Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2011

Title
Domestic Violence—Family Law: Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 5.380; adopt form DV-180

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Kimberly J. Nystrom-Geist, Cochair
Hon. Dean Stout, Cochair
Elkins Family Law Implementation Task Force
Hon. Laurie D. Zelon, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2012

Date of Report
October 13, 2011

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Executive Summary

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommend adopting a new form and rule of court to allow parties to stipulate to parentage in a Domestic Violence Prevention Act (DVPA) case. The new form and rule implement Family Code section 6323(b)(2), which was amended effective January 1, 2011.

Recommendation

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommend that the Judicial Council, effective January 1, 2012, adopt *Agreement and Judgment of Parentage* (form DV-180) and rule 5.380 in Chapter 8, *Domestic Violence*, of

Division 1, Title 5, of the California Rules of Court to implement amended Family Code section 6323(b)(2).[1]

The proposed new form and rule are attached at pages 9–12.

Previous Council Action

The proposed form and rule are new; the council has taken no previous action on these items.

Rationale for Recommendation

Effective January 1, 2011, Assembly Bill 939 (Stats. 2010, ch. 352) amended Family Code section 6323(b)(2) to authorize the court to accept a stipulation of parentage in a Domestic Violence Prevention Act (DVPA) case and, if parentage is uncontested, enter a judgment establishing parentage, subject to the set-aside provisions in Family Code section 7646.

The amendment ratifies one of the recommendations of the Elkins Family Law Task Force, which was appointed by the Judicial Council in 2008. In its final report, the task force recommended legislation to authorize family law courts hearing DVPA cases to accept stipulations regarding paternity and enter parentage judgments in uncontested parentage matters without the parties' having to file separate parentage actions. The report stated at page 41, "This procedure would support increased access to the courts, use court resources more efficiently, and more effectively protect children in these matters."

The proposed form and rule of court would allow parents to stipulate to a judgment of parentage in a DVPA case without being required to pay a filing fee or to open a separate parentage or other type of case for the judgment. It would, however, allow the court to open a separate case in which to file the judgment.

Form DV-180

Form DV-180 would be used exclusively in DVPA cases to enter stipulated judgments regarding parentage. It was circulated as an optional form, but, after careful consideration, the committee and the task force propose it as a mandatory form. The statute does not require development of a new form, but, for the reasons outlined in the section "Comments, Alternatives Considered, and Policy Implications," the committee and the task force recommend that the Judicial Council adopt the form to enhance judicial administration and reduce the potential for confusion by court customers.

Rule 5.380

The rule specifies that the court may not require a party to pay a filing fee or open a separate case file for the judgment. The rule would not prevent a court from opening a new case file so long as

[1] Chapter 8, *Domestic Violence*, would be a temporary location for the rule. The rule would eventually be moved to a new chapter 11 if the overall reorganization of the family law rules is adopted. The rule number would remain the same. For more information, please see the Alternatives Considered section in this report.

the parties are not charged a filing fee. The rule is not required by the statute, but it provides administrative clarity and uniformity.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment as part of the spring 2011 public comment cycle, from April 21, 2011, to June 20, 2011, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. This distribution list includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. The committee also sought comments from the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. A total of 27 comments were received.

Four commentators agreed with the proposal, 10 agreed with the proposal if modified, 4 disagreed with the proposal, 1 both disagreed and agreed with the proposal if modified, and 8 did not indicate a position on the proposal.[2]

Form DV-180

Designation as mandatory form. Form DV-180 was circulated for comment as an optional form. A few commentators suggested that the proposed form was unnecessary and not required by the statute and that existing family law forms could be used instead of the proposed form. A few commentators acknowledged the complexity of parentage actions and indicated that if there were a new form, it should be mandatory, not optional. The committee and the task force considered several factors and concluded that (1) there should be a form specifically for use in DVPA cases, and (2) it should be mandatory in order to enhance court administration and lessen the potential for confusion or conflicting orders.

Some commentators suggested that litigants should use existing Uniform Parentage Act (UPA) family law forms instead of proposed form DV-180. The suggested UPA forms include *Petition to Establish Parental Relationship* (form FL-200) and *Stipulation for Entry of Judgment Re: Establishment of Parental Relationship* (form FL-240).

Form FL-240 is not appropriate for use in DVPA actions because it includes relief and orders that are not specifically authorized by the amendment to Family Code section 6323(b); the statute does not incorporate the entire UPA. As noted by many commentators, including the California Judges Association, the only action authorized by the statute is a judgment of parentage, not the other orders available in a UPA action such as child custody, visitation, and support.

[2] A chart providing the full text of the comments and the committee's and task force's responses is attached at pages 12–44.

Therefore, including all of the provisions of the UPA by using existing form FL-240 would not only exceed the statutory authority but also would lead to confusion because there could be duplicative or conflicting child custody, visitation, or support orders. For example, if a court issued a restraining order on form DV-130 with specified child custody, visitation, and support orders, adding the family law parentage stipulation at the same time would be confusing because litigants and attorneys will be uncertain whether the prevailing child custody, visitation, or support orders should be attached to form DV-130 or FL-240.

Moreover, the parties could submit the FL-240 weeks or months after the court issues the restraining order on form DV-130 with custody orders. If the stipulation on form FL-240 includes a different custody or visitation agreement, it will not be entered into the statewide law enforcement restraining order system and may conflict with the orders previously issued on form DV-130. Furthermore, form FL-240 is part of a more extensive procedure and requires submission of form FL-200. On balance, the committee and the task force concluded that new form DV-180 would result in less confusion for the parties and reduced workload for the courts because fewer forms would need to be processed.

Item 3 on the form provides checkboxes for the parents to complete that may alert the court to facts indicating that parentage is contested or is at issue in another court case. The advisements listed in the form at items 6, 7, and 8 are currently stated in the standard family law form *Advisement and Waiver of Rights Re: Establishment of Parental Relationship* (form FL-235), but the wording has been revised in plain-language style and format. The warnings and advisements alert the parties to their rights and responsibilities, such as the right to file a parentage case and the responsibility to pay child support.

As several commentators noted, parentage actions are complex. If form DV-180 was optional, parties could use either the UPA forms mentioned above or any other form they might choose to draft. Form DV-180 includes the important warnings and notices that are included on form FL-240, including those regarding the imposition of child support. If parties drafted their own judgments, the court would be required to expend significant resources to carefully review them to ensure that the notices are present and that the judgment did not exceed the court's statutory authority. For these reasons, the committee and the task force recommend that form DV-180 be mandatory, even though it was circulated for public comment as optional.

Form DV-180 includes an option for the court to order that the child's birth certificate be amended to reflect the father's name or to order a name change for the child. The California Department of Public Health requires a court order to change the father's name on a birth certificate. The committee and the task force concluded that these two orders are administrative in nature and flow directly from the court's parentage order.

Paternity Opportunity Program. Commentators writing on behalf of the Superior Courts of San Francisco and Sacramento Counties suggested that the stipulated judgment of parentage be limited to the existing Paternity Opportunity Program (POP). That procedure is an extrajudicial

procedure whereby parents establish paternity by submitting the required form to the California Department of Child Support Services. No court action is required. Amended Family Code section 6323(b)(2) does not mention the POP, but nothing in the rule or statute would prevent parties from utilizing the POP if so desired. Courts may wish to continue to inform parties about the program's existence.

Standards, jurisdiction, or venue requirements. Several commentators opposed the inclusion of factual information in items 3 (a)–(c) on the form circulated for public comment. They indicated that there is no statutory requirement to include factual bases such as the child being born during the marriage or genetic tests showing parentage. Other commentators found the list to be underinclusive; one suggested adding a checkbox to indicate whether the mother was married to someone else when the child was born.

As amended, Family Code section 6323(b)(2) is narrowly written. It does not explicitly incorporate the entire UPA. It simply states that the court may accept a stipulation of paternity by the parties and, if uncontested, enter a judgment of paternity subject to the set-aside provisions in section 7646 of the UPA. The committee and the task force agree with the commentators who objected to including factual bases on the form. Thus, there are no checkboxes for parties to indicate how each of them is related to the child as would be required in a UPA case, such as the child being born during the marriage or genetic tests showing parentage. Further, there is no express reference in Family Code section 6323(b)(2) to the jurisdiction or venue requirements in the UPA, so form DV-180 does not include them.

Item 3(d) consists of checkboxes for the parties to indicate other court cases that could provide a basis for the court not to accept the agreement about parentage so as to avoid conflicting orders. No commentators opposed including this section.

Cross-references to form DV-180 in other DVPA forms. Many commentators suggested that form DV-180 be cross-referenced in the *Request for Domestic Violence Restraining Orders* (DV-100) and the *Response to Request for Domestic Violence Restraining Orders* (DV-120). The committee and the task force agreed with the commentators that cross-referencing form DV-180 would reduce confusion and enhance understanding by court customers. The references are located in a separate domestic violence forms proposal submitted to the Judicial Council.

