



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 17, 2020

Title

Rules and Forms: Technical Changes to
Family Law and Juvenile Forms

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise forms FL-170 and JV-320

Effective Date

January 17, 2020

Recommended by

Family and Juvenile Law Advisory
Committee

Date of Report

December 31, 2019

Hon. Jerilyn Borack, Cochair

Hon. Mark A. Juhas, Cochair

Contact

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising one form for use in default or uncontested divorces and one mandatory form used in termination of parental rights proceedings in dependency cases to correct technical errors.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 17, 2020:

1. Revise *Declaration for Default or Uncontested Dissolution or Legal Separation* (form FL-170) to replace “Default without agreement” with “Default with agreement” in item 4b, and to change the instruction in item 5 to “(check a, b, c, or d).”
2. Revise *Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320) to insert the word “not” in item 15d.

The revised forms are attached at pages 4–11.

Relevant Previous Council Action

On September 24, 2019, the Judicial Council revised *Declaration for Default or Uncontested Dissolution or Legal Separation* (form FL-170) in response to amendments to the Family Code. On that same date the council also revised *Orders Under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320) to conform to changes to the Indian Child Welfare Act regulations and guidelines.

Analysis/Rationale

The Family and Juvenile Law Advisory Committee recommends revising form FL-170 to correct an error that was introduced into the form when it was modified in response to amendments in the Family Code. The header in item 4b was inadvertently amended to read “Default without agreement” instead of “Default with agreement.” The committee also recommends changing the instruction in item 5 to read “(check a, b, c, or d)” to reflect that there is a choice “d” on the next page. These errors make the form, which is often used by self-represented litigants, quite confusing.

Similarly, the word “not” was inadvertently left out of item 15d when form JV-320 was revised. It is recommended that this error be corrected before the form becomes effective to ensure the form remains legally accurate.

Policy implications

The recommended revisions promote two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by ensuring that the Judicial Council forms reflect accurate legal information that will make it easier for litigants to gain access to the family court.

Comments

The recommendation has not circulated for public comment because the proposal satisfies the requirement of California Rules of Court, rule 10.22(d)(2). The committee recommends that the council adopt the recommended revisions without circulation for comment because the proposal presents a technical change that is unlikely to create controversy.

Alternatives considered

The committee did not consider any alternatives to the recommended action because the revisions are required to eliminate confusion.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impact on courts or litigants other than the costs of replacing outdated forms. Courts and self-help centers have been alerted to this change so that they minimize the number of new forms printed with inaccurate information.

Attachments and Links

1. Forms FL-170 and JV-320, at pages 4–11
2. Link A: *Family Law: Changes to Parentage Rules and Forms* (Sept. 6, 2019),
<https://jcc.legistar.com/View.ashx?M=F&ID=7693361&GUID=0723E145-B444-4B7F-8762-0F753FD3E01F>
3. Link B: *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019),
<https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000>

1. I declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. I agree that my case will be proven by this declaration and that I will not appear before the court unless I am ordered by the court to do so.
3. All the information in the ☐ amended ☐ Petition ☐ Response is true and correct.
4. **Type of case** (check a, b, or c):
 - a. ☐ **Default without agreement**
 - (1) No response has been filed and there is no written agreement or stipulated judgment between the parties;
 - (2) The default of the respondent was entered or is being requested, and I am not seeking any relief not requested in the petition; and
 - (3) The following statement is true (check one):
 - (A) ☐ There are no assets or debts to be disposed of by the court.
 - (B) ☐ The community and quasi-community assets and debts are listed on the **completed** current *Property Declaration* (form FL-160), which includes an estimate of the value of the assets and debts that I propose to be distributed to each party. The division in the proposed *Judgment* (form FL-180) is a fair and equal division of the property and debts, or if there is a negative estate, the debts are assigned fairly and equitably.
 - b. ☐ **Default with agreement**
 - (1) No response has been filed and the parties have agreed that the matter may proceed as a default matter without notice; and
 - (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnership rights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.
 - c. ☐ **Uncontested**
 - (1) Both parties have appeared in the case; and
 - (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnership rights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.

