

Table of Contents

Volume 1

CHAPTER 1. PREMARITAL AGREEMENTS

I. GENERAL CONSIDERATIONS

A. OVERVIEW

- § 1:1 Introduction
- § 1:2 Nature and advantages of agreement
- § 1:3 Determining client's needs
- § 1:4 Dual representation of parties

B. FORM DRAFTING PRINCIPLES

- § 1:5 Governing law, form, and execution
- § 1:6 Subject matter; altering rights
- § 1:7 Unenforceable agreements; severability
- § 1:8 Acknowledgment and recordation
- § 1:9 Effect of void marriage; limitations of actions and equitable defenses

C. TAX ASPECTS

- § 1:10 Income taxation; dependency exemptions
- § 1:11 Gift taxation
- § 1:12 Estate taxation

D. CLIENT REPRESENTATION

- § 1:13 In general
- § 1:14 Representation by independent counsel
- § 1:15 Establishment of attorney/client relationship
- § 1:16 Contents of fee agreement
- § 1:17 Potential conflicts of interest
- § 1:18 Capacity and consent; undue influence
- § 1:19 Consideration

II. CHECKLISTS

- § 1:20 Matters to consider discussing with prospective client
- § 1:21 Matters to consider in drafting general premarital agreement
- § 1:22 Additional matters to be considered where one party or both parties have been previously married

III. FORMS

A. LETTERS, RETAINER AGREEMENTS, AND RELEASES

- § 1:23 Attorney's waiver of conflict of interest letter
- § 1:24 Attorney-client retention letter
- § 1:25 Release of claim to exemption for child of divorced or separated parents (IRS 8332)
- § 1:26 Client letter regarding IRS form 8332 for custodial parent
- § 1:27 Client letter regarding IRS form 8332 for noncustodial parent
- § 1:28 Modified release of claim to exemption for child

B. COMPLETE AGREEMENT

- § 1:29 Complete agreement
- § 1:30 Premarital property agreement—Barring all rights in property of another spouse—Each spouse has separate property—Wife with children from prior marriage
- § 1:31 Form of partial recordation of premarital agreement
- § 1:32 Memorandum of premarital agreement and general power of attorney
- § 1:33 Schedule of property of parties
- § 1:34 Testamentary disposition of interest by will
Separate property

C. OPTIONAL PROVISIONS

1. Recitals and Other Standard Provisions

- § 1:35 Age of parties
- § 1:36 Present separate residences

DEFAULT

- § 1:37 Present residence
- § 1:38 Places of residence
- § 1:39 Waiver of Family Code § 1616 provisions
- § 1:40 Conclusive nature of recitals
- § 1:41 Agreement in contemplation of marriage; simple provision
- § 1:42 Agreement in contemplation and consideration of marriage; complex provision
- § 1:43 Antenuptial Agreement; Recording
- § 1:44 Successor and assigns
- § 1:45 Marriage required
- § 1:46 Nonassignability
- § 1:47 Warranties
- § 1:48 Negotiated content
- § 1:49 Property interests
- § 1:50 Governing law
- § 1:51 Prior voluntary conduct as not creating obligations
- § 1:52 Personal employment facts
- § 1:53 Cessation of employment
- § 1:54 Execution of other instruments
- § 1:55 General release
- § 1:56 Existence of other agreements
- § 1:57 Entire agreement
- § 1:58 Incorporation of agreement into judgment or decree
- § 1:59 Applicable law
- § 1:60 Severability
- § 1:61 Attorney fees
- § 1:62 No drafting presumptions
- § 1:63 Consideration
- § 1:64 Gender and number
- § 1:65 Waiver of breach
- § 1:66 Effective date
- § 1:67 Noncontestability provision
- § 1:68 Sunset provision

2. Intent of Parties

- § 1:69 Intention regarding agreement
- § 1:70 No reliance on statements of other
- § 1:71 Independent persons
- § 1:72 Agreement with a memorandum
- § 1:73 Simple binding agreement

- § 1:74 Entire agreement
- § 1:75 Severability
- § 1:76 Binding agreement with disclosure and representation
- § 1:77 Binding agreement with specific Family Code waivers

3. Representation By Counsel

- § 1:78 Representation by independent counsel concerning conclusive presumption and interpretation of agreement
- § 1:79 Representation by independent counsel
- § 1:80 Representation for one party, no representation for other party; short form
- § 1:81 Representation for one party, no representation for other party; complex version
- § 1:82 Counsel drafted agreement but did not representation by either party; short form
- § 1:83 Counsel drafted agreement but did not representation by either party; complex version

4. Disclosure

- § 1:84 Representations
- § 1:85 Reliance on own information
- § 1:86 Disclosure; simple version
- § 1:87 Disclosure; complex version
- § 1:88 Right to disclosure of property and waiver of further disclosure
- § 1:89 No financial disclosure with first party acknowledging no claim in property and waiving right
- § 1:90 No financial disclosure requested by second party
- § 1:91 Nondisclosure of property without knowledge
- § 1:92 Nondisclosure with some knowledge
- § 1:93 No financial disclosure with first party acknowledging right to investigate and waiving that right
- § 1:94 Disclosure of prepared financial material

5. Property Rights

- § 1:95 Property rights
- § 1:96 Real and personal property
- § 1:97 Separate and community obligations
- § 1:98 Effect of commingling

DEFAULT

- § 1:99 Rights to separate property
- § 1:100 No present rights in property or income of other
- § 1:101 Addition of property subject to agreement
- § 1:102 Separate property earnings
- § 1:103 Fund for Party A; short form
- § 1:104 Fund for Party A, complex version
- § 1:105 Waiver of management and control of property
- § 1:106 Mutual waivers of *Marvin* claims
- § 1:107 Principal family residence
- § 1:108 Principal family residence at death of owner spouse
- § 1:109 Pets and livestock
- 6. Custody and Support of Children**
- § 1:110 Children and obligations from former marriage
- 7. Spousal Support and Payment of Living Expenses**
- § 1:111 Spousal support
- § 1:112 Payment of living expenses; short form
- § 1:113 Living expenses paid out of joint account:
- § 1:114 Living expenses proportionate
- § 1:115 Living expenses paid by one party only
- § 1:116 Separate and community obligations
- 8. Confidentiality**
- § 1:117 Confidentiality privacy provision
- § 1:118 Simple confidentiality provision for financial information
- § 1:119 Complex confidentiality provision
- 9. Debts and Gifts**
- § 1:120 Gifts between parties
- § 1:121 Gifts from third parties
- 10. Financial Planning, Survivorship, and Wills**
- § 1:122 Filing and payment of income taxes
- § 1:123 Pensions separate
- § 1:124 Stock options and restricted stock units
- § 1:125 Waiver election of the qualified pre-retirement survivor annuity with spousal consent
- § 1:126 Life insurance

- § 1:127 Mutual waiver regarding probate rights
- § 1:128 Promise to provide for spouse by will
- § 1:129 Testamentary estate plan
- § 1:130 Spousal support waiver in the event of
dissolution of marriage

11. Modification, Termination, and Arbitration of Agreement

- § 1:131 Modification of agreement
- § 1:132 Amendment of agreement
- § 1:133 Non-modification of agreement executed in
counterparts
- § 1:134 Arbitration or private judicial proceedings;
simple form
- § 1:135 Arbitration or private judicial proceeding by
arbitrators with family law experience
- § 1:136 Arbitration or private judicial proceeding by
privately compensated judicial officer