Standalone form. Some commentators suggested that the form be made an attachment to *Restraining Order After Hearing* (DV-130); others suggested that it be a standalone form. The committee and the task force recommend that the form not be attached to another form so that it can be more easily located, particularly if the underlying restraining order expires or is terminated.

Rule 5.380

Retention. One commentator requested clarification about the retention period for the form. Government Code section 68152(c)(3) states that the court must retain a domestic violence

restraining order as a judgment and a temporary restraining order for 60 days after expiration of the order. The committee and the task force recommend that the stipulated judgment of paternity be retained as a paternity record under section 68152(c)(8) to clarify that the judgment would be retained permanently.

No separate case file. The committee and the task force considered whether the parties should be required to open a separate family law case in which to file the judgment. Comments supporting a requirement to file a separate case indicated the potential difficulty for the court in locating the judgment if the underlying restraining order expires. However, the statutory scheme favors the reduction of multiple case files. The committee and the task force concluded that the rule should not create an additional barrier for parties in a DVPA case by requiring them to file a separate case. The rule would not prevent a court from opening a new case file, so long as the parties are not charged a filing fee.

Court retains discretion to accept stipulation with ex parte order. Two commentators suggested that form DV-180 be used only after a noticed hearing. However, amended Family Code section 6323(b)(2) is located in the part of the DVPA that lists the relief available upon issuance of an ex parte order, prior to a noticed hearing. The location of the statute clearly indicates that the Legislature intended for the court to have discretion to accept a stipulated judgment when issuing even an ex parte restraining order.

Notice of entry of judgment. Several commentators suggested that the court should issue a notice of entry of judgment. The committee recommends that the rule specify that form DV-180 constitutes a judgment establishing parental relationship so that the court will be required to mail the *Notice of Entry of Judgment* (form FL-190).

Filing fees. The Superior Court of Riverside County opposed the filing fee waiver in cases where a restraining order is in effect, indicating that the court's ability to collect even a motion fee would be eliminated by the rule. Family Code section 6222 states that there is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by the DVPA when the request for the other order is necessary to obtain or give effect to a protective order. A judgment of paternity is necessary to establish certainty regarding paternity under Family Code section 6323 for purposes of issuing child custody and visitation orders, which are necessary to give effect to a protective order.

In addition to the requirement of Family Code section 6222, the committee and the task force also considered that a high percentage of DVPA cases would qualify for fee waivers and concluded that the court time required to process fee waivers would negate any collections from filing fees assessed in the minority of cases that would not qualify for fee waivers. One commentator noted that courts will be required to review the case file to determine whether the restraining order is currently in effect in order to determine whether a filing fee may be charged.

The committee and the task force acknowledge this workload issue but concluded that, on balance, it is warranted and necessary under the law.

Alternatives considered

Option 1: Adopt form DV-180 and rule 5.380. This option consists of the mandatory form and rule, as proposed, to implement Family Code section 6323(b)(2). The rule was envisioned as part of a larger rules reorganization that would have significantly renumbered and restructured the family law rules and placed this rule in chapter 11 of title 5, division 1, of the California Rules of Court. In consideration of budgetary and other pressures currently facing the trial courts, the larger reorganization has been postponed and only the most urgently needed rules will proceed at this time. If the larger rules reorganization takes effect, new chapter 8 of title 5, division 1, will be consolidated and will no longer be needed. The rule number will remain the same.

Option 2: Approve form DV-180 and adopt rule 5.380. This option would include the proposed rule of court and would allow litigants to use form DV-180 as an optional form, existing family law forms, or their own form to stipulate to parentage in a DVPA case.

Option 3: Do not adopt form DV-180 or rule 5.380. This option would involve no new rule or form and would not specify which form litigants should use. It could cause confusion if family law forms FL-200, FL-235, and FL-240 were used because those forms include relief not authorized by amended Family Code section 6323(b)(2).

Implementation Requirements, Costs, and Operational Impacts

Form DV-180 will require no increase in court staff workload than would the use of existing family law forms; parties who choose to stipulate to parentage must use a form to articulate their agreement. Form DV-180 may result in less court staff workload than if existing family law forms were used because form DV-180 is a single form and the corresponding family law forms would require processing of at least two forms.

The rule specifies that form DV-180 be retained permanently because it is a paternity judgment. DVPA restraining orders have different retention periods but often are not required to be retained permanently. Therefore, courts seeking to destroy a DVPA case file as authorized by the Government Code will be required to review the file to determine if it contains form DV-180. However, courts should already have systems in place to review DVPA case files, before destruction, to determine if child custody and visitation orders exist, because those orders remain in effect after a restraining order terminates or expires. Therefore, reviewing the case file for form DV-180 before destruction of the case file should require no significant additional staff resources.

The proposed rule of court limiting a filing fee could result in a slight increase in court staff workload by those courts choosing to charge a filing fee for form DV-180. They would be required to review the case file to determine whether the underlying restraining order is still in effect. Given the high percentage of DVPA cases where litigants qualify for fee waivers, any

income would likely be offset by the increased court staff workload involved in processing fee waivers.

Relevant Strategic Plan Goals and Operational Plan Objectives

New rule 5.380 and new form DV-180 support Goal I: Access, Fairness, and Diversity, specifically the goal of ensuring that court procedures are fair and understandable. The new rule and form would further the operational plan policy to identify and work to eliminate all barriers to access.

Attachments

1. Cal. Rules of Court, rule 5.380, at page 9
2. Form DV-180, at page 10–12
3. Chart of comments, at pages 13–45
4. Attachment A: Statutes Pertaining to Form DV-180 and Rule of Court, Rule 5.380, at pages 46-48

Rule 5.380 of the California Rules of Court is adopted, effective January 1, 2012, to read:

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a) No requirement to open separate case; no filing fee

(1) If the court accepts the agreement of parentage and issues a judgment of parentage, the court may not require a party to open a separate parentage or other type of case in which to file the judgment. The court may open a separate type of case, but the court must not charge a fee for filing the judgment of parentage in the new case.

(2) When a judgment of parentage is filed in a Domestic Violence Prevention Act case in which a restraining order is currently in effect, no filing fee may be charged.

(b) Retention

The judgment must be retained by the court as a paternity record under Government Code section 68152.

(c) Notice of Entry of Judgment

When *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must mail *Notice of Entry of Judgment* (form FL-190).

DV-180 Agreement and Judgment of Parentage

Clerk stamps date here when form is filed.

DRAFT
Not Approved By the Judicial Council

This form is used only when parents agree to be named as legal parents of their children. Parents complete (1) through (9).

(1) Protected Person:

Name: _____

Relationship to the children in this case *(check one):* ☐ Mother ☐ Father

Your lawyer in this case *(if you have one):*

Name: _____ State Bar No.: _____

Firm name: _____

Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone number, fax, or e-mail.)*

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____ Fax: _____

E-mail address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

(2) Restrained Person:

Name: _____

Relationship to the children in this case *(check one):* ☐ Mother ☐ Father

Address: _____

City: _____ State: _____ Zip: _____

Agreement of Parentage

(3) No Other Parentage Case

a. We are the parents of the children listed below.

b. To the best of our knowledge *(check each box that is true):*

1. ☐ There is no court case in which another person claims to be or is alleged to be the parent of the children.
2. ☐ No court has ordered or found that someone other than us is a parent of the children.
3. ☐ There is no pending adoption or guardianship case for the children.
4. ☐ No other person has signed a voluntary declaration of paternity for the children.

(4) The children in this case are *(specify):*

	Child's Name	Date of Birth	Sex
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____
d.	_____	_____	_____

☐ *Check here if you need more space. Use a sheet of paper and print "Children" as a title.*

Your name: _____

Case Number:

5 Orders Requested

a. We ask the court to find that we are the legal parents of the children in 4 and to enter a judgment of parentage.

b. We ask the court to order the children's birth certificates to be amended by *(check each order you want):*

1. ☐ Adding the father's name.
2. ☐ Changing the last name of the children to: _____

6 If you sign this form, you will give up these rights:

- **Right to a trial.** You can ask a judge, in a separate case, to decide if you are the parent of the children in this case. You can bring evidence and witnesses to that trial. And you can question the witnesses against you.
- **Right to genetic tests.** You can ask a judge, in a separate case, to order genetic tests to see if you are the parent of the children in this case. Depending on your case, the court may order you to pay for those tests.

