that occurred between the effective date of *In re Marriage Cases* and passage of Proposition 8. *Strauss v Horton* (2009) 46 C4th 364, 457, 93 CR3d 591.

On related forms and discussion, see chap 10. For a full discussion of domestic partnership matters, see California Domestic Partnerships (Cal CEB 2005).

III. DISSOLUTION AND LEGAL SEPARATION

§3.2 A. Grounds

A judgment of dissolution of marriage or of legal separation may be granted only on the grounds of (1) irreconcilable differences that have caused the irremediable breakdown of the marriage or (2) incurable insanity. Fam C §2310. The “irreconcilable differences” alleged as the grounds in virtually every petition for dissolution or legal separation are defined by statute as those grounds that are determined by the court to be substantial reasons for not continuing the marriage and that make it appear that the marriage should be dissolved. Fam C §2311 (former CC §4507). What is required to meet the statutory requirements is “the existence of substantial marital problems which have so impaired the marriage relationship that the legitimate objects of matrimony have been destroyed and as to which there is no reasonable possibility of elimination, correction or resolution.” *Marriage of Walton* (1972) 28 CA3d 108, 118, 104 CR 472.

As a practical matter, courts have been quite liberal in finding the requisite irreconcilable differences and, consequently, their existence is rarely an issue in dissolution or legal separation proceedings. On rare occasions, at a hearing with both spouses present, one will state that there is a possibility of reconciliation. Usually the other spouse will make it clear that this is a false hope. If it appears to the court, however, that there is a reasonable possibility of reconciliation, the court must continue the proceeding for no more than 30 days. Fam C §2334.

§3.3 B. Dissolution Residency Requirement; Legal Separation Petition to Avoid Delay

A judgment of dissolution of marriage may not be entered unless at least one of the parties was a resident of California for 6 months, and of the county in which the petition was filed for three months, immediately before the filing of the petition. Fam C §2320. This residency requirement is mandatory and may not be circumvented by stipulation or consent. There is no statutory residency requirement, however, for a judgment of legal separation.

It is not uncommon for a new arrival in California to seek a dissolution. There is a minimum 6-month waiting period between the service of the summons and petition (or the appearance of the respondent) and the termination of the marriage. Fam C §2339. A new arrival may be concerned that the 6-month residency requirement for a dissolution and the 6-month waiting period may result in a wait approaching a year before the marriage may be terminated. This delay can be shortened by the party's filing a petition for legal separation and then amending the petition to one for dissolution when the residency requirement is met. The filing date of the amended petition or pleading is deemed to be the date of commencement of the proceeding for the dissolution of the marriage for the purposes only of the residence requirements of Section 2320. Fam C §2321(a). Therefore, a judgment of dissolution may theoretically be final within 6 months after original jurisdiction over respondent is obtained by service of the summons and petition for legal separation. See Fam C §2339(a). Another reason for proceeding in this manner is to enable the petitioner to seek pendente lite orders (*e.g.*, for support) while waiting to meet the residency requirement for a judgment of dissolution. On temporary orders generally, see chap 11. Additionally, because automatic restraining orders (*e.g.*, against disposing of property and changing insurance beneficiaries) are effective against the respondent when he or she is served, an early filing of a petition for legal separation may provide the petitioner with some timely protection against the respondent's dissipation of assets. See Fam C §§233(a), 2040; §11.11. On the special jurisdictional requirements for child custody orders, see §§7.5–7.13.

Notice requirements for the amended petition depend on whether the respondent has appeared in the action. It had generally been assumed that, when the respondent had appeared, either a stipulation or the granting of a noticed motion would be required before the court could allow the filing of the amended petition. CCP §473. In *Marriage of Dick* (1993) 15 CA4th 144, 157, 18 CR2d 743, however, the court held, without mentioning §473, that a noticed motion was not required

to amend a pleading to change a request for a legal separation to one for a dissolution. Rather, only notice of the amendment was required. See also CCP §576 (court may allow amendment of any pleading at any time before or after commencement of trial). With or without a stipulation or noticed motion, notice of the amendment must be given in the manner provided by Judicial Council rules (Fam C §2321(b)). Mailing a copy of the amended petition to the respondent's attorney will suffice. CCP §1012.

If the respondent has not appeared in the action, the petition may be amended once without any application to the court. CCP §472. Under Fam C §2321(b), notice may be given by mail to the respondent's last known address, or by personal service, as long as the intent to amend when the residency requirement is satisfied was set forth in the initial petition. Such a statement should always be included in the petition for legal separation when the petitioner plans to amend it later to request a dissolution, because it is always possible that the respondent will not appear. The petitioner may simply place the notation "10. See attached" immediately above the declaration under penalty of perjury on the petition for legal separation (for petition form, see §10.12) and attach a sheet containing the following statement: "On satisfaction of the residency requirement of Family Code §2320, Petitioner intends to amend this petition to seek a judgment of dissolution of marriage." Although Fam C §2321(b) specifically authorizes service of notice of the amendment by mail when the statement of intent to amend was included in the original petition, it is unclear whether the statement will eliminate the need to serve the amended petition in the manner provided for service of summons. See *Marriage of Rhoades* (1984) 157 CA3d 169, 172, 211 CR 531. Consequently, the safest course is to serve the amended petition by personal service (see §10.31) or by mail and acknowledgment of receipt (see §§10.33–10.34).

When the respondent has been served with the summons and the original petition, the amended petition does not require either a new summons or a new service of summons. Comment to CCP §412.10; see CCP §410.50. When the respondent has not been served, however, a new summons should be requested (CCP §412.10) and a copy served with the amended petition. Comment to CCP §412.10.

§3.4 C. Legal Separation Judgment Requires Consent or Default

A judgment of legal separation may be granted only if (1) both parties consent or (2) the respondent does not appear and the petitioner requested a legal separation. Fam C §2345. The practical effect of this requirement is to give the respondent the power to prevent the

petitioner from obtaining a judgment of legal separation by filing a response that indicates that he or she does not consent to the judgment. The respondent may simply place the following statement immediately above the declaration under penalty of perjury on the response to the petition for legal separation: “10. Respondent does not consent to a judgment decreeing the legal separation of the parties. (Family Code section 2345.)” For response form, see §10.52.

§3.5 D. Effect of Judgment on Parties’ Marital Status

A judgment of dissolution of marriage terminates the parties’ marital status, and they are free to remarry as of the date indicated in the judgment. Fam C §2340. A judgment of legal separation, on the other hand, does not terminate the parties’ marital status; but either party may file a subsequent action to dissolve the marriage (Fam C §2347).

