



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 16–17, 2017

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Title	Agenda Item Type
Family Law: Technical Changes to Bifurcation Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms FL-315 and FL-347	January 1, 2018
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 23, 2017
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Gabrielle D. Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends technical revisions to two forms—an application and an order for the early termination of marital or partnership status. Specifically, the list of the conditions for granting the bifurcation of the case and ending status early upon a separate trial will be changed to track the language used in Family Code section 2337. This change will ensure that the conditions for granting the bifurcation last until the judgment has been entered on all remaining issues and has become final.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Revise *Request or Response to Request for Separate Trial* (form FL-315) to clarify that the conditions enumerated in item 4b(2) through (5) last “until judgment has been entered on all remaining issues and has become final.”

2. Revise *Bifurcation of Status of Marriage or Domestic Partnership—Attachment* (form FL-347) to clarify that the conditions enumerated item 5b–e of form FL-347 last “until judgment has been entered on all remaining issues and has become final.”

The revised forms are attached at pages 4–9.

### Previous Council Action

The Judicial Council adopted form FL-347 and revised form FL-315, effective January 1, 2009,<sup>1</sup> to comply with Assembly Bill 861 (Stats. 2006, ch. 141), which amended Family Code section 2337 to require all pension plans be joined before the termination of marital status and the court makes orders regarding the distribution of those pension funds. The bill also added optional conditions to section 2337 to protect the nonmoving party as a result of the termination of marriage or domestic partnership.

### Rationale for Recommendation

Committee staff was alerted that there is confusion between the language in Family Code section 2337 and the language of the implementing forms, FL-315 and FL-347.

Subdivisions (c)(2)–(5) of the bifurcation statute, Family Code section 2337,<sup>2</sup> all begin “Until judgment has been entered on all remaining issues and has become final.” Forms FL-315 and FL-347 read “until a judgment has been entered and *filed* on all remaining issues.” (Emphasis added.) While this is the most common way for a judgment to become final, it is not accurate in all cases.

Thus, the language used in the forms may have the effect of shortening the duration of the protections and responsibilities of the parties under Family Code section 2337 in some cases. For example, a judgment on all remaining issues may *become final* upon filing with the family court soon after a separate trial on the matter.<sup>3</sup> However, some judgments may not become final until an order is made on appeal or following a new trial.<sup>4</sup> To remedy a situation in which a party

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<sup>1</sup> Judicial Council of Cal., Advisory Com. Rep., *Family Law: Miscellaneous Forms* (Oct. 2, 2008), [www.courts.ca.gov/documents/102408itema34.pdf](http://www.courts.ca.gov/documents/102408itema34.pdf).

<sup>2</sup> Available at [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=FAM&sectionNum=2337](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=2337).

<sup>3</sup> Family Code section 2340: “A judgment of dissolution of marriage shall specify the date on which the judgment becomes finally effective for the purpose of terminating the marriage relationship of the parties.”

<sup>4</sup> Family Code section 2341: “(a) Notwithstanding Section 2340, if an appeal is taken from the judgment or a motion for a new trial is made, the dissolution of marriage does not become final until the motion or appeal has been finally disposed of, nor then, if the motion has been granted or judgment reversed. [¶] (b) Notwithstanding any other provision of law, the filing of an appeal or of a motion for a new trial does not stay the effect of a judgment insofar as it relates to the dissolution of the marriage status and restoring the parties to the status of unmarried persons, unless the appealing or moving party specifies in the notice of appeal or motion for new trial an objection to the termination of the marriage status. No party may make such an objection to the termination of the marriage status unless such an objection was also made at the time of trial.”

could be denied the complete protections afforded by Family Code section 2337 after the court terminates the marriage or domestic partnership, the committee recommends changing the forms so that they are legally accurate.

***Request or Response to Request for Separate Trial (form FL-315)***

This form will be revised to clarify that the conditions enumerated in item 4b(2) through (5) last “until judgment has been entered on all remaining issues and has become final.”

***Bifurcation of Status of Marriage or Domestic Partnership—Attachment (form FL-347)***

This form will likewise be revised to clarify that the conditions enumerated item 5b–e last “until judgment has been entered on all remaining issues and has become final.”

**Comments, Alternatives Considered, and Policy Implications**

Forms FL-315 and FL-347 did not circulate for comment. The recommended revisions to the forms are technical changes that are unlikely to create controversy and thus do not require circulation for comment under rule 10.22(d)(2) of the California Rules of Court.

The committee is aware that there are two appeals pending on this issue and understands that the Judicial Council does not have a policy about making a change to a rule or form while an appeal related to that rule or form is pending. The committee recognizes that its recommendations could affect the outcome of those cases. For this reason, the committee considered waiting for the Court of Appeal to make its determination. However, the committee was concerned that waiting to change the form to reflect the statutory language might cause harm to other persons seeking to protect their rights upon bifurcation of the marital status.

Although implementation of the revisions will require courts to incur standard reproduction costs for the forms, the changes will provide clarity about the rights and responsibilities of parties whose marriage or partnership is terminated early in family court.