7 If you sign this form, the court may decide you are the legal parent. The court may order you to:

- **Pay child support.** Child support may be taken out of your paycheck without notifying you first. Child support can be a lot of money, and it usually lasts until the child turns 18. If you do not support the children as ordered, you can face criminal charges.
- **Pay other expenses and costs.** The court may also order that you pay other expenses for the children in this case. You will have all the legal duties of a parent.

Before you sign this form, you can hire a lawyer.

If you cannot afford to pay for a lawyer to represent you, call the local bar association for help. You can also ask the court's Family Law Facilitator for information on how to find a lawyer.

8 Sign below only if you understand and give up your rights.

- We are saying that we are the legal parents of the children in this case.
- If either of us has a lawyer for this agreement, that lawyer has read and explained this information to the person being represented and that person understands it.
- We have read and understand this form.
- If someone translated this form, we understood the translation.

9 We have read and understand the rights listed in this form. Both people named in 1 and 2 give up these rights and freely agree that the court can make orders naming us as legal parents of the children listed on this form. We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date	*Type or print Protected Person's name*	▶ *Protected Person signs here*
Date	*Type or print Restrained Person's name*	▶ *Restrained Person signs here*
Date	*Type or print Protected Person's lawyer's name*	▶ *Protected Person's lawyer signs here*
Date	*Type or print Restrained Person's lawyer's name*	▶ *Restrained Person's lawyer signs here*

Your name: _____

Case Number:

Judgment of Parentage

10 The court finds

Name: _____ ☐ Mother ☐ Father

Name: _____ ☐ Mother ☐ Father

are the parents of the children listed below:

	Child's Name	Date of Birth	Sex
a.			
b.			
c.			
d.			

☐ Additional children noted on an attachment.

11 The court orders

a. ☐ The last names of the children are changed to *(specify):* _____

b. ☐ The birth certificates must be amended to conform to this court order by:
(1) ☐ adding the father's name (2) ☐ changing the last name of the children

12 ☐ Other *(specify):*

Number of pages attached: ____

13 Notice of Entry of Judgment

The parties must provide self-addressed, stamped envelopes and one original and two copies of the completed *Notice of Entry of Judgment* (form FL-190) to the court.

Date: _____ ▶ _____

Judicial Officer

14 Interpreter's Declaration

I have read or translated or interpreted this *Agreement and Judgment of Parentage,* to the best of my ability, to the *(check one):*

☐ Protected Person ☐ Restrained Person, who said that:

- He or she was unable to read or understand the English documents;
- His or her primary language is *(specify):* _____; and
- He or she now understands this document.

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 interpreter's name *Interpreter signs here*

Date: _____ _____ ▶ _____

Type or print interpreter's name *Interpreter signs here*

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Domestic Violence – Family Law: Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases (adopt Cal. Rules of Court, rule 5.380; approve form DV-180)

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

	Commentator	Position	Comment	Committee and Task Force (Committee) Response
1.	Hon. Irma Poole Asberry, Supervising Judge, Superior Court of Riverside County	A	Rule and Forms provide straight-forward resolution to handle paternity in DV cases w/o requiring another case to be opened. Process will be simple for SRL to follow.	No response required.
2.	Association of Certified Family Law Specialists By Diane Wasznicky, President	AM	ACFLS suggests the following modifications: 1. FL-180: Item number 3 does not provide for same sex parents. It needs to be modified to allow same sex parents to stipulate to parentage. The Judicial Council is seeking specific comment on whether this form will lead to confusion for individuals filling out the DV-130 (Restraining Order After Hearing). The confusion that may arise is that individuals may not know whether to fill out this form for parenting orders or DV-130. It does not appear that confusion will arise. This form could be excluded from the pro per packets and only available for those specifically wanting to enter a paternity judgment. Alternatively, better bolding and instructions must be given so that the confusion is minimized. It seems appropriate that DV-100 and DV-120 (Request for Restraining Orders and Response to Request) be modified to include a request for paternity orders.	The committee agrees to use gender neutral language where possible and appropriate. Item 3 has been revised from the version distributed for public comment to eliminate the jurisdictional bases. The committee agrees to cross-reference form DV-180 where appropriate. The form has been revised to eliminate orders other than the stipulated agreement regarding parentage.
3.	Bay Area Legal Aid, Santa Clara Office By Nicole Ford, Staff Attorney	NI	**Domestic Violence – Family Law: Stipulated Judgment of Parentage in Domestic Violence Prevention Act Cases.** I'm really pleased that they're allowing	No response required.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			paternity judgments to be made at DVRO hearings and that a judgment can be entered – it cuts down on paperwork and confusion but allowing one judge to deal with it all instead of filing *another* case that (in larger counties) gets assigned to another judge which leads to orders that can be disjointed and inconsistent. However the one problem raised (and that specifically asks for comments) is the DV-180 form which is an "Agreed Judgment of Parentage" stipulation form that can be submitted concurrently with the DV-130 or after. The concern is that if it's submitted after the DV-130 has been entered, the DV-180 won't be included as part of the CLETS order and won't be in the system. However, as currently happens, changes in custody orders from orders issued on the DV-130 are generally not included in the CLETS database. I do not see how including a judgment of paternity on the DV forms after the DV-130 is issued is any different from changes to custody after or from filing a separate UPA which definitively does not go in the CLETS database. I think allowing a judgment of paternity under DVPA cases will streamline the process and eliminate extra paperwork and unclog at least some of the courts with unnecessary cases.	The revised form eliminates any orders other than the stipulated agreement regarding parentage. Therefore, there will be no opportunity to modify custody, visitation or support orders on Form DV-180.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
4.	California Department of Child Support Services By Bill Otterbeck, Deputy Director	NI	This department administers the California child support program pursuant to Title IV-D of the Social Security Act. Our program will be negatively impacted by the legislation and Rule 5.380. Parentage judgments obtained in Domestic Violence cases per the proposed rule will not be accessible by the Title IV-D program staff. The Domestic violence court files are confidential and not even listed in the register of actions that Local Child Support Agencies (LCSA) can access. This is a problem because LCSA staff my file actions to establish paternity in IV-D actions when they have no knowledge of a prior Domestic Violence judgment. This can result in duplicative or inconsistent judgments in different forums. IV-D and the Juvenile courts have been burdened with this same issue for years. Over those years LCSAs and Assembly Bill 1058 court commissioners have reported many instances of inconsistent judgments between the courts because neither court is aware of the preexisting judgment in the other forum.	Family Code section 6323(b) was amended by statute. The rule clarifies court procedures impacted by the amendment. Domestic violence restraining orders are family law matters and are available to the public. They are not confidential. See California Rules of Court, rule 2.400(a). The committee understands and appreciates the problem of conflicting orders. However, that issue is not particular to Form DV-180.
5.	California Judges' Association By Jordan Posamentier, Esq, Legislative Counsel	NI	This proposal would provide a form and procedure for parents to stipulate to parentage in a Domestic Violence Prevention Act (DVPA) case. The California Judges Association takes issue with this proposal not because it is unwise but because it seems to lack statutory authority. The code authorizes only a stipulated judgment	The committee agrees to eliminate any orders other than the stipulation regarding parentage and related name change orders.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			on parentage (*see* Family Code Section 6323), but the proposed form, DV-180, is not so constrained. It appears to include much more, with no authority to do so. If a judgment on custody is sought, then it may need to be filed separately.	
6.	Hon. John Chemeleski, Trial Court Commissioner, Superior Court of Los Angeles County	A	Objections to proposal SPR11-52: Form DV-180: This form for a stipulated judgment of parentage should not include any provisions in addition to the determination of parentage. Under the DVPA the court only has the authority to issue "temporary" custody orders either ex parte (FC 6323) or after a hearing (FC 6340). There is no provision for a child custody judgment or a trial on child custody in the DVPA. The changes this year to FC 6323 only provide for a judgment of paternity by stipulation in a DVPA proceeding. Therefore any modification to a DVPA custody order would still be a temporary order. To obtain a trial or a judgment on a custody issue a UPA, dissolution or other family law proceeding would have to be initiated. These differences are significant as explained recently by the California Supreme Court in the Elkins decision, both as to the procedures involved in a trial as opposed to a motion/OSC as well as the effect of the judgment as opposed to an Order after hearing for temporary orders. This form, as well as the first sentence of the proposed	The committee agrees to eliminate any orders other than the stipulation regarding parentage and related name change orders.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			Rule 5.381, appears to further complicate this process and provide additional confusion without any constructive guidance as to how to obtain a final/permanent enforceable resolution of a custody dispute and avoid duplication of proceedings.	
7.	Family Violence Law Center By Kristie Whitehorse, Managing Attorney	A	Who will be preparing the stipulation? The clerk?	The committee recommends adding a sentence at the beginning of the form to alert the parties to complete items (1) through (9).
8.	Scott Harmen, Commissioner, Superior Court of Sacramento County	AM	The code only provides for a Stipulated Judgment of Paternity. This form goes beyond that to include custody and support orders. These orders are already dealt with in the DVRO forms and should not be on this form.	The committee agrees and recommends revising the form to eliminate any orders other than the stipulated agreement regarding parentage.
9.	Legal Advocates for Children and Youth By Anthony Cain, Supervising Attorney	AM	This rule is a positive addition for our clients, as it removes any question of whether or not clients would need to file a separate paternity action (requiring filing fees) if they stipulate to paternity in a case originating from a domestic violence restraining order that is still in effect. LACY suggests modifying paragraph 3 of the proposed DV-180 to mirror the current FL-240; stipulation of judgment re: parental relationship. The FL-240 does not require a factual basis to support the stipulation. The parties simply acknowledge they have reviewed the FL-235 and agree to parentage. The proposed DV-180 requires the parties to choose one of the specified factual bases. There is no need to add	No response required. The committee agrees to revise Item 3 to eliminate the factual bases, as suggested. The committee discussed the suggestion to remove all information from Item 3 but prefers to include prompts to alert the court about any existing actions that could conflict with the judgment of parentage in the DVPA case.

