

Circulated Changes July 2021

LOCAL RULE 16 FAMILY LAW (Effective date 7-1-90, as amended 1-1-04, as amended 7-1-04, as amended 7-1-05, as amended 1-1-07, as amended 7-1-07, as amended 7-1-08, as amended 1-1-09, as amended 7-1-09, as amended 1-1-10, as amended and renumbered 1-1-11, as amended 7-1-11, as amended 1-1-12, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, as amended 7-1-15, as amended 1-1-17, as amended 7-1-17, as amended 1-1-18, as amended 7-1-18, as amended 1-1-19, as amended 1-1-20, as amended 4-20-20, as amended 6-12-20, as amended 7-1-20, as amended 1-1-21, **as amended 7-1-21**)

16.5 RESTRAINING ORDERS, EX PARTE REQUEST FOR RESTRAINING ORDERS, ORDER SHORTENING TIME FOR SERVICE/HEARING (Effective date 7-1-90, as amended 01-01-04, as amended 7-1-04, as amended 7-1-09, as amended 7-1-11, as amended 1-1-12, as amended 7-1-15, as amended 6-12-20, as amended 1-1-21, **as amended 7-1-21**)

(a) Requests for ex parte temporary restraining orders in domestic violence, civil harassment, workplace violence, elder abuse, and dependent adult abuse actions:

1. NOTICE: Requests for ex parte restraining orders in the actions referenced in (a) above may be made without notice to the opposing party. Upon the requisite showing being made by way of affidavit or declaration a temporary restraining order may be issued without notice.
 - a. The required showing in a domestic violence, elder abuse and dependent adult abuse action is reasonable proof of a past act or acts of abuse by the defendant against the plaintiff. FC §6300, W & I. C, §15657.03(c).
 - b. The required showing in a civil harassment action is reasonable proof of harassment of the plaintiff by the defendant and that great or irreparable harm would result to the plaintiff. CCP §527.6(c).
 - c. The required showing in a workplace violence action is reasonable proof that the employee suffered unlawful violence or a credible threat of violence by the defendant and that great or irreparable harm would result to an employee. CCP §527.8(e).
2. The court has discretion to require notice to an opposing party/defendant of any request for an ex parte temporary restraining order in any of the actions listed in 16.5(a) above.

(b) Requests for ex parte temporary restraining orders in:

- Marital litigation (i.e., dissolution, nullity and legal separation actions)
- domestic partnership litigation (i.e., where custody/visitation is an issue in domestic partnership dissolution, nullity or legal separation actions)
- an action under the uniform parentage act to determine custody or visitation
- a proceeding to determine custody or visitation in an action brought by the Department of Child Support Services pursuant to FC§17404
- a grandparent visitation action by joinder, or
- an independent action for visitation by a former legal guardian:

1. NOTICE: Unless it appears from the facts presented in the applicant's declaration that reasons exist for the applicant to be excused from the notice requirements of CRC 3.1203(a) [see CRC 3.1204(b)(3)], notice of an intent to seek an ex parte restraining order in any actions referenced in (b) above must be given pursuant to California Rules of Court 3.1203, 3.1204 and 3.1206.

- (c) Ex parte hearings are held each court day at 3:00 pm at the North Butte County Courthouse, 1775 Concord Avenue in Chico. The party requesting the ex parte temporary order(s) must file the moving papers (Request for Order) at or before ~~12:00 noon~~ **10:00 am** on the day of the hearing.
- (d) All requests for temporary orders in the actions referenced in (b) above must include a declaration containing the information as set forth in *Declaration Re: Notice of Ex Parte Application for Order and/or Orders Shortening Time* (form LM.010) and the reasons why an order shortening time for service and hearing will not suffice in lieu of an ex parte order pending hearing.
- (e) Ex parte requests for modification of existing custody and visitation orders or for custody and visitation orders will not issue absent a clear showing of risk of immediate harm to the child(ren), or immediate risk the child(ren) will be removed from the State of California. The showing must be made by affidavit or declaration and shall include a full, detailed description of the most recent incident(s) of physical harm, threats of harm or threats to remove the child(ren) from the state and must specify the date of each incident. There is an absolute duty to advise the Court what the existing custody and visitation arrangement is and how it will be changed by the requested ex parte order. Further, if there is an existing Court order relative to child custody and visitation, the date and provisions of that order must be set forth as part of the supporting declaration. *(Effective date 7-1-90, as amended 01-01-04, as amended 7-1-04, as amended 7-1-09, as amended 7-1-11, as amended 1-1-12, as amended 7-1-12 as amended 7-1-15, as amended 6-12-20, as amended 1-1-21, as amended 7-1-21)*