**Attachments and Links**

1. Form FL-315, at pages 4–6
2. Form FL-347, at pages 7–9

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REQUEST FOR SEPARATE TRIAL                      OR                       RESPONSE TO REQUEST FOR SEPARATE TRIAL

Attachment to     Request for Order (form FL-300)                       Responsive Declaration to Request for Order (form FL-320)

1. I am the  petitioner     respondent    and     request     oppose the request                      that the court sever (bifurcate) and grant an early and separate trial on the following issue or issues:

- a.  Permanent custody and visitation of the children of the marriage of domestic partnership
- b.  Date of separation of the parties
- c.  Alternate valuation date for property
- d.  Validity of agreement entered into before or during the marriage or domestic partnership
- e.  Dissolution of the status of the marriage or domestic partnership

(1) I will serve with this application or response my preliminary *Declaration of Disclosure* (form FL-140) and completed *Schedule of Assets and Debts* (form FL-142) and *Income and Expense Declaration* (FL-150) unless they have been previously served or the parties have stipulated in writing to defer service.

(2) All pension or retirement plans in which the community has an interest are listed below or on attachment 1e(2):

(3) All pension or retirement plans listed in 1e(2) have been joined as a party to this proceeding, unless joinder is precluded or made unnecessary as a matter of law. (See Retirement Plan Joinder—Information Sheet (form FL-318-INFO) to determine if a joinder is required.)

(4) I understand that the court may make the orders specified or requested on pages 2 and 3 if the request is granted to bifurcate the status of the marriage or domestic partnership and the marriage or partnership is ended.

(5)  I request that the court make the orders indicated on pages 2 and 3 and any attachments.

*NOTE: A request for an early termination of your marital or partnership status may have a significant impact on your rights or responsibilities in your case. If you do not understand this form, you should speak with an attorney.*

f.  Other (specify):

2. a.  I request that the court conduct this separate trial on the hearing date.

b.  I will, at the hearing, ask the court to set a date for this separate trial.

3. The reasons in support of this request are (specify):

Memorandum attached.                       Supporting declarations attached.

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4. Conditions relating to bifurcation of the status of the marriage or partnership:

- a. I understand that the court must enter an order to preserve the claims of each spouse or domestic partner in all retirement plan benefits upon entry of judgment granting a dissolution of the status of the marriage or domestic partnership.
- b. I request that the court order the following as a condition of granting the bifurcation and ending the marriage or partnership upon an early and separate trial:

(1)  **Division of property**

The  petitioner  respondent and his or her estate must indemnify and hold me harmless from any taxes, reassessments, interest, and penalties that I have to pay in connection with the division of the community estate that I would not have had to pay if we were still married or in a domestic partnership at the time the division was made.

(2)  **Health insurance**

Until judgment has been entered on all remaining issues and has become final,  petitioner  respondent must maintain all existing health and medical insurance coverage for me and any minor children as named dependents as long as he or she is eligible to do so. If at any time during this period, he or she is not eligible to maintain that coverage, he or she must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

To the extent that coverage is not available, the  petitioner  respondent must be responsible for paying, and demonstrate to the court's satisfaction the ability to pay, for health and medical care for me and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and must otherwise indemnify and hold me harmless from any adverse consequences resulting from the loss or reduction of the existing coverage.

(3)  **Probate homestead**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in a termination of my right to a probate homestead in the residence in which I am residing at the time the severance is granted.

(4)  **Probate family allowance**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my right to a probate family allowance as the surviving spouse or surviving domestic partner.

(5)  **Retirement benefits**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of my rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated those benefits, to the extent that I would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner.

(6)  **Social security benefits**

The  petitioner  respondent must indemnify and hold me harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent that I would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner.

(7)  **Beneficiary designation—nonprobate transfer**

The  petitioner  respondent must maintain the beneficiary designation specified for each Nonprobate Transfer Asset (Probate Code section 5000) identified on the attached list in the percentage indicated. *(See Attachment 7 (not a form), which lists each asset and proposed percentage.)* This designation must stay in effect until judgment has been entered with respect to the community ownership of that asset and until my interest in it has been distributed to me.

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(8)  **Individual Retirement Accounts**

To preserve the ability of the nonowner to defer the distribution of an Individual Retirement Account (IRA) or annuity upon the death of the owner, the court should make the attached orders assigning and transferring the community interest of  petitioner  respondent in each listed IRA to that party. (See Attachment 8 (not a form), which lists names of IRAs, account numbers, and amount to be awarded.)

(9)  **Enforcement of community property rights**

Because it will be difficult to enforce either of our community property rights if one of us dies before the division and distribution or compliance with any court-ordered payment of any community property interest, the court should make the attached order to provide enforcement security for  petitioner  respondent. (See attachment 9 (not a form), which specifies the security interest to be ordered as provided by Family Code section 2337(c)(9).)