a. ☐ Both the parties have filed, or are filing concurrently, a *Declaration Regarding Service of Declaration of Disclosure* (form FL-141) and an *Income and Expense Declaration* (form FL-150).

b. ☐ This matter is proceeding by default. I am the petitioner in this action and have filed a proof of service of the preliminary *Declaration of Disclosure* (form FL-140) with the court. I hereby waive receipt of the final *Declaration of Disclosure* (form FL-140) from the respondent.

c. ☐ This matter is proceeding by default. I am the petitioner in this action, and service of the summons on respondent was done by publication or posting under court order. Service of the preliminary *Declaration of Disclosure* (form FL-140) is not required. I hereby waive receipt of the final *Declaration of Disclosure* (form FL-140) from the respondent.

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- d. ☐ This matter is proceeding as an uncontested action. Service of the final *Declaration of Disclosure* (form FL-140) is mutually waived by both parties. A waiver provision executed by both parties under penalty of perjury is contained on the *Stipulation and Waiver of Final Declaration of Disclosure* (form FL-144), in the settlement agreement or proposed judgment, or in another, separate stipulation.
6. ☐ **Child custody and visitation (parenting time)** should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. ☐ The information in *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* (UCCJEA) (form FL-105) ☐ has ☐ has not changed since it was last filed with the court. (If changed, attach updated form.)
- b. ☐ There is an existing court order for custody/parenting time in another case in (county):
The case number is (specify):
- c. ☐ The current custody and visitation (parenting time) previously ordered in this case, or the current schedule is (specify):
- ☐ Contained on Attachment 6c.
- d. ☐ The facts that support the requested judgment are (In a default case, state your reasons below):
- ☐ Contained on Attachment 6d.
7. ☐ **Child support** should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. If there are minor children, check and complete item (1) if applicable and item (2) or (3):
- (1) ☐ Child support is being enforced in another case in (county):
The case number is (specify):
- (2) ☐ The information in the child support calculation attached to the proposed judgment is correct based on my personal knowledge.
- (3) ☐ I request that this order be based on the ☐ Petitioner's ☐ Respondent's earning ability. The facts in support of my estimate of earning ability are (specify):
- ☐ Contained on Attachment 7a(3).
- b. Complete items (1) and (2) regarding public assistance.
- (1) I ☐ am receiving ☐ am not receiving ☐ intend to apply for public assistance for the child or children listed in the proposed order.
- (2) To the best of my knowledge, the other party ☐ is ☐ is not receiving public assistance.
☐ Petitioner ☐ Respondent is presently receiving public assistance, and all support should be made payable to the local child support agency at the address set forth in the proposed judgment. A representative of the local child support agency has signed the proposed judgment.
8. **Spousal, Partner, and Family Support** (If a support order or attorney fees are requested, submit a completed Income and Expense Declaration (form FL-150) unless a current form is on file. Include your best estimate of the other party's income. Check at least one of the following.)
- a. ☐ I knowingly give up forever any right to receive spousal or partner support.
- b. ☐ I ask the court to reserve jurisdiction to award spousal or partner support in the future to:
☐ Petitioner ☐ Respondent
- c. ☐ I ask the court to terminate forever spousal or partner support for: ☐ Petitioner ☐ Respondent
- d. ☐ Spousal support or domestic partner support should be ordered as set forth in the proposed *Judgment* (form FL-180) based on the factors described in:
☐ *Spousal or Partner Support Declaration Attachment* (form FL-157)
☐ written agreement
☐ attached declaration (Attachment 8d)
- e. ☐ Family support should be ordered as set forth in the proposed *Judgment* (form FL-180).
- f. ☐ Other (specify):