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			this requirement that wouldn't apply if the parties were stipulating to parentage in a Uniform Parentage Act matter.	
10.	Legal Aid Foundation of Los Angeles By Jimena Vasquez, Staff Attorney	AM	-We agree with proposed Rule 5.380 with modifications. The modifications suggested are as follows: **No Need For New Form As Could Use Existing Family Law Forms for Stipulation** Rule 5.380(a) suggests that a parentage judgment in a domestic violence case be issued on a special DV-180 form. The DV-180 form is duplicative as there already exists a Stipulated Judgment form. While we understand the desire to keep all domestic violence related forms together, this will also make it more cumbersome for some pro per litigants. Many domestic violence victims are in pro per and receive domestic violence form packets from the clerk of the court. Already, the packet is quite lengthy and imposing. Adding more forms to the packet with no instructions on its use or purpose would be more burdensome on litigants already pressed for time. Instead we recommend using existing family law forms relating to stipulation of parentage and the advisement of waiver and rights. These would not need to be added to the domestic violence packet and could be handed out by the	**No Need For New Form As Could Use Existing Family Law Forms for Stipulation** The committee recommends adoption of Form DV-180 because it is limited in scope. The existing Family Law form FL-240 (*Stipulation for Entry of Judgment*) includes many orders that are not authorized by amended Family Code section 6323(b). As indicated by many commentators, including orders such as child custody and visitation on Form DV-180 would cause confusion. Furthermore, there is no authority in Family Code section 6323(b) for any orders other than the stipulation regarding paternity. The committee recommends adding a sentence to the beginning of the form to alert litigants to the purpose of the form. The committee does not recommend a rule to

	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			mediator during mediation or by the court at the hearing. If the DV-180 is used we also would not recommend adding it to the pro-per packet and would suggest that the court keep it on hand.	specify whether courts add Form DV-180 to their packets. The committee prefers to defer to the courts on this decision.
			The Opportunity To Stipulate to Parentage Needs To Be Referenced In The Appropriate Domestic Violence Forms	**The Opportunity To Stipulate to Parentage Needs To Be Referenced In The Appropriate Domestic Violence Forms**
			Rule 5.380 is meant to give litigants the opportunity to request to be legally named as the parents of a minor child. The rule was meant to avoid litigants having to go back to court to establish parentage and thereby reduce court filings, and reduce the batterer's ability to continue the abuse through the court system. However, nowhere in the domestic violence forms is made mention of this new relief available to litigants. If litigants do not know about the relief they will not be able to take advantage of it.	The committee agrees to cross-reference Form DV-180 where appropriate.
			We suggest that a simple way to educate litigants about their right to be named as a parent is by putting it in the initial request, the DV-100 and in the response, DV-120. We propose simply adding a section entitled Legal Parentage to DV-100 before the request for child custody and visitation as follows: **Legal Parentage**	The committee agrees to cross-reference Form DV-180 where appropriate. The recommended text is not exactly as suggested but is substantially similar.

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			▫ **I request that the court name me and the person in 2 as the legal parents of the children listed in 4.** In the DV-120 the request would be similar and could be done as follows: **Legal Parentage** **a. ▫ I agree to the order requested** **b. ▫ I do not agree to the order requested** If the appropriate boxes in the DV-100 and DV-120 are checked the court will have reasonable basis to inquire whether the parties want to stipulate on the record to parentage and then give them the appropriate forms to sign. **<u>If the DV-180 Is Going to Be Used, It Needs To Be Cross Referenced As Appropriate</u>** The DV-180 form is not cross referenced on any other domestic violence form. This again obscures the relief available to litigants. If it is going to be used, the form should be crossed referenced where appropriate. For example, there are situations in which a litigant may wish to attach the DV-180 to the DV-130 or as suggested by the form that the DV-180 is attached to a DV-140, or DV 150. All these	**<u>If the DV-180 Is Going to Be Used, It Needs To Be Cross Referenced As Appropriate</u>** The comment appears to request that Form DV-180 be an attachment. The committee carefully considered this suggestion and concluded that it would be better if Form DV-180 was a stand-alone form. It does not need to be entered into CLETS. Furthermore, as a stand-alone form it will be easier to locate.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			forms should therefore cross reference the DV-180 at the top. **<u>If DV-180 Is Going To Be Used, Any Reference To Mother And Father Should Also Include "Other" As A Category</u>** The DV-180 only lists mother and father as the categories for relationship to the children in Section 1 and 2. However, to be consistent and in recognition of the divers family arrangements in California, "other" should also be listed. This would be similar to the category on the DV-105 and DV-140 sections 1 and 2 with a blank after the "other" to specify the relationship to the child. Similarly in section 3d(5) reference is specifically made to "another man" and "father" of the children. California case law has stated that presumptions can apply to both men and women. Therefore, it would be more appropriate to use gender neutral language such as "person" or "parent." **<u>If DV-180 Is Going To Be Used, Item 5a Needs To Be Clarified</u>** Item 5a as written is confusing because it does not specify whether the orders attached were	**<u>If DV-180 Is Going To Be Used, Any Reference To Mother And Father Should Also Include "Other" As A Category</u>** The committee discussed this suggestion but does not recommend adding another category for "other." As drafted the form allows for same sex parents because each parent could check the "mother" or "father" boxes. The comment does not specify what relationships could be included as "other." The committee considered other types of relationships such as guardian but those relationships would have already been legally established so Form DV-180 would not be appropriate. The committee agrees to use gender neutral language where possible and appropriate. **<u>If DV-180 Is Going To Be Used, Item 5a Needs To Be Clarified</u>** Item 5 is revised to eliminate any orders other than the stipulation regarding parentage. This

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			modified from a previous order or if they are duplicative of prior orders. To clarify 5a we suggest adding a 5b that specifically refers to a request to modify current custody orders as follows: ▫ **Modify Current Custody and Visitation Orders: ▫ DV-140 ▫ DV-150 ▫ Other:____** We would eliminate DV-145 as it is always attached to the DV-140. We would also replace parenting time with visitation to be consistent with the other forms dealing with custody that do not make reference to parenting time. With this clarification we are not as concerned with the issue of the modified custody and visitation not being added to the CLETS information as there is now a new form, DV-300 for the court to notify CLETS of changes to a restraining order after hearing. By clearly indicating this is a modification the court will be aware that it may need to issue a DV-300 and the modification will then be entered into CLETS.	will eliminate the confusion raised by the commentator. **Modify Current Custody and Visitation Orders: ▫ DV-140 ▫ DV-150 ▫ Other:____** This comment appears to be related to the SPR11-55 proposal and will be addressed in that chart.
11.	Los Angeles Center for Law and Justice By Suma Mathai, Supervising Family Law Attorney	NI	Currently when parents, previously involved in a case under the Domestic Violence Prevention Act (DVPA), have a subsequently filed custody and visitation order, whether by stipulation or order of the court, those changes to the custody and visitation order are generally not attached to a reissued DV-130, nor are they updated in the	Item 5 is revised to eliminate any orders other than the stipulation regarding parentage and the birth certificate amendment. This revision will eliminate the confusion noted by the commentator. In addition, the form does not need to be attached to the DV-130. It is a stand-alone form.

