



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Family Law: Disclosure Requirements	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms FL-141, FL-310, and FL-320; approve form FL-316	July 1, 2011
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	August 10, 2010
Hon. Jerilyn L. Borack, Cochair Hon. Susan D. Huguenor, Cochair	Contact
	Gabrielle Selden, 415-865-8085 gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising form FL-141 and approving form FL-316 to reflect amendments to Family Code section 2107 enacted by Assembly Bill 459 (Stats. 2009, ch. 110). The amendments provide additional remedies to a party when the other party fails to comply with mandatory disclosure requirements in a dissolution action. In addition, the committee recommends revising forms FL-310 and FL-320 to correct technical errors and make their captions consistent with other family law and governmental forms.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2011:

- Revise *Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration* (form FL-141) to allow a party to indicate that the court granted a voluntary waiver of the other party's preliminary or final declaration of disclosure under Family Code section 2107;

- Revise *Application for Order and Supporting Declaration* (form FL-310) and *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) to correct technical errors and make their captions consistent with other family law and governmental forms; and
- Approve *Request for Orders Regarding Noncompliance With Disclosure Requirements* (form FL-316) to promote a uniform statewide practice for parties seeking relief under Family Code section 2107 when one party fails to comply with mandatory disclosure requirements. This form would list the remedies available to the complying party under Family Code section 2107.

Copies of the forms are attached at pages 6–11.

Previous Council Action

There has been no previous council action relevant to this proposal.

Rationale for Recommendation

Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (form FL-141)

This mandatory form is used as a proof of service of the declaration of disclosure. The form allows parties to indicate if the disclosure requirements were waived. The revised form would allow a party to also indicate that the court granted a voluntary waiver of the other party's preliminary or final declaration of disclosure. Including this information on the form is likely to promote the timely processing of a judgment by notifying the clerk of the court (and any judicial officer reviewing a party's judgment packet) that the judgment can be processed despite the absence in the court file of proof that the other party served his or her declaration or disclosure and income and expense declaration.

Request for Orders Regarding Noncompliance With Disclosure Requirements (form FL-316)

The committee proposes approval of this optional form to serve as an attachment to *Order to Show Cause* (form FL-300) or *Notice of Motion* (form FL-301), to be used by the complying party to request relief when the other party has failed to comply with the disclosure requirements. The optional form would promote a uniform statewide practice for a party seeking relief for failure of the other party to comply with disclosure requirements and would include check boxes for each of the remedies available to the complying party under revised Family Code section 2107.

Application for Order and Supporting Declaration (form FL-310)

Before proposing approval of above form FL-316, the committee had proposed adding a new item 8 to form FL-310 for a party to use to request relief when a party had failed to comply with

disclosure requirements. The proposal also included technical changes to update form FL-310. Specifically, form FL-310 would be revised to update the titles of the domestic violence forms that appear in the text box at the bottom of the first page. Notwithstanding the proposal to approve form FL-316 instead of revising form FL-310 to include the relief under Family Code section 2107, the committee still recommends that the technical correction be made to form FL-310 during this cycle.

Responsive Declaration to Order to Show Cause or Notice of Motion (form FL-320)

This form would be revised to make a few technical changes, including adding (1) “partner support” to the title in item 4, and (2) the term “Other Parent” in the caption as required by rule 5.310 of the California Rules of Court for all forms used in a title IV-D support action.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment was circulated from April 19, 2010, through June 18, 2010, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list. Included on the lists were judges, court administrators, attorneys, mediators, family dispute resolution directors, social workers, and other family law professionals, such as family court services directors, managers, supervisors, and staff.

Of a total of 14 commentators, 3 agreed with the original proposal, 5 agreed if modifications were made, and 5 did not indicate whether they agreed, but suggested modifications to improve the forms. One commentator disagreed with the changes to form FL-141 and FL-310 (now form FL-316). A chart of comments providing the full text of the comments and the committee’s responses is attached at pages 11–19.