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9. ☐ **Parentage** of the children of the petitioner and respondent born prior to their marriage or domestic partnership should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. ☐ A voluntary declaration of parentage or paternity is attached.
- b. ☐ Parentage was previously established by the court in (*county*):
The case number is (*specify*):
☐ The written agreement of the parties regarding parentage is attached here (Attachment 9b) or to the proposed *Judgment* (form FL-180).
10. ☐ **Attorney fees** should be ordered as set forth in the proposed *Judgment* (form FL-180).
☐ The facts in support of this request are on *Request for Attorney's Fees and Costs Attachment* (form FL-319).
☐ Other (*specify facts below*):
11. ☐ The judgment should be entered nunc pro tunc for the following reasons (*specify*):
12. ☐ Petitioner ☐ Respondent requests restoration of the former name as set forth in the proposed *Judgment* (form FL-180) (*proceedings for dissolution or nullity of marriage only*).
13. Irreconcilable differences have led to the irremediable breakdown of the marriage or domestic partnership, and there is no possibility of saving the marriage or domestic partnership through counseling or other means.
14. This declaration may be reviewed by a commissioner sitting as a temporary judge, who may determine whether to grant this request or require my appearance under Family Code section 2336.

STATEMENTS IN THIS BOX APPLY ONLY TO DISSOLUTIONS

15. If this is a dissolution of a marriage or domestic partnership created in another state, the petitioner or the respondent has been a resident of this county for at least three months and of the state of California for at least six months continuously and immediately preceding the date of the filing of the petition for dissolution of marriage or domestic partnership.
16. I ask that the court grant the request for a judgment of dissolution of marriage or domestic partnership based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.
17. ☐ **Status only judgment:** This declaration is only for the termination of marital or domestic partner status. I ask the court to reserve jurisdiction over all other issues not requested in this declaration for later determination.

THIS STATEMENT APPLIES ONLY TO LEGAL SEPARATIONS

18. I ask that the court grant the request of a judgment for legal separation based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.

I understand that a judgment of legal separation does not terminate a marriage or domestic partnership, and that I am still married or a partner in a domestic partnership.

19. ☐ Other (*specify*):

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)

Child's name:				
Date of birth:	Age:			
Parent's name (if known):		Mother		Father
Parent's name (if known):		Mother		Father

1. a. Hearing date: _____ Time: _____ Dept.: _____ Room: _____
b. Judicial officer: _____
c. Parties and attorneys present: _____

2. ☐ The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), 366.25(b), or 727.31(b) and the report and recommendation of the ☐ social worker ☐ probation officer ☐ and other evidence.
3. ☐ The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

4. ☐ a. ☐ Notice has been given as required by law.

b. ☐ This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.3; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.

5. ☐ **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

6. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.

7. ☐ The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for

☐ parent (*name*): ☐ Mother ☐ Father

☐ parent (*name*): ☐ Mother ☐ Father

CHILD'S NAME:	CASE NUMBER:
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8. a. ☐ There is clear and convincing evidence that it is likely the child will be adopted.
- b. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
- (1) ☐ Qualified expert witness testimony was provided by _____; and
(Name of Witness)
- (2) ☐ Evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
- (3) ☐ The court finds by evidence beyond a reasonable doubt that continued physical custody by the ☐ mother
☐ father ☐ Indian custodian ☐ other: _____ is likely to result in
serious emotional or physical damage to the child.
9. The parental rights of
- a. ☐ parent (name): _____ ☐ Mother ☐ Father
- b. ☐ parent (name): _____ ☐ Mother ☐ Father
- c. ☐ alleged fathers (names): _____
- d. ☐ unknown mother ☐ all unknown fathers
- are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.
- e. **The adoption is likely to be finalized by (date):**
(If item 9 is checked, go to item 18.)
10. This case involves an Indian child. The parental rights of
- a. ☐ parent (name): _____
- b. ☐ parent (name): _____
- c. ☐ Indian custodians (names): _____
- d. ☐ alleged fathers (names): _____
- e. ☐ unknown mother ☐ all unknown fathers
- are modified in accordance with the tribal customary adoption order of the (specify): _____ tribe,
dated _____ and comprising _____ pages, which is accorded full faith and credit and fully incorporated herein.
The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary
adoptive placement in accordance with the tribal customary adoption order.
(If item 10 is checked, go to item 18.)
11. ☐ The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include
an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child
with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her
relative would be detrimental to the emotional well-being of the child. (If item 11 is checked, go to item 15 or 16.)
12. ☐ Termination of parental rights would be detrimental to the child for the following reasons: (If item 12 is checked, check
reasons below and go to item 15 or 16.)
- a. ☐ The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from
continuing the relationship.
- b. ☐ The child is 12 years of age or older and objects to termination of parental rights.
- c. ☐ The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental
rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no
longer needed.
- d. ☐ The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of
exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but
who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the
physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child.
This clause does not apply to any child who is either
- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