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			CLETS system. With the adoption of the new DV-180, custody and visitation orders that are issued subsequent to the issuance of the initial DV-130 should be treated just as any order, made later in time, would be. Parties may, in fact, be confused about whether they should attach custody and parenting time orders to the DV-130 or the DV-180 where the forms are filed concurrently. For ease in enforcement and clarity for the parties, *any* custody and visitation order should be complete in itself, without referring to other documents unless they are attached. Thus, if a DV-130 and DV-180 are filed concurrently, exact copies of the approved custody and parenting time forms should be attached to <u>both</u> forms.	
12.	Neighborhood Legal Services of Los Angeles County By Carmen Goldberg, Esq.	NI	Response to specific request for comments #1: If the DV-180 is filed concurrently with the DV-130 at the hearing- the DV-180 should be an attachment to the DV-130 because the DV-130 is the final order of the court for that hearing. Child custody agreements should also be attached to the DV-130. If there is a subsequent hearing, the DV-180 and child custody orders should be attached to the Order after Hearing for that hearing. The DV-180 could be the final Order for that hearing, but it could also be part of other Orders. In that	The committee recommends that Form DV-180 be a stand-alone form, not an attachment to Form DV-130. As a stand-alone form, Form DV-180 will be easier to locate. In addition, it could be filed much later than Form DV-130, not concurrently. Finally, Form DV-180 is a Judgment and therefore a final order on the matter of parentage. The committee carefully considered this comment but recommends that all of the orders that were in item 5 of the form that was distributed for public comment be eliminated so that the only order is a judgment of

	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			case a new DV-130 or an Order After Hearing should be signed. In the alternative, NLSLA proposes that, in cases where the parties are stipulating to parentage, that the Court use a different form which incorporates all the provisions of the DV-130 (and its attachments) as well as the provisions of the DV-180. This form could be a DV-135 "Domestic Violence Prevention Act Judgment" that serves as Judgment for the entire case. With this procedure, there would be no issue as to whether the DV-180 gets attached to the DV-130 or vice versa. The parties could enter into the stipulation on one form and then the court would issue the complete judgment on the "DVPA Judgment" form. The form could be a CLETS form and would be much easier for law enforcement to interpret and enforce than the proposed DV-180/DV-130 combination. Response to specific request for comment #2: We are not too concerned about the possible confusion with a subsequent order as it relates to the CLETS system. Now, self represented litigants ("SRL's") can file a Paternity action, dissolution or a CSSD case and have subsequent court orders that change what is in the CLETS system. SLR's must inform law enforcement as to the most recent court order. This practice will be the same with this new form.	parentage. The committee does not recommend a new form for a Judgment in a Domestic Violence Prevention Act (DVPA) case. The comment does not provide statutory authority for a judgment in a DVPA case, other than as specifically indicated in Family Code section 6323(b) for a judgment of parentage. No response required.

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	Commentator	Position	Comment	Committee and Task Force (Committee) Response
			Comment #3: We have some concerns that a litigant cannot make a decision as to Parentage in a moment of crisis, such as after filing a DVPA case. However, do balance this with the streamlined ability to avoid filing a separate case. SRL's want the clarity of custody and visitation orders. The ability to establish parentage in the restraining order is important for SRL's. They will be able to avoid the fees and time required to have a subsequent case filed.	No response required.
			Comment #4: If the intent of the Committee is to create something less than a Judgment of Paternity such as would be made in a Paternity case (including, for example, child support orders or a reservation of jurisdiction to make later orders), we believe the name of the form should be Agreed ORDER of Parentage. The DV-180 is not the same as a Judgment of Paternity and we think this title can be confusing for SLR's and attorneys. -A Judgment of Paternity is the conclusion of a Petition to Establish Parentage. The DV-180 does not make all the orders necessary in a Paternity Judgment.	Family Code section 6323(b) states that the court is authorized to issue a judgment of paternity. Form DV-180 is intended to be a Judgment of Paternity as would be made in a UPA case. The statute does not incorporate the entire Uniform Parentage Act so other orders are not included on the form. The only section of the UPA referenced in FC 6323(b) is the set aside provision (Family Code section 7646). All orders that were included in item 5 in the version submitted for public comment have been eliminated except for amendment of the birth certificate.
			Comment #5: The child's Gender should be added next to date	The committee agrees to add a section for the

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			of birth on the DV-180 as there are some names where one cannot tell the sex of the baby.	child's sex in item 4.
13.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
14.	Tom Stabile, Attorney, Law Office of Stabile and Cowhig	N	Parties who wish to bring up issues such as judgments, etc. they should be required to open a sep case & file #	The committee does not recommend requiring litigants to open a separate case in which to file Form DV-180. The history of amended Family Code section 6323 indicates that the legislature intended to implement recommendations of the Elkins Family Law Task Force. In its final report, the Task Force recommended that legislation should authorize family law courts hearing Domestic Violence Prevention Act (DVPA) cases to accept stipulations regarding paternity and enter parentage judgments in uncontested parentage matters without the parties' having to file separate parentage actions. The Senate Judiciary Committee analysis of Assembly Bill 939 on June 28, 2010 for the hearing on June 29, 2010 stated that the proposed legislation "...would significantly simplify the process for the vast majority of unrepresented family law litigants who initially enter the family law system through a petition for a protective order."
15.	State Bar of California, Family Law Section	AM	FLEXCOM suggests the following modifications:	

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	By Saul Bercovitch, Legislative Counsel		DV-180: Agreed Judgment of Parentage. This form should not be part of the DV packets provided to self-represented individuals, as it will most likely cause confusion. It is recommended that the courts have these forms available for use in the courtrooms. FLEXCOM further suggests that revision be made to DV-100 and DV-120 to allow for parties to request a determination of parentage within the DV action.	The committee understands that Form DV-180 will not be used by all parties. However, courts retain discretion as to the method for distribution of forms. The committee agrees to cross-reference form DV-180 in appropriate Domestic Violence Prevention Act forms.
16.	Superior Court of Amador County By Janet Davis, Court Manager	NI	If there will now be a paternity judgment in domestic violence cases the retention period needs to be clarified in Govt Code 68152(3).	The committee agrees and has incorporated the suggestion into Rule 5.380.
17.	Superior Court of Contra Costa County By Kathleen Shambaugh, Business Operations Director	NI	DV-180 Page 3: add a section: "We signed a Voluntary Declaration of Paternity." Use DV-180 as an attachment to DV-130 (Restraining Order After Hearing.) That way, DV-180 could be part of the DV order after hearing You can add a check box to DV-130 to note that DV-180 is attached. Then, add a check box to DV-180 to note that it is attached to DV-130.	The committee considered this comment but does not recommend including factual bases in Form DV-180 because there is no statutory authority or requirement to do so. The committee considered this suggestion but does not recommend that Form DV-180 be an attachment to DV-130. Form DV-180 could be used at any time during the term of the restraining order. The committee recommends that Form DV-180 be a stand-alone form so that it is more easily located. It does not need to be entered into CLETS as it is not a restraining order.

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			Parties should not use DV-180 prior to the hearing on the restraining order. The judge may not order the restraining order and if the RO is not ordered, no paternity or custody orders should be made. Filing the form as a modification to the DV ROAH could be problematic since the DVROAH may provide for no contact between the parties and the DV ROAH is the order that is in the CLETS system (unless DV-300 is approved.) It is my understanding the DV-180 order is not an order that would be entered into the CLETS system since it is not a restraining order. This could result in a violation of the restraining order if there is contact between the parties. Page 3 of DV-180: many litigants want to make changes to the birth certificate once paternity has been established. The language in the judgment has to be very specific in order for the California Dept. of Vital Statistics to make the changes to the birth certificate. Someone from that department should review the form or provide acceptable language to ensure that those changes will be made to the birth certificate.	Family Code section 6323(b) is located in the part of the DVPA which specifies which orders are available on an ex parte basis. To be consistent with the statute, the rule does not limit when Form DV-180 may be filed. The committee recommends that Form DV-180 include only the judgment of parentage, not other orders. All other orders that were included in item 5 in the version submitted for public comment have been eliminated, except for amending the birth certificate. The language used in Form DV-180 regarding amending the birth certificate is the same as in the standard family law UPA form which is used for the same purpose.
18.	Superior Court of Los Angeles County	AM	The forms require some revisions. To be consistent with the proposed changes to the CRC, the form should be named "Stipulated	The Plain Language style deviates from the precise terminology used in the California Rules of Court and the statutes when the