12. Execution Provisions

- § 1:137 Captions
- § 1:138 Execution in counterparts
- § 1:139 Signature by attorneys
- § 1:140 Antenuptial agreement

Bibliography

Table of Contents

CHAPTER 2. MARITAL SETTLEMENT AGREEMENTS

I. LEGAL PRINCIPLES

A. OVERVIEW

- § 2:1 Purpose of agreement
- § 2:2 Contractual nature
- § 2:3 Comprehensive drafting
- § 2:4 Fiduciary duty
- § 2:5 Disclosure requirements
- § 2:6 Preliminary declaration of disclosure
- § 2:7 Final declaration of disclosure
- § 2:8 Waiver of final declaration of disclosure
- § 2:9 Remedies for false disclosure

B. EVIDENCE OF CIRCUMSTANCES SURROUNDING AGREEMENT

- § 2:10 Precatory language
- § 2:11 Closing acknowledgments

C. DIVISION OF PROPERTY

1. Governing Principles

- § 2:12 Overview
- § 2:13 Equalizing payments

2. Capital Gains Tax

- § 2:14 Capital gains tax and the division of property
- § 2:15 Capital gains on securities
- § 2:16 Capital gains on residence
- § 2:17 Drafting principles regarding disposition of residence
- § 2:18 Reimbursement of separate property contribution (Fam. Code, § 2640)

3. Stock Options

§ 2:19	Overview
§ 2:20	Characterization of stock options as separate or community property
§ 2:21	Nontransferability
§ 2:22	Tax considerations
4. Qualified Deferred Earnings Accounts	
§ 2:23	Overview
§ 2:24	Defined contribution plans
§ 2:25	Defined benefit plans
§ 2:26	Qualified Domestic Relations Order (QDRO)
§ 2:27	Joinder of pension plan
§ 2:28	Dividing defined contribution plan
§ 2:29	Dividing defined benefit plan
5. Allocation and Valuation of Professional Practice or Service Business	
§ 2:30	Overview
§ 2:31	Valuation
§ 2:32	Date of valuation
§ 2:33	Use of forensic accountant
6. Assets Involving Separate Property and Community Personal Effort	
§ 2:34	Mixed-character asset described
§ 2:35	Apportionment of profits
7. Other Assets	
§ 2:36	Identifying nonobvious assets
§ 2:37	Loss carryforward
§ 2:38	Date-of-separation earnings
§ 2:39	Contingent contracts
§ 2:40	Frequent flyer miles
§ 2:41	Accounts in name of minor child
§ 2:42	Excess tax payments
§ 2:43	Life insurance
§ 2:44	Burial plots
8. Revocation of Living Trust	
§ 2:45	Trust terms obsolete
§ 2:46	No transmutation
§ 2:47	Transfer of title

DEFAULT

9. Bankruptcy

- § 2:48 Nondischargeable debts
- § 2:49 Form drafting principles

10. Income Tax Returns

- § 2:50 Audit of joint returns and resulting tax liability
- § 2:51 Preparation of future returns

D. SUPPORT AND CUSTODY

1. Spousal Support

a. Determination and Duration of Support

- § 2:52 Overview
- § 2:53 Temporary support
- § 2:54 Permanent support
- § 2:55 Continuing jurisdiction
- § 2:56 Effect of death, remarriage, or cohabitation
- § 2:57 Waiver of support

b. Tax Aspects of Spousal Support

- § 2:58 Deductibility
- § 2:59 Frontloading
- § 2:60 Form drafting to mitigate consequences of frontloading

c. Modification of Spousal Support

- § 2:61 Modifiability
- § 2:62 Grounds for modification post-judgment

2. Child Support

- § 2:63 Authority for child support
- § 2:64 Amount of support
- § 2:65 Add-ons

3. Family Support

- § 2:66 Overview
- § 2:67 Tax considerations
- § 2:68 Form drafting principles

4. Custody and Visitation

- § 2:69 Terminology of custody

- § 2:70 Deciding custody
- § 2:71 Structuring the timeshare arrangement
- § 2:72 Counsel for the children
- § 2:73 Special masters
- § 2:74 Move-away cases
- § 2:75 Access to records
- § 2:76 Drug and alcohol use

E. GENERAL PROVISIONS AND EXECUTION

- § 2:77 General provisions
- § 2:78 Arm's length agreement
- § 2:79 Date of execution

II. CHECKLISTS

- § 2:80 Information to ascertain before drafting agreement
- § 2:81 Potential community assets and obligations
- § 2:82 Matters to consider when drafting provisions for division of property
- § 2:83 Matters to consider when drafting provisions for spousal support
- § 2:84 Checklist for income and expense declaration
- § 2:85 Matters to consider when drafting provisions for family support
- § 2:86 Steps to complete before client executes agreement
- § 2:87 Forms to prepare and steps to take before submitting agreement to court
- § 2:88 Steps to complete before closing file

III. FORMS

A. COMPLETE AGREEMENT

- § 2:89 Marital settlement agreement
- § 2:90 Marital settlement agreement—Division of community and other property—One spouse in military

B. OPTIONAL AND ALTERNATIVE PROVISIONS

1. Spousal Support

DEFAULT

§ 2:91 Spousal support for specified time period with
shifted burden of proof

§ 2:92 Stepped-down spousal support

2. Family or Child Support

§ 2:93 Add-on expenses in conjunction with family
support

§ 2:94 Family support

§ 2:95 Recapture of income

§ 2:96 Child support provision regarding electronic
transfer of funds

3. Property Division

§ 2:97 Retention of family residence

§ 2:98 Unequal allocation of capital gains tax and
proceeds upon sale of residence

§ 2:99 All capital gains tax from sale of residence
assumed by one party

§ 2:100 Confirmation of capital gains tax and division of
proceeds after separate property
reimbursement (Fam. Code, § 2640)

§ 2:101 Transfer of one party's share of proceeds from
sale of residence as part of equalizing payment

§ 2:102 Life insurance policies

§ 2:103 Assumption by spouse of community debts

§ 2:104 Sale of marital assets from one spouse to
another in community property states

4. Mediation

§ 2:105 Precatory language regarding mediation

§ 2:106 Mediation expenses and attorney fees

§ 2:107 General provisions regarding mediation

5. Prenuptial Agreement

§ 2:108 Precatory language regarding prenuptial
agreement

§ 2:109 Statement of purpose when prenuptial
agreement exists

C. JUDICIAL COUNCIL FORMS

§ 2:110 Petition (Judicial Council Form FL-100)

§ 2:111 Response (Judicial Council Form FL-120)

§ 2:112 Appearance, stipulations and waivers (Form

- FL-130)
- § 2:113 Application for separate trial (Form FL-315)
- § 2:114 Ex parte application for restoration of former
name after entry of judgment and order (Form
FL-395)
- § 2:115 Request and declaration for final judgment of
dissolution of marriage (Form FL-970)
- § 2:116 Declaration of disclosure (Form FL-140)
- § 2:117 Declaration regarding service of final declaration
of disclosure (Form FL-141)
- § 2:118 Schedule of assets and debts (Form FL-142)
- § 2:119 Income and expense declaration (Form FL-150)
- § 2:120 Request for income and benefit information from
employer (Form FL-397)
- § 2:121 Financial statement simplified (Form FL-155)
- § 2:122 Property declaration (Form FL-160)
- § 2:123 Continuation of property declaration (Form
FL-161)
- § 2:124 Judgment (Form FL-180)
- § 2:125 Statement attached to judgment granting
dissolution of marriage
- § 2:126 Stipulation for judgment
- § 2:127 Qualified domestic relations order for support
(Form FL-460)
- § 2:128 Attachment to qualified domestic relations order
for support (Form FL-461)
- § 2:129 Request to enter default (Form FL-165)
- § 2:130 Declaration for default or uncontested
dissolution or legal separation (Form FL-170)
- § 2:131 Notice of entry of judgment (Form FL-190)