- The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

CHILD'S NAME:	CASE NUMBER:
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16. a. ☐ The child remains placed with *(name of placement)*:
with a permanent plan of *(specify)*:

- | | |
|---|---|
| (1) <input type="checkbox"/> Returning home
(2) <input type="checkbox"/> Adoption
(3) <input type="checkbox"/> Tribal customary adoption
(4) <input type="checkbox"/> Legal guardianship | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative
(6) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
|---|---|

The child's permanent plan is likely to be achieved by *(date)*:

(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 18.)

b. ☐ Visitation between the child and

☐ parent *(name)*:

☐ Mother

☐ Father

☐ parent *(name)*:

☐ Mother

☐ Father

☐ legal guardian *(name)*:

☐ other *(name)*:

is scheduled as follows *(specify)*:

c. ☐ Visitation between the child and *(names)*:

is detrimental to the child's physical or emotional well-being and is terminated.

17. ☐ The child is an Indian child. The court finds that the child's permanent plan complies with the placement preferences because:

a. ☐ The permanent plan is not adoption, and *(choose one)*:

- (1) ☐ The child is placed with a member of the child's extended family as defined by Welf. & Inst. Code, § 224.1(c); or
- (2) ☐ A diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
- (3) ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) ☐ A diligent search was made for a placement with a member of the child's extended family, in a foster home licensed, approved, or specified by the Indian child's tribe or an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or
- (5) ☐ The child is placed in accordance with the preferences established by the tribe; or
- (6) ☐ The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

b. ☐ The permanent plan is adoption *(choose one)*:

- (1) ☐ The child is placed with a member of the child's extended family; or
- (2) ☐ A diligent search was made for a placement with a member of the child's extended family, those efforts are documented in detail in the record, and the child is placed with other members of the child's tribe; or
- (3) ☐ An diligent search was made for a placement with a member of the child's extended family or other member of the child's tribe, those efforts are documented in detail in the record, and the child is placed with another Indian family; or
- (4) ☐ The child is placed in accordance with the preferences established by the tribe; or
- (5) ☐ The court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in detail in the record.

CHILD'S NAME:	CASE NUMBER:
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18. ☐ The child's placement is necessary.
19. ☐ The child's placement is appropriate.
20. ☐ The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
21. ☐ The child is an Indian child and active efforts as detailed in the record ☐ were ☐ were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. If active efforts were made, those efforts have proved ☐ successful ☐ unsuccessful.
22. ☐ The child is, or there is reason to know the child is, an Indian child. Notice has been provided as required by Welf. & Inst. Code, § 224.3, and proof of such notice has been filed with the court.
23. ☐ The child remains a ☐ dependent ☐ ward of the court. (If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)
24. ☐ All prior orders not in conflict with this order will remain in full force and effect.
25. ☐ Other (specify):

26. ☐ Next hearing date: _____ Time: _____ Dept.: _____ Room: _____
- a. ☐ Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b. ☐ Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
- c. ☐ Six-month postpermanency review

27. The ☐ Parent (name): _____ ☐ Mother ☐ Father
- ☐ Parent (name): _____ ☐ Mother ☐ Father
- ☐ Indian custodian (name): _____
- ☐ Child
- ☐ Other (name): _____
- have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

Date: _____

JUDICIAL OFFICER