

# CALIFORNIA PRACTICE GUIDE

## FAMILY LAW

### 2026 UPDATE

**This 2026 softbound Update completely replaces the 2025 Update.**

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail.

Our cut-off date for this Update was April 1, 2026. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

***Thank You!*** Your comments and suggestions are greatly appreciated.  
*Please keep them coming!*



## 2026 UPDATE HIGHLIGHTS

### CHAPTER 2

#### CHOOSING APPROPRIATE MARITAL/DOMESTIC PARTNERSHIP STATUS RELIEF

##### CONSENT LIMITATION FOR PETITION FOR LEGAL SEPARATION

[2:27; 2:29] **Residency requirement:** Petition for legal separation dismissed where H did not consent to legal separation and W did not satisfy residency requirement to seek dissolution at time of filing. [*Marriage of Patel* (2025) 117 CA5th 262, 267, 340 CR3d 35, 38]

### CHAPTER 3

#### COMMENCING THE PROCEEDINGS

##### PARTY DESIGNATION

[3:244.1] **Pseudonym use to protect identity:** A party seeking to proceed anonymously must demonstrate an overriding interest that overcomes the public's right to access, and the court must find a substantial probability that interest will be prejudiced if a pseudonym is not used. [*Roe v. Smith* (2025) 116 CA5th 227, 238-247, 339 CR3d 152, 158-166]

##### PERSONAL SERVICE

[3:362] **Substitute service (CCP §415.20(b)):** Beginning January 1, 2027, copies of the summons and petition can be sent by United States Postal Service using Priority Mail with tracking or Certified Mail with return receipt requested in addition to first-class mail. [Amended CCP §415.20(b)(1)]

[3:366] **“Reasonable diligence”:** Beginning January 1, 2027, a party shows “reasonable diligence” by attempting personal delivery of the summons and complaint, in good faith, on at least three occasions on three different days at three different times. [Amended CCP §415.20(b)(2)]

[3:368.1-368.4] **Photographs of effected/attempted service required:** Beginning January 1, 2027, photographs must accompany proof of service. [Amended CCP §417.10]

### CHAPTER 5

#### ORDERS PENDING TRIAL

##### RESTRAINING ORDERS

[5:5.5] **Renewal of DVPA restraining orders in contested cases:** Trial court does not have discretion to order renewal for less than five year period. [See *Hart v. Hart* (2025) 115 CA5th 571, 576, 338 CR3d 231, 235]

##### DOMESTIC VIOLENCE PETITIONS

[5:38.5] **Protected child:** Trial court erred in not including parties'

children as protected parties in DVRO where totality of circumstances showed good cause existed. [*K.T. v. E.S.* (2025) 109 CA5th 1114, 1131-1132, 331 CR3d 140, 153]

## PROTECTIVE ORDERS

[5:58] **Insurance coverage:** Beginning January 1, 2027, both parties are restrained from allowing insurance or other coverage to lapse for nonpayment of premiums or failing to renew the coverage. [Amended Fam.C. §2040(a)(3)]

[5:66.1] **Totality of circumstances:** The court must consider the totality of circumstances when issuing a DVTRO or DVRO. [Fam.C. §6301(d); *R.R. v. C.R.* (2026) 117 CA5th 1262, 1274-1275, 341 CR3d 474, 482-483; *Marriage of A.M. & R.Y.* (2025) 110 CA5th 1115, 1127, 332 CR3d 341, 349; *X.K. v. M.C.* (2025) 112 CA5th 1287, 1297, 335 CR3d 277, 285]

[5:67.8] **Effect of search results on protective order:** Trial court cannot consider allegations in criminal complaint obtained as result of Fam.C. §6306(a) search not involving a conviction as proof of abusive act under DVPA. [*Marriage of M.P. & M.C.* (2025) 116 CA5th 1096, 1113-1114, 339 CR3d 798, 812]

[5:69.1a] **Disturbing the other party's peace includes out of state conduct:** The totality of circumstances assessment includes party's conduct that occurred in other locations that could have disturbed the peace of the party requesting the DVRO or DVTRO. [*X.K. v. M.C.* (2025) 112 CA5th 1287, 1297-1298, 335 CR3d 277, 285]