Bibliography

Table of Contents

CHAPTER 3. CHILD CUSTODY AND SUPPORT

I. SCOPE OF CHAPTER

- § 3:1 Scope of entire chapter
- § 3:2 Child custody
- § 3:3 Child support

II. CHILD CUSTODY

A. GENERAL CONSIDERATIONS

- § 3:4 Subject matter jurisdiction for custody determinations
- § 3:5 Personal jurisdiction for custody determination
- § 3:6 Unenforceability of limitation of jurisdiction
- § 3:7 Custody issues outside the scope of the Family Code
- § 3:8 No statutory custody preferences
- § 3:9 Statutory custody definitions
- § 3:10 Temporary custody
- § 3:11 Permanent custody
- § 3:12 Preferences of the child
- § 3:13 Rights of third parties
- § 3:14 Fiscal responsibility and liability issues

B. DRAFTING CONSIDERATIONS REGARDING LEGAL CUSTODY

- § 3:15 Overview; scope of agreement
- § 3:16 Identifying areas of parental decision making and participation
- § 3:17 Deciding how to implement and enforce the agreement

C. DRAFTING CONSIDERATIONS REGARDING PHYSICAL CUSTODY

- § 3:18 Overview
- § 3:19 Implementing physical custody
- § 3:20 Issues ancillary to physical custody

III. CHILD SUPPORT

A. GENERAL CONSIDERATIONS

- § 3:21 Jurisdiction for orders to pay child support
- § 3:22 Mandatory compliance with statewide guidelines
- § 3:23 Legislative principles
- § 3:24 Family support
- § 3:25 Duration of child support obligation
- § 3:26 Voluntary support after age of majority
- § 3:27 Support for incapacitated adult child

B. ELEMENTS OF GUIDELINE SUPPORT CALCULATIONS

- § 3:28 Statutory findings as basis for support
- § 3:29 Determination of gross income
- § 3:30 Nontaxable income
- § 3:31 Perquisites
- § 3:32 Determination of net monthly disposable income
- § 3:33 Adjustments for tax filing status, itemized deductions, and credits
- § 3:34 Hardship deductions
- § 3:35 Consideration of new spouse's income for tax purposes

C. ADJUSTMENTS TO GUIDELINE SUPPORT

1. Adjustments Authorized By Statute

- § 3:36 Permitted adjustments
- § 3:37 Stipulation of the parties
- § 3:38 Deferred sale of residence
- § 3:39 Extraordinarily high income

2. Escalation Provisions

- § 3:40 Bonuses and other nonrecurring income
- § 3:41 Seasonal or fluctuating income
- § 3:42 Cost of living increases

3. Use of Child's Assets

DEFAULT

§ 3:43 Use of child's property or income

D. ADDITIONAL CHILD SUPPORT

§ 3:44 Mandatory additional child support

§ 3:45 Discretionary additional child support

E. SECURITY FOR PAYMENT OF SUPPORT

§ 3:46 Earnings assignment

§ 3:47 Life insurance

§ 3:48 Deposit into trust account

§ 3:49 Deposit of assets

§ 3:50 Interstate enforcement of wage assignment

F. MODIFICATION

§ 3:51 Change of circumstance for guideline modification

§ 3:52 Simplified method of discovery for purposes of
modification of child support or family support

IV. FORMS

A. CHILD CUSTODY

1. Basic Custody Provisions

§ 3:53 Sample basic custody provisions

§ 3:54 Registration of out-of-state custody decree
(Judicial Council Form FL-580)

§ 3:55 Joint parenting agreement—After termination of
relationship—With schedule for physical custody

2. Alternative Custody Provisions

a. Custody Plans, Confidentiality, and Modification

§ 3:56 Joint legal custody with specific exceptions

§ 3:57 Sole legal custody

§ 3:58 Award of joint physical custody with designation
of primary custodial parent

§ 3:59 Designation of primary residence with
establishment of custodial times

§ 3:60 Confidentiality of temporary custody plan

§ 3:61 Basis for modification of physical custody

§ 3:62 Make-up periods

§ 3:63 Definition of “emancipation event”

b. Care and Control of Child

§ 3:64 Access to information regarding the child

§ 3:65 Child care

§ 3:66 Health care

§ 3:67 Passport applications

c. Educational Issues and Religious Training

§ 3:68 Education

§ 3:69 School enrollment by mutual agreement

§ 3:70 School enrollment only on written consent

§ 3:71 Termination of school enrollment only on written consent

§ 3:72 Discussion of transfer of school enrollment with other parent prior to discussion with child

§ 3:73 Right of participation in child’s school and enrichment activities

§ 3:74 Religious education by mutual agreement

§ 3:75 Religious education determined by one parent

§ 3:76 Agreement of parents on payment of summer camp expenses

d. Travel and Change of Residence

§ 3:77 Removal of child from state

§ 3:78 Change of child’s residence provision

§ 3:79 Agreed-upon maximum distance between parents’ residences

§ 3:80 Procedure in event of moveaway

e. Child-Parent Communication

§ 3:81 Telephone communication

§ 3:82 Child’s right to privacy of conversations

f. Restrictions on Parental Acts

§ 3:83 Prohibition against derogatory comments

§ 3:84 Prohibition against use of alcohol and/or controlled substances

§ 3:85 Prohibitions against interference with custody

g. Liability for Child’s Acts

§ 3:86 Shared liability for child’s acts

DEFAULT

§ 3:87 Indemnification for liability for child's acts

h. Disputes and Dispute Resolution

§ 3:88 Choice of court if future custody dispute

§ 3:89 Dispute resolution

§ 3:90 Decision making authority in one parent when parties unable to agree

§ 3:91 Appointment of a special master

i. Secular and Religious Holidays

§ 3:92 Three-day holiday weekends

§ 3:93 Rosh Hashanah

§ 3:94 Yom Kippur

§ 3:95 Passover

§ 3:96 Chanukah

§ 3:97 Christmas

§ 3:98 Easter

§ 3:99 Kwanzaa

§ 3:100 Thanksgiving

§ 3:101 Halloween

§ 3:102 Fourth of July

§ 3:103 Alternate holiday provision

j. Physical Custody on Birthdays and Vacations

§ 3:104 Special custody birthday

§ 3:105 Special custody days (Mother's Day/Father's Day)

§ 3:106 School vacations

§ 3:107 Summer vacation

B. CHILD SUPPORT

1. Complete Agreement

§ 3:108 Basic child support agreement

§ 3:109 Child support information and order attachment (Judicial Council Form FL-342)

§ 3:110 Agreement of parent's spouse to support child

2. Optional Provisions

§ 3:111 Release of claims against father for child support re adoption

§ 3:112 Cost of living adjustment

- § 3:113 Therapy expenses
- § 3:114 Alternative health insurance provisions
providing for equal responsibility
- § 3:115 Religious education
- § 3:116 Extracurricular activities
- § 3:117 Private school tuition and fees
- § 3:118 School field trips or other trip sponsored by
organization
- § 3:119 Reimbursement of expenses
- § 3:120 Declaration by parent for creation of trust fund
for support of child after marriage of child
- § 3:121 Alternating the dependency exemption
- § 3:122 Designation of electronic fund transfer account
number