As circulated for comment, the committee initially proposed revising forms *Application for Order and Supporting Declaration* (form FL-310) and *Responsive Declaration to Order to Show Cause or Notice of Motion* (form FL-320) to include a new item titled “Noncompliance With Disclosure Requirements.” On each form, the new item would have included check boxes for each of the remedies available under Family Code section 2107.

However, several commentators raised concerns about adding another item to an already crowded form. They noted that adding a new item to form FL-310 would greatly reduce the space available to describe “Other Relief” or to write a declaration of facts in support of other frequently requested relief like child custody, visitation, and child, spousal, and partner support. In addition, commentators did not anticipate that the issue of noncompliance with disclosure requirements would arise as often as the other frequently used sections. One commentator suggested that a better solution would be to adopt a separate form for motions relating to noncompliance with disclosure requirements similar to form FL-315, which is used for bifurcation motions.

The committee agreed with the above suggestions and drafted an optional form titled *Request for Orders Regarding Noncompliance With Disclosure Requirements* (form FL-316). This form

would serve as an attachment to a notice of motion or an order to show cause form for a party seeking relief under Family Code section 2107.

Some commentators stated that form FL-141 should be revised because the reference to a “preliminary” and “final” income and expense declaration is not statutorily correct. These commentators suggested that the form be revised to refer only to a “current” income and expense declaration. The committee agreed with these commentators and revised the form accordingly. In addition, the committee decided to include on the form the definition of the word “current” as it appears in rule 5.128 of the California Rules of Court.

One commentator did not agree with the proposed changes to form FL-141 and item 8 on form FL-310 (now form FL-316). As to form FL-141, the commentator expressed that the proposed changes would not help to more effectively process judgments and that the form would be redundant because the order waiving the declaration would already be part of the court record. Further, the requirement would add an additional step that may easily be overlooked by litigants. With respect to form FL-316, the commentator expressed that the form does not account for situations in which a party wants to request multiple orders regarding disclosure requirements or other (or alternative) relief that may be applicable to him or herself.

In response to the above comments regarding form FL-141, the committee noted that form FL-141 is a mandatory form which must be filed when requesting entry of a judgment, even when disclosures have been waived. For example, the form must currently be filed when petitioner is proceeding by default and has waived service of the final declaration of disclosure or where the parties agreed to waive service of final declarations of disclosure. The committee believes it is important to revise the form as proposed to clarify to the court, the parties, and their attorneys that the form must also be completed and filed in situations where a voluntary waiver was requested and ordered under Family Code section 2107.

Regarding the comments about form FL-316, the committee decided to add an item g to the form with a check box for a party to indicate if he or she is requesting any other, or alternative, relief, relating to disclosure requirements. In item g, a party would be able to describe alternative orders that he or she believes would more sufficiently resolve the disclosure issues. This would cover situations in which a party is requesting orders that apply to the noncomplying party as well as to him or herself as the complying party.

Other commentators generally suggested clarification of statutory references to Family Code 2107(b) and technical corrections. In response, the committee made clarifying and technical changes to forms FL-141, FL-310, and FL-320.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal. Standard reproduction costs will be incurred in distributing the revised forms. Litigants may also obtain

these forms on the California Courts website and public libraries, thus reducing the need for courts to maintain a large number of copies onsite.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed revised forms and new form support the policies underlying Goal I, Access, Fairness, and Diversity, because they help court users understand the law concerning the mandatory disclosure process before a judgment can be entered by the court. The new form specifically helps court users understand how they can seek help from the court if the other party fails to comply with the mandatory disclosure laws.