(10)  **Other conditions that are just and equitable**

I request that the court make the following additional orders:

5. Number of pages attached after this page:

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)

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**BIFURCATION OF STATUS OF MARRIAGE OR DOMESTIC PARTNERSHIP**

ATTACHMENT TO  JUDGMENT (FL-180)  FINDINGS AND ORDER AFTER HEARING (FL-340)

The court grants the request of  petitioner  respondent to bifurcate and grant a separate trial on the issue of the dissolution of the status of the marriage or domestic partnership apart from other issues.

**Date marital or domestic partnership status ends (specify):**

**THE COURT FINDS**

1. A preliminary declaration of disclosure with a completed schedule of assets and debts and income and expense declaration has been served on the nonmoving party, or the parties have stipulated in writing to defer service of the preliminary declaration of disclosure until a later time.
2. Each retirement or pension plan of the parties has been joined as a party to the proceeding for dissolution unless joinder is precluded or made unnecessary by applicable law.

**THE COURT ORDERS**

3. a. To preserve the claims of each party in all retirement plan benefits on entry of judgment granting a dissolution of the status of the marriage or domestic partnership, the court makes one of the following orders for each retirement plan in which either party is a participant:
  - (1) A final domestic relations order or qualified domestic relations order under Family Code section 2610 disposing of each party's interest in retirement plan benefits, including survivor and death benefits.
  - (2) An interim order preserving the nonemployee party's right to retirement plan benefits, including survivor and death benefits, pending entry of judgment on all remaining issues.
  - (3) A provisional order on *Pension Benefits—Attachment to Judgment* (form FL-348) incorporated as an attachment to the judgment of dissolution of the status of marriage or domestic partnership (*Judgment (Family Law)* (form FL-180)). This order provisionally awards to each party a one-half interest in all retirement benefits attributable to employment during the marriage or domestic partnership.

	Type of order attached		
b. Name of plan:	3a(1)	3a(2)	3a(3)
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

See attachment 3b for additional plans.

- c. The moving party must promptly serve on the retirement or pension plan administrator a copy of any order entered under items a and b above and a copy of the judgment granting dissolution of the status of the marriage or domestic partnership (form FL-180).
4. Jurisdiction is reserved for later determination of all other pending issues in this case.
5. The court makes the following additional orders as conditions for granting the severance on the issue of dissolution of the status of marriage or domestic partnership. In the case of the moving party's death, the order continues to be binding on that moving party's estate and will be enforceable against any asset, including the proceeds thereof, to the same extent that these obligations would have been enforceable before the person's death.
  - a.  **Division of property**

The  petitioner  respondent must indemnify and hold the other party harmless from any  taxes,  reassessments,  interest, and  penalties payable by the other party in connection with the division of the community estate that would not have been payable if the parties were still married or domestic partners at the time the division was made.

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5. b.  **Health insurance**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must maintain all existing health and medical insurance coverage for the other party, and that party must also maintain any minor children as named dependents, as long as that party is eligible to do so. If at any time during this period the  petitioner  respondent is not eligible to maintain that coverage, that party must, at his or her sole expense, provide and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage to the extent it is available.

If that coverage is not available, the  petitioner  respondent is responsible for paying the health and medical care for the other party and the minor children to the extent that care would have been covered by the existing insurance coverage but for the dissolution of marital status or domestic partnership, and will otherwise indemnify and hold the other party harmless from any adverse consequences resulting from the loss or reduction of the existing coverage. "Health and medical insurance coverage" includes any coverage under any group or individual health or other medical plan, fund, policy, or program.

c.  **Probate homestead**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

d.  **Probate family allowance**

Until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse or surviving domestic partner.

e.  **Retirement benefits**

Except for any retirement plan, fund, or arrangement identified in any order issued and attached as set out in paragraph 3, until judgment has been entered on all remaining issues and has become final, the  petitioner  respondent must indemnify and hold the other party harmless from any adverse consequences to the other party if the bifurcation results in the loss of the other party's rights with respect to any retirement, survivor, or deferred compensation benefits under any plan, fund, or arrangement, or to any elections or options associated with them, to the extent that the other party would have been entitled to those benefits or elections as the spouse or surviving spouse or the domestic partner or surviving domestic partner of the moving party.

f.  **Social security benefits**

The moving party must indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse or surviving domestic partner of the moving party.

g.  **Beneficiary designation—nonprobate transfer**

Attachment 5(g), Order Re: Beneficiary Designation for Nonprobate Transfer Assets, will remain in effect for each covered asset until the division of any community interest therein has been completed.

h.  **Individual Retirement Accounts**

Attachment 5(h), Order Re: Division of IRA Under Internal Revenue Code Section 408(d)(6), has been issued to preserve the ability of  petitioner  respondent to defer distribution of his or her community interest on the death of the IRA owner.



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- 5. i.  **Enforcement of community property rights**  
Good cause exists to make additional orders as set out in Family Code section 2337(c)(9). See Attachment 5(i).
  
- j.  **Other conditions that are just and equitable**  
Other:

6. Number of pages attachments:

**WARNING:** *Judgment (Family Law)* (form FL-180) (status only) must be completed in addition to this form for the status of the marriage or domestic partnership to be ended.