3. Miscellaneous

- § 3:123 Release or revocation of release of claim to
exemption for child by custodial parent (IRS
Form 8332)

C. JUDICIAL COUNCIL FORMS

- § 3:124 Petition for custody and support of minor
children (Form FL-260)
- § 3:125 Response to petition (Form FL-270)
- § 3:126 Request for hearing and application to set aside
support order (Form FL-360)
- § 3:127 Responsive declaration to application to set
aside support order (Form FL-365)
- § 3:128 Order after hearing on motion to set aside
support order (Form FL-367)
- § 3:129 Declaration under Uniform Child Custody
Jurisdiction and Enforcement Act (UCCJEA)
(Judicial Council Form FL-105/GC-120)
- § 3:130 Summons (Form FL-110)
- § 3:131 Proof of service of summons (Form FL-115)
- § 3:132 Proof of personal service (Form FL-330)
- § 3:133 Proof of service by mail (Form FL-335)
- § 3:134 Answer to complaint or supplemental complaint
regarding parental obligations (Form FL-610)
- § 3:135 Judgment regarding parental obligations (Form
FL-630)
- § 3:136 Request for hearing and application to set aside
voluntary declaration of paternity (Form

DEFAULT

- FL-280)
- § 3:137 Information sheet for completing request for hearing and application to set aside voluntary declaration of paternity (Form FL-281)
- § 3:138 Responsive declaration to application to set aside voluntary declaration of paternity (Form FL-285)
- § 3:139 Order after hearing on motion to set aside voluntary declaration of paternity (Form FL-290)
- § 3:140 *[Reserved]*
- § 3:141 Notice of motion and motion for simplified modification of order for child, spousal, or family support (Form FL-390)
- § 3:142 Responsive declaration to motion for simplified modification of order for child, spousal, or family support (Form FL-392)
- § 3:143 Stipulation to establish or modify child support and order (Form FL-350)
- § 3:144 Application and order for health insurance coverage (Form FL-470)
- § 3:145 Employer's health insurance return (Form FL-475)
- § 3:146 Notice of consolidation (Form FL-920)
- § 3:147 Temporary orders (Form FL-305)
- § 3:148 Findings and order after hearing (Form FL-340)
- § 3:149 Spousal or family support order attachment (Form FL-343)
- § 3:150 Property order attachment (Form FL-344)
- § 3:151 Notice of delinquency (Form FL-485)
- § 3:152 Declaration of payment history (Judicial Council Form FL-420)
- § 3:153 Payment history attachment (Form FL-421)
- § 3:154 Application to determine arrearages (Form FL-490)
- § 3:155 Order for child support security deposit and evidence of deposit (Form FL-400)
- § 3:156 Application for disbursement and order for disbursement from child support security deposit (Form FL-401)
- § 3:157 Wage and earnings assignment order (Form FL-435)
- § 3:158 Ex parte application for wage and earnings assignment order (Form FL-430)

- § 3:159 Stay of service of wage assignment order and order (Form FL-455)
- § 3:160 Order to show cause (Form FL-300)
- § 3:161 Responsive declaration to order to show cause or notice of motion (Form FL-320)
- § 3:162 Affidavit of facts constituting contempt financial and injunctive orders (Form FL-411)
- § 3:163 Findings and order regarding contempt (Form FL-415)
- § 3:164 Affidavit of facts constituting contempt custody and visitation (Form FL-412)
- § 3:165 Supervised visitation order (Form FL-341A)
- § 3:166 Child custody and visitation order attachment (Form FL-341)

Bibliography

Table of Contents

CHAPTER 4. COHABITATION AGREEMENTS

I. LEGAL PRINCIPLES

A. GENERAL CONSIDERATIONS

- § 4:1 Introduction
- § 4:2 Purpose of agreement
- § 4:3 Validity and scope of agreement
- § 4:4 Application of agreements to same sex couples
- § 4:5 Declaration of domestic partnership
- § 4:6 Termination of registered domestic partnership
- § 4:7 Validity of agreements executed in other jurisdictions
- § 4:8 Validity of California agreement in other jurisdictions
- § 4:9 Effect of subsequent marriage between cohabitants
- § 4:10 Effect of subsequent marriage by one cohabitant to third party
- § 4:11 Rights to income
- § 4:12 Rights to benefits
- § 4:13 Rights to property
- § 4:14 Tort liability
- § 4:15 Surviving cohabitant's right to sue for wrongful death, loss of consortium, and emotional distress
- § 4:16 Domestic violence and restraining orders

B. DRAFTING CONSIDERATIONS

1. Client Interview

- § 4:17 In general
- § 4:18 Representation by independent counsel
- § 4:19 Establishment of attorney/client relationship
- § 4:20 Contents of fee agreement
- § 4:21 Potential conflicts of interest
- § 4:22 Capacity and consent; undue influence

- § 4:23 Consideration
- § 4:24 Statute of frauds

2. Tax Considerations

- § 4:25 Tax treatment of transfers
- § 4:26 Income taxation; dependency exemption
- § 4:27 Gift and estate taxes

C. CHECKLISTS

- § 4:28 Matters to consider in drafting general cohabitation agreement
- § 4:29 Matters to consider in drafting support provisions
- § 4:30 Matters to consider in drafting property provisions

II. FORMS

A. SAMPLE LETTERS

- § 4:31 Attorney's waiver of conflict-of-interest letter
- § 4:32 Letter retainer agreement
- § 4:33 Letter memorializing revision of agreement

B. COHABITATION AGREEMENTS

1. Complete Agreement

- § 4:34 Cohabitation agreement
- § 4:35 Cohabitation agreement—Between parties living together remaining unmarried
- § 4:36 Cohabitation agreement—Between parties living together remaining unmarried—Residence owned by one party
- § 4:37 Cohabitation agreement—Between parties living together remaining unmarried—Provisions for custody and support
- § 4:38 Cohabitation agreement—Between parties living together remaining unmarried—Joint purchase of real estate
- § 4:39 Cohabitation agreement—Between parties living together remaining unmarried—To share residence, earnings, and accumulated property—No provision for support
- § 4:40 Cohabitation agreement—Between parties living together remaining unmarried—Parties have

DEFAULT

child

§ 4:41 Termination of cohabitation agreement where parties have children

§ 4:42 Termination of cohabitation agreement—One party has child—One party to buy other's interest in jointly owned real estate