Attachments

1. Forms FL-141, FL-310, FL-320, and FL-316, at pages 6–11
2. Chart of Comment, at pages 12–20
3. Attachment A: AB 459

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft 16 8/11/10 gds Not approved by the Judicial Council CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
DECLARATION REGARDING SERVICE OF DECLARATION OF DISCLOSURE AND INCOME AND EXPENSE DECLARATION <input type="checkbox"/> Petitioner's <input type="checkbox"/> Preliminary <input type="checkbox"/> Respondent's <input type="checkbox"/> Final	

1. I am the attorney for petitioner respondent in this matter.
2. Petitioner's respondent's *Preliminary Declaration of Disclosure* (form FL-140) and current* *Income and Expense Declaration* (form FL-150) were served on attorney for the other party by: personal service mail other (specify): _____ on (date): _____
3. Petitioner's respondent's *Final Declaration of Disclosure* (form FL-140) and current *Income and Expense Declaration* (form FL-150) were served on attorney for the other party by: personal service mail other (specify): _____ on (date): _____
4. Service of petitioner's respondent's preliminary final declaration of disclosure current income and expense declaration has been waived as follows:
 - a. The parties agreed to waive final declaration of disclosure requirements under Family Code section 2105(d). The waiver was filed on (date): _____
 - b. The party has failed to comply with disclosure requirements and the court granted the request for voluntary waiver of receipt under Family Code section 2107 on (date): _____
 - c. This is a default proceeding. Petitioner waives the final declaration disclosure requirements under Family Code section 2110.

* "Current" is defined as completed within the past three months providing no facts have changed. (Cal. Rules of Court, rule 5.128.)

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)

NOTE: File this document with the court.
Do not file a copy of the *Preliminary or Final Declaration of Disclosure* or any attachments to either declaration of disclosure with this document.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

APPLICATION FOR ORDER AND SUPPORTING DECLARATION
—THIS IS NOT AN ORDER—

Petitioner Respondent Claimant requests the following orders:

1. CHILD CUSTODY To be ordered pending the hearing
- a. Child's name and age b. Legal custody to (name of person who makes decisions about health, education, etc.) c. Physical custody to (name of person with whom child will live.)

- d. Modify existing order
(1) filed on *(date)*:
(2) ordering *(specify)*:

- e. As requested in form FL-311 FL-312 FL-341(C) FL-341(D) FL-341(E)

2. CHILD VISITATION To be ordered pending the hearing

- a. As requested in: (1) Attachment 2a (2) Form FL-311 (3) Other *(specify)*:

- b. Modify existing order
(1) filed on *(date)*:
(2) ordering *(specify)*:

- c. One or more domestic violence restraining/protective orders are now in effect. *(Attach a copy of the orders if you have one.)* The orders are from the following court or courts *(specify county and state)*:

- (1) Criminal: County/state: Case No. *(if known)*: (3) Juvenile: County/state: Case No. *(if known)*:
(2) Family: County/state: Case No. *(if known)*: (4) Other: County/state: Case No. *(if known)*:

3. CHILD SUPPORT *(An earnings assignment order may be issued.)*

- a. Child's name and age b. Monthly amount requested (if not by guideline)
\$

- c. Modify existing order
(1) filed on *(date)*:
(2) ordering *(specify)*:

4. SPOUSAL OR PARTNER SUPPORT *(An earnings assignment order may be issued.)*

- a. Amount requested *(monthly)*: \$ c. Modify existing order
b. Terminate existing order (1) filed on *(date)*:
(1) filed on *(date)*: (2) ordering *(specify)*:
(2) ordering *(specify)*:

NOTE: To obtain domestic violence restraining orders, you must use the forms *Request for Order (Domestic Violence Prevention)* (form DV-100), *Temporary Restraining Order (Domestic Violence Prevention)* (form DV-110), and *Notice of Court Hearing (Domestic Violence Prevention)* (form DV-109).