In a dissolution action, the earliest the parties’ marital status may be terminated is 6 months after the court acquires jurisdiction over the respondent. Fam C §2339. When the judgment terminating the marital status is obtained after the 6-month date, the earliest the status may be terminated is the date the judgment is granted. The court has authority to postpone termination of the parties’ marital status to a time later than the earliest date at which the marriage could be terminated, *e.g.*, to enable them to file joint tax returns for the current tax year or preserve health insurance coverage for one spouse as a dependent of the other. Fam C §2339(b). Likewise, as long as 6 months after acquisition of jurisdiction over the respondent have passed, the court may terminate the parties’ marital status before granting a judgment on the other issues in the action, *e.g.*, to enable a party to remarry. Fam C §2337. For conditions that may be imposed on the party requesting bifurcation of marital status, see §14.61.

The matter of the termination date of the parties’ marital status requires the attorney’s care and diligence. Clients should be informed early on that (1) there is no way to obtain termination of the marital status in less than 6 months after the court obtains jurisdiction over the respondent and (2) marital status does not terminate automatically by the mere passage of the 6 months. Some clients mistakenly assume that it is the passage of the requisite time that terminates their marriage, without understanding the necessity for a judgment, and take subsequent actions, from filing tax returns as a single person to remarrying, based on that assumption. In such instances, it may be possible to obtain an earlier marital status termination date *nunc pro tunc* under Fam C §2346. But the ability to cure such problems by a

nunc pro tunc judgment was substantially limited by the 1989 amendment to former CC §4513, predecessor of Fam C §2346. A nunc pro tunc order may not result in a marital status termination date earlier than the trial, uncontested hearing, or submission of a default affidavit under Fam C §2336. Fam C §2346(d). On nunc pro tunc entry of judgments, see §§17.59–17.64.

Counsel should also take care in explaining the consequences of a termination of marital status prior to division of all property (*e.g.*, automatic severance of joint tenancy, failure of nonprobate transfers under Prob C §5600, and danger of loss of survivor benefits relating to employer-provided retirement or life insurance if former spouse dies before a judgment dividing the property is entered) and ensure that appropriate orders to protect the client are in place before status is bifurcated.

On a “legal spouse’s” loss of the right to claim “surviving spouse” status in probate proceedings after an adjudication of property and support rights in a marital dissolution but *before* a termination of marital status, see *Estate of McDaniel* (2008) 161 CA4th 458, 73 CR3d 907.

§3.6 E. Availability of Other Orders

In either an action for dissolution or one for legal separation, the court may make a wide range of orders in addition to decreeing the dissolution or legal separation itself, including, as applicable, adjudicating the property rights of the parties of property (see chap 5), spousal support (see chap 6), child custody and visitation (see chap 7), child support (see chap 8), attorney fees and costs (see chap 9), restraining orders (see Fam C §§2045, 6360; chap 11), and restoration of a former name (see Fam C §2080). See Fam C §§2010, 2550. Except for the restoration of a former name, however, any requirements for the exercise of personal jurisdiction (see §§4.4–4.5) and child custody jurisdiction (see §§7.2–7.15) must be met before the orders may be made. Unlike parties to nullity actions, who must establish putative-spouse status to seek certain types of orders (see §§3.20–3.22), parties to dissolution and legal separation actions may obtain orders on division of property, spousal support, and attorney fees and costs without meeting any such threshold requirements, as long as theirs is a valid marriage.

IV. NULLITY

A. Grounds

§3.7 1. Marriage Must Be Void or Voidable

A judgment of nullity may be granted only when a marriage is adjudged void or voidable under conditions provided by statute. Fam C §§2200–2201 (void marriages), 2210 (voidable marriages). In brief, a marriage is void in cases of incest and bigamy, and is voidable in cases of minority, a current spouse mistakenly believed to be deceased, unsound mind, fraud, force, and physical incapacity. For discussion of particular grounds, see §§3.8–3.15. A judgment of nullity may not be granted on any other ground. See *Price v Price* (1938) 24 CA2d 462, 466, 75 P2d 655. Further, the statutory grounds must have existed at the time of the marriage. Fam C §§2200–2201, 2210; *McDonald v McDonald* (1936) 6 C2d 457, 460, 58 P2d 163.

A void marriage is void from the beginning. Fam C §§2200 (incestuous marriages), 2201 (bigamous marriages). Technically, no marriage has occurred, regardless of whether a judgment of nullity is obtained. Nevertheless, it is sound practice to obtain a judgment of nullity in a void marriage because it provides a judicial determination, as a matter of public record, that eliminates any doubt about the parties' marital status. Also, depending on the circumstances, a party to a void marriage may be entitled to assert property and support rights as though the marriage had been valid. See §§3.20–3.21. Finally, when the parties have children, issues of custody, visitation, and child support can be addressed in a nullity action. See §3.23.

A voidable marriage, on the other hand, is valid unless and until it is judicially declared a nullity. *McDonald v McDonald* (1936) 6 C2d 457, 461, 58 P2d 163.

2. Particular Grounds: Void Marriage

§3.8 a. Incest

Marriages between parents and children, ancestors and descendants of every degree, brothers and sisters, half brothers and half sisters, uncles and nieces, and aunts and nephews are incestuous and void from the beginning. Fam C §2200.

§3.9 b. Bigamy

A marriage entered into while either party is married to another person is usually bigamous and void from the beginning. Fam C §2201. See *Marriage of Campbell* (2006) 136 CA4th 502, 509, 38 CR3d 894 (purported remarriage by person involved in dissolution

litigation who lacks judgment dissolving current marriage is void). There are, however, two specified exceptions under which such a marriage is merely voidable. Fam C §2201; see §3.11.

3. Particular Grounds: Voidable Marriage

§3.10 a. Minority

A marriage is voidable if, at the time of the marriage, the petitioner was under age 18 and the requisite parental and court consents were not obtained, unless the petitioner freely cohabited with the respondent as husband or wife after attaining age 18. Fam C §2210(a). The required consents are set forth in Fam C §§302–303.

A nullity action filed by a party who was underage at the time of the marriage must be filed within 4 years after the party attains age 18. Fam C §2211(a)(1). The action may be filed by the party's parent or guardian if it is filed before the party attains age 18. Fam C §2211(a)(2).

A minor who intentionally misrepresents his or her age in order to get a marriage license is not thereby barred from petitioning to have the marriage annulled. *Ruiz v Ruiz* (1970) 6 CA3d 58, 85 CR 674.

