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# **Manual on Divorce Issues for People in California Prisons and Jails**

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## **Disclaimer**

This manual is intended to answer questions that California prisoners may have about divorce, and help guide them through the divorce process. It only provides basic information and instruction, and should not be substituted for the legal advice of an attorney. As with all legal matters, it is best to hire an attorney if you can afford one, especially if you have a large property dispute, or child custody issues.

**This manual is based on California law only** and therefore is only intended to aid people filing for divorce in California. Since the manual focuses on issues common to prisoners and divorce it may not be appropriate to consult if you or your spouse are not incarcerated in California.

By agreeing to accept this manual you agree that Legal Services for Prisoners with Children is not liable for any undesirable outcome of your legal proceeding. You also acknowledge that this manual is not a substitute for legal advice, and that by choosing to represent yourself in your legal dispute you are responsible for ensuring that you follow proper court procedures. You also agree that you are responsible for ensuring that all information contained within is current and accurate. We have tried to use the most up to date and accurate legal rules and procedures, but we cannot guarantee that they will remain that way.

This manual is not endorsed by the State Bar of California.

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# INTRODUCTION

This manual was created for California prisoners and advocacy groups. It is intended to provide basic information about California's divorce laws, and basic instruction on how to obtain a divorce without an attorney. This manual is not intended as legal advice, and it should not be taken as such. It is always better to consult an attorney before moving forward with a divorce, or any legal matter.

The structure of the manual has two sections: "Common Questions," and "How To Do Your Own Divorce." The informative section is done mainly in question-and-answer format, so the prisoner can quickly pinpoint issues important to him or her. However, each person using this manual is encouraged to read the entire "Common Questions" section.

The "How-To" section provides basic information and instructions on the procedure for completing a divorce in California without assistance of an attorney. Again, it is best to hire an attorney to complete the divorce process. However, realizing that most incarcerated people have little to no financial resources, this manual provides basic instructions on completing the process by themselves. Any prisoner using this manual is encouraged to conduct his/her own research using the law library or by asking a family member or friend to help with research.

This manual does provide some basic information about child custody and child and spousal support. The information provided, however, is very basic and is not included in the "How-To" guide. For more information and help with custody and support issues, it is recommended that the prisoner contact a family law facilitator. A listing of family law facilitators for counties in California is included at the end of this manual.

All references in the manual to "spouse" include "domestic partner" and all references to marriage include domestic partnership.

This manual is current through June 2008.

A note about the format: Words appearing in *bold italics* can be found in the glossary.

# PART 1: COMMON QUESTIONS

## I. WHAT IS A DIVORCE?

### 1. What kinds of “divorce” can I get?

Many people do not know that there are actually four ways to end a marriage or domestic partnership in the State of California: Dissolution (traditional divorce), Summary Dissolution, Annulment, and Legal Separation. This manual will mainly cover the first, and most common type, dissolution of marriage (divorce).

#### a. Dissolution (divorce)

A divorce is a *civil legal proceeding* that officially ends a marriage or domestic partnership. In California, the legal term is “dissolution of marriage.” This booklet uses the words divorce and dissolution interchangeably; they mean the same thing. The spouse who files the petition for a divorce is called the *petitioner*. The spouse who is served with (given) this petition is called the *respondent*.

Besides ending the marriage, a divorcing couple must settle their other affairs. These include *custody* and *visitation* of children; financial support of the children (*child support* orders); *alimony* (*spousal support*), if appropriate; and the division of the couple’s property and debts acquired during the marriage.

The couple may agree on some issues such as where their children will live, how their property will be divided, etc. Their agreement can then be written up and made a part of the divorce judgment. The divorce court judge will generally approve any agreement the spouses make about settling their affairs. The only exception is child support. In some cases, and especially where one of the divorcing parents receives welfare the court will not approve an agreement where the parent with the children gives up the right to child support or agrees to an amount the court thinks is too low.

A divorce action involves *restraining orders* against both spouses. The *summons* form for dissolution contains three restraining orders that automatically prevent both the husband and wife from:

- (a) Removing a *minor* child from the state without the other party’s written consent;
- (b) Making property transfers without the other party’s written consent or making any major purchases without notifying the other party first; and
- (c) Certain actions that would affect insurance coverage for the benefit of the parties and their minor children.

The divorce court also has the option of issuing restraining orders against either the husband or wife to protect that person and family from immediate violence or danger. Unlike the orders described above, domestic violence restraining orders do not automatically take effect when the divorce summons has been served, but must be

specifically requested. The legal forms to request these orders are not included in this manual. Contact Legal Services for Prisoners with Children or the family law facilitator listed in the back of this manual for more information.

### **b. Summary Dissolution**

A summary dissolution is a divorce that is granted under the following conditions:

1. You have been married for five years or less as of the date that the Joint Petition (or Notice of Termination of Domestic Partnership) is filed
2. You have no children from the relationship that were born or adopted before or during the marriage/domestic partnership and neither party is pregnant
3. Both of you agree to give up your right to spousal support
4. Neither you nor your spouse owns a home or other real estate
5. The combined value of your community property is no greater than \$36,000
6. Your combined debts are less than \$6,000 not counting vehicle loans
7. The value of your separate property is no greater than \$36,000
8. You meet the residency requirements of California
9. Both parties have signed an agreement that divides the property and debts

If you meet these criteria, you and your spouse can agree to have your marriage dissolved by summary dissolution. The *clerk of the superior court* in the county where you are incarcerated has detailed information about how you can file for a summary dissolution. You or your spouse can request copies of a booklet entitled “Summary Dissolution Information” from the clerk.

The summary dissolution takes at least six months. The basic procedure is that you and your spouse file the joint petition together to begin the divorce, then for the next six months after filing either spouse has the option of changing his or her mind and stopping the divorce by filing a *Notice of Revocation of Consent to Joint Petition*. If after six months neither spouse has filed the notice, either spouse can request the final judgment of dissolution. The dissolution does not automatically happen after six months; one of you must file the request and get the judgment signed, filed and entered, before the dissolution is final.

An incarcerated person who simply consented to the filing of the Joint Petition should not assume he or she is divorced after the six months are up. All the steps must be completed. Fees and costs must still be paid as in a regular divorce, unless you and your spouse qualify for waiver of court filing fees (see question number 6, below). However, you do not have to appear in court if your marriage qualifies for a summary dissolution. [Included in this manual is a “How-To” guide to Summary Dissolution. See page 23]

You or your spouse may still want to consult with an attorney if you are not sure whether your marriage qualifies for summary dissolution, or if you do not understand the forms and procedures. Remember that this type of dissolution must be fully agreed to by both spouses. The non-incarcerated spouse can take care of most of the work, but both of you must agree to end the marriage and file a joint petition. If both of you can agree to this procedure, the divorce can be simple and inexpensive.

### c. Nullity (annulment)

A *nullity* (commonly referred to as an *annulment*) is recognized in California only under rare circumstances. When a court grants a nullity it means that the marriage was illegal from the beginning—the marriage never existed. Both parties are then able to marry another person immediately. Grounds for granting a nullity include: (1) one party used fraud or deceit to induce the marriage, (2) one or both parties was still a minor when married and did not have the required consent of his/her parents, and, (3) incest. The court in a nullity has the same kind of power to make custody, child support, and spousal support orders and to divide property as it does in a divorce. If you are trying to get a nullity then this manual will not help you. You need to speak to an attorney, or a family law facilitator.

### d. Legal Separation

A legal separation is exactly like a dissolution, except that at the end of the proceeding you are **not** divorced and therefore **not** free to marry another person or enter into another registered domestic partnership. People get legal separations for various reasons, including religious and economic reasons. As in a dissolution, the court can make orders regarding child support/custody/visitation and spousal support, and restraining orders if necessary. One important thing to remember is that property accumulated by each spouse **after** a legal separation is the separate property of that spouse.