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

5. ATTORNEY FEES AND COSTS a. Fees: \$ _____ b. Costs: \$ _____
6. PROPERTY RESTRAINT **To be ordered pending the hearing**
- a. The petitioner respondent claimant is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
- The applicant will be notified at least five business days before any proposed extraordinary expenditures, and an accounting of such will be made to the court.
- b. Both parties are restrained and enjoined from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties or their minor children.
- c. Neither party may incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.
7. PROPERTY CONTROL **To be ordered pending the hearing**
- a. The petitioner respondent is given the exclusive temporary use, possession, and control of the following property that we own or are buying (*specify*):
- b. The petitioner respondent is ordered to make the following payments on liens and encumbrances coming due while the order is in effect:
- | <u>Debt</u> | <u>Amount of payment</u> | <u>Pay to</u> |
|-------------|--------------------------|---------------|
| | | |
8. OTHER RELIEF (*specify*):
9. **I request** that time for service of the *Order to Show Cause* and accompanying papers be shortened so that these documents may be served no less than (*specify number*): _____ days before the time set for the hearing. I need to have the order shortening time because of the facts specified in item 10 or the attached declaration.
10. FACTS IN SUPPORT of relief requested and change of circumstances for any modification are (*specify*):
- Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

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 APPLICANT)
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ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT 9: 06/28/10 GDS NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
RESPONSIVE DECLARATION TO ORDER TO SHOW CAUSE OR NOTICE OF MOTION	
HEARING DATE: _____ TIME: _____ DEPARTMENT OR ROOM: _____	CASE NUMBER: _____

1. CHILD CUSTODY
 a. I consent to the order requested.
 b. I do not consent to the order requested, but I consent to the following order:

2. CHILD VISITATION
 a. I consent to the order requested.
 b. I do not consent to the order requested, but I consent to the following order:

3. CHILD SUPPORT
 a. I consent to the order requested.
 b. I consent to guideline support.
 c. I do not consent to the order requested, but I consent to the following order:
 (1) Guideline
 (2) Other (*specify*):

4. SPOUSAL OR PARTNER SUPPORT
 a. I consent to the order requested.
 b. I do not consent to the order requested.
 c. I consent to the following order:

5. ATTORNEY FEES AND COSTS
 a. I consent to the order requested.
 b. I do not consent to the order requested.
 c. I consent to the following order:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	CASE NUMBER:
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6. PROPERTY RESTRAINT
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

7. PROPERTY CONTROL
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

8. OTHER RELIEF
- a. I consent to the order requested.
 - b. I do not consent to the order requested.
 - c. I consent to the following order:

9. SUPPORTING INFORMATION
- Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

NOTE: To respond to domestic violence restraining orders requested in the *Request for Order (Domestic Violence Prevention)* (form DV-100), you must use the *Answer to Temporary Restraining Order (Domestic Violence Prevention)* (form DV-120).

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)

PETITIONER: RESPONDENT:	CASE NUMBER:
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**REQUEST FOR ORDERS REGARDING NONCOMPLIANCE
WITH DISCLOSURE REQUIREMENTS**

Attachment to **Order to Show Cause (form FL-300)** **Notice of Motion (form FL-301)**

1. Petitioner Respondent has complied with mandatory disclosure requirements (you must attach a copy of your filed *Declaration Regarding Service of Declaration of Disclosure* (form FL-141)), and requests an order that
 - petitioner: respondent:
 - a. provide a
 - (1) preliminary declaration of disclosure under Family Code section 2104 as directed by court order.
 - (2) final declaration of disclosure under Family Code section 2105 as directed by court order.
 - b. provide a further response to his or her preliminary final declaration of disclosure under Family Code section 2107(b)(1).
 - c. has failed to comply with disclosure requirements and is prevented from presenting evidence on the issues that should have been covered in the declaration of disclosure under Family Code section 2107(b)(2).
 - d. be granted for good cause his or her request for voluntary waiver of receipt of preliminary final declaration of disclosure under Family Code section 2107(b)(3).
 - e. for the reasons described below, be ordered to pay money sanctions for failure to comply with disclosure requirements. The amount of the money sanctions should be in an amount sufficient to deter him or her from repeating the conduct or comparable conduct, including reasonable attorney fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Fam. Code, § 2107(c).)
 - f. be granted his or her request to set aside the judgment under Family Code section 2107(d).
 - g. be ordered to comply with other, or alternative, relief, requested (*specify*):

2. **FACTS IN SUPPORT** of relief requested are (*specify*):
 - Contained in the attached declaration. (You may use *Attached Declaration* (form MC-031) for this purpose).