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			Judgment of Parentage."	preferred Plain Language term is equivalent to the legal term and less complex. The words "Agreement" and "Stipulation" have a similar meaning although the word "Agreement" is more easily understood by the average reader.
			It is not clear whether DV-180 can be used to stipulate retroactively to parentage in a case in which the restraining order was issued prior to January 1, 2012.	Family Code section 6323(b) does not specify whether or not the judgment can be used to stipulate retroactively to parentage in DVPA cases filed prior to the amendment of the statute. Clarification of this issue would require legislation.
			DV-180 11(a) does not provide for some, but not all, of the orders requested to be granted.	The revised form includes only the agreement regarding parentage, not other orders.
			DV-180 skips number 12, going from 11 to 13.	The committee agrees to fix the typographical error.
19.	Superior Court of Monterey County By Minnie Monarque, Director of Civil & Family Law Division	N	The form itself, DV180 is fundamentally flawed. The requirements of its use conflict directly with other rules requiring the use of Family Law Forms to modify the orders. If the parties wish to stipulate to a judgment of parentage, then there are appropriate forms to do that; DV-180 as proposed does not provide the necessary admonishments regarding the rights the parties waive by signing it. The form itself presents issues that could create the direct violation of the underlying restraining orders in accomplishing the laudable goal of determining parentage for minor children.	The committee recommends that all orders that were included in item 5 in the version submitted for public comment be eliminated, except for the judgment of parentage and the birth certificate amendment. The committee notes that the form includes the standard warnings and advisements that are included on the Family Law parentage forms. The commentator does not indicate which advisements are missing. The statutory scheme favors the reduction of

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			Additionally these provisions remove from the court the discretion to require the parties to file a regular Domestic Relations or Parentage action case. By keeping these issues in the framework of a Domestic Violence matter, the entire tenor of how the case is addressed within the court as well as by the parties is altered, and not to the benefit of the litigants or to minor children, even after the restraining orders have expired. Such a decision should remain within the sound discretion of the court to determine whether a domestic relations or parentage action case should be filed and the domestic violence case be consolidated within it. The framework of the rules as recited also appear to create a financial incentive to the litigants to keep the matter in a domestic violence framework, such than any further action would never allow the requirement of either a first appearance fee for the entry of a judgment or a filing fee for the modification of orders, regardless of how long expired the domestic violence order has been. It is proposed that this form not be adopted.	multiple case files; the committee recommends that the rule should not create an additional barrier for parties in a DVPA case by requiring a separate case file. Family Code section 6222 states that there is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by the DVPA when the request for the other order is necessary to obtain or give effect to a protective order. A judgment of paternity is necessary to establish certainty regarding paternity under Family Code section 6323 for purposes of issuing child custody and visitation orders, which are necessary to give effect to a protective order.
20.	Superior Court of Orange County By Linda Daeley, Family Law Division Supervisor	AM	Court operations would like some guidance as to how a stipulation to paternity would be handled when there is no finding of domestic violence and the parties have no other family law case. There are no provisions for this scenario.	The committee recommends that the judgment of paternity be retained permanently as a paternity record under Government Code section 68152(c)(8).

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			Our recommendation regarding child custody and parenting time orders filed with form DV-130 and DV-180 is to have the orders filed with the DV-130 during the period that the order is in effect; once the order has expired any modification would be filed with the DV-180. To allow the orders to be filed with the DV-180 will cause confusion and a workload issue as court staff will be forced to modify the DV-130 to mirror the DV-180 in order to assure the CLETS system has the correct information. Parties should not be filing stipulated parenting agreements if there is a restraining order in effect where a judicial officer has determined a different arrangement; modifications require judicial oversight. The DV-180 will not be placed into CLETS; law enforcement will not be aware of the modification if not mirrored in the DV-130.	Form DV-180, as revised, does not include any orders that would be included on Form DV-130 (*Restraining Order After Hearing*). Form DV-180 would not be entered into CLETS.
			Form DV-180 • Item 5, language should be included to refer back to the DV-130 for custody, parenting time and support orders unless the orders have expired and a modification has since been filed. Remove items a-c. Renumber items d-f as a-c.	The committee recommends removing references to additional orders that were included in item 5 of the proposed form.
			• Item 13, interpretation of the form doesn't always occur on the record – remove this language from item 13	The committee agrees to revise the form to delete the reference to an interpretation on the record so that the form is flexible enough to account for interpretations that are not on the record.

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21.	Superior Court of Orange County, Family Law Judicial Panel	AM	Comments: On Form DV-180, delete provisions regarding "custody & parenting time", "child support", "attorney fees & costs". This is to avoid confusion and inconsistency with the DV court orders regarding child custody & visitation, attorneys fees & costs, & support issued as part of the DV ROAH (form DV-130). Any stipulated modifications of these issues post-DV ROAH in the future should be submitted separately.	The committee agrees to remove references to additional orders that were included in item 5 of the proposed form that was circulated for public comment.
22.	Superior Court of Riverside, Staff By Michael Cappelli	N	**DV-180 Agreed Judgment of Parentage** This creates another procedure for determination of paternity with safeguards for validity. If the goal is to shield the parties from paying the filing fee in a parentage case it would be preferable to merely allow the parties to file the Petition to Establish without a filing fee, in other words, a statutory waiver of the fee. Judgments created via this proposed procedure would be difficult for other judicial officers, the granting county or other counties or courts to locate. Perhaps there should be a notice of entry of judgment on the DV-180? We already have well established systems to determine paternity which are not without problems. Adding a new system without any	The committee recommends that Form DV-180 be narrow to include only a judgment of parentage, in accordance with revised Family Code section 6323. All other orders that were included in item 5 in the version submitted for public comment have been eliminated, except for the birth certificate amendment. The committee agrees to revise Rule of Court 5.380 to specify that the court must mail a Notice of Entry of Judgment. Standard UPA forms include relief not authorized by the amended legislation and are not appropriate in DVPA actions.

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			safeguards to address a "fee" concern increases the burden on self-represented litigants.	
23.	Superior Court of Sacramento County By Robert Turner, ASO II	NI	Rule 5.380(a) Such a judgment may be issued on form DV-180, *Agreed Judgment of Parentage*. Comment: This is redundant to the existing code. If form DV-180 is not mandatory then there's no reason to identify it in this rule. There are many other forms to use. Rule 5.380(b) If the court issues a restraining order in the case after a noticed hearing under Family Code section 6340 and the court accepts the judgment of parentage, the court may not require a party to open a separate parentage or other type of case file. Comment: Not clear where this is stated in code 6340. Form DV-180: No "notice of entry" to accompany this form. A family support issue can have judgments issued in cases, such as, UPA, dependency to search for judgments. This proposed process now adds another case in which to search. Let's not create a new form, we should use the POP form. Statue does not require a new form.	The committee agrees to amend the rule to eliminate the reference to the form name and number. In addition, the committee recommends that Form DV-180 be mandatory. The existing Family Law form FL-240 (*Stipulation for Entry of Judgment*) is a mandatory form that includes many orders that are not authorized by amended Family Code section 6323(b). The committee agrees with commentators who indicated that inclusion of orders such as child custody and visitation on Form DV-180 would cause confusion. The committee agrees to revise the form to require the parties to submit Form FL-190 so the court is able to mail the Notice of Entry of Judgment. The committee does not recommend revising the rule to require exclusive use of the POP form because the statute is not so limited. Although the statute does not require a new

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				form, existing forms are not adequate to allow self-represented litigants access to the remedy authorized by the statute.
			Form DV-180, Item 5(d)italics Comment: Change "write" to "print"	The committee agrees to revise the form as suggested to use the word “print” instead of “write.”
			This form is unnecessary and problematic. First, the parties may request custody/parenting time in the DV filings forms (100, 101). The court may enter a judgment only on stipulation and if paternity is uncontested. Therefore, the items in #3 are wrong/irrelevant. For example, mother may have adopted child; or, the parties were not living together when the child was conceived, which is not included in a FCS7540 presumption. This may be a two-mom case. Or a 7611(d) "Holding out" case as the basis for orders. The basis for granting orders is not important. The form should simply recite, "we stipulate we are the parents and agree judgment should be entered." No grounds are necessary for that. The other items are good such as those in 3(d). ICWA and UCCJEA may be implicated. -Miles Whitney, Research Attorney	The committee agrees to eliminate the factual bases and other orders as suggested.
24.	Superior Court of San Bernardino County	N	The proposed form & rule present a few challenges. If there is a threat of domestic violence and the protected person asks the other person to sign off on a form re: parentage, might	The restrained person is authorized to communicate with the protected person to serve legal papers so there is some ability to coordinate a stipulated agreement without

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			that not incite an act of violence since the form clearly states it's for Domestic Violence Prevention? If the form is used after the restraining order is issued, then when could the protected person and the restrained person lawfully be together to sign the form?	violating the restraining order. Alternatively, the parties could sign the agreement at court during the hearing. The committee appreciates the safety concerns that are inherent in the DVPA process but the statute provides the parties the opportunity to stipulate to parentage.
			It is not clear from the form when it would be filed. Would it be attached to the request for a restraining order? Filed later? As noted in the Invitation to Comment, there are questions about the timing and what effect it would have on the CLETTS system and the ability of police officers to enforce a restraining order. If the modified orders are not in the state-wide system, it is possible that there could be real life consequences to the restrained person. And for the court to re-enter orders is an extra burden, as proper procedures need to be followed. It is suggested that any stipulation as to parentage not contain modifications.	The form could be filed upon issuance of the temporary restraining order or any time thereafter, so long as there is a restraining order in effect. The committee recommends eliminating from the form any orders other than the stipulated agreement regarding parentage. Thus, there is no opportunity to include custody, visitation or support orders on Form DV-180.
			If the parties are to agree upon parentage, what are the standards for the judge to accept it? Under Item 3, the parties are asked to check "each box that is true". What if they only check a, that this is the mother? If the parties were unmarried and no genetic tests were performed, is that a sufficient factual basis to determine parentage? In the parentage forms, at least they mention sexual intercourse. Presumably,	The statute does not provide any standards upon which the judge may rely to accept or deny an agreement of parentage. The form has been revised from the version distributed for public comment to eliminate the factual bases. Clarification of these issues would require further legislation.