## 2. How long does it take to get divorced?

Once you or your spouse has filed the divorce petition, the actual order making you a single person again cannot be entered for at least six months after the respondent spouse has been served a copy of the summons and petition, or appears by filing a response. Even so, you must remember that the court can still make orders in areas such as child custody, child support, and visitation rights that take effect immediately.

At the end of the six-month period, you are NOT automatically divorced (single again). In fact, the process will probably take longer if there are *contested* matters and/or a lot of property is involved. The court has to enter a final judgment of divorce before the marriage is legally ended.



## II. DIVORCE IN PRISON or JAIL

### 1. Can I file for a divorce while I am incarcerated?

Yes. If you or your spouse has resided in California for at least six months and in the county where you plan to file your divorce for at least three months, you can legally petition to end your marriage in California. If you have been incarcerated in the same jail or prison for the last 3 months, you can file for divorce in the county where that jail or prison is located.

### 2. Can my spouse divorce me just because I'm incarcerated?

Yes. California recognizes two grounds for divorce, and is commonly referred to as a "no fault" state. The most common grounds for a divorce are *irreconcilable differences*. Irreconcilable differences only means that your marriage will not work and counseling will not save it. This can mean just about anything, and being incarcerated typically falls into this category. The second, rarely used, ground for divorce is *incurable insanity*. This requires medical proof that one spouse was insane when the divorce petition was signed, and remains incurably insane. If your spouse is filing for divorce they are most likely using the irreconcilable differences grounds, and there is little you can do to refute that.

### 3. Are there reasons why it might be best not to file for a divorce while I am in prison?

There are several reasons to wait until you are released before petitioning for a divorce:

- (a) As a prisoner you will be not be able to be present in court unless it is absolutely necessary. You are more likely to be allowed to be present by telephone or videoconference, which you can request for any proceeding.
- (b) You cannot have actual physical custody of your children. You have a better chance of getting some sort of custody after you are released. Your chances will also improve if you can demonstrate that you have put your life back on track (have a job, housing, attend therapy/counseling, etc).
- (c) There is no guarantee that your children will be able to visit you in prison or jail. Visitation can be a problem even while married, and after divorce it can become more complicated, especially if your former spouse will not cooperate.
- (d) Many property and financial interests may be better to take care of in person. For example, as a result of your marriage you may be entitled to retirement or medical benefits that you may not know about. Unless you have someone on the outside working for you, it may be difficult to obtain this information yourself while you are incarcerated.

### 4. If my spouse files for a divorce while I am incarcerated, do I have a right to attend the hearings?

You do not have an absolute right to attend a divorce proceeding. California Penal Code Section 2625 states that a prisoner has a right to be present at any court proceeding in an action that may terminate the prisoner's parental rights or adjudicate the prisoner's child a dependent of the court. Since a divorce proceeding is neither one to terminate a person's parental rights nor a proceeding to declare a child a dependent of the court, a prisoner does not have an absolute right to attend the hearing.

However, because this is an action in which your parental or marital rights are subject to adjudication, the court may order that you be brought before the court. It is unlikely that the court will do so on its own, so you should request to attend as soon as you find out about the divorce proceeding. This is especially important if you have children and you are concerned about custody and visitation rights.

You need to file a motion with the court explaining your reasons for wanting to be at the hearing. It is especially important for you to tell the court you want to attend a hearing that involves child custody. LSPC publishes a manual entitled *Transportation to Court*, which explains this procedure and provides you with the required forms. You should contact LSPC (address is on the cover of this manual) to request that manual. If the proceeding is to terminate your parental rights, or to declare your child a dependent of the court, the court will send you notice and you must respond, indicating your desire to be present at the hearing.

#### **5. Will I be notified if my spouse files for a divorce while I am in prison?**

Assuming that your spouse knows where you are located, he/she is required to serve you with a summons (FL-110) and a copy of the divorce petition. The summons is a document informing you that your spouse has filed for divorce, and that you have 30 days to respond. If you do not respond within 30 days the court may enter a ***default judgment***, which makes the divorce final and may grant your spouse all of his/her demands. It is therefore very important that you respond when you are served.

You will most likely be served by mail, and included with the summons, petition, and other papers will be a ***Notice and Acknowledgment of Receipt*** (FL-117). This form asks you to waive your right to be personally served with the papers. If you agree to service by mail you need to sign this form and send it back to the person who sent it to you. If you do not agree then your spouse will have to arrange to have someone serve you personally. To find out more about this procedure see the "How To Do Your Own Divorce" section.

### III. WHAT ABOUT MY CHILDREN?

#### 1. What is “custody”?

Many people have misconceptions about what child custody means, or are unclear about how it will affect their relationship with their children. In California there are two types of custody: *physical* and *legal*. Physical custody refers to where the children live. Legal custody means the parent who gets to make decisions about the children’s lives and development, for example, where they will go to school, who they visit, what religious training they will receive.

Each of these types of custody can be given to one parent (*sole custody*) or both parents (*joint custody*). It is important to know that custody orders in California can be changed. *If you are released you can petition to have the custody order changed.* When you choose to do this we can provide you with a list of resources to help you do so, but we recommend that you first be able to show the court that you have become a productive member of society again (ex: have housing, a job, etc.).

#### 2. What will happen to our children during the divorce proceedings?

It is common for courts to give sole physical custody to the non-incarcerated parent, and often sole legal custody as well. The court uses *the best interest of the children* as the standard to determine what will happen to them. If you want to have any custody of your children while you are incarcerated you should be prepared to show the court why doing so would be in the best interest of the children. If you do not want your spouse to have custody, you should be prepared to show the court why that would not be in the best interest of the children. One example of a reason the court may not grant custody to your spouse would be a history of abuse (against you, the children, or both).

#### 3. Can I get custody of my children while I am incarcerated?

You cannot get physical custody so long as you are incarcerated unless you are in a mother-infant facility. The court may grant you legal custody (usually joint) while you are incarcerated, especially if your spouse agrees to this. If you want a divorce and any physical custody it is best to wait until you are released. For some tips on how to improve your chances of getting legal custody, see the next question.

#### 4. Can I get custody of my children when I get released?

Yes. Any custody order can be modified until the children become adults. However, once a custody order is made a parent will have to show very good reasons and/or a significant change in circumstances to modify (change) the custody order. Getting out of prison or jail is not necessarily enough. Some ways you can improve your chances of getting custody are:

Physical custody: Have a job and adequate housing.

Legal custody: Keep in contact with your children; write and visit often and keep

documentation of all correspondence, phone calls and visits. For information on how to secure more visitation with your children while you are incarcerated, please contact our office.

### **5. Will the court order me to make child support payments?**

If the court is aware of your incarceration and lack of income, the judge will probably not require you to make support payments while you are incarcerated. It is best to note your incarceration and inability to make support payments on the divorce petition (or response). Of course if you do have an income, or income-producing assets, the court will probably order you to make support payments. If for some reason the judge does order you to make support payments, and you do not have any income, ask them to modify the order since you will be incarcerated and have no income. If the judge still orders payments please contact our office again and we can send you more detailed information about this. Even if you are not required to make monthly payments during your incarceration, any child support that you owe will be subject to interest charges.

### **6. If dissolution proceedings begin while I am incarcerated, do I have the right to ask for support payments for my child and myself?**

#### **(a) Child Support**

Only the person with physical custody of the child is entitled to request and receive child support, and only the non-custodial parent can be required to make support payments. Therefore, while you are incarcerated, and likely do not have physical custody of the children, you cannot get child support. You should contact us for more information if you are in the California Prisoner Mother Program, a Family Foundations Program or if you will get physical custody when you are released.

If the court does not give physical custody to you or your spouse, then both parents will be liable for making support payments for the child. As mentioned above, you will need to request that the court not order you to pay child support as long as you remain in jail or prison.