§3.11 b. Bigamy

A marriage is voidable if, at the time of the marriage, either party was married to another person and (1) for 5 successive years immediately preceding the marriage, the party's spouse had been absent and not known to the party to be living or (2) at the time the marriage was entered into, the party's spouse was generally reputed or believed by the party to be dead. Fam C §2210(b).

An action to obtain a judgment of nullity of a voidable bigamous marriage may be filed by either party during the life of the other, or by the party's prior spouse at any time. Fam C §2211(b).

§3.12 c. Unsound Mind

A marriage is voidable if, at the time of the marriage, either party was of unsound mind, unless that party, after coming to reason, freely cohabited with the other as husband or wife. Fam C §2210(c). A party is "of unsound mind" when he or she is incapable of understanding the nature of the marriage contract and the duties and responsibilities it creates. *Dunphy v Dunphy* (1911) 161 C 380, 383, 119 P 512. The degree of mental capacity at the time of the marriage ceremony determines its validity. Thus, a marriage entered into during a lucid

interval is valid. *Briggs v Briggs* (1958) 160 CA2d 312, 320, 325 P2d 219.

An action for a judgment of nullity on the ground of unsound mind may be filed by the spouse, or by a relative or conservator of a party of unsound mind, at any time before the death of either party. Fam C §2211(c).

§3.13 d. Fraud

A marriage is voidable if either party's consent was obtained by fraud, unless that party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife. Fam C §2210(d). The false representations or concealment constituting the fraud must relate to a matter of substance and directly affect the purpose of the party deceived in entering the marriage. *Handley v Handley* (1960) 179 CA2d 742, 746, 3 CR 910. Fraud must go to the very essence of the marital relation to be sufficient for an annulment. *Marriage of Johnston* (1993) 18 CA4th 499, 502, 22 CR2d 253. For example, a spouse's intent to ignore his marital obligation of fidelity may support a finding of fraud. *Marriage of Ramirez* (2008) 165 CA4th 751, 757, 81 CR3d 180 (husband intended to continue ongoing simultaneous sexual relationships with both his wife and her sister at time of marriage, constituting fraud under Fam C §§720 and 2210(d)). An allegation that, in the words of one appellate court, "the husband turned out to be, in the eyes of his wife, a lazy, unshaven disappointment with a drinking problem" were found insufficient to justify a judgment of nullity. *Johnston*, 18 CA4th at 502. Similarly, a spouse's premarital misrepresentation of his or her financial status is insufficient to grant an annulment based on fraud. *Marriage of Meagher and Maleki* (2005) 131 CA4th 1, 9, 31 CR3d 663 (reversing annulment granted to wife whose husband misrepresented financial status before marriage in alleged attempt to gain control of her assets). For a client who has married based on representations that, although false, may not meet the standard for a nullity based on fraud, the requirement can be a difficult one to understand and accept. The attorney must exercise considerable care in explaining the applicable law and in advising the client about the likelihood of the court's granting a judgment of nullity based on fraud.

An action for a judgment of nullity on the ground of fraud may be filed only by the injured party and must be filed within 4 years after discovery of the facts constituting the fraud. Fam C §2211(d). Such statutes of limitations usually commence to run in advance of actual knowledge, however, and begin when the injured party becomes aware of facts that would make a reasonably prudent person

suspicious. *Hobart v Hobart Estate Co.* (1945) 26 C2d 412, 438, 159 P2d 958. But when there is a fiduciary relationship between the parties, *e.g.*, husband and wife, it is recognized that facts that would ordinarily require investigation may not excite suspicion and, consequently, the same degree of diligence is not required. 26 C2d at 440.

§3.14 e. Force

A marriage is voidable if either party's consent was obtained by force, unless that party afterwards freely cohabited with the other as husband or wife. Fam C §2210(e). Threats alone may be sufficient for a judgment of nullity only if they were the inducing cause of the coerced party's consent to the marriage and if his or her free exercise of will was overcome by the threats to such an extent as to render the consent apparent rather than real. *Nicholson v Nicholson* (1917) 174 C 391, 393, 163 P 219.

An action for a judgment of nullity on the ground of force may be filed only by the injured party and must be filed within 4 years after the date of the marriage. Fam C §2211(e).

§3.15 f. Physical Incapacity

A marriage is voidable if either party was, at the time of the marriage, physically incapable of entering into the marriage state and the incapacity continues and appears to be incurable. Fam C §2210(f). The physical incapacity required is the inability to engage in normal copulation. *Stepanek v Stepanek* (1961) 193 CA2d 760, 762, 14 CR 793.

An action for a judgment of nullity on the ground of physical incapacity may be filed only by the nonincapacitated party and must be filed within 4 years after the date of the marriage. Fam C §2211(f).

§3.16 B. No Statutory Residency Requirement

For a judgment of nullity, unlike a judgment of dissolution (see §3.3), there is no statutory residency requirement.

§3.17 C. No Requirement of Consent or Default

For a judgment of nullity, unlike a judgment of legal separation (see §3.4), there is no requirement that either the respondent consent or his or her default be entered.

§3.18 D. Effect of Judgment on Parties' Marital Status

A judgment of nullity restores the parties to the status of unmarried persons. Fam C §2212(a). Technically, this is true only of voidable marriages, because parties to void marriages were never validly married. See §3.7. Unlike a dissolution judgment, which may specify a future date on which the marital status ends (see Fam C §2340), a judgment of nullity always results in the parties being free to remarry immediately. Whereas a dissolution judgment merely dissolves the existing marriage, and leaves intact the marriage relationship between the date of marriage and the date of termination of the marital status, a judgment of nullity is said to “relate back” and erase the marriage and all its implications from the outset. *Sefton v Sefton* (1955) 45 C2d 872, 874, 291 P2d 439. Legally, it is as though the parties had never married. It should be noted, however, that a party to a nullity action who qualifies as a “putative spouse” may be treated much as a true spouse would be treated for purposes of property division, support, and attorney fees and costs. See §§3.20–3.22. Also, the doctrine of “relation back” has been deemed not to apply when its application would unjustly affect the rights of an innocent third party. In *Sefton v Sefton*, *supra*, for example, the court held that the granting of an annulment of a voidable marriage on the grounds of fraud did not entitle a party to revive an alimony obligation that had terminated on her remarriage. 45 C2d at 876. Later courts extended *Sefton* to apply when the annulment was of a void marriage on the grounds of bigamy. *Fry v Fry* (1970) 5 CA3d 169, 85 CR 126; *Berkely v Berkely* (1969) 269 CA2d 872, 75 CR 294. One court has held, however, that if a party who obtained an annulment on the grounds of force could establish that the remarriage was not due to any voluntary act on her part, the trial court would have the authority to reinstate spousal support based on equity. *Marriage of Weintraub* (1985) 167 CA3d 420, 426, 213 CR 159.