2. Optional Provisions

a. Recitals and Other Standard Provisions

§ 4:43 Age of parties

§ 4:44 Present separate residences

§ 4:45 Present residence

§ 4:46 Application of Family Code

§ 4:47 Consideration—Past and Present Relationship

§ 4:48 Conclusive nature of recitals

§ 4:49 Reliance on own information

§ 4:50 Warranties

§ 4:51 Negotiated content

§ 4:52 Scope of agreement

§ 4:53 Existence of other agreements

§ 4:54 Property interests

§ 4:55 Governing law

§ 4:56 Jurisdiction and venue

§ 4:57 Prior voluntary conduct as not creating obligations

§ 4:58 Noncontestability clause

§ 4:59 Entire agreement

§ 4:60 Severability

§ 4:61 Consideration supporting agreement

§ 4:62 Places of residence

§ 4:63 Binding agreement

§ 4:64 Restitution

§ 4:65 Consideration—Past Relationship

§ 4:66 Applicable law

§ 4:67 Attorney fees

§ 4:68 General release

b. Intent of Parties

§ 4:69 Intent of relationship

§ 4:70 Intent not to marry

§ 4:71 Intent of agreement

- § 4:72 Executory intent of parties
- § 4:73 Intent to define property rights

c. Marriage and Prenuptial Provisions

- § 4:74 Use of family name
- § 4:75 Effect of valid marriage
- § 4:76 Effect of subsequent marriage between parties
- § 4:77 Agreement becoming prenuptial agreement

d. Representations By Parties

- § 4:78 Personal employment facts
- § 4:79 Cessation of employment
- § 4:80 Conclusive presumption of truth of recitals
- § 4:81 No reliance on statements of other
- § 4:82 Independent persons
- § 4:83 No fraud, duress, or undue influence
- § 4:84 Stable and significant relationship
- § 4:85 Representations and warranty

e. Representation By Counsel

- § 4:86 Representation by independent counsel
- § 4:87 Representation by same counsel
- § 4:88 Representation for one party, no representation
for other party
- § 4:89 One party represented, the other refusing
representation
- § 4:90 Neither party represented by counsel, but counsel
drafted agreement; waiver of discovery
- § 4:91 No representation by drafting counsel for either
party

f. Disclosure

- § 4:92 No financial disclosure with first party
acknowledging no claim in property and waiving
right
- § 4:93 No financial disclosure with first party
acknowledging right to investigate and waiving
that right
- § 4:94 No financial disclosure requested by second party
- § 4:95 Nondisclosure of property without knowledge
- § 4:96 Nondisclosure with some knowledge
- § 4:97 Disclosure of property

g. Property Rights

DEFAULT

- § 4:98 Property rights
- § 4:99 No present rights in property or income of other
- § 4:100 Mutual waiver of *Marvin* claims with
nonpayment of compensation
- § 4:101 Mutual waiver of *Marvin* claims with payment
of compensation
- § 4:102 Nonexistence of joint property
- § 4:103 Joint property
- § 4:104 Intent that property remain separate
- § 4:105 Separate property
- § 4:106 Separate bank accounts and credit cards
- § 4:107 Transmutation
- § 4:108 Equity compensation
- § 4:109 Tracing of assets
- § 4:110 Nonexistence of present interest in property
owned by the other
- § 4:111 Depository accounts
- § 4:112 Allowance for one party
- § 4:113 Deposit of funds
- § 4:114 Right to live in residence after other party's
death
- § 4:115 Pets and livestock

h. Children

- § 4:116 Paternity acknowledgment
- § 4:117 Declaration of paternity

i. Payment of Living Expenses

- § 4:118 No duty of support
- § 4:119 Living expenses paid out of joint account
- § 4:120 Living expenses proportionate
- § 4:121 Living expenses paid by one party only

j. Debts and Gifts

- § 4:122 Debts between the parties
- § 4:123 Gifts

k. Financial Planning, Survivorship, and
Wills

- § 4:124 Contractual or employment benefits
- § 4:125 Wills
- § 4:126 Mutual waiver regarding probate rights
- § 4:127 Life insurance in favor of one party

§ 4:128 No life insurance obligation

1. Confidentiality

§ 4:129 Simple confidentiality provision

§ 4:130 Complex confidentiality provision:

m. Modification

§ 4:131 Modification of agreement

§ 4:132 Amendment of agreement

n. Arbitration For Dispute Resolution

§ 4:133 Arbitration or private judicial proceeding by
arbitrators with family law experience

§ 4:134 Arbitration or private judicial proceeding by
privately compensated judicial officer

§ 4:135 Arbitration by American Arbitration Association

o. Separation of Parties

§ 4:136 Separation by first party

§ 4:137 Separation by second party

§ 4:138 Lump sum separation payment

p. Execution Provisions

§ 4:139 Acknowledgment

§ 4:140 Signature by attorneys

§ 4:141 Captions

§ 4:142 Compensation of attorney as witness

Bibliography

Table of Contents

Volume 2

CHAPTER 5. PARENTING AGREEMENTS

I. OVERVIEW

A. INTRODUCTION

§ 5:1 Nature and purpose of parenting agreement

B. LAW GOVERNING CUSTODY AND VISITATION

1. Rights of Parents

§ 5:2 Overview

2. Rights of Nonparents

§ 5:3 Rights of nonparents generally

§ 5:4 Rights of de facto parents

§ 5:5 Rights of grandparents and close relatives

§ 5:6 Obtaining rights through adoption

§ 5:7 Obtaining rights through durable power of attorney

§ 5:8 Effect of birth certificate paternity designation; declaration of paternity

C. USE OF PARENTING AGREEMENTS; ENFORCEABILITY

§ 5:9 Use of parenting agreement to define rights and responsibilities relating to child on termination of partners' relationship where both partners are biological parents

§ 5:10 Voiding of a voluntary declaration of parentage

§ 5:11 Use of parenting agreement to define rights and responsibilities relating to child on termination

- of partners' relationship where neither or only one partner is biological parent
- § 5:12 Use of parenting agreement to define rights and responsibilities relating to child during relationship between same-sex partners
- § 5:13 Contractual enforcement

D. FORM DRAFTING CONSIDERATIONS

- § 5:14 Statement of facts; background information
- § 5:15 Choice of surname
- § 5:16 Custody; basic time share and special days
- § 5:17 School and extracurricular activities; religious upbringing; medical care
- § 5:18 Special recreational or cultural activities
- § 5:19 Child care
- § 5:20 Transportation of child
- § 5:21 Nondisparagement; noninterference
- § 5:22 Access to information
- § 5:23 Right to change residence
- § 5:24 Absence of parent
- § 5:25 Mediation and private judge
- § 5:26 Special master
- § 5:27 Inheritance and custody on death
- § 5:28 Execution of documents; severability

E. TAX ASPECTS

- § 5:29 Overview

F. CHECKLIST

- § 5:30 Matters to consider when drafting parenting agreement

II. FORMS

A. PARENTING AGREEMENTS BETWEEN UNMARRIED PARTNERS RELATING TO CHILD ON TERMINATION OF PARTNERS' RELATIONSHIP

- § 5:31 Parenting agreement providing for joint legal and joint physical custody where both partners are biological parents of child

DEFAULT

- § 5:32 Parenting agreement providing for joint legal and sole physical custody where both partners are biological parents of child
- § 5:33 Parenting agreement providing for joint legal and joint physical custody where neither or only one partner is biological parent of child
- § 5:34 Parenting agreement providing for joint legal and sole physical custody where neither or only one partner is biological parent of child

B. PARENTING AGREEMENTS BETWEEN UNMARRIED PARTNERS RELATING TO CHILD DURING PARTNERS' RELATIONSHIP

- § 5:35 Parenting agreement between lesbian partners where one partner is egg mother and one partner is gestational mother
- § 5:36 Parenting agreement between lesbian partners where one partner is both gestational and egg mother
- § 5:37 Caregiver authorization
- § 5:38 Petition to establish parental relationship (Judicial Council Form FL-200)
- § 5:39 Response to petition to establish parental relationship (Uniform Parentage) (Judicial Council Form FL-220)
- § 5:40 Advisement and waiver of rights re:
Establishment of parental relationship (Uniform Parentage) (Judicial Council Form FL-235)
- § 5:41 Stipulation for entry of judgment re:
Establishment of parental relationship (Uniform Parentage) (Judicial Council Form FL-240)
- § 5:42 Judgment (Uniform Parentage) (Judicial Council Form FL-250)