#### **(b) Spousal Support (alimony)**

It is unlikely that the court will order your spouse to pay you spousal support (alimony) as long as you are incarcerated. When you are released this can change, so it is best to ask the court to put off any decision about spousal support until you are released. This way you can avoid going through the procedures for a change in support payments (which can be more time-consuming and difficult).

### **7. How can I get visitation with my children?**

If the divorce petition does not specify that you will be allowed visitation with your children, make sure a visitation order is put in the final divorce order. This will make it easier for you to see your children when you are incarcerated. You will need to check box 7c on FL-100 (Petition), or 9c on FL-120 (Response), and offer a plan for visitation. Here are some things you can do to increase your chances of securing visitation:

1. Present to the court a specific and realistic plan for allowing your children to visit you during your incarceration. (Check 7c in the Petition, or 9c in the Response). Be considerate of practical obstacles, such as long traveling distances between jail/prison and the child's home.
2. Give the names and addresses, preferably of family members, or of friends who will pick the children up for visits to you and return them to your ex-spouse after each visit. Try to find relatives who know the children well, who have a relatively good relationship with your ex-spouse, and who are approved or will be approved for visits with you.
3. Spell out the times for visitation and the specific arrangements (e.g., "Mary Doe, the children's paternal grandmother, will pick up the children, Johnny Doe and Janie Doe, every month on the fourth Saturday at 8:00 a.m. at [spouse's] home and will transport the children to visit with [you] at \_\_\_\_\_, in \_\_\_\_\_, California. Mrs. Doe will return the children to [spouse's] home on the fourth Sunday of every month at 8:00 p.m.>").
4. If the prison or jail has a special visiting program for parents and children, such as a Family Living Unit Visiting Program or a Children's Center, describe this program for the court, for example, "The correctional facility where petitioner is incarcerated has a special program for children and parents which makes visiting easier and more enjoyable for the children. There are toys, games, and books in the Children's Center and a social worker who works with the parents and the children."
5. If the person bringing the children to visit you in prison is not the other parent or the legal guardian, that person needs a notarized letter from the custodial parent giving his/her permission for the visit. In addition, any person bringing a minor child to a state prison for a visit must present the child's official birth certificate or county embossed abstract of birth at each visit.

If your ex-spouse and children agree to this visiting plan, it is far more likely that the judge will agree to allow visits between you and your children during your incarceration. The court keeps jurisdiction over custody and visitation issues until the children reach the age of 18 years. Either you or your spouse can ask for a change (modification) of orders based upon a substantial change of circumstances.

**Remember**, your incarceration alone does not mean that your children will not be allowed to visit you at the prison. As long as such visits are not detrimental to the child, the court should allow them.

## IV. WHAT ABOUT OUR PROPERTY?

### 1. Are there different kinds of property?

Property, generally, is classified as either *real property* (real estate or land) or *personal property* (everything else). In a divorce your property (both real and personal) will be classified as either community or separate.

**Community property**, in California, means property that is acquired during the marriage. California is known as a “community property state.” This means that when a couple divorces, the law is that most, if not all, property acquired during the marriage be divided equally, even property that may be in one spouse’s name.

The usual types of community property owned by a married couple include a house, an automobile, and household appliances acquired during the marriage. Cash in bank accounts and other investments acquired during the marriage would normally be community property as well. One very important and often overlooked kind of property you might have an ownership interest in is your spouse’s retirement or pension plan. Because your rights in your spouse’s pension plan can be very valuable, you should consult with a lawyer to protect them.

**Separate property**, in California, means property that was acquired before the marriage, was given as a gift of inheritance, or acquired after the couple separates. The date of separation is when you or your spouse made it clear that you wanted to end the marriage by saying you wanted a divorce or by moving out.

Separate property includes any property that you or your spouse owned before you were married. During the marriage, it is still possible for each spouse to acquire separate property. For example, if you had separate funds in a bank account before marriage that remained separate during marriage, and you purchased an automobile with those funds, the automobile would be your separate property. Another example would be if a relative or friend died and left you or your spouse some property in a will. This would be separate property to the receiving spouse. Gifts given to one spouse are also the separate property of that spouse.

After you and your spouse separate, any property you acquire or any money you earn becomes your separate property. As previously mentioned, the date of separation is the date that you or your spouse decided that your marriage was over and some step was taken to that end. There need not be a physical separation of the spouses, nor is a legal separation necessary.

How you and your spouse divide your property can be the most difficult part of a divorce. If you and your spouse have a lot of property it would be best to consult with an attorney.

### 2. How will our property be divided?

You and your spouse can make agreements about how to divide your property, including property obtained before and after the marriage. The court will usually approve these

agreements provided they are in writing, and this can often be the best way to divide your property. If you and your spouse own a house, speak to a lawyer about your rights before signing any agreement about the house.

If you cannot agree as to how your property is to be divided, then the court uses the community property method of distribution to define who owns what. You will be required to declare all of your property, and your spouse will do the same. The judge then decides which property is community and which is separate. The community property gets split evenly between you and your spouse; you keep your separate property and your spouse keeps his/her separate property.

### **3. What is quasi-community property?**

**Quasi-community property** is all property, wherever situated, that would have been treated as community property if the spouse who acquired the property had been living in California at the time it was acquired. (Cal. Fam. Code § 125).

### **4. What about our house?**

If the house is community property and you or your spouse cannot agree on how it will be disposed of, the court has a couple of options, depending on whether or not children are involved.

- (a) If there are no children the court can order the house sold and the proceeds divided equally.
- (b) If there are children, the court will probably allow the spouse who has custody of the children to stay in the house for a while, after which the house will be sold and proceeds divided.

If the house is the separate property of one spouse, that spouse will generally receive the house.

### **5. What about our debts?**

The law treats the division of debts in the same manner as community and separate property. **Community debts** are all debts made or loans taken out by either spouse during the marriage, even if only one person's name is on the bill. Community debts are usually divided equally between the spouses. This means that you may be responsible for a debt even if you did not know about it. For example, if your spouse took out loans in his or her name alone and never told you about it. If this is the case, you may be able to have the judge rule that this debt is not a community debt, but is separate to your spouse. It would be best to talk to a lawyer if this is your situation. The area of law dealing with community and separate property can become very complicated where a lot of property is involved. This is especially true where the property is held in various forms (pensions, houses, cars, investments, etc.). If you and your spouse have accumulated a lot of property either before or during the marriage (or both), you should speak with a divorce lawyer.

## V. GENERAL QUESTIONS

### 1. Do I need a lawyer?

You may be able to complete the dissolution proceedings without an attorney. If the divorce is uncontested the legal proceedings can be relatively simple and inexpensive. Or, you may qualify for a summary dissolution (see section I), which can be done without an attorney. However, if you and your spouse cannot agree on the terms of the dissolution (child custody/visitation, division of property, support) it would be best to hire an attorney. It is strongly recommended that you consult an attorney if you can afford one.

If you cannot afford an attorney, this manual includes a “How To Do Your Own Divorce” section. This section can help guide you through the divorce process. **Please note that the “How To Do Your Own Divorce” section is not intended as a substitute for legal advice from an attorney.** It is only a compilation of instructions on how to proceed *pro per* (by your self).

### 2. Is there any way to save my marriage?

Unless your spouse wants to stay married there is no way you can force him/her to do so. Sometimes counseling can help save a marriage, but there are no guarantees. Some counties in the state require the person filing for the divorce to also file a **Confidential Counseling Statement** form along with the petition. The purpose of this requirement is to provide the parties with free or low cost counseling to see if the marriage can be saved, or if it can't, to get the two parties to agree to a peaceful breakup. Of course, both spouses must agree to participate. To find out whether counseling is required, and to get the proper forms, contact the clerk of the court or the family law facilitator in the county where you plan to file for divorce.