16.18 DEFAULT OR UNCONTESTED JUDGMENT *(Effective 7-1-90, as amended 1-1-04, renumbered 1-1-04, as amended 7-1-04, as amended 7-1-08, as amended 1-1-10, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17, as amended 7-1-17, amended 7-1-18, as amended 7-1-20, as amended 7-1-21)*

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- A. GENERAL POLICY

1. Where a Judgment of Dissolution, Nullity or Legal Separation of spouses in a marriage or partners in a domestic partnership is sought to be obtained by written agreement of the parties after a response has been filed (uncontested), or by default, the affidavit provisions of the Family Code may be used.
2. Judgments of Nullity of Marriage or Nullity of a Domestic Partnership require a Court hearing (Mandatory Form FL.120 must be filed).
3. Generally uncontested and default family law Judgments shall be obtained by declaration. However, a hearing may be set upon request of a party or by a Court order.
- ~~4. Any written agreement between the parties which is submitted to the Court as part of a Judgment shall have the signatures of both parties notarized.~~

B. JUDGMENT BY DEFAULT

1. Unless the Court orders otherwise, a default will not be entered based on notice and acknowledgement of receipt signed by a person other than the party to whom it is directed.

C. DOCUMENTS

1. A *Judgment Checklist: Dissolution/Legal Separation* (Judicial Council form FL-182) or *Family Law Parentage Judgment Checklist* (form FL.050) should be completed and filed with any proposed default or uncontested Judgment that is submitted to the Clerk's Office pursuant to Family Code §2336. All documents described in those checklists should also be submitted.

D. CHILD CUSTODY AND VISITATION

1. If Petitioner is asking for a default Judgment in a dissolution, legal separation, or in a parentage or custody and support case, and has a child with the other parent and one or more of the following apply:

- a. does not already have a custody and visitation order,
- b. did not file a Child Custody and Visitation Application Attachment (Judicial Council Form FL-311) or a specific proposed order with the Petition,
- c. does not already have a Marital Settlement Agreement or Stipulated Judgment,

then the Petitioner shall complete, file and serve by mail or in person a *Declaration for Default Custody and Visitation Orders* (form FL.030) at least fifteen (15) calendar days before the Judgment is submitted.

2. A copy of the filed Declaration and proof of service (Judicial Council Form FL-330/FL-335) shall be submitted to the Court with any proposed Judgment.

3. If Petitioner is obtaining the Judgment by default hearing, the Petitioner does not have to file and serve the *Declaration for Default Custody and Visitation Orders* (form FL.030) but must be prepared to talk about the factors requested in the Declaration at the default Court hearing.

E. CHILD SUPPORT

1. Where Judgment is obtained by default and there is no attached written agreement concerning child support, an attached Declaration shall state the effective date of the order sought, the amount of support sought per child and in total, the gross and net income of each party, the name and birth date of each child, and the amount of support for each child as calculated according to California child support guidelines. A computerized printout of the guideline calculations, including the findings page, may be substituted for the support portion of this Declaration.

2. Where a child support order is sought and the party to whom support is to be paid is receiving public assistance or the Department of Child Support Services (DCSS) is enforcing existing child support orders, that fact shall be set out in the Judgment and the issue shall be reserved for enforcement by DCSS. The party shall further list the court case number on the DCSS action.