Bibliography

Table of Contents

CHAPTER 5A. GENDER AFFIRMING CARE

§ 5A:1	Introduction
§ 5A:2	Civil case cover sheet (Form CM-010)
§ 5A:3	Notice of hearing on petition (Form NC-150)
§ 5A:4	Petition For recognition of change of gender and sex identifier, name change, and issuance of new certificates (Form NC-300)
§ 5A:5	Instructions for petition For recognition of change of gender and sex identifier, name change, and issuance of new certificates (Form NC-300 Information)
§ 5A:6	Birth certificate for child of petitioner (Form NC-311)
§ 5A:7	Marriage license and certificate—Attachment (Form NC-312)
§ 5A:8	Order to show cause—Issuance of new marriage license and certificate (Form NC-325)
§ 5A:9	Order recognizing change of gender and sex identifier, for name change, and for issuance of new certificates (Form NC-330)
§ 5A:10	Petition for recognition of minor’s change of gender and sex identifier and for issuance of new birth certificate and change of name (Form NC-500)
§ 5A:11	Instructions for filing petition for recognition of minor’s change of gender and sex identifier (Form NC-500 Information)
§ 5A:12	Declaration of guardian or juvenile attorney (Form NC-510)
§ 5A:13	Order to show cause—Recognition of minor’s change of gender and issuance of new birth certificate (Form NC-520)
§ 5A:14	Order recognizing minor’s change of gender and sex identifier and for issuance of new birth certificate (Form NC-530)
§ 5A:15	Order to show cause—Change of name to conform to gender identity (Form NC-125)

Table of Contents

CHAPTER 6. ADOPTION

I. INTRODUCTION

A. LEGAL PRINCIPLES

1. Overview

- § 6:1 Practitioner's role
- § 6:2 Governing law
- § 6:3 Definitions
- § 6:4 Types of adoptions
- § 6:5 Issues common to all types of adoptions
- § 6:6 Who may adopt
- § 6:7 Who may be adopted

2. Consent to Adoption

- § 6:8 Consent for adoption of unmarried minor
- § 6:9 Consent for adoption of married minor or adult

3. Termination of Parental Rights

- § 6:10 Initiating proceeding under Fam. Code, §§ 7800 et seq.
- § 6:11 Initiating proceeding under Uniform Parentage Act (Fam. Code, §§ 7600 to 7730)

4. Hearing; Accounting Report; Certificates

- § 6:12 Conduct of hearing
- § 6:13 Appearance in person or by counsel
- § 6:14 Accounting report
- § 6:15 Certificate of adoption—Birth certificate

5. Effect of Adoption

- § 6:16 Legal relationship following adoption of unmarried minor
- § 6:17 Legal relationship following adoption of married minor or adult
- § 6:18 Intestate succession rights
- § 6:19 Testate succession rights

6. Financial and Ethical Considerations

§ 6:20 Financial assistance to birth parents

§ 6:21 Ethical considerations

7. Tax Aspects

§ 6:22 Ability to declare child as a dependent

§ 6:23 Adoption tax credit and exclusion

§ 6:24 Child tax credit

B. CHECKLIST

§ 6:25 Matters to consider in preparing accounting report (Fam. Code, § 8610)

C. FORMS

§ 6:26 Adoption information worksheet

§ 6:27 Application for taxpayer identification number for pending U.S. adoptions (IRS Form W-7A)

§ 6:28 Power of attorney for counsel to appear at final hearing on behalf of petitioners who are absent from California

§ 6:29 Freed for adoption (Form JV-127)

§ 6:30 Qualified adoption expenses (IRS Form 8839)

§ 6:31 Accounting report—Adoptions (Judicial Council Form ADOPT-230)

§ 6:32 Custody agreement and promise to adopt child

§ 6:33 Adoption agreement between married prospective adoptive parents and pregnant natural mother

II. ADOPTION OF UNMARRIED MINOR

A. INDEPENDENT ADOPTION

1. Legal Principles

§ 6:34 Nature of independent adoption—Relinquishment versus consent

§ 6:35 Reasons for independent adoption

§ 6:36 Role of adoption service provider

§ 6:37 Home study preplacement certification versus postplacement study

§ 6:38 Independent adoption placement agreement

§ 6:39 Placing parent's right to revoke consent to adoption

DEFAULT

- § 6:40 Waiver of placing parent's right to revoke consent to adoption

2. Form Drafting Considerations

- § 6:41 Advising prospective adoptive parents
§ 6:42 Structuring the adoption
§ 6:43 Initiating the adoption
§ 6:44 Rights of birth father
§ 6:45 Use of Judicial Council forms
§ 6:46 Documentation and final hearing

3. Checklists

- § 6:47 Matters to consider in initial interview and representation of adoptive parents
§ 6:48 Matters to consider in structuring the adoption
§ 6:49 Matters to consider in drafting petition for independent adoption of unmarried minor

4. Forms

a. Representation by Counsel

- § 6:50 Consent to representation of multiple parties by counsel
§ 6:51 Statement of representation
§ 6:52 Independent adoption retainer agreement
§ 6:53 Notice of withdrawal of attorney of record (Form FL-960)
§ 6:54 Birth mother representation agreement

b. Structuring the Adoption

- § 6:55 Birth mother's plan for hospital
§ 6:56 Request by birth parent for financial assistance
§ 6:57 Agreement for continuing contact
§ 6:58 Hospital instruction letter

c. Consent of Placing Parent

- § 6:59 Independent adoption placement agreement (DSS Form AD 924)
§ 6:60 Independent adoption placement agreement—Indian child (DSS Form AD 925)
§ 6:61 Statement of understanding—Independent adoption program (DSS Form AD 927)
§ 6:62 Statement of understanding—Independent adoption program—Parent who places the child

- with the prospective adoptive parents (DSS Form AD 926)
- § 6:63 Waiver of right to revoke consent to adoption: Independent adoption program (DSS Form AD 929)
- § 6:64 Adoptions Information Act statement (DSS Form AD 908)
- § 6:65 Adoptions Information Act statement—Adult adoptee (DSS Form AD 908A)
- § 6:66 Declaration of mother (DSS Form AD 880)
- § 6:67 Medical records release
- § 6:68 Medical authorization
- § 6:69 Adoption information (Judicial Council Form Adopt-050)

d. Initiation of Court Aspects of Adoption

- § 6:70 Petition for adoption (Form ADOPT-200)
- § 6:71 Receipt for child
- § 6:72 Transmittal letter to Department of Social Services

e. Termination of Parental Rights of Alleged Father

- § 6:73 Appearance, waiver of notice, and statement regarding paternity
- § 6:74 Notice of alleged paternity
- § 6:75 Petition to terminate parental rights of alleged father
- § 6:76 Citation on petition to terminate parental rights of alleged natural father
- § 6:77 Petition to terminate parental rights of alleged father served with notice of alleged paternity without timely response
- § 6:78 Order terminating parental rights of alleged father served with notice of alleged paternity without timely response
- § 6:79 Ex parte application for order to terminate parental rights of alleged father who waived notice or denied paternity
- § 6:80 Order terminating parental rights of alleged father who waived notice
- § 6:81 Petition to terminate parental rights of alleged father who cannot be located
- § 6:82 Order terminating parental rights of alleged

DEFAULT

father who cannot be located

f. Final Adoption Hearing

- § 6:83 Petitioner consent and agreement to adopt (Form ADOPT-210)
- § 6:84 Order of adoption (Form ADOPT-215)
- § 6:85 Closing letter to adopting parents