The fact that you are incarcerated may be an obstacle to obtaining counseling if you want it. Try to overcome this problem by asking the counselor to arrange telephone meetings or videoconferences with your spouse.

### 3. What should I do if I want a divorce but I don't know where my spouse/partner is?

You cannot get a divorce unless your spouse is given notice of your intention to petition for divorce. Most of the time you will serve your spouse by mail, or personally (see the “How To Do Your Own Divorce” section). However, if you cannot find your spouse you may be able to do *service by publication*. This means that the court will order that the dissolution summons be published for a period of time in the newspaper most likely to reach your spouse. You will have to pay the newspaper for publishing the notice unless you can prove to the court that you are too poor to afford the publication costs. The court must then either provide for the cost or authorize another method of service.



Courts only use service by publication as a last resort, so be prepared to show that you have exhausted all possible means of locating your spouse. Keep a record of your attempts to contact your spouse. Try serving your spouse by mail using his/her last known address. Ask relatives, friends, employers, and co-workers where your spouse can be contacted. Ask a friend to check the city and county telephone directories in the locales where you suspect your spouse may reside, the voters' register, the Department of Motor Vehicles, and the County Tax Assessor. You can also try contacting The Salvation Army Missing Persons Services at PO Box 22646, Long Beach, CA 90802; phone: 1-800-698-7728. They do charge a fee for this service. If you were unable to track down the whereabouts of your spouse, then you can ask the court to authorize service by publication.

#### **4. How can I pay the cost of filing a divorce petition or filing my response?**

The filing fee for the dissolution petition varies from county to county, but is usually around \$300. If you file for your divorce without an attorney, you will need to file your petition *pro per*, which means that you are representing yourself. If your income is low enough, you may request that the court allow you to file without paying court fees and costs. Ask for Forms FW-001 (Application for Waiver of Court Fees and Costs) and FW-003 (Order on Application of Court Fees and Costs). File these forms along with your dissolution petition or your response. If approved by the court, you will not be required to pay for the filing of your divorce petition. There is no guarantee, however, that being incarcerated alone will mean you don't have to pay the filing fees. If you received public assistance before your incarceration, include proof of that with the waiver application; otherwise provide proof of your income now that you are incarcerated (a copy of your "inmate trust account" should satisfy this requirement).

#### **5. What should I do after receiving the divorce papers?**

- (a) First read the documents very carefully. You need to know what your spouse is asking the court to order regarding your children and property.
- (b) Consider hiring an attorney if the divorce proceeding seems too complicated, or if you expect a fight over child custody or division of property.
- (c) If you cannot afford an attorney, contact a legal services or legal aid office in the county where the divorce petition was filed. Keep in mind that some legal services offices do not handle divorces, and some only in certain circumstances. You may want to contact the volunteer legal services office in the county where the petition is filed to see if they handle dissolution cases. You can get their telephone number from the white pages of the local telephone directory. If you do not have access to the local telephone directory in the county of the divorce petition, ask the local legal services office to send you the address of the volunteer legal services pro bono assistance office for the county where the divorce was filed. If no one can or will help you, you can consult our "How To Do Your Own Divorce" guide.

#### **6. What is a default dissolution?**

If you or your spouse fails to file a response to the divorce petition within thirty (30) days after receiving it, and the court has determined that it was properly served, the court can grant all requests made in the divorce petition. This is called a default judgment. If the court grants the requests, the non-responding party will not have an opportunity to appear and contest any part of the petition.

By not responding to the petition, the respondent is effectively telling the court that they agree with the requests made by the petitioner. If the respondent does agree with the terms of the petition, they may choose not to respond to it. However, if they disagree with any of the terms of the petition, it is very important to file a written response within the 30-day time limit. By filing a response, the right to be a part of the divorce proceedings is preserved and the respondent can make his/her own request for a fair dissolution judgment.

If you are the respondent, even if you are absolutely clear about what your spouse is seeking in the divorce, and you agree to everything, it is a good idea to respond. Responding does not mean that you and your spouse still cannot enter into an agreement later.

If you are the petitioner and your spouse has not replied within the mandatory 30-day limit, see the “Default Dissolution” section under “How to Do Your Own Divorce.”

## **7. What about Domestic Partners?**

As of January 1, 2005 California recognized Domestic Partners. Domestic partners are either a same-sex couple or a couple where at least one person is over the age of 62 (and meets some other requirements).

Dissolution, Annulment, or Legal Separation of a Domestic Partnership is the same as a marriage, except domestic partners use FL-103 as the petition and FL-123 as the response. Everything else is the same. There is a simplified way to end a domestic partnership, much like a summary dissolution, but it is a bit more restrictive. For requirements and the proper forms for this simplified procedure contact the family law facilitator and ask them about “Terminating a Domestic Partnership by Notice of Termination of Domestic Partnership.”

## PART 2: HOW TO DO YOUR OWN DIVORCE

### I. INTRODUCTION

This section will provide you with basic instructions for proceeding with a divorce on your own. It cannot be stressed enough that if you can afford an attorney you should get one to help you with the divorce, especially if you have a lot of property or expect a major disagreement about division of property and/or child custody and visitation.

First, you must know about the different options you have for proceeding with a divorce. As mentioned, you can hire an attorney to represent you. If you do not have enough money for an attorney but your spouse has a lot of money and is using an attorney, you can ask the court to require him/her to pay the cost of an attorney for you. You can also hire a **consulting attorney**. A consulting attorney will not represent you in court, but will give you advice, and is usually less expensive than having an attorney represent you. Another option is to hire a **mediator**. A mediator can also be much less expensive than a trial, and the mediator can enter a binding judgment. A mediator will help you and your spouse reach a fair agreement, and requires you to disclose all financial information. Mediation can be a good option if you and your spouse have a decent relationship and are open to having a third party help you reach an agreement. A **collaborative attorney** is similar to a mediator and will help you prepare an agreement to present to a judge. A collaborative attorney does not enter a binding judgment.

If you have more questions about these options, or want some help exploring them more thoroughly, please contact one of the following resources:

1. Family Law Facilitators: every County Court has a Family Law Facilitator who offers advice and guidance through divorce, custody, and support issues. The facilitator will not represent either party in court. A complete list is provided at the back of this manual.
2. Write to your local legal services office asking for their help, and if they cannot assist you, ask them for a referral.
3. Consult the book *How to Do Your Own Divorce in California*, available from Nolo Press, 950 Parker St., Berkeley CA 94710-2524; 1-800-728-3555; Cost is approximately \$30.
4. Contact the Center for Families, Children & the Courts in writing at 455 Golden Gate Avenue, San Francisco, CA 94102 or call 415- 865-7739, and request a copy of the booklet “Going to Court Without a Lawyer: A Guide for Handling Uncontested Divorce, Legal Separation and Annulment.”
5. If you have access to a computer and the Internet (or have a family member or friend who has access) go to [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) and click on the Self-help

page where you can get information, instructions and forms. Forms can be filled out online and printed out.

6. There are some other services that will assist you in doing your own divorce. They charge a fee, which is usually much less than you would pay an attorney. These are two of the cheaper services, but there are many others:

3 Step Divorce: 1-800-680-9052

California Divorce Attorneys  
27281 Las Ramblas, Suite 200  
Mission Viejo, CA 92691  
(949) 367-4593

Please note that the two services above are private services and do not have a professional relationship with Legal Services for Prisoners with Children (LSPC). LSPC can neither guarantee nor endorse their work.

## II. INSTRUCTIONS FOR REGULAR DISSOLUTION (DIVORCE)

The following forms are normally required for filing (or Responding to) a Petition for Dissolution. Certain forms may not be needed in your particular case. For instance, if there is no property or debt from your marriage, you will not need to file the *Property Declaration* form listed below.