E. Availability of Other Orders

§3.19 1. Putative Marriage Doctrine

When a marriage is invalid due to some legal infirmity, an innocent party may nevertheless be entitled, under the putative marriage doctrine, to orders in addition to the decree of nullity. *Marriage of Vryonis* (1988) 202 CA3d 712, 717, 248 CR 807. To be deemed a “putative spouse” and thereby entitled to such relief, a party must have had a good faith and objectively reasonable belief that the marriage was legally valid. 202 CA3d at 720; *Marriage of Ramirez* (2008) 165

CA4th 751, 756, 81 CR3d 180 (fact that license for California marriage indicated marriage performed in Mexico suffices to put reasonable person on notice that marriage not valid). A marriage need not be a void or voidable one (see §3.7) to be deemed putative, as long as the party or parties had the requisite reasonable good-faith belief in its validity. 202 CA3d at 718. See also *Estate of DePasse* (2002) 97 CA4th 92, 108, 118 CR2d 143 (knowing lack of validly issued marriage license does not allow finding of objectively reasonable belief); *Welch v State* (2000) 83 CA4th 1374, 100 CR2d 430 (subjective but not objectively reasonable belief is insufficient). Thus, for example, a marriage that is not legally valid because of the lack of a proper marriage ceremony may, depending on the circumstances, give rise to putative-spouse status even though it is neither void nor voidable.

Even when the marriage is deemed putative, however, any requirements for the exercise of personal jurisdiction (see §§4.4–4.5) and child custody jurisdiction (see §§7.2–7.15) must be met before the court may grant any additional orders other than restoration of a former name.

It may be that in limited circumstances a party who does not qualify as a putative spouse because he or she knew that the marriage was invalid can, nevertheless, be awarded, on the basis of estoppel, relief normally available only to a putative spouse. See *Marriage of Recknor* (1982) 138 CA3d 539, 542, 187 CR 887. But see *Marriage of Vryonis* (1988) 202 CA3d 712, 722 n5, 248 CR 807 (estoppel not available when party asserting it knew true facts).

Domestic partnership. A person with a reasonable, good faith belief in the validity of his or her registered domestic partnership is entitled to protection as a putative registered domestic partner, even if the domestic partnership was not properly registered. *Domestic Partnership of Ellis & Arriaga* (2008) 162 CA4th 1000, 1009, 76 CR3d 401 (distinguishing and criticizing to extent inconsistent *Velez v Smith* (2006) 142 CA4th 1154, 1174, 48 CR3d 642).

2. Particular Issues

§3.20 a. Division of Property

When division of property is in issue and the court finds that either or both parties are entitled to the status of a putative spouse, the court must divide the property acquired during the union that would have been community or quasi-community property had the union been valid. Fam C §2251. Termed “quasi-marital property,” the property must be divided in accordance with Fam C §§2500–2660. Fam C §2251(a)(2). Thus, the property will be divided in the same way that

community and quasi-community property are divided in a proceeding for dissolution of a valid marriage.

It is unclear whether a nonputative spouse may demand an equal division of the quasi-marital property under Fam C §2251 when the other party is a putative spouse who does not consent to the division. See *Marvin v Marvin* (1976) 18 C3d 660, 680 n18, 134 CR 815 (noting dispute concerning interpretation of former CC §4452, predecessor of Fam C §2251, but finding resolution unnecessary to decision).

§3.21 b. Support for Putative Spouse

A party found to be a putative spouse may be awarded support from the other party, both during the pendency of a nullity proceeding and in a judgment of nullity, as if the marriage had not been void or voidable. Fam C §2254.

§3.22 c. Attorney Fees and Costs

Awards of attorney fees and costs in nullity proceedings are governed by Fam C §2255. Under that section, the court may award attorney fees and costs, in accordance with Fam C §§2030–2034:

- In an action based on a void marriage (see Fam C §§2200–2201), to either party; and
- In an action based on a voidable marriage (see Fam C §2210), to a party found to be innocent of fraud or wrongdoing in inducing or entering into the marriage and free from knowledge of the existence of any prior marriage or other impediment to the contracting of the present marriage.

§3.23 d. Child Custody, Child Support, Restraining Orders, and Restoration of Former Name

Matters on which orders may be requested in a nullity action without any requirement of putative-spouse status include child custody, child support, restraining orders, and restoration of a former name. See Fam C §§2045, 2080, 2253, 6323, 6360.

V. SUMMARY DISSOLUTION

§3.24 A. Statutory Prerequisites

California's summary dissolution procedure is set forth in Fam C §§2400–2406. This procedure is available only if, at the time the joint

petition is filed, all the conditions set forth in Fam C §2400(a) exist. In ascertaining whether summary dissolution is an available option, counsel should consider particularly the following requirements:

- There are no children of the relationship, and the wife, to her knowledge, is not pregnant (Fam C §2400(a)(3));
- The marriage is of no more than 5 years' duration (Fam C §2400(a)(4));
- Neither party has any interest in real property (an exception is made for a lease of a residence occupied by either party if it does not include an option to purchase and will terminate within one year) (Fam C §2400(a)(5));
- Amounts owed on debts incurred by either or both of the parties after the date of marriage, excluding debts relating to automobiles, do not exceed \$5000 (Fam C §2400(a)(6) (indexed for inflation; see below));
- The total net fair market value of community property assets (excluding automobiles and specifically including any deferred compensation or retirement plan) is less than \$33,000 and neither party has separate property assets (excluding automobiles) with a net value of more than \$33,000 (Fam C §2400(a)(7) (indexed for inflation; see below));
- The parties have executed an agreement setting forth the division of community assets and the assumption of community liabilities and have executed all documents necessary to effect the agreement (Fam C §2400(a)(8)); and
- The parties waive any of their rights to spousal support (Fam C §2400(a)(9)).