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			section d is separate (but can't tell from the form) and that the parties need to be able to check off each of those boxes. Should some additional instructions be required? Regarding the Rule of Court, assume that the agreement re: parentage was accompanied by a stipulation for child support and there was no reference to custody. Would that also be a no fee filing? FC 6222 only prevents a filing fee when it is related to the restraining order or another order necessary to give effect to that order. A stipulated parentage and child support order may not be necessary to give effect to the protective order. This Rule of Court will deny the Court from collecting any legally appropriate fees, assuming the ability to pay.	The committee discussed the suggestion to revise the rule to allow the court to charge a filing fee for Form DV-180 but does not recommend doing so. The committee recommends eliminating from the form any orders other than the stipulation regarding parentage. Thus, parties will not be able to file child support or other orders with Form DV-180.
25.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	If the DV-180 needs to be modified, the party should file an amended DV-130. In the alternative, there should be a form similar to JUV-255 – Change to Restraining Order After Hearing to notify LEAS of changes to Form DV-180. DV-180: Our court thinks it is a mistake to expand this form to include anything other than its intended purpose – to stipulate to paternity. To do so invites problems as to where the custody/visitation and support orders (and other court orders) RELATING TO THE DV	The committee recommends eliminating from the form any orders other than the stipulation regarding parentage. Therefore, there will be no opportunity to modify Form DV-180. The committee considered the statutory construction and agrees that Form DV-180 should be limited to the parentage agreement and the birth certificate amendments that flow from the order.

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			APPLICATION should properly be attached. The DV-180 should be a stand alone form; Items 5a, 5b, 5c, and 5e should be deleted; keep 5d – name change, 5e – reasonable expenses or pregnancy and birth, and 5f – other. The form should be allowed to be filed at any time during the DV case and would not necessarily have to be tied to a hearing. If issues of custody/visitation/support need to be addressed, either initially or later through modification, they would be raised through a Request for Order, using the DV case number, and when ordered, set forth on a DV-130 or an amended DV-130. If the restraining orders have expired, then the orders would be set forth on a standard FOAH. **LASTLY, there needs to be a mechanism to TRACK THE PATERNITY JUDGMENTS that are entered using the DV-180. If they are simply entered in a DV case, there will not be an adequate method of tracking them; we need to avoid having duplicate paternity judgments entered or inconsistent paternity judgments issued. The state should consider creating a database for paternity judgments entered in DV cases, similar to the POP database.**	The committee agrees to recommend that the rule be revised to eliminate any limits on when the form could be submitted. The committee agrees to add captions to the form to ensure that it may be used as a stand -alone form. The comment is beyond the scope of the proposal.
26.	Superior Court of San Francisco	N/AM	- Legal parentage is an extremely complex legal issue, which can get even more	Family Code section 6323(b) does not specify that the Paternity Opportunity Program (POP)

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	County, Family Court By Hon. Rebecca Wightman, Commissioner		complicated when one considers the volatile nature of DVPA proceedings. There is always a danger of either litigant (alleged victim/alleged perpetrator) "willing" to stipulate for all of the wrong reasons – whether due to an ongoing pattern of violence (e.g. victim signs out to fear), or whether due a litigant willing to sign anything just to get visitation right away (e.g. perpetrator signs without taking the time to understand the rights being waived and associated responsibilities). Unless there are uniform standards implemented, with mandatory forms, the chances of problems "at the back end" will increase (e.g. folks trying to undo a stipulated judgment under claims of duress, etc.) If the committee adopted a rule that utilized the Paternity Opportunity Program forms, then there would really only be a need to have a mandatory "Notice of Judgment of Paternity" form that could be filed in DVPA actions (such that subsequent proceedings re: custody/visitation, support, etc. could proceed in the same action). See the more specific comments below. - When statutory authority already exists that permits individuals to stipulate to parentage and have it operate as a judgment as a matter of law (via the Paternity Opportunity	could be used as the basis for the stipulated judgment. The committee carefully considered these issues and concluded that requiring the use of the POP as the basis for the judgment would require legislation. Parties may continue to use the POP and the recommended rule does not limit its use in any way. The suggestion would require additional legislation. Litigants may continue to use the POP and the proposed rule does not limit its use in any way.

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			Program ["POP"] contained in Family Code §§7570 et seq.), it is unfortunate that the legislature did not specifically mention/utilize that avenue to the extent possible. It is suggested that proposed rule 5.380 be modified to incorporate, to the extent possible, use of the voluntary declaration of parentage process in DVPA proceedings. These forms are already readily available at many locations, including the courts (e.g. Family Law Facilitators) and a number of other agencies, and if these Paternity Declaration forms were then sent, as required by the existing statutes, to the state registry – then all courts and other agencies that need to know, can easily find the information regarding parentage. Ideally, if necessary, it would be good to immediately seek clarifying and/or clean-up language to coordinate the existing statutes regarding voluntary establishment of paternity and allowing DVPA courts to enter judgments of paternity. Otherwise, this will essentially be creating yet another layer/tier of cases which increases the possibility of multiple, inconsistent judgments of paternity being made by one court, without the knowledge of other courts (whether in dependency, or Title IV-D proceedings, or regular Family Law courts).	

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			- If any new forms are to be used, it is imperative that they be mandatory forms so that there can at least be some consistency and uniformity in being able to locate – on existing court case management systems – the important information regarding parentage. Otherwise, you end up with the pronouncement of entry of a Judgment of Parentage potentially being "buried" within other orders being made in the case (e.g. within a mere "Order After Hearing" or within the TRO issued itself). Ironically, the committee recognizes the issue of the potential difficulty for the court in locating a judgment in its discussion regarding whether to require the parties to open a separate case in which to file the judgment. And while it is understandable why the committee did not want to require the opening of a separate case, the committee fails to recognize that very issue by simply providing for a voluntary form. Unless a mandatory form is utilized, there will be no consistency, and it will be even more difficult to efficiently locate the information needed by a court, as well as for any other agency, such as the Dept. of Child Support Services (DCSS) to locate the information (so as to alleviate the need to open up one of their own cases). - What happens if another court	The committee agrees to recommend that Form DV-180 be mandatory. The existing Family Law form FL-240 (*Stipulation for Entry of Judgment*) is a mandatory form that includes many orders that are not authorized by amended Family Code section 6323(b). The committee agrees with commentators who indicated that inclusion of orders such as child custody and visitation on Form DV-180 would cause confusion. Furthermore, there is no authority in Family Code section 6323(b) for any orders other than the stipulation regarding paternity because there is no reference to the Uniform Parentage Act except for the set aside provision. In addition, the committee recommends that Rule 5.380 specify that Form DV-180 be retained permanently as a paternity record under Government Code section 68152.