B. AGENCY ADOPTION

1. Legal Principles

- § 6:86 Nature of agency adoption—Governing law
- § 6:87 Relinquishment as distinguished from consent
- § 6:88 Identified or designated adoption
- § 6:89 Role of agency
- § 6:90 Required formalities of relinquishment
- § 6:91 Revocation of relinquishment prior to filing
- § 6:92 Revocation of relinquishment after filing due to fraud or procedural irregularity
- § 6:93 Adoptive placement agreement
- § 6:94 Trial placement and supervision
- § 6:95 Grievance procedures
- § 6:96 Agency fees
- § 6:97 Consideration of race, color, national origin, or religion as factor in placement
- § 6:98 Nonresident status of adoptive family
- § 6:99 Placement preference for foster parents and extended family
- § 6:100 Kinship adoption
- § 6:101 Form drafting considerations

2. Forms

a. For General Use In Agency Adoption

- § 6:102 Agency consent
- § 6:103 Relinquish of child to licensed adoption agency

b. For Use in Kinship Adoption

- § 6:104 Postadoption contact agreement (Form ADOPT-310)
- § 6:105 Name and address disclosure
- § 6:106 Petition for enforcement, modification, or termination of postadoption contact agreement (Form ADOPT-315)

- § 6:107 Response to petition for enforcement, modification, or termination of postadoption contact agreement (Form ADOPT-320)
- § 6:108 Order on petition for enforcement, modification, or termination of postadoption contact agreement (Form ADOPT-325)

C. STEPPARENT ADOPTION

1. Legal Principles

- § 6:109 Nature and purpose of stepparent adoption
- § 6:110 Consent of custodial parent
- § 6:111 Consent of noncustodial parent
- § 6:112 Adoption without consent of noncustodial parent
- § 6:113 Petition for stepparent adoption
- § 6:114 Investigation of stepparent adoption
- § 6:115 Withdrawal of consent once given—Withdrawal or dismissal of adoption petition
- § 6:116 Hearing on stepparent adoption petition
- § 6:117 Form drafting considerations

2. Checklist

- § 6:118 Matters to consider in drafting petition for stepparent adoption

3. Forms

- § 6:119 Consent of noncustodial parent
- § 6:120 Consent to stepparent adoption by custodial parent

D. INTERSTATE ADOPTION

1. Legal Principles

a. Overview of Interstate Compact on Placement of Children

- § 6:121 Purpose and background of Interstate Compact
- § 6:122 Exclusions from Interstate Compact
- § 6:123 Penalties for noncompliance with ICPC
- § 6:124 Continuing jurisdiction
- § 6:125 Compliance with law of sending state
- § 6:126 Scope of counsel's involvement in interstate independent adoption
- § 6:127 Scope of counsel's involvement in interstate

DEFAULT

agency adoption

b. Interstate Independent Adoption

- § 6:128 Applicability of ICPC
- § 6:129 Interplay between ICPC and independent adoption law generally
- § 6:130 Interstate travel by birth mother prior to child's birth
- § 6:131 Preplacement home study
- § 6:132 Representation in other state

c. Form Drafting Considerations

- § 6:133 Information to be compiled
- § 6:134 Documents to be prepared
- § 6:135 Submission of documents to ICPC coordinator for sending state
- § 6:136 Preparation and submission of Form ICPC 100B

2. Forms

- § 6:137 Interstate Compact placement request (Form ICPC 100A)
- § 6:138 Statement of intent to adopt and statement of personal knowledge
- § 6:139 Financial responsibility agreement
- § 6:140 Legal risk statement
- § 6:141 Statement of reason for out-of-state placement
- § 6:142 Interstate Compact report on child's placement status (Form ICPC-100B)
- § 6:143 Notice to recipient state

E. INTERCOUNTRY ADOPTION

1. Intercountry Independent Adoption

- § 6:144 Prohibition of intercountry independent adoption

2. Intercountry Agency Adoption

- § 6:145 Overview of intercountry adoption
- § 6:146 Specifying nation of origin of child
- § 6:147 Required medical report on child and birth parents
- § 6:148 Readoption of child adopted in foreign country

F. ADOPTION OF NATIVE AMERICAN CHILD

1. Legal Principles

- § 6:149 Overview of Indian Child Welfare Act (ICWA)
- § 6:150 Scope and implementation of ICWA
- § 6:151 Definitions
- § 6:152 Application and order for appointment of guardian ad litem to minor (Form FL-935)
- § 6:153 Tribal membership
- § 6:154 Rights of Indian parents of Indian children
- § 6:155 Rights of Indian child's tribe
- § 6:156 Rights of non-Indian parents of Indian children
- § 6:157 ICWA and equal protection—Existing Indian family exception
- § 6:158 Client interview and form drafting considerations in handling ICWA issues

2. Checklist

- § 6:159 Matters to consider in handling adoption with ICWA issues

3. Forms

- § 6:160 Statement of understanding (DSS Form AD 899)
- § 6:161 Indian child inquiry attachment (ICWA-010(A))
- § 6:162 Information sheet on Indian child inquiry attachment and notice of child custody proceeding for Indian child (ICWA-005-INFO)
- § 6:163 Notice of child custody proceeding for Indian child (ICWA-030)
- § 6:164 Attachment to notice of child custody proceeding for Indian child (ICWA-030(A))
- § 6:165 Parental notification of Indian status (ICWA-020)
- § 6:166 Notice of designation of tribal representative and notice of intervention in a court proceeding involving an Indian child (ICWA-040)
- § 6:167 Attachment to petition for adoption of Indian Child (Judicial Council Form ADOPT-220)
- § 6:168 Notice of petition and petition to transfer case involving an Indian child to tribal jurisdiction (ICWA-050)
- § 6:169 Order on petition to transfer case involving an Indian child to tribal jurisdiction (ICWA-060)
- § 6:170 Consent to termination of parental rights and certification—Adoption of an Indian child

DEFAULT

(Form ADOPT-225)

§ 6:171 Consent to adoption by parents of Indian child
(DSS Form AD 859)

§ 6:172 Independent adoption placement agreement
(Indian Child) (Form AD 925)

III. ADOPTION OF ADULT OR MARRIED MINOR

A. OVERVIEW

§ 6:173 Nature and purpose of adult adoption

§ 6:174 Governing law—Venue and procedure

§ 6:175 Limitations on adult adoption

B. DRAFTING CONSIDERATIONS

§ 6:176 Adoption agreement—Petition for approval of
adoption agreement

§ 6:177 Estate planning considerations

§ 6:178 Termination of adoption

C. CHECKLIST

§ 6:179 Matters to consider in adoption of adult or
married minor

D. FORMS

§ 6:180 Agreement of adult adoption

§ 6:181 Petition for adoption (adult)

§ 6:182 Consent to adoption by spouse of petitioner or
proposed adoptee

§ 6:183 Power of attorney for counsel to appear on
behalf of party to adoption of adult or married
minor

§ 6:184 Decree of adoption of adult or married minor

Bibliography

Table of Contents

CHAPTER 7. SURROGACY AND ARTIFICIAL INSEMINATION

I. SURROGACY

A. OVERVIEW

- § 7:1 Introduction
- § 7:2 Definitions
- § 7:3 Types of surrogacy
- § 7:4 Role of attorney
- § 7:5 Role of surrogacy agency