Family Code §2400 is indexed for inflation. It provides that on the first day of each odd-numbered year, beginning on January 1, 1985, the statutory limitation on the value of obligations set forth in Fam C §2400(a)(6) must be adjusted in accordance with changes in the California Consumer Price Index. The same adjustment must be made on the limitations on the value of assets set forth in Fam C §2400(a)(7) on the first day of each odd-numbered year, beginning on January 1, 1993. Fam C §2400(b). The Judicial Council is required to compute and publish the amounts. Fam C §2400(b). The joint petition form (Judicial Council Form FL-800; see §3.27) is scheduled to be revised every 2 years to reflect the current figures. For the most recent figures, counsel should thus consult Judicial Council Form FL-800.

§3.25 B. Standard Dissolution Contrasted

There are many differences between a summary dissolution and a standard dissolution. Among the most significant are the following:

- Summary dissolution has a much more limited availability than standard dissolution. The many requirements that must be met to file a joint petition in a summary proceeding are set forth in Fam C §2400(a), and the most significant of these are enumerated in §3.24. Only two of the many requirements (i.e., residence and irreconcilable differences) apply in a standard dissolution proceeding.
- In addition to a judgment terminating the parties' marital status, summary dissolution provides only orders for division of property (assets and obligations) at the time of the judgment and for restoration of a former name. See Fam C §2404. Most significant is that the parties must, in the joint petition, waive the right to receive spousal support from each other at any time. Fam C §2400(a)(9). A standard dissolution, however, offers a wide range of orders, both pendente lite and at the time of the judgment.
- Either party to a summary dissolution proceeding may terminate the proceeding unilaterally at any time before entry of the final judgment. Fam C §2402. Thus, a party seeking a summary dissolution, unlike one seeking a standard dissolution, requires the consent, or at least the acquiescence, of the other party throughout the proceedings in order to obtain the judgment.

C. Procedures

§3.26 1. Discussion

The summary dissolution procedures are quite simple. There are only two steps:

- The parties file a Joint Petition for Summary Dissolution of Marriage (Judicial Council Form FL-800) (see §3.27), signed by both of them under penalty of perjury. Fam C §2401. The parties must attach three forms (see §§3.28–3.30) that the Judicial Council has determined will be required in summary dissolutions in order to implement the provisions for preliminary declarations of disclosure under Fam C §§2100–2113, applicable to proceedings commenced on or after January 1, 1993 (Fam C §2113). See Fam C §2109; Items 9 and 10 on the joint petition form. For a complete discussion of declarations of disclosure, see §§13.44–13.49. Also, unless the parties have no community assets

or liabilities, they must attach a marital property agreement (see §3.31). See Fam C §2400(a)(8); Item 11 on the joint petition form.

- After 6 months have elapsed from the filing of the joint petition, either party may file a single form containing a Request for Judgment, a Judgment of Dissolution of Marriage, and a Notice of Entry of Judgment (Judicial Council Form FL-820) (see §3.32). The court issues and signs the final judgment, and the clerk mails the notice of entry. Fam C §2403.

At any time before the filing of the Request for Final Judgment, however, either party may revoke the joint petition and terminate the proceedings by filing a Notice of Revocation of Petition for Summary Dissolution (Judicial Council Form FL-830) (see §3.33). Fam C §2402(a)–(b). Although Fam C §2402(c) states that the revoking party must mail a copy of the notice of revocation to the other party, that task is performed by the clerk.

§3.27 2. Form: Joint Petition for Summary Dissolution of Marriage (Judicial Council Form FL-800)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address)		FL-800 FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO. (Optional) _____ E-MAIL ADDRESS (Optional) _____ ATTORNEY FOR (Name) _____		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS _____ MAILING ADDRESS _____ CITY AND ZIP CODE _____ BRANCH NAME _____		
MARRIAGE OF HUSBAND: _____ WIFE: _____		
JOINT PETITION FOR SUMMARY DISSOLUTION OF MARRIAGE		CASE NUMBER _____

We petition for a summary dissolution of marriage and declare that all the following conditions exist on the date this petition is filed with the court.

1. We have read and understand the *Summary Dissolution Information* booklet (form FL-810).
2. We were married on (date):
 (A summary dissolution of your marriage will not be granted if you file this petition more than five years after the date of your marriage.)
3. One of us has lived in California for at least six months and in the county of filing for at least the three months preceding the date of filing.
4. There are no minor children who were born of our relationship before or during our marriage or adopted by us during our marriage. The wife, to her knowledge, is not pregnant.
5. Neither of us has an interest in any real property anywhere. (You may have a lease for a residence in which one of you lives. It must terminate within a year from the date of filing this petition. The lease must not include an option to purchase.)
6. Except for obligations with respect to automobiles, on obligations incurred by either or both of us during our marriage, we owe no more than \$6,000.
7. The total fair market value of community property assets, not including what we owe on those assets and not including automobiles, is less than \$38,000.
8. Neither of us has separate property assets, not including what we owe on those assets and not including automobiles, in excess of \$38,000.
9. We each have filled out and given the other an *Income and Expense Declaration* (form FL-150).
10. We each have filled out and given the other copies of the worksheets on pages 8, 10, and 12 of the *Summary Dissolution Information* booklet (form FL-810) used in determining the value and division of our property. We have told each other in writing about any investment, business, or other income-producing opportunities that came up after we were separated based on investments made or work done during the marriage and before our separation. This meets the requirements of preliminary declaration of disclosure.
11. (Check whichever statement is true.)
 - a. We have no community assets or liabilities.
 - b. We have signed an agreement listing and dividing all our community assets and liabilities and have signed all the papers necessary to carry out our agreement. A copy of our agreement is attached to this petition.
12. Irreconcilable differences have caused the irremediable breakdown of our marriage, and each of us wishes to have the court dissolve our marriage without our appearing before a judge.
13. The wife desires to have her former name restored. Her former name is (specify name): _____
 The husband desires to have his former name restored. His former name is (specify name): _____

HUSBAND: WIFE:	CASE NUMBER:
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14. Upon entry of judgment of summary dissolution of marriage, we each give up our rights to appeal and to move for a new trial.

15. Each of us forever gives up any right to spousal support from the other.

16. We agree that this matter may be determined by a commissioner sitting as a temporary judge.

17. Mailing address of husband

Name:
Address:

City:
State:
Zip Code:

18. Mailing address of wife

Name:
Address:

City:
State:
Zip Code:

19. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:



(SIGNATURE OF HUSBAND)

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:



(SIGNATURE OF WIFE)

NOTICES

Your divorce will not be final until husband or wife files a *Request for Judgment, Judgment of Dissolution of Marriage, and Notice of Entry of Judgment* (form FL-820) and receives a stamped copy back from the court. Either husband or wife can file form FL-820 with the court six months after you file this petition. Until husband or wife files form FL-820, either one of you can stop the divorce by filing a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830).