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 APPLICANT)

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Association of Certified Family Law Specialists by Diane Wasznicky President-Elect Sacramento	AM	<p>We agree basically with the form to implement the new statutory provision with one modification.</p> <p>The reference to a “preliminary” and “final” income and Expense Declaration is not correct. Such a distinction is not set out in the statutes and use of such terms for what is essentially a separate document with multiple uses, would be very confusing.</p> <p>All statutory references use the term “current” Income and Expense Declaration. This is how it should be referenced on your proposed new form.</p>	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.
2.	Harriett Buhai Center for Family Law By Erin Dabbs Staff Attorney Los Angeles	AM	<p>FL-141</p> <p>It is unclear to us why the form allows for the waiver of the Income and Expense Declaration at item 5b as opposed to simply the declaration of disclosure as specified in Family Code section 2107.</p> <p>We would also ask the Judicial Council to consider adding to item 4, the option to select a waiver of the parties’ Final Declaration of Disclosure pursuant to Family Code section 2110. Many of our clients proceed through default. In default cases, the Petitioner may waive the service of the Final Declaration of Disclosure. Currently, our clients must manually white out section 2105 and write in section 2110. We would propose that item 4 read as</p>	<p>Family Code section 2104(e) provides that “Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.”</p> <p>The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.</p>

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>follows: Service of the parties' Final Declaration of Disclosure was waived under (check only one) <input type="checkbox"/> Family Code section 2105, subdivision d or <input type="checkbox"/> Family Code section 2110.</p> <p>FL-310 (now form FL-316) Typographic corrections:</p> <ol style="list-style-type: none"> 1) At item 8, there is a missing word at the end of the first full sentence under the title. The sentence should read: you must attached a copy of your filed... 2) We believe that the words Petitioner and Respondent should be capitalized at item 8 to be consistent with other forms, though I believe the reason they are lowercase is their place within the sentence. 3) At item 8c, the correct cite at the end of the sentence appears to be 2107(b)(3), not 2107(c). 2107(c) discusses sanctions, not waiver of the declaration of disclosure. Also, as consider adding an option to request sanctions under 2107(c). 	<p>The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.</p>
3.	Child Support Directors Association of California By: George O. Nielsen, Vice-Chair CSDA/Judicial Council Forms Committee	NI	Re: form FL-320 "The committee agrees with the proposed revision to add "Other Parent" to the caption areas on this form.	No response required.

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	and David G. Oppenheim CSDA Executive Director Sacramento		The committee requests that the layout of the form be modified to provide additional space in item 10 in order to allow space for more supporting information. Often when a local child support agency responds to a motion brought by a party, either in pro per or through an attorney, more space is required than is available on the form as proposed, necessitating the attachment of an additional sheet. Given the very high volume of usage, attaching an additional document to this form entails a significant cost to the child support program statewide. Increasing the space in item 10 would provide additional cost savings and further increase efficiency of the local child support agencies over and above what would be attained by this proposed revision.	The committee decided to preserve space needed on the form for parties to write a declaration by creating a separate form for parties to use to request relief for noncompliance with disclosure requirements.
4.	Christine Copeland San Benito	NI	Re: form FL-141 items 2 and 3 Is it possible to insert form numbers after you mention the forms? This may make the process more user-friendly for SRLs who often stumble through disclosure stage of their case. Form FL-141- the text box at the bottom of the form makes it unclear as to whether the I/E (form FL-150) has to be filed (I think it does have to be filed and the form should say so). Re: form FL-310, item 8 (now form FL-316) There is a small typo in the parenthetical clause in first check box section- you need the word	The committee agreed to make this change. The committee agreed to change the text box at the bottom of the form to state: "Do not file a copy of the Preliminary or Final Declaration of Disclosure or any attachments to either declaration of disclosure with this document." The committee agreed to make this change.