Form Title	Form Number
Application for Waiver of Court Fees and Costs	FW-001
Order on Application for Waiver of Court Fees and Costs	FW-003
Summons (Family Law)	FL-110
Proof of Service of Summons (Family Law, Uniform Parentage, Custody and Support)	FL-115
Petition (Family Law)	FL-100 (FL-103)
Notice and Acknowledgment of Receipt	FL-117
Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)	FL-105/GC-120
Declaration of Disclosure (Family Law)	FL-140
Declaration Regarding Service of Declaration of Disclosure (Family Law)	FL-141
Schedule of Assets and Debts (Family Law)	FL-142
Income and Expense Declaration (Family Law)	FL-150
Request to Enter Default (Family Law - Uniform Parentage)	FL-165
Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)	FL-170
Property Declaration (Family Law)	FL-160
Judgment (Family Law)	FL-180
Notice of Entry of Judgment (Family Law - Uniform Parentage - Custody and Support)	FL-190
Proof of Services by Mail	FL-335
Response	FL-120 (FL-123)

Remember: Court forms are often updated, renumbered or changed. Be sure to check in the law library or contact the family law facilitator or a legal services agency to verify that the form you are using is the most current version. Courts will not accept out-of-date forms.

What follows is a step-by-step guide for doing your own divorce. It is important to know that this guide only provides the basic procedures. For legal advice you should always consult an attorney, and if you have substantial property or debt, or expect a difficult battle over child custody, you should consult with an attorney.

## **Points to remember:**

1. The forms should be typed if at all possible. If you don't have access to a typewriter or computer, print all information clearly in BLUE or BLACK ink only. Do not use pencil.
2. Make four copies of everything, including blank forms, before you send anything to the court. Send the court the originals and three copies and keep one copy for your records. The clerk of the court will return the two copies to you after they have been "file-stamped" if you ask him/her to do so AND you include a self-addressed, stamped envelope so the copies can be returned.
3. Once you get the "file-stamped" copies back from the clerk, you can then have the paperwork served on the other party (one set of "file-stamped" copies goes to the other party and you keep the other set for yourself).
4. At the top of each form is a group of blocks referred to as the *caption*. In the first block entitled "Attorney or Party Without an Attorney," print your name using capital letters. At the bottom of the block, after the words "Attorney For," print or type the words "In Pro Per" or "*self-represented litigant*." Be sure to fill out the caption on every form.
5. Don't forget to date and sign the forms.

### **STEP 1: FILING THE PETITION (if you are responding to a petition, see Step 3: RESPONDING TO A PETITION)**

Forms needed: FL-100 (Petition), FL-105/GC-120 (UCCJEA), FL-110 (Summons), FW-001 and FW-003 (Fee waiver forms).

Complete these forms and send them to the court where you are filing. You can either mail them in or have a trusted person file them for you. The court will take all three copies and return two file-stamped copies to you. Keep one copy for your records; you will use the other copy to serve your spouse.

Be sure to read all instructions carefully. On these forms you will make requests regarding child custody/visitation, child/spousal support, and division of property. It is very important that you are clear about what you are seeking in these regards on the forms. Please see the main text for information on custody and visitation. You may choose to include FL-160 (Property Declaration) with the petition (see pg 20 for information on FL-160).

If you are applying for a fee waiver (see page 13) include those forms with the petition. You only need two copies of these (one for the court and one for you).

### **STEP 2: SERVING THE PETITION**

Forms needed: FL-115 (Proof of Service of Summons) or FL-117

(Notice and Acknowledgment of Receipt), FL-120 (or FL-123, for a domestic partnership), FL-335 (Proof of Service by Mail) and one copy of each form from Step 1.

Now you need to “serve” your spouse. You can have a friend or relative do this, or you can hire a “process server” to do it for you (about \$40-\$50; they do not waive fees; you can find them in the yellow pages). **You may not serve the papers yourself.** If you choose to have your spouse personally served, you need to use form FL-115. Or, you can have him/her served by mail. If the choice is to do it by mail certified mail should be used, so that there is proof that it was delivered. **If you are having your spouse served by mail form FL-117 must be used and a copy of FL-335 (Proof of Service by Mail) must be sent to the court.** Serving the paperwork starts the clock ticking, and the other party has 30 days to respond, or he or she will be subject to a default judgment (see pages 14 and 25).

Remember to keep one copy of each form from Step 1 (FL-100, FL-105, FL-110) for your own records, and to include them along with the forms needed for serving the petition. If you are serving your spouse by mail, do not fill out form FL-117, leave it blank. Also leave form FL-120 (or FL-123) blank. Your spouse will fill out these forms and send them back to the court.

### **STEP 3: RESPONDING TO A PETITION**

Forms you will need: FL-120 (or FL-123 if domestic partnership case), FL-117 (if you were served by mail), FW-001 and FW-003 (fee waiver forms; there is a filing fee for a Response).

If your spouse sent you the divorce forms, then **you need to respond within 30 days!** If you do not respond within 30 days you may be subject to a default judgment (see page 15). A BLANK Response form should be included with the packet of forms your spouse sent you when he/she filed for the divorce. FL-117 will only be included if you were served by mail. If these were not included a default cannot be entered against you, but you should request that your spouse send them to you.

You should fill out these forms, make two copies, and send all three copies of each to the court. One will go to your spouse; one will get filed with the court, and one you will keep (it will be sent back to you if you include a self-addressed, stamped envelope).

Again, be sure to follow the instructions carefully, and be clear about what you want out of the divorce. Your response must reflect what you want regarding custody/visitation, support, and division of property. You may include FL-160 (Property Declaration) with the response (see next page for info on FL-160).

### **STEP 4: THE PROPERTY**

Forms you will need: FL-140 (Declaration of Disclosure), FL-141 (Declaration of Service of FL-140), FL-142 (Schedule of Assets and Debts), FL-160 (Property Declarations).

The purpose of these forms is to list all property that you and your spouse have. You only need to list community property. You will have to do a preliminary and a final declaration of your assets and debts (if your spouse has defaulted, or you and your spouse have agreed to a settlement, you do not have to complete the final disclosures). If you have a lot of property, this may be a difficult part of the divorce, but you should be sure to list everything. The court will decide disagreements about what is community and what is separate property.

Here's how the process works:

- a. **Preliminary disclosures:** Complete FL-142 and FL-140. Send one copy to your spouse and keep a copy for yourself. Be sure to indicate that this is your preliminary disclosure. **DO NOT SEND FL-142 or FL-140 to the court.**
- b. Send a copy of FL-141 to the court. This form notifies the court that you sent the preliminary disclosures to your spouse. Be sure to mark on FL-141 that this is your preliminary disclosure.
- c. **Final disclosures:** After you get FL-140 and FL-142 from your spouse you might want to make some changes, or you may not. Once you are sure about what you want to declare as community property, send another copy of FL-140 and FL-142 (even if nothing has changed) to your spouse. This time mark the boxes for "final" disclosure. Remember to keep a copy for your records.
- d. Send a copy of FL-141 to the court, this time marking "final" disclosures. Remember, do NOT send FL-140 or FL-142 to the court, and keep a copy for your records.
- e. Complete FL-160. You will need two separate FL-160's; one for separate property and one for community property (including quasi-community property). These forms can be included with the petition, or you can include them with the final disclosures you send your spouse. The purpose of this form is to list all property, community and separate, and state how you think it should be divided. Your spouse may have already sent you one, but you can still complete your own, particularly if you do not agree with how the property is listed (community or separate), or if some property was omitted. If you and your spouse have agreed to a settlement, you do not need to complete this form.

**Note on child custody/visitation:** After you have filed your UCCJEA (FL-105/GC-120), disagreement about child custody/visitation might still be an issue. This manual is not intended to give you in-depth advice on how to handle this situation if it arises. It would be best to contact the family law facilitator in the county where you are filing for divorce to get some help and/or advice on how to proceed. In addition, many courts require that if there is a dispute about child custody/visitation that the parties attend mediation to



work out an agreement about those issues. The family law facilitator should be able to give you information about mediation (see appendix 2 for the list of facilitator offices).