Dissolution may automatically cancel the rights of a spouse under the other spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the rights of a spouse as beneficiary of the other spouse's life insurance policy. You should review these matters, as well as any credit card accounts, other credit accounts, insurance policies, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or a court order. (See Fam. Code, §§ 231-235.)

Copies: Original (file with court clerk); one copy for each party; office copies.

§3.28

3. Form: Worksheet for Determining Value and Division of Community Property

HUSBAND:	CASE NUMBER:
WIFE:	

VII. SAMPLE WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the wife's separate property cannot be more than \$38,000. The total fair market value of the husband's separate property cannot be more than \$38,000. Separate property is anything that either of you owned or earned before you got married, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage. Do not include cars.

	Wife's Property— Fair Market Value	Husband's Property— Fair Market Value
A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.		
Item		
Credit union savings—wife (before marriage)	420	
Savings bonds—husband (bought before marriage)		250
Pension plan benefits—wife (before marriage and after separation)	1500	
Pension plan benefits—husband (before marriage and after separation)		1300
B. Items owned outright		
Item		
Clothes—wife (bought before marriage)	350	
Stocks—wife (birthday present from father)	375	
Furniture—wife (owned before marriage)	460	
Camera—husband (owned before marriage)		229
Wristwatch—husband (bought after separation)		142
Clothes—husband (bought after separation)		250
C. Items being bought on credit		
Item	Fair Market Value	Minus What's Owed
TV set—wife (after separation)	400	350 =
Clothes—wife (after separation)	220	170 =
		=
		=
		=
		=
		=
GRAND TOTALS: WIFE'S AND HUSBAND'S SEPARATE PROPERTY		
	3205	2171

Copies: Original (attach to original of joint petition and file with court clerk); one copy for each party; office copies.

Comment: This form is included within the Summary Dissolution Information booklet (Judicial Council Form FL-810), available in California Judicial Council Forms Manual §3 (Cal CEB 1981).

§3.29

**4. Form: Worksheet for Determining Value
of Separate Property**



Copies: Original (attach to original of joint petition and file with court clerk); one copy for each party; office copies.

Comment: This form is included within the Summary Dissolution Information booklet (Judicial Council Form FL-810), available in California Judicial Council Forms Manual §3 (Cal CEB 1981).

**§3.30 5. Form: Worksheet for Determining
Community Obligations and Their
Division**



Copies: Original (attach to original of joint petition and file with court clerk); one copy for each party; office copies.

Comment: This form is included within the Summary Dissolution Information booklet (Judicial Council Form FL-810), available in California Judicial Council Forms Manual §3 (Cal CEB 1981).

**§3.31 6. Form: Marital Property Agreement
MARITAL PROPERTY AGREEMENT**

This agreement is made between _____, hereafter referred to as "Husband," and _____, hereafter referred to as "Wife." Its purpose is to make a final and complete settlement of all property rights between the parties.

Husband will be awarded the following community assets. Wife transfers to Husband as his separate property all her rights and interests in each asset:

[List each asset]

Wife will be awarded the following community assets. Husband transfers to Wife as her separate property all his rights and interests in each asset:

[List each asset]

Husband will be assigned the following community liabilities. Husband will pay and hold Wife harmless from each liability:

[List each liability]

Wife will be assigned the following community liabilities. Wife will pay and hold Husband harmless from each liability:

[List each liability]

The community assets and liabilities divided above constitute all the community assets and liabilities of the parties.

The foregoing is agreed to by:

Date: _____
_____ Husband

Date: _____
_____ Wife

Copies: Original (attach to original of joint petition and file with court clerk); one copy for each party; office copies.

HUSBAND: —	CASE NUMBER:
WIFE: —	

NOTICE OF ENTRY OF JUDGMENT

6. You are notified that a judgment of dissolution of marriage was entered on *(date)*:

Date: _____ Clerk, by _____, Deputy

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the *Notice of Entry of Judgment* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the notice was mailed at *(place)*: _____ California, on *(date)*:

Date: _____ Clerk, by _____, Deputy

HUSBAND'S ADDRESS		WIFE'S ADDRESS
┌	┌	┌
└	└	└

Copies: Original and two copies (submit to court clerk); office copies.

§3.33

8. Form: Notice of Revocation of Petition for Summary Dissolution (Judicial Council Form FL-830)

FL-830

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (<i>Name</i>): SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
MARRIAGE OF PETITIONER: RESPONDENT:		
NOTICE OF REVOCATION OF PETITION FOR SUMMARY DISSOLUTION		CASE NUMBER:

Notice is given that the undersigned terminates the summary dissolution proceedings and revokes the *Joint Petition for Summary Dissolution of Marriage* (form FL-800) filed on (date):

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

Date: _____
(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

COMPLETE THIS NOTICE, EXCEPT FOR THE PLACE AND DATE OF MAILING AND CLERK'S NAME. SUBMIT THE ORIGINAL AND TWO COPIES TO THE COUNTY CLERK'S OFFICE. IF NO REQUEST FOR JUDGMENT HAS BEEN FILED, THE CLERK WILL NOTIFY YOU THAT THIS NOTICE OF REVOCATION HAS BEEN FILED BY COMPLETING THE CERTIFICATE BELOW.

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a copy of the foregoing was mailed first class postage prepaid, in a sealed envelope as shown below, and that the mailing of the foregoing and execution of this certificate occurred at (place): _____ California, on

(Date): _____ Clerk, by _____, Deputy

Name and address of husband		Name and address of wife

NOTICE

IF THE CLERK'S CERTIFICATE OF MAILING ABOVE HAS BEEN DATED AND SIGNED BY THE CLERK, THIS SUMMARY DISSOLUTION PROCEEDING IS ENDED. YOU ARE STILL MARRIED.

Copies: Original and two copies (submit to court clerk); office copies.

§3.34 D. Attorney's Role

It is clear that attorneys play a smaller role in summary dissolution proceedings than they do in standard dissolution proceedings. Indeed, it is likely that many of the parties who proceed by summary

dissolution do so without consulting attorneys at all. Nevertheless the Judicial Council summary dissolution brochure is required to state that it is in the parties' best interests to consult an attorney on the dissolution of their marriage (Fam C §2406(b)(1)), and attorneys may certainly provide advice and even appear of record in such proceedings.