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>“of” in front of word “copy.”</p> <p>Also, this area of the form instructs filer to attach a copy of the Declaration re: Service of Declaration. . . . Form. (1) Does this/should this include I/E (form FL-150)? and (2) why? If the form(s) has already been filed, why encourage duplication of forms in the court file?</p> <p>Re: Form FL-320 Is it possible/desirable to add to the text box at bottom of page 1 that the form must be filed/served at least 9 court days before the hearing (unless the court has shortened time)?</p>	<p>Because requests in item 8 are regarded as matters of law and motion, a party must support any request for relief with declarations and appropriate attachments.</p> <p>Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before the suggested revision is considered for adoption. The committee may consider this suggestion during the next rules cycle.</p>
5.	Hon. Louise Fightmaster Superior Court of Sonoma County (not on behalf of the court) Santa Rosa	AM	<p>“The narrative this cites Family Code section 2107 (b)(4) - but there is no such section - it is 2107(d) that addresses the complying party's ability to set aside the judgment and the non-complying party's limitations regarding setting aside the judgment (fraud/perjury).</p> <p>Forms look fine and I agree.”</p>	<p>The committee agreed to correct the Family Code reference.</p> <p>No response required.</p>
6.	Peggy Hill Family Law Facilitator Superior Court of Monterey County	NI	<p>I have a suggestion for a small change to FL - 141 that may save the SRL's some grief:</p> <p>Instead of having to check Petitioner or Respondent for who was served, can't the form just say “other party” so that once you check whether you are the Petitioner or Respondent, you don't have to check who you served, which logically would be the opposite party? We have</p>	<p>The committee agreed to make this change.</p>

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			to return forms or do amended forms for people who don't notice that part of the form.	
7.	Blanca Miranda Family Law Facilitator Program Assistant Hayward	NI	<p>I notice that there are proposed changes to the FL-310, Application for Order and Supporting Declaration. I have a suggestion that was not listed in the proposed changes.</p> <p>On page 2, item 3(b): Child Support The majority of court litigants I see fill in the current amount of child support in that space. This a common error.</p> <p>Actually, the space is asking for the amount of child support being requested.</p> <p>The text should be modified as follows: from " b. Monthly amount (if not by guideline)" to " b. Monthly amount requested (if not by guideline)"</p>	The committee agreed to make the proposed technical changes.
8.	Orange County Bar Association by Lei Lei Wang Eckvall President Newport Beach	A	No specific comment provided.	No response required.
9.	Superior Court of Los Angeles County	A	Change promotes efficiency in processing judgments.	No response required.
10.	Superior Court of Orange County by Linda Daeley, Manager Family Law Division	AM	<p>Proposed Form FL-310 (now form FL-316) - the word "of" was omitted from number 8.</p> <p>Page 2, #8 should read as follows: "...has complied with mandatory disclosure requirements (you must attach a copy of your filed..."</p>	<p>The committee agreed to make this change and include it in form FL-316.</p> <p>The committee agreed to make this change and include it in form FL-316.</p>