## **STEP 5: THE MONEY**

Form you will need: FL-150 (Income and Expense Declaration)

(This step is not required if you and your spouse have agreed to a settlement or your spouse has defaulted).

The purpose of this step is to determine exactly how much money you make. Your spouse will fill out the same form. This form is used to determine child and/or spousal support. The form is a total of four pages and can take a lot of time to complete.

You will need two copies of this completed form, one for you and one for your spouse. This form covers all the money you earned during the last twelve months. **If you do not have any children under the age of 18 years old you do not need to complete page 4 of this form.**

You should complete the entire form, sign and date the first page, and attach copies of your last three paychecks (or the previous year's tax returns) for verification. *Incarcerated people might be able to substitute a printout of their Inmate Trust Account instead of paychecks. Ask the family law facilitator if this is an option.* One copy must be served on your spouse (you can include it with the final FL-140 and FL-142 forms), and you should keep one copy for yourself.

## **STEP 6: TRIAL/ENTRY OF JUDGMENT**

(You will be given a hearing date when the petition and response have been filed).

Forms you will need to bring to court are: FL-150 (Income and Expense Declaration), FL-160 (Property Declaration), FL-180 (Judgment), FL-190 (Notice of Entry of Judgment).

As mentioned earlier, this manual does not give advice about custody and support procedures. If you have a custody or support dispute you may be required to file more forms at this time. This process can be more complex, so please consult with the family law facilitator in the county where the divorce petition was filed for more information about custody and support issues at the judgment phase.

Before a judgment can be entered you must also decide whether you want to have a hearing or not. Since you are incarcerated you will not be able to attend a divorce hearing, so you should try to get your spouse to agree to a judgment by mail. The problem with getting a judgment by mail is that it can take a long time, and that by not being present you will not be able to make any corrections to mistakes you may have made. Also, if your packet of forms sent to the court is missing a form then you will have to re-send the packet. If your spouse insists on a hearing then you can ask the court to be present by phone. If there is going to be a child-custody issue then you may petition to appear in person, though this is rarely allowed. Procedures for getting a

hearing date vary from county to county, so speak to a family law facilitator for instructions on how to set a hearing date.

If you and your spouse have agreed to a divorce settlement then the judgment phase will be easier, and doing the judgment by mail may be favorable (though it still takes a bit longer).

Here is the process for filing your judgment.

1. Prepare your Judgment (FL-180).

FL-180 (Judgment) states what you want the judge to order, whether you want to restore your name before you married, and the date your “marital status ends.” Most people attach documents to this form, which may include some child custody or support forms that you have received from a family law facilitator. You can also attach your own, typed, judgment request. If you choose to type your own judgment request it must be on pleading paper (the paper with numbers on each line; you should be able to get it from your law library), and it must include all language that is required by law (this language appears on the various forms). The typed request should include everything you want the judge to order. If you choose to attach your own judgment request you need to make sure that it does not differ from what you have previously stated and/or asked for in your petition. If you do not have any child custody issues or support issues you do not need to attach any separate documents.

If you and your spouse have a settlement agreement then you should attach it to the judgment form (FL-180).

2. Submit your forms to the court.

If you are doing the judgment at a hearing then you will not need FL-165 (Request to Enter Default), and you obviously will not mail the forms in. If you are mailing the judgment in then you need to include:

- FL-150 (Income and Expense Declaration), or FL-155 (Simplified)
- FL-141 (Declaration Regarding Service of Declaration of Disclosure), if you already submitted this to the court, you do not have to send it again.
- FL-160 (Property Declaration)
- FL-165 (Request to Enter Default)
- FL-180 (Judgment), four copies—each with attachments
- FL-190 (Notice of Entry of Judgment), three copies
- Stamped envelopes, addressed EXACTLY as the addresses are listed on the Notice of Entry of Judgment

Assuming there are no problems with the submission of your judgment documents, you should receive a packet of documents back from in court in a few weeks. Remember, if it has been less than six months from the date the divorce petition was filed then you will have to wait until six months have passed before the divorce is final. You may have to wait until the six months has passed to get your documents back.

### III. INSTRUCTIONS FOR SUMMARY DISSOLUTION

[For more information on Summary Dissolutions see page 3]

The forms required for a summary dissolution can be obtained at a law library, by request from the family law facilitator, or by contacting Legal Services for Prisoners with Children.

Follow these steps to complete your summary dissolution:

1. Make sure you qualify for a summary dissolution. In order to qualify you must be able to answer “yes” to all of these statements:

- a. On the date you are filing your Joint Petition for Summary Dissolution or the Notice of Termination of Domestic Partnership, you have been married or been a registered domestic partner LESS than five (5) years.
- b. You have no children (born or adopted) from the marriage, and neither of you is pregnant at the time of filing.
- c. You do NOT own or have any interest in any real estate (house, condo, rental property, etc.).
- d. You do not owe more than \$6,000 in debts acquired since the date of your marriage or registered domestic partnership (do not count auto loans).
- e. You have less than \$36,000 worth of property acquired during the marriage or domestic partnership (do not count your cars or money owed on the property).
- f. You do not have separate property worth more than \$36,000 (do not count your cars or money owed on the property).
- g. You agree that neither you nor your spouse/domestic partner will ever get spousal or domestic partner support.
- h. You signed an agreement that divides your property and debts.
- i. Either you or your spouse/domestic partner have lived in California for the last six months and have lived in the county where the petition will be filed for the last three months. If you and your spouse/domestic partner have lived in California for at least six months, but in different counties for at least three months, you can file your case in either county.

If you answered “yes” to all of the above statements then you qualify for a summary dissolution. You do not have to appear in court; when the process is finalized you will have ended your marriage or domestic partnership.

2. Read the Summary Dissolution Booklet (FL-810). You will have to swear “under penalty of perjury” that you have read this booklet.

3. Fill out the paperwork. Here is the form you will need, with some instructions:

FL-800 (Joint Petition for Summary Dissolution of Marriage)

(a) If you are not using a lawyer, write “self-represented litigant” or “pro per” on the line “Attorney For.”

(b) Be sure to read lines 1-9 *very carefully*

(c) If you have a property agreement make sure you check the box at the bottom of page 1 informing the court that you have a property agreement.

(d) Remember that you both must sign this paper, and that you must make three copies (attaching the property agreement to each, if you have one).

4. Send your forms to the proper court. The proper court is the one located in the county that you or your spouse lives in, and has lived in for the last three months. There is usually a filing fee, but you can submit a request for waiver of court fees, forms FW-001 and FW-003 (instructions for this form are included in the divorce section).

5. Wait six months. No divorce in California can be completed without waiting six months. This gives you a little time to change your mind and to adjust to your changed circumstances.

6. Fill out and file FL-820 (Request for Judgment). Send your completed FL-820 to the same court that you sent the divorce petition. When you receive the “endorsed filed copy” of your FL-820 you are divorced.

## IV. INSTRUCTIONS FOR A DEFAULT DISSOLUTION

If you have successfully served your spouse and he/she did not respond within 30 days and he/she does not wish to sign any agreement or participate in the proceedings, then you can request a default judgment. Courts might not grant the default if your spouse responds after you request the default.