When the attorney is consulted for advice but will not be the client's attorney of record, the attorney should seek to ensure that the client understands the limited scope of the attorney's responsibilities and that the understanding is confirmed in writing, *e.g.*, in the fee agreement. Whether or not the attorney will be the attorney of record, the attorney should make clear to both parties which of them the attorney is representing, and that he or she is not representing both, and should confirm that advice in writing, *e.g.*, by letter to the unrepresented party.

§3.34A VI. TERMINATING DOMESTIC PARTNERSHIP WITHOUT COURT ACTION

An out-of-court procedure exists for registered domestic partners to terminate their domestic partnerships without court action by use of a prescribed notice filed with the Secretary of State. This procedure is dependent on conditions parallel to those that apply to married couples seeking summary dissolution of marriage. See Fam C §§2400–2406.

In order to terminate a registered domestic partnership by use of the notice procedure and without a court proceeding, all of the following conditions must exist at the time a Notice of Termination of Domestic Partnership form (Secretary of State Form DP-2) is filed with the Secretary of State (Fam C §299(a)(1)–(10)):

- Both registered domestic partners sign the Notice of Termination of Domestic Partnership;
- There are no children of the parties' relationship who were born before or after registration of the domestic partnership or adopted by the parties after registration, and neither domestic partner, to the knowledge of the partners, is pregnant;
- The registered domestic partnership is not more than 5 years in duration, as measured from the date of registration (see Fam C §297.5(k)(1));
- Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party that both: (1) does not include an option to purchase, and (2)

terminates within 1 year from the date of filing of the Notice of Termination of Domestic Partnership;

- There are no unpaid obligations in excess of the statutory amount described in Fam C §2400(a)(6) (pertaining to summary dissolution), as adjusted by Fam C §2400(b), incurred by either or both of the parties after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile;
- The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in Fam C §2400(a)(7) (pertaining to summary dissolution), as adjusted by Fam C §2400(b), and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount;
- The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement;
- Each domestic partner waives any rights to support by the other domestic partner;
- The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership (see brochure at <http://www.sos.ca.gov/dpreistry/forms/sf-dp2.pdf>); and
- Both parties desire that the domestic partnership be terminated.

If the partners do not meet these conditions, they must file a family court action to terminate the domestic partnership. See Fam C §299(d). For a more detailed discussion of terminating a domestic partnership without court action, see California Domestic Partnerships §§19.6–19.7 (Cal CEB 2005).

VII. CHOOSING FORM OF ACTION

§3.35 A. Dissolution Versus Legal Separation

For most parties initiating marital actions in California (*i.e.*, those whose marriage is neither void (see §§3.8–3.9) nor voidable (see §§3.10–3.15)), the choice in the form of action is either a dissolution or a legal separation. A party to a voidable marriage who either chooses not to seek a judgment of nullity or is ineligible for such a

judgment (*e.g.*, the statute of limitations (see §§3.10, 3.13–3.15) has run) has the same two options.

Most parties choose dissolution rather than legal separation because a judgment of dissolution terminates the marriage and restores the parties to the status of unmarried persons. Fam C §2300. Legal separation is an appropriate choice, however, for parties who wish to separate their lives just as formally and fully as parties to a dissolution do, but who want to remain legally married, whether for religious or other personal reasons (*e.g.*, maintenance of medical insurance coverage, assuming such coverage will continue to be available after judgment of legal separation is entered, qualification for derivative social security benefits, eligibility for certain benefits accorded to military spouses). A judgment of legal separation basically determines the same issues that a judgment of dissolution does except that it does not set a date for termination of the marital status. *Faught v Faught* (1973) 30 CA3d 875, 106 CR 751. It should be noted that, at any time after a judgment of legal separation is granted, either party may file a separate dissolution action to terminate the marriage. Fam C §2347. However, issues adjudicated in a legal separation proceeding are res judicata and may not be reopened in a subsequent dissolution proceeding. *Faught v Faught, supra* (duration of spousal support).

When a judgment of dissolution is desired but the parties have not met the residency requirement of Fam C §2320, a petition for legal separation may be filed and then, when the residency requirement is met, amended to request a judgment of dissolution. Fam C §2321. This procedure enables the parties to seek pendente lite relief or to start the minimum 6-month period before their marital status may be terminated, without waiting until the residency requirement is met. For further discussion, see §3.3.

A judgment of legal separation may be granted only if (1) both parties consent or (2) the respondent does not appear and the petitioner requested a legal separation. Fam C §2345. Consequently, unless it is being filed with the intent to amend it to one for dissolution when the residency requirement is met, a petition for legal separation should not be filed if opposition from the respondent is anticipated. For further discussion, see §3.4.

For a case discussing the effect of a long term separation (without a judgment) on the ability of a married person who initiated but abandoned a dissolution action to claim “surviving spouse” status in probate proceedings, see *Estate of Garrett* (2008) 159 CA4th 831, 71 CR3d 864.

§3.36 B. Dissolution Versus Nullity

A party who is eligible to file a petition for a judgment of nullity based on a voidable marriage (see §§3.10–3.15) will have a choice between an action for a judgment of dissolution (or legal separation) and one for a judgment of nullity.

Among the reasons for choosing to seek a judgment of dissolution are the following:

- In some instances, it may be difficult to establish grounds for a judgment of nullity based on a voidable marriage (see §§3.10–3.15). Even when proof is difficult, however, the petition may request a judgment of nullity and a judgment of dissolution in the alternative. See Cal Rules of Ct 5.114. Then, if grounds for a judgment of nullity are not established, the petitioner may seek a judgment of dissolution.
- The parties may not wish to acknowledge in a public court proceeding the underlying facts establishing that their marriage is voidable.
- A party who is not a putative spouse (see §3.19) may be entitled to orders (*e.g.*, division of property, support, attorney fees and costs) in a dissolution action that he or she could not obtain in a nullity action.

Among the reasons for choosing to seek a judgment of nullity are the following:

- A judgment of nullity is effective immediately without the 6-month waiting period from service of process (or the respondent's appearance) to termination of the marriage that applies in a dissolution proceeding.
- A party may prefer, as a matter of legal status, never to have been married to the other party, rather than to have been married and then divorced.
- A judgment of nullity may allow application of the "relation-back" doctrine, thereby restoring rights that were lost as a result of the marriage. See §3.18.

When the responding party is not a putative spouse (see §3.19), it may be possible to prevent that party from obtaining orders (*e.g.*, division of property, support, attorney fees and costs) in a nullity action that he or she could obtain in a dissolution action.