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			order/finding that someone else is the parent already exists?? What happens if a POP declaration already exists in which another parent has been identified?? Simply having a check box on a voluntary form is inadequate, and will not prevent an increase in multiple, inconsistent paternity findings, orders or judgments. Simply asking pro pers to state "to the best of our knowledge" does little to ensure these important facts have not occurred, as many pro pers may not even be aware of another court case (e.g. paternity judgment in child support, default disso judgment, dependency judgment). SUGGESTION: The proposed rule needs to contain specific language in it – if the committee is not going to adopt the suggestions above (re: use of existing statutes on establishing paternity via POP, etc.) – that the parties are not to submit, and the court cannot accept, a stipulation or agreed judgment of parentage if there already exists another court order that has ordered or found someone else to be the parent(s), or there is a pending adoption or guardianship case for the child(ren), or there is an existing POP declaration that has been signed and submitted to the state registry. - Specifically regarding the requested comments surrounding Item 5(a) of the	The committee is aware and concerned about the issue of conflicting orders. However, the committee recommends that parties be allowed to submit their stipulation despite the potential for conflicting orders. The information in item 3 provides the court with a reason to decline to sign the judgment. The committee understands that litigants may not be aware of conflicting court orders. The committee considered adding a notice to the parties as suggested but does not recommend doing so because a party cannot be asked to declare under penalty of perjury to know about an action if she or he is not aware of it. Courts should retain their discretion to engage parties in further inquiry to determine if there is a reason not to sign the judgment. The potential for conflicting orders is not specific to paternity actions. Based on comments submitted during the public comment period, the committee

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			proposed form, it should be noted that if the committee adopted the suggestion(s) above (incorporating the use of the voluntary paternity declaration forms in the proposed rule, along with a required filing of a "Notice of Paternity Judgment" once the POP Declaration forms were properly submitted, you would not necessarily run into the problem/potential confusion identified in the committee's discussion.	recommends that DV-180 not include the orders previously listed in item 5. Therefore, the form no longer presents the problem of modifying existing custody or other orders.
			- As a separate suggestion re: the issue of what is/is not entered into CLETS, why not have a similar process – i.e. a check box, where the TRO indicates (as determined by the DVPA courts – whether a litigant may have peaceful contact with the other parent for purposes of the safe exchange of the children and/or visitation as may be ordered by the court. In other words, have a similar set up as when you have Criminal Protective Orders (entered into CLETS), with subsequent family law orders allowing for such peaceful contact (which are not typically entered into CLETS). The CLETS system would be inundated with modifications in custody/visitation orders, etc. every time there was change, if the details of permitted contact had to be entered into CLETS each time. This does not happen with Criminal Protective Orders, so why should civil TROs be any	Based on comments submitted during the public comment period, DV-180 does not include the orders previously listed in item 5. Therefore, the form no longer presents the problem of modifying existing custody or other orders.

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			different? It is only the new proposed form (DV-180) that is causing the problem – which would not be needed to be filed concurrently if the prior suggestions (re: use of POP declarations and a "Notice of Judgment of Paternity" form were developed for filing) are adopted	
27.	Superior Court of Santa Clara County Family Court By Mary E. Arand/Mary Ann Grilli/L. Michael Clark/Neal Cabrinha, Superior Court Judges	AM	Rule 5.380: This rule generally appears to be consistent with the new legislation that provides that the Court may enter judgment of parentage based on a stipulation of the parties. (Family Code section 6323(b)(2).) Rule 5.380(a): Because the DV-180 is an optional form, the rule should state that the Court may alternatively enter judgment of parentage in the DV case using the Advisement and Waiver of Rights form (FL-235); stipulation for entry of judgment (FL-240); and Judgment of Parentage (FL-250). We agree that a judgment of parentage should not be entered until the noticed hearing and grant of a permanent restraining order. It would be problematic if a judgment was entered, and	Rule 5.380: The committee recommends that Form DV-180 be mandatory. The existing Family Law form FL-240 (*Stipulation for Entry of Judgment*) is a mandatory form that includes many orders that are not authorized by amended Family Code section 6323(b). The committee agrees with commentators who indicated that inclusion of orders such as child custody and visitation on Form DV-180 would cause confusion. The amended statute is located in the part of the code which specifies which orders are authorized upon issuance of a temporary order pending a hearing. The form could be

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			the restraining order was later denied at the hearing or withdrawn by the petitioner. Without that permanent order in place, it does not make sense to enter judgment in a case that has no underlying jurisdictional basis. Form DV-180: Page 1, para. 3: add another line and box for the parties to check that states that the mother was not married to a third person at the time the child was born. We have seen many parentage cases lately where this is an issue, and the marital presumption for another potential father must be overcome. The orders on Page 3: Item 10: a place to state the children's names should be found here. Item 11.a.: each of the items in paragraph 5 of the request should be repeated here, with boxes to check for the Court. The Court may grant some, but not all, of the requested orders. The Committee requested specific comments about whether stipulated agreements for custody	submitted to the court upon issuance of the temporary restraining order or any time thereafter, so long as there is a restraining order in effect. The court retains discretion to decide whether or not to issue the requested judgment. Form DV-180: The committee recommends that the form not include any factual bases as these are not required by the statute. The committee agrees to incorporate the suggestion in its recommendation. The form does not list any orders other than the stipulation regarding parentage. Family Code section 6323(b) does not authorize other orders, such as costs for pregnancy and birth. Therefore, the committee recommends that all of the orders included in item 5 as it was distributed for public comment be eliminated, except for any birth certificate amendments. No response required.

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			and parenting time entered after a DV-130 would be problematic, because the custody order would not be entered in CLETS. It is common in Dissolution or CP cases where DV orders have been issued that the parties later stipulate or agree to modify the temporary custody orders issued at the time of the hearing on the restraining order. The family typically has not yet attended mediation at the time of entry of the DV order. In our county, these later custody orders are not entered into CLETS, because in most cases not issued on a DV form. We have not found it to be a problem for custody orders to be in place without being in CLETS, and it would be a burden for the parties to amend the DV order each time a custody order is issued after the original DV order.	

6222. There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

6323. (a) Subject to Section 3064:

(1) The court may issue an ex parte order determining the temporary custody and visitation of a minor child on the conditions the court determines to a party who has established a parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any custody or visitation orders have already been issued in any other proceeding.

(2) (A) In making a determination of the best interests of the child and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all **family** members, if the party who has obtained the restraining order has established a parent and child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical custody to the party to whom the restraining order was issued and may make an order of no visitation to the other party pending the establishment of a parent and child relationship between the child and the other party.

(B) A party may establish a parent and child relationship for purposes of subparagraph (A) only by offering proof of any of the following:

(i) The party gave birth to the child.

(ii) The child is conclusively presumed to be a child of the marriage between the parties, pursuant to Section 7540, or the party has been determined by a court to be a parent of the child, pursuant to Section 7541.

(iii) Legal adoption or pending legal adoption of the child by the party.

(iv) The party has signed a valid voluntary declaration of paternity, which has been in effect more than 60 days prior to the issuance of the restraining order, and that declaration has not been rescinded or set aside.

(v) A determination made by the juvenile court that there is a parent and child relationship between the party offering the proof and the child.

(vi) A determination of paternity made in a proceeding to determine custody or visitation in a case brought by the district attorney pursuant to Section 11350.1 of the Welfare and Institutions **Code**.

(vii) The party has been determined to be the parent of the child through a proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(viii) Both parties stipulate, in writing or on the record, for purposes of this proceeding, that they are the parents of the child.

(b) (1) Except as provided in paragraph (2), the court shall not

make a finding of paternity in this proceeding, and any order issued pursuant to this section shall be without prejudice in any other action brought to establish a parent and child relationship.

(2) The court may accept a stipulation of paternity by the parties and, if paternity is uncontested, enter a judgment establishing paternity, subject to the set-aside provisions in Section 7646.

(c) When making any order for custody or visitation pursuant to this section, the court's order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(d) When making an order for custody or visitation pursuant to this section, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any visitation or custody arrangement shall be limited to situations in which a third person, specified by the court, is present, or whether visitation or custody shall be suspended or denied.

7638. The procedure in an action under this part to change the name of a minor or adult child for whom a parent and child relationship is established pursuant to Section 7636, upon application in accordance with Title 8 (commencing with Section 1275) of Part 3 of the **Code** of Civil Procedure shall conform to those provisions, except that the application for the change of name may be included with the petition filed under this part and except as provided in Sections 1277 and 1278 of the **Code** of Civil Procedure.

7639. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 2 (commencing with Section 102725) of Chapter 5 of Part 1 of Division 102 of the Health and Safety **Code**.

7646. (a) Notwithstanding any other provision of law, a judgment establishing paternity may be set aside or vacated upon a motion by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons if genetic testing indicates that the previously established father of a child is not the biological father of the child. The motion shall be brought within one of the following time periods:

(1) Within a two-year period commencing with the date on which the previously established father knew or should have known of a judgment that established him as the father of the child or commencing with the date the previously established father knew or should have known of the existence of an action to adjudicate the issue of paternity, whichever is first, except as provided in

paragraph (2) or (3) of this subdivision.

(2) Within a two-year period commencing with the date of the child's birth if paternity was established by a voluntary declaration of paternity. Nothing in this paragraph shall bar any rights under subdivision (c) of Section 7575.

(3) In the case of any previously established father who is the legal father as a result of a default judgment as of the effective date of this section, within a two-year period from January 1, 2005, to December 31, 2006, inclusive.

(b) Subdivision (a) does not apply if the child is presumed to be a child of a marriage pursuant to Section 7540.

(c) Reconsideration of a motion brought under paragraph (3) of subdivision (a) may be requested and granted if the following requirements are met:

(1) The motion was filed with the court between September 24, 2006, and December 31, 2006, inclusive.

(2) The motion was denied solely on the basis that it was untimely.

(3) The request for reconsideration of the motion is filed on or before December 31, 2009.