Here is the process:

1. Print and complete the forms in the order in which they are listed.
  1. Request to Enter Default (FL-165)
  2. Income and Expense Declaration (FL-150)
  3. Property Declaration (FL-160)
2. Submit a completed Proof of Service of Summons (FL-115) along with the documents listed above. You can have someone deliver these to the court, or you can mail them in. This document informs the court of when and how the Respondent received service of your papers and lets the Court know when a Default can be entered against the Respondent.
3. A stamped envelope addressed to your spouse or to your spouse's attorney must be given to the court at the time you submit the documents listed above.
4. Make two copies of each form and mail them all to the court. You may choose to have a friend drop them off for you instead. Include an envelope addressed to yourself, so that the Clerk's Office can return your documents to you once they are filed.
5. Mail your final judgment forms to the court. Forms you will need are:
  - FL-180 (Judgment), four copies—each with attachments
  - FL-190 (Notice of Entry of Judgment), three copies
  - Stamped envelopes, addressed EXACTLY as the address are listed on the Notice of Entry of Judgment

Since you are getting a default judgment you will not need to submit all the forms regarding property and income. Also remember that the divorce cannot be completed until six months after the date you filed the petition.

## V. INSTRUCTIONS FOR DISSOLUTION BY SETTLEMENT

If you and your spouse agree to a settlement you still need to complete the petition (FL-100), summons (FL-110), and response (FL-120) steps for a regular dissolution, and both need to complete the preliminary disclosures (FL-140, FL-141, FL-142).

**You will also need to file a FL-130** (Appearance, Stipulations, and Waivers; this form has many boxes, you only need to check #7, showing that you and your spouse have a **written settlement agreement**). You may also choose to check boxes 4 and 8, if appropriate), **and FL-170** (Declaration for Default or Uncontested). Both of these forms should be filed with the court either with the petition and response, or shortly after (with the disclosures). Like most forms, make three copies and send them all to the court, along with a self-addressed stamped envelope so the court can return the file-stamped documents to you.

You and your spouse can both choose to waive the final Disclosures, and the Property Declaration and Income and Expense Declaration, but you must make it clear in your written agreement that you are choosing to do so.

Your written agreement should be clear about what you want to happen with custody/visitation, support, and division of property, and needs to be signed by both parties. This agreement will be made into a court order, so it is very important that you both know exactly what is in the agreement and agree to it. You both need to sign the agreement as well.

To make the settlement final, see page 22 for instructions.

## GLOSSARY

**Alimony** – an alternative name for “spousal support.”

**Annulment** – a more common term for “nullity.”

**Caption** – the top portion of court forms that has boxes for information about the attorney, parties, court address, and case number.

**Civil legal proceeding** – a court proceeding in the superior court that is not a criminal proceeding; divorce, child custody, visitation are examples of civil legal proceedings.

**Child support** – the financial support that a parent may be required to pay to the parent or guardian who is providing a home for a child.

**Clerk of the superior court** – a person who works at the courthouse and is responsible for receiving and filing court documents; court clerks may not give you legal advice.

**Collaborative attorney** – an attorney that is similar to a mediator and who helps with the preparation of an agreement between the parties.

**Consulting attorney** – an attorney that can give you advice but who does not represent you in court; a consulting attorney’s fees may be less expensive than hiring an attorney to represent you in the divorce case.

**Contested** – a case that is ‘contested’ means that the parties cannot agree on child custody, visitation or money matters; contested cases often require more time and the assistance of an attorney.

**Custody** – child custody in California can be *physical* or *legal*; physical custody refers to whom the child lives with and legal custody refers to who is responsible for decisions affecting a child’s life such as where the child goes to school, what medical care a child might need, or whether the child participates in religious training; parents may have *joint* custody (physical and/or legal) or one parent may have *sole* custody (physical and/or legal).

**Default judgment** – when a person does not file a response within 30 days, the court may enter a default judgment in favor of the person that filed the petition; this means that the respondent might no longer have anything to say about child custody, visitation, or support.

**Incurable insanity** – one of the grounds for a divorce in California that is rarely used because it requires medical proof that a person was insane at the time the petition was filed and remains incurably insane.

**Irreconcilable differences** – the most common grounds for a divorce in California, it means that you and your spouse/domestic partner cannot work out your differences and no longer want to live together; neither spouse or partner has to show who was ‘at fault’ or the cause of the divorce or separation.

**Mediator** – an unbiased person who meets with you and your spouse or partner to work out an agreement that is fair to both of you.

**Minor** – a child who is under the age of 18 years old; child custody or visitation issues only affect children who are not yet 18 years of age.

**Notice and Acknowledgement of Receipt** – a form a person uses when both parties are able to work together cooperatively on their case and the papers were served by mail; the person doing the service includes two copies of this form and an addressed, stamped envelope; your spouse or domestic partner keeps one copy and signs and dates the other copy and mails it to you.

**Notice of Revocation of Consent to Joint Petition** – a form that a person can file if she or he has a change of mind within six months of filing the petition for summary dissolution.

**Nullity (annulment)** – a proceeding that is rarely used that establishes that the marriage or domestic partnership was never legally valid because of fraud, bigamy, incest, force, physical incapacity or being under the age of consent.

**Personal property** – any property that is not real estate such as furniture, a car, appliances, etc.

**Petitioner** – the person who starts the case by filing the Petition for Dissolution of Marriage or Domestic Partnership.

**Pro per** – the term used for people who are in court without an attorney; also called “self represented litigant.”

**Property Declaration** – form FL-160 on which you list all community property, quasi-community property or separate property (community property and separate property may not be listed on the same form).

**Real property** – property such as land, a house, condo, etc.

**Respondent** – the person who is sent (served) a copy of the petition and a blank Response form so that he or she can file a response with the court.

**Restraining orders** – when the Petition is filed an automatic restraining order goes into effect (the Standard Family Law Restraining Order is listed on the Summons); this order stops either parent from taking a child out of California unless the other parent gives



written permission before the travel takes place, or there is a court order allowing the travel.

**Self-represented litigant** – same as pro per (see above); someone who is in court without an attorney.

**Service by Publication** – service on the respondent when that person’s whereabouts are unknown; the court must order that service by publication is an option; it requires that the petitioner publish the dissolution summons in the legal notices section of a newspaper that is likely to be read by the other spouse/domestic partner; there is a fee for publishing these notices.

**Spousal support** – also often called “alimony” this is a payment by one person to the other spouse/domestic partner after the marriage/domestic partnership has been dissolved; spousal support is not automatic, it must be ordered by the court.

**Summons** – a form that informs the respondent that he or she is being sued in Family Court for a dissolution of marriage or domestic partnership; the person receiving this summons has 30 days to file a response with the court; the back of the form contains information about the Standard Family Law Restraining Orders; the form is in English and Spanish.

**Visitation** – the person who does not have physical custody of his or her child can ask for visitation with the child; visitation can take many forms including daily visits, weekly visits, weekends, summers or during school vacations.

# APPENDIX 1

## SAMPLE LETTER TO THE FAMILY LAW FACILITATOR

(Use when you don't have a lawyer representing you)

Date:

Office of the Family Law Facilitator

County of \_\_\_\_\_

Address

City, state, zip code

Re: [Dissolution of Marriage, Legal Separation, Summary Dissolution, Nullity]

To Whom It May Concern:

I am incarcerated and do not have an attorney to assist me with this paperwork. I am asking for your assistance with these documents.

Enclosed please find:

1. One original and three (3) copies of the following:  
LIST THE DOCUMENTS YOU ARE SENDING, USING ALL UPPER CASE LETTERS [for example: PETITION; RESPONSE; SUMMONS; APPLICATION FOR FEE WAIVER, etc.]
2. A self-addressed, stamped envelope

Please file and stamp these documents for me and return two (2) copies to me in the envelope enclosed with this letter. I am also requesting that you provide me with a hearing date on this matter at least six (6) weeks after the date of this letter ***[only include this if you are the petitioner and there is no scheduled hearing in the case]***

Thank you for your attention and assistance.