B. GOVERNING LAW

- § 7:6 Overview; gestational surrogacy agreements
- § 7:7 Gestational surrogacy agreements using donated egg and sperm
- § 7:8 Traditional surrogacy agreements
- § 7:9 Surrogacy facilitator

C. STAGES OF SURROGACY AGREEMENT RELATIONSHIPS

1. Advertising and Matching

- § 7:10 Overview

2. Precontract Due Diligence; Screening Potential Surrogates

- § 7:11 Overview
- § 7:12 Medical screening
- § 7:13 Psychological screening
- § 7:14 Background investigation

3. Drafting Surrogacy Agreement

a. Negotiating and Drafting Considerations

- § 7:15 Overview

b. Elements of Surrogacy Agreement

- § 7:16 Overview
- § 7:17 Identification of parties; purpose of agreement;
nature of obligations
- § 7:18 Assumption of risks
- § 7:19 Medical, psychological, and background
investigations
- § 7:20 Term, cancellation, and breach of agreement;
remedies for breach
- § 7:21 Monetary terms
- § 7:22 Insurance for surrogate
- § 7:23 Parental rights and responsibilities
- § 7:24 Contingency provisions
- § 7:25 Location of birth; involvement of intended parents
during birth
- § 7:26 Standard provisions
- 4. Establishing and Managing Trust Fund
- § 7:27 Overview
- 5. Medical Process Coordination
- § 7:28 Overview
- 6. Prebirth Legal Proceedings Regarding
Parentage and Custody
- § 7:29 Overview
- § 7:30 Timing
- § 7:31 Parties to proceeding
- § 7:32 Variations to standard proceeding
- § 7:33 Obtaining parentage judgment
- § 7:34 Parentage testing
- § 7:35 Delivering certified copy of judgment to hospital
- § 7:36 Additional procedures if necessary
- 7. Coordination of Events Surrounding Birth
- § 7:37 Overview
- 8. Postbirth Legal Proceedings Regarding
Parentage and Custody
- § 7:38 Overview
- § 7:39 Parentage and birth certificate
- § 7:40 Adoption and termination of parental rights

DEFAULT

§ 7:41 Termination of agreement

D. TAX ASPECTS

§ 7:42 Overview

§ 7:43 Characterization of payments as gifts

§ 7:44 Characterization of payments as child support

E. CHECKLIST

§ 7:45 Matters to consider in handling surrogacy case

F. FORMS

1. Surrogacy Agreements

§ 7:46 Artificial insemination surrogacy agreement
between intended father and surrogate couple

§ 7:47 Surrogate parenting agreement

§ 7:48 Agreement to select surrogate mother

§ 7:49 In vitro surrogacy agreement between intended
parents and surrogate couple; intended parents
are genetic parents

§ 7:50 In vitro fertilization surrogacy agreement
between intended mother and surrogate using
donated genetic material

2. Related Forms

§ 7:51 Authorization for release of records

§ 7:52 Nonconsent of surrogate's husband (Fam. Code, §
7613)

§ 7:53 Acknowledgment and assumption of risks of
unquarantined genetic material

§ 7:54 Application to amend birth record; Adjudication of
facts of parentage (Form VS 21)

§ 7:55 Application to amend birth record;
Acknowledgment of paternity (Form VS 22)

§ 7:56 Application for certified copy of birth record
(Form VS 111)

§ 7:57 Cheat sheet for birth amendments

§ 7:58 Fee agreement for surrogacy client

II. ARTIFICIAL INSEMINATION, IMPLANTATION, SPERM DONATION, AND EGG DONATION

A. OVERVIEW

- § 7:59 Introduction
- § 7:60 Definitions
- § 7:61 Role of attorney
- § 7:62 Role of intermediary agency

B. TYPES OF AGREEMENTS

- § 7:63 Artificial insemination agreements; implantation agreements
- § 7:64 Sperm and egg donation agreements

C. GOVERNING LAW

1. Artificial Insemination; Sperm Donation

- § 7:65 Overview; paternity of child (Fam. Code, § 7613)
- § 7:66 Requirement of physician involvement
- § 7:67 Effect of failure to certify consent

2. Egg Donation

- § 7:68 Application of Fam. Code, § 7613 to egg donors

3. Surrogacy

- § 7:69 Exception to application of Fam. Code, § 7613 in certain surrogacy cases

D. STAGES OF ARTIFICIAL INSEMINATION, IMPLANTATION, SPERM DONATION, AND EGG DONATION AGREEMENT RELATIONSHIPS

1. Locating and Screening Donors; Selecting Physician

- § 7:70 Locating potential donors
- § 7:71 Screening donors
- § 7:72 Selecting physician

2. Drafting Agreements

a. Elements of Artificial Insemination and Implantation Agreements

- § 7:73 Overview
- § 7:74 Statement of intent and purpose

DEFAULT

- § 7:75 Consent to procedure
- § 7:76 Assumption of risks
- § 7:77 Parentage
- § 7:78 Standard provisions

b. Elements of Sperm and Egg Donation Agreements

- § 7:79 Overview
- § 7:80 Identification of parties; statement of purpose
- § 7:81 Obligations of donor
- § 7:82 Medical, psychological, and background investigations
- § 7:83 Medical insurance for egg donor
- § 7:84 Waiver of parental rights by donor, acceptance of parental rights by recipient
- § 7:85 Assumption of all legal, medical, and psychological risks
- § 7:86 Confidentiality or anonymity between parties
- § 7:87 Monetary provisions
- § 7:88 Disposition of unused gametes
- § 7:89 Standard provisions

3. Donation Procedure

- § 7:90 Overview

4. Establishing Legal Parentage

- § 7:91 Overview

E. TAX ASPECTS

- § 7:92 Overview
- § 7:93 Characterization of payments as gifts

F. CHECKLIST

- § 7:94 Matters to consider in handling artificial insemination or implantation case

G. FORMS

1. Artificial Insemination Agreement

- § 7:95 Artificial insemination agreement between husband, wife, and licensed physician
- § 7:96 Agreement for artificial insemination—Between

- husband, wife, and donor—Identity of donor known
- § 7:97 Agreement for artificial insemination—Between recipient and donor—Identity of donor known
- § 7:98 Agreement for artificial insemination—By recipient and physician—Identity of donor unknown
- § 7:99 Consent to artificial insemination—Provision—Potential side effects and release of liability
- 2. Implantation Agreement
- § 7:100 Implantation agreement between husband, wife, and licensed physician
- 3. Sperm Donation Agreements
- § 7:101 Sperm donation agreement between sperm donor and agency
- § 7:102 Sperm donation agreement between sperm donor and recipients for insemination of recipients' surrogate
- § 7:103 Consent of wife of donor of semen American Medical Association form
- 4. Egg Donation Agreements
- § 7:104 Egg donation agreement between egg donor and agency
- § 7:105 Agreement between agency and recipients to utilize eggs from anonymous donor
- 5. Miscellaneous
- § 7:106 California statutory form for assisted reproduction—Intent to be parents—Married spouses or registered domestic partners using assisted reproduction to conceive a child (Form 1)
- § 7:107 California statutory form for assisted reproduction—Intent to be parents—Unmarried, intended parents using intended parent's sperm to conceive a child (Form 2)
- § 7:108 California statutory form for assisted reproduction—Intent to be parents—Intended parents conceiving a child using eggs from one parent and the other parent will give birth (Form 3)
- § 7:109 California statutory form for assisted

DEFAULT

reproduction—Intent to be parents—Intended
parents using known sperm, egg donor to
conceive child (Form 4)

Bibliography