F. SPOUSAL OR PARTNER SUPPORT

1. The issue of spousal or partner support for each party must be addressed in the Judgment. A support amount may be requested, spousal or partner support may be terminated, or the issue of spousal or partner support may be reserved.

2. If a request is made for:

a. establishing by default a permanent spousal or partner support for Petitioner or Respondent, or

b. terminating by default spousal or partner support for the Respondent, in a "marriage of long duration" (as defined in Family Code §4336(b)).

and there is no attached written agreement concerning spousal or partner support, Petitioner shall file and serve by mail a Declaration at least fifteen (15) calendar days before filing the Judgment stating the following:

1. The effective date of the order sought
2. The proposed duration of support sought
3. The amount of support sought
4. The gross and net income of both parties
5. Information regarding relevant factors under Family Code §4320

The Proof of Service by mail form (Judicial Council Form FL-335) for service of this Declaration shall be filed with the Court before filing the proposed Judgment.

This section does not apply to requests for termination of permanent spousal support in marriages not of long duration under Family Code §4336(b).

G. REAL PROPERTY

All real property referred to in a Judgment shall be described by its complete common address and/or legal description.

H. RESTORATION OF NAME

Restoration of a party's former name shall be ordered in a Judgment only upon that party's written request or request in open Court.

I. FORMAT OF JUDGMENT

1. All orders concerning child custody, child visitation, child support, spousal support and attorney fees, as applicable, shall be set forth in the body of the judgment. As to these specific matters, reference to an attached written agreement of the parties is not acceptable.

2. The division of the community estate and confirmation of separate property, as applicable, may be set forth either in the body of the judgment or in an attached agreement incorporated in the judgment by reference.

3. Any jointly agreed-upon judgment or marital settlement agreement shall have the signatures of both parties notarized, or otherwise authenticated.

J. PREPARATION AND SUBMISSION OF PROPOSED ORDER AFTER HEARING

1. The preparation and submission of the proposed Order After Hearing shall be pursuant to California Rule of Court 5.125.

K. RESTRAINING ORDERS. All restraining orders in a judgment issued pursuant to FC §§2045(a) and 6322 must be followed by the date of expiration of such order.

L. FINALITY OF JUDGMENT OF DISSOLUTION

1. No Judgment for the dissolution of marriage shall be final until six (6) months have expired from date of service of summons and petition or date of appearance of respondent. The Judgment shall specify the date on which the Judgment is finally effective for the purpose of terminating the marriage relationship of the parties. (FC §§2338 and 2339).

2. Upon noticed motion and good cause shown, or stipulation of the parties, the Court may retain jurisdiction over the date of termination of the marital status, or order the marital status terminated at a future specified date (FC §2340).

M. NUNC PRO TUNC JUDGMENTS. To be entered nunc pro tunc, a Judgment must comply with FC §2346.

N. FEE WAIVERS AT TIME OF ENTRY OF A JUDGMENT

Pursuant to Government Code section 68637, subsections (d) and (e), all fee waivers will be subject to review by a judicial officer at the time a Judgment is submitted for signature and entry. At such time, the judicial officer may specify at his/her discretion that a Judgment not be entered except upon payment of all outstanding fees or upon the granting of a new fee waiver upon submission of a new application. Nothing in this rule limits the Court's ability to review fee waivers during the proceeding per Government Code section 68636.

O. RELIEF INCONSISTENT WITH PETITION

Except by written agreement or as may be permitted by law, the Court will not grant relief that is inconsistent with the relief requested in the Petition. The Court on its own motion may require the party to appear to justify the relief requested. *(Effective 7-1-90, as amended 1-1-04, renumbered 1-1-04, as amended 7-1-04, as amended 7-1-08, as amended 1-1-10, as amended 7-1-12, as amended 7-1-14, as amended 1-1-15, as amended 1-1-17, as amended 7-1-17, as amended 7-1-18, as amended 7-1-20, as amended 7-1-21)*