Sincerely,

Sign your name

(Print your name and include your prison/jail number)

(Name of prison/jail facility)

(Address)

(City, state, zip code)

**[Note: keep a copy of this letter until you receive the stamped copies back]**

## APPENDIX 2

### Family Law Facilitators in California

(Current as of June 2008; from [www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/))

COUNTY	ADDRESS	PHONE
Alameda	1225 Fallon Street, Room 240 Oakland, CA 94612	510/208-4969
	224 West Winton, Room 179 Hayward, CA 94544	510/670-5150
Alpine	1354 Johnson Blvd., Suite 2 South Lake Tahoe, CA 96150	530/573-3066
Amador	108 Court Street Jackson, CA 95642	209/754-1443
Butte	1931 Arlin Rhine Drive Oroville, CA 95965	530/532-7004
Calaveras	Government Center 891 Mountain Ranch Road San Andreas, CA 95249	209/754-1443
Colusa	547 Market Street Courthouse Annex Colusa, CA 95932	530/458-0601
Contra Costa	751 Pine Street Martinez, CA 94553	925/957-7887
Del Norte	625 "F" Street, Suite B Crescent City, CA 95531	707/465-3894
El Dorado	495 Main Street Placerville, CA 95667	530/621-6433
	1354 Johnson Blvd., Suite 2 South Lake Tahoe, CA 96150	530/573-3066
Fresno	255 N. Fulton Street, Suite 106 Fresno, CA 93701	559/497-6500

Glenn	526 W. Sycamore Street Willows, CA 95988	530/934-6380
Humboldt	825 5 <sup>th</sup> Street Eureka, CA 95501	707/269-1210
Imperial	939 Main Street El Centro, CA 92243	760/482-4739
Inyo	699 W. Line Street Bishop, CA 93514	760/872-4146
Kern	1215 Truxtun Avenue Bakersfield, CA 93301	661/868-4815
	132 E. Coso Street, Room A Ridgecrest, CA 93555	661/868-4815
	1775 Highway 58 Mojave, CA 93501	661/868-4815
	1122 Jefferson Street Delano, CA 93215	661/868-4815
	325 Central Valley Highway Shafter, CA 93263	661/868-4815
	12022 Calle Main Lamont, CA 93241	661/868-4815
Kings	1426 South Drive Hanford, CA 93230	559/582-1010, ext 3093
Lake	485 N. Main Street Lakeport, CA 95453	707/263-9024
Lassen	145 S. Lassen Street Susanville, CA 96130	530/251-8353
Los Angeles	111 N. Hill Street, Room 428-F Los Angeles, CA 90012	213/974-5004
	600 S. Commonwealth Avenue Room 1617 Los Angeles, CA 90005	213/637-8470

	12720 Norwalk Blvd., Room 202 Norwalk, CA 90650	562/807-7300
	300 E. Olive Street, Room 100 Burbank, CA 91502	818/557-3583
	200 W. Compton Blvd., Rm 1001 Compton, CA 90220	310/603-3218
	42011 Fourth Street West, Rm 3575 Lancaster, CA 93534	661/974-7348
	415 West Ocean Blvd., Room 43B Long Beach, CA 90802	562/491-6432
	300 E. Walnut Street, Room 100B Pasadena, CA 91101	626/356-5030
	400 Civic Center Plaza, Room 114 Pomona, CA 91766	909/620-3150
	900 Third Avenue, Outside Dept. J Torrance, CA 90503	310/222-1714
	6230 Sylmar Avenue, Room 212A Van Nuys, CA 91401	818/374-7108
Madera	117 South Lake Street Madera, CA 93638	559/674-5600
Marin	3501 Civic Center Drive, Rm C-27 San Rafael, CA 94903	415/473-3062
Mariposa	5092 Jones Street, PO Box 839 Mariposa, CA 95338	209/966-5320
	5081 Buillion Street Mariposa, CA 95338	209/966-3007
Mendocino	100 N. State Street, Room 212 Ukiah, CA 95482	707/463-5666
Merced	1901 "G" Street Merced, CA 95340	209/725-4165
Modoc	201 S. Court Street, #28 Alturas, CA 96101	530/233-2008

Mono	452 Old Mammoth Road Mammoth Lakes, CA 93546	760/924-3740
Monterey	1200 Aguajito Road Monterey, CA 93940	831/647-5800
Napa	825 Brown Street Napa, CA 94559	707/299-1137
Nevada/Sierra	201 Church Street, Suite 10 Nevada City, CA 95959	530/470-2567
Orange	341 The City Drive Orange, CA 92863	714/935-6568
Placer	11545 "B" Avenue Auburn, CA 95603	530/889-7465
Plumas	89 Court Street Quincy, CA 95971	530/283-4792
Riverside	880 N. State Street Hemet, CA 95243	909/600-6443
	4175 Main Street Riverside, CA 92501	909/955-1583
	46--200 Oasis Street Indio, CA 92201	760/863-7880
Sacramento	3341 Power Inn Road, Room 113 Sacramento, CA 95826	916/875-3400
San Benito	440 Fifth Street Hollister, CA 95023	831/636-4079
San Bernardino	351 N. Arrowhead Avenue San Bernardino, CA 92415	909/387-3060
	14455 Civic Drive Victorville, CA 92392 (Tuesday, Thursdays, Fridays)	760/243-8757
	8303 N. Haven Ave., Basement Level Rancho Cucamonga, CA 91730 (Mondays and Wednesdays)	909/948-4679

	6527 White Feather Road Joshua Tree, CA 92252	760/366-4100
San Diego	Main: 220 W. Broadway, Rm 4001 San Diego, CA 92101	619/531-3234
	Family Court 1555 Sixth Avenue San Diego, CA 92101	619/531-3234
	East County: 250 E. Main Street El Cajon, CA 92020	619/531-3234
	North County: 325 S. Melrose Drive Vista, CA 92083	760/940-4952
	South County: 500 Third Ave., Rm 390 Chula Vista, CA 91910	619/531-3234
San Francisco	400 McAllister Street, Room 402 San Francisco, CA 94102	415/551-3991
San Joaquin	222 E. Weber, Room 361 Stockton, CA 95202	209/468-8280
San Luis Obispo	1120 Mill Street, Suite A San Luis Obispo, CA 93408	805/788-3418
San Mateo	400 County Center, 2 <sup>nd</sup> Floor Redwood City, CA 94063	650/363-4590
Santa Barbara	1100 Anacapa St, 1 <sup>st</sup> Fl Santa Barbara, CA 93101	805-568-3133
	201 S. Miller, Suite 208 Santa Maria, CA 93454	805/346-1476
Santa Clara	99 Notre Dame Avenue San Jose, CA 95113	408/882-2900
Santa Cruz	701 Ocean Street, Room 110 Santa Cruz, CA 95060 (Tuesday & Thursday only)	831/420-2200
	1 Second Street, Room 300 Watsonville, CA 95076	831/786-7200

Shasta	1500 Court Street, Room 115 Redding, CA 96001	530/245-6900
Sierra/Nevada	201 Church Street, Suite 10 Nevada City, CA 95959	530/470-2567
Siskiyou	500 N. Main Street Yreka, CA 96097	530/842-0157
Solano	600 Union Avenue Fairfield, CA 94533	707/207-7348
Sonoma	600 Administration Drive Room 233-J Santa Rosa, CA 95403	707/565-2841
Stanislaus	800 11 <sup>th</sup> Street, Room 220 Modesto, CA 95353	209/525-6304
Sutter	430 Center Street Yuba City, CA 95991	530/822-8330
Tehama	756 Rio Street Red Bluff, CA 96080	530/529-1263
Trinity	101 Court Street Weaverville, CA 96093	530/623-1208 or 530/623-1369
Tulare	1612 W. Mineral King, Room C Visalia, CA 93291	559/737-4422
Tuolumne	41 W. Yaney Avenue Sonora, CA 95370	209/533-5697
Ventura	800 S. Victoria Avenue, Rm 30 Ventura, CA 93009	805/662-6661
Yolo	725 Court Street Woodland, CA 95695	530/406-6794
Yuba	120 Fifth Street Marysville, CA 95901	530/749-7685