§3.37 C. Standard Dissolution Versus Summary Dissolution

When the parties meet the statutory requirements for the summary dissolution procedure (see Fam C §2400(a)), they will be able to choose between a summary dissolution and a standard dissolution.

The primary advantage of the summary procedure, particularly when parties will proceed in pro per, is its simplicity. Although they may still benefit from legal advice on whether the summary procedure is appropriate and in preparing their property settlement agreement, many parties will be able to process their own summary dissolution.

The primary disadvantage of the summary procedure is that either party may unilaterally terminate the proceeding by filing a notice of revocation at any time before entry of the final judgment. Fam C §2402. If either party then initiates a standard dissolution proceeding within 90 days after the filing of the notice of revocation, however, the period of time between the filing of the joint petition and the filing of the notice of revocation may be applied to satisfying the 6-month requirement of Fam C §2339 for termination of the marriage in the standard dissolution proceeding. Fam C §2342.

§3.38 VIII. LIMITED SCOPE REPRESENTATION

The Judicial Council has adopted rules to help attorneys provide limited scope representation (sometimes called “unbundling”) to family law litigants who would like the assistance of an attorney for parts of their cases, even if they cannot afford full representation. See Cal Rules of Ct 5.70–5.71. On limiting the scope of representation in fee agreements, see Fee Agreement Forms Manual §§1.20–1.21 (2d ed Cal CEB 2007).

A. Nature of Limited Representation

§3.39 1. Drafting Documents

An attorney who contracts with a family law client to draft or help draft legal documents, but does not make or contract to make an appearance in the case, is not required to disclose in the documents that he or she was involved in their preparation. Cal Rules of Ct 5.70(a). If the litigant seeks a court order for attorney fees to pay for those services, however, the information necessary to determine fees, including the attorney’s name, basis for billing, tasks performed, and amount billed, must be disclosed to the court. Cal Rules of Ct 5.70(b). Rule 5.70 does not apply to an attorney who has made a general appearance or has contracted with the client to make an appearance on any issue that is the subject of the pleadings. Cal Rules of Ct 5.70(c).

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	CASE NUMBER:
--------------------------------------------------------------------------	--------------

g. Contempt (describe in detail):

h. Other (describe in detail):

i. See attachment 3i.

4. By signing this form, the party agrees to sign form MC-050, *Substitution of Attorney—Civil* at the completion of the representation as set forth above.

5. The attorney named above is "attorney of record" and available for service of documents only for those issues specifically checked on pages 1 and 2. For all other matters, the party must be served directly. The party's name, address, and phone number are listed below for that purpose.

Name:

Address (for the purpose of service):

Phone:

Fax:

This notice accurately sets forth all current matters on which the attorney has agreed to serve as "attorney of record" for the party in this case. The information provided herein is not intended to set forth all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY)

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY)

PETITIONER/PLAINTIFF:	CASE NUMBER
RESPONDENT/DEFENDANT:	
OTHER PARENT/CLAIMANT:	

PROOF OF SERVICE BY PERSONAL SERVICE MAIL

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. I served a copy of the *Notice of Limited Scope Representation* as follows (check either a. or b. below):
 - a. **Personal service.** The *Notice of Limited Scope Representation* was given to:
 - (1) Name of person served:
 - (2) Address where served:
 - (3) Date served:
 - (4) Time served:
 - b. **Mail.** I placed a copy of the *Notice of Limited Scope Representation* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed and mailed as follows:
 - (1) Name of person served:
 - (2) Address:
 - (3) Date of mailing:
 - (4) Place of mailing (*city and state*):
 - (5) I live in or work in the county where the *Notice* was mailed.
3. Server's information:
 - a. Name:
 - b. Home or work address:
 - c. Telephone number:

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

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF PERSON SERVING NOTICE)

§3.42 B. On Completion of Limited Representation

When the attorney has completed the tasks specified in the Notice of Limited Scope Representation (Judicial Council Form FL-950) and the client has not signed a Substitution of Attorney (Judicial Council Form MC-050), the attorney may be relieved as counsel by (Cal Rules of Ct 5.71):

- Filing optional Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (Judicial Council Form FL-955) with the court;

- Serving optional Form FL-955 and optional Objection to Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (Judicial Council Form FL-956) on the client;
- Serving optional Form FL-955 on all other parties and counsel of record in the case; and
- If no objection is filed within 15 days from the date the Form FL-955 was served on the client, filing with the court:
 - An updated Form FL-955 indicating the lack of objection, and
 - A proposed optional Order on Application to Be Relieved as Counsel Upon Completion of Limited Scope Representation (Judicial Council Form FL-958).

If an objection is filed within 15 days after the attorney serves the Form FL-955 on the client, the clerk sets a hearing to take place no later than 25 days from the date the objection is filed and sends notice of the hearing to the parties and counsel. Cal Rules of Ct 5.71(e).

If no objection is filed, the clerk forwards the file with the proposed order for the judge to sign. The attorney serves a copy of the signed order on the client and on all parties who have appeared in the case. Cal Rules of Ct 5.71(f). The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court. Cal Rules of Ct 5.71(f).

The Judicial Council forms relating to the attorney's withdrawal from a limited scope of representation case are optional, not mandatory.

On withdrawing as attorney after judgment in a full representation case, see §§17.87–17.88.

§3.43 IX. USE OF COLLABORATIVE LAW PROCESS

During the past decade, a growing number of attorneys have made use of collaborative negotiation techniques in resolving their family law cases. This approach to handling cases has come to be known as “collaborative practice” or a “collaborative law process.” As of January 1, 2007, this process is recognized by statute. Fam C §2013.

Section 2013 defines “collaborative law process” as one in which the parties and any professionals they engage to assist them agree in writing to use their best efforts and to make a good-faith attempt to resolve disputes related to the family law matters on an agreed basis without resorting to adversary judicial intervention. Fam C §2013(b).

Section 2013 specifically authorizes the use of a collaborative process in reaching a written agreement between the parties. Fam C §2013(a).

An uncodified portion of the legislation that enacted §2013 states that it is the legislature's intent that further legislation be enacted to provide a procedural framework for the practice of collaborative law. Stats 2006, ch 496, §5. However, legislation proposed in 2007 to effectuate this intent (AB 189) was not chaptered, but remained active as of the publication of this edition. For related discussion, see *Dissolution Strategies: From Intake to Judgment*, chap 4 (Cal CEB Annual).