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Proposed Form FL-141 - to be consistent with #'s 2 and 3, and to provide assistance with clerical/judicial review, #4 should have additional information as follows:</p> <p>Waiver was filed on (date) _____</p> <p>Waiver is incorporated in stipulated judgment filed on (date) _____</p>	<p>The committee agreed with these suggestions and has incorporated them, with minor changes, into the revisions that it is recommending for adoption.</p>
11.	<p>Superior Court of Sacramento County By: Robert Turner ASO II Finance Division</p>	N	<p>Re: Form FL-141 The proposed change to FL-141 is unnecessary and will not assist the court in processing cases. Where the court has granted the relief described in the form change, this is already part of the court record and the form is redundant. Further, this addition to the form may increase the difficulty that litigants have in complying with the disclosure requirements because it adds an additional step that may easily be overlooked by litigants. This is a mandatory form and as such, court may interpret this change as a new requirement on litigants and it may hold up the entry of Judgments unnecessarily.</p> <p>Re: Form FL-310 (now form FL-316) On form FL-310, the placement of the “petitioner” and “respondent” boxes in item 8 above items a-d will make it difficult for parties to request alternative relief and may result in litigants filing successive motions when the relief sought at the one is not sufficient to resolve the disclosure issues. Litigants frequently request relief in which the non-</p>	<p>FL-141 is a mandatory form which must be filed when requesting entry of a judgment, even when disclosures have been waived. For example, the form must be filed when petitioner is proceeding by default and has waived service of the final declaration of disclosure or where the parties agreed to waive service of final declarations of disclosure. The committee believes it is important to revise the form so that it also includes situations where a voluntary waiver was requested and ordered under Family Code section 2107.</p> <p>The committee decided to add an item g to this form with a check box for a party to indicate if he or she is requesting any other, or alternative, relief, relating to the matter. In g, the party would be able to specify other or alternative orders that he or she believes would more sufficiently resolve the disclosure issues. This space could also be used to specify if the party is</p>

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			complying party is ordered by the court to do one thing and, alternatively, the complying person is permitted to do another. By forcing the party to indicate up front the party to whom the orders apply, the form limits the litigant from requesting alternative relief that applies first to one party and then to the other. For example, a customer requesting the relief available at item 8a will frequently also wish to request the relief available at 8c, in the event that the non-complying party fails to comply in a reasonable time. The way the form is worded, these two forms of relief would need to be requested in separate motions. Similarly, items 8b and 8d may be requested at the same time, but the wording of the form removes this possibility.	requesting orders that apply to him or herself as the complying party.
12.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A	No additional comment.	No response required.
13.	The Executive Committee of the Family Law Section of the State Bar of California By: Christopher C. Melcher, Esq. Woodland Hills and By: Saul Bercovitch Legislative Counsel San Francisco	NI	SPR10-30 proposes to modify <i>Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration</i> (form FL-141) and other forms. FLEXCOM supports to the proposal but suggests that the language in item 5.b. be modified to remove reference to “Preliminary” and “Final” Income and Expense Declaration. We do not refer to Income and Expense Declarations as preliminary or final in the practice of family law; those terms are used only for Declarations of Disclosure. The	The committee agrees with these suggestions and has incorporated them into the revisions that it is recommending for adoption.

SPR10-30

Family Law: Disclosure Requirements (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Family Code, instead, requires a “current” Income and Expense Declaration. See, e.g., Family Code §§ 2104, subd. (e) & 2106.</p> <p>The proposed modification to the form would be confusing to family law practitioners and litigants. FLEXCOM suggests that item 5.b. of <i>Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration</i> (form FL-141, Draft 6) be modified as follows:</p> <p style="padding-left: 40px;">b. <input type="checkbox"/> Current Income and Expense Declaration</p>	
14.	Superior Court of Ventura County by Brenda McCormick Managing Attorney Ventura	AM	<p>Pursuant to Family Code section 2107(b)(3) the proposed change will add a section to the Application for Order and Supporting Declaration form (FL-310) (now form FL-316) to be used when a party seeks an order waiving the other party’s failure to serve the preliminary and/or final Declaration of Disclosure.</p> <p>The court understands the purpose of adding the section, but by adding this section it further reduces the current space to a single line to request “Other Relief” and approximately three lines for the “Facts in Support.” The space available on both the “Other Relief” and “Facts in Support” sections are barely sufficient on the present form and reducing them further will just cause attorneys and self-represented litigants to prepare additional, self-drafted attachments. As it is not anticipated that the waiver of</p>	The committee decided to preserve space needed on the form for parties to write a declation by creating a separate, optional form FL-316 for parties to use to request relief for noncompliance with disclosure requirements.

SPR10-30**Family Law: Disclosure Requirements** (revise forms FL-141, FL-310, and FL-320, and approve form FL-316)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			compliance issue will arise very often, it is not efficient to reduce the space for quite frequently used sections. A better solution would be to adopt a separate form for the waiver of disclosure motions, similar to the FL-315 used for bifurcation motions.	

ATTACHMENT A

BILL NUMBER: AB 459 CHAPTERED
BILL TEXT

CHAPTER 110
FILED WITH SECRETARY OF STATE AUGUST 6, 2009
APPROVED BY GOVERNOR AUGUST 5, 2009
PASSED THE SENATE JUNE 22, 2009
PASSED THE ASSEMBLY JUNE 25, 2009
AMENDED IN SENATE JUNE 15, 2009
AMENDED IN ASSEMBLY APRIL 13, 2009

INTRODUCED BY Assembly Member Bonnie Lowenthal

FEBRUARY 24, 2009

An act to amend Sections 2104, 2106, and 2107 of the Family Code, relating to dissolution.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, Bonnie Lowenthal. Dissolution: disclosure.

Existing law requires each party to a proceeding for dissolution of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, and a final declaration of disclosure, as specified, unless service of the final disclosure is waived. Existing law requires each party to serve a preliminary declaration of disclosure after or concurrently with service of the petition for dissolution or nullity of marriage, or legal separation of the parties. If a party fails to serve a preliminary or final declaration of disclosure, as specified, or fails to provide information required in those declarations with sufficient particularity, if the other party has served the respective declaration of disclosure, and if the noncomplying party also fails to comply with a request for the preparation of the appropriate declaration of disclosure or further particularity, existing law authorizes the complying party to file a motion to compel a further response or for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

Existing law generally prohibits entry of judgment with respect to the parties' property rights unless each party, or the attorney for that party, has executed and served a copy of the final declaration of disclosure and current income and expense declaration. Existing law requires a court to set aside a judgment when the parties have failed to comply with all disclosure requirements, as specified.

This bill would add, as an additional option that a complying party may pursue if the noncomplying party fails to comply with the request described above, the option to file a motion showing good cause to grant the complying party's voluntary waiver of receipt of the noncomplying party's disclosure, as specified. If that motion is granted, the bill would require the court to set aside a judgment only at the request of the complying party, unless the motion is based on actual fraud or perjury, as specified. The bill would make related and conforming changes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2104 of the Family Code is amended to read:

2104. (a) Except by court order for good cause, as provided in Section 2107, after or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order. However, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

SEC. 2. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (d) of Section 2105, Section 2110, or absent good cause as provided in Section 2107, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party, or his or her attorney, shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110.

SEC. 3. Section 2107 of the Family Code is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do one or more of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) File a motion showing good cause for the court to grant the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to Section 2104 or final declaration of disclosure pursuant to Section 2105. The voluntary waiver does not affect the rights enumerated in subdivision (d).

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) Except as otherwise provided in this subdivision, if a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error. If the court granted the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to paragraph (3) of subdivision (b), the court shall set aside the judgment only at the request of the complying party, unless the motion to set aside the judgment is based on one of the following:

(1) Actual fraud if the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding.

(2) Perjury, as defined in Section 118 of the Penal Code, in the preliminary or final declaration of disclosure, in the waiver of the final declaration of disclosure, or in the current income and expense statement.

(e) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them. Absent a court order to the contrary, the disclosure declarations shall not be filed with the court and shall be returned to the parties.