## RFO AND DVRO PROCEDURES

[5:497.3-497.4a] **Motion to seal civil harassment proceedings:** The sealed records rules (CRC 2.550, 2.551) apply to civil harassment restraining order proceedings under CCP §527.6. [CRC 2.550, 2.551; *Marino v. Rayant* (2025) 110 CA5th 846, 858, 332 CR3d 1, 9]

## CHAPTER 6

### SUPPORT

#### CHILD SUPPORT

[6:6.4a] **Rescission of voluntary declarations executed before January 1, 2020:** Rescission of voluntary declarations of parentage executed before January 1, 2020 is governed by former Fam.C. §7575. [*County of Los Angeles v. Lugo* (2025) 116 CA5th 206, 219, 339 CR3d 138, 146]

[6:16] **Children conceived by artificial insemination with consent of other intended parent:** Traditional surrogacy contracts need not be in writing to be enforceable. [*Miles v. Gerstein* (2025) 110 CA5th 88, 105-106, 331 CR3d 492, 504-505]

[6:16.8b] **Disposition of frozen embryos upon divorce:** Where parties have entered into a valid contract specifying how frozen embryos shall be treated in the event of divorce or legal separation,

the contract governs. [*Pham v. Sup.Ct. (Kon)* (2025) 117 CA5th 115, 122, 124, 340 CR3d 204, 210, 212]

[6:303] **Pregnancy and confinement costs reimbursement:** Fam.C. §7637 provides that a support judgment may direct either parent to pay the reasonable expenses of the mother's pregnancy and confinement. [Fam.C. §7637; *Mamer v. Weingarten* (2025) 108 CA5th 169, 175-177, 328 CR3d 922, 927-928]

## **SPOUSAL SUPPORT**

[6:808; 6:829.12] **Sponsored immigrant's income deducted from 125% threshold:** Several courts have concluded the sponsored immigrant's income must be deducted from the 125% threshold support obligation. [*Marriage of Adeyeye & Faramaye* (2025) 112 CA5th 119, 124-126, 333 CR3d 719, 724-725]

## **CHAPTER 7**

### **CUSTODY AND VISITATION**

#### **CHILD'S BEST INTEREST**

[7:321.3c] **Separating half siblings:** A court was not obligated to find compelling circumstances to support custody change in separating child from her half-sibling where father did not cite authority for proposition and did not submit any evidence as to strength of the bond between the half-siblings. [*Marriage of R.K. & G.K.* (2025) 113 CA5th 14, 24, 335 CR3d 143, 151]

#### **FAM.C. §3044 REBUTTABLE PRESUMPTION AGAINST CUSTODY**

[7:329.9b] **Fam.C. §3044 presumption required even with custody agreement:** Absent specific findings on the record rebutting the Fam.C. §3044 presumption, the court cannot award sole or joint custody to a domestic violence perpetrator even where parties agree. [*Marriage of J.G. & K.G.* (2025) 110 CA5th 1214, 1223, 332 CR3d 407, 413]

#### **CUSTODY ORDERS**

[7:356.2] **Ability to remedy violation dependent on clear custody order:** Legal custody orders must be precisely written if a party wishes to be able to seek contempt for violation thereof. For a court to find a party in contempt, there must be a clear, intentional violation of a specific, narrowly drawn order. [*Houser v. Sup.Ct. (Larsen)* (2025) 116 CA5th 1182, 1186-1187, 340 CR3d 31, 34; also discussed at ¶9:413.5]

#### **VISITATION RIGHTS**

[7:490.3] **Quasi-judicial immunity for supervision visitation providers:** CRC Jud. Admin., Standard 5.20 delegates authority to supervisions visitation providers, and their exercise of that authority is protected by quasi-judicial immunity. [Jud. Admin., Standard 5.20; *Vergara v. Ouse* (2025) 116 CA5th 1238, 1246-1247, 339 CR3d 897, 902-903]

## CHAPTER 8

### MARITAL PROPERTY

#### PENSION AND RETIREMENT BENEFITS

[8:1170; 8:1172.2] **Reimbursement for breach of fiduciary duty is marital property right:** W's Fam.C. §1101(g) reimbursement of lost share of CP due to H's breach of fiduciary duty is marital property right which can be enforced against H's ERISA retirement accounts. [*Marriage of DeBenedetti & Ensberg* (2025) 110 CA5th 1035, 1045-1048, 332 CR3d 316, 324-326]

## CHAPTER 10

### TAX ASPECTS OF MARRIAGE TERMINATION

#### SPOUSAL SUPPORT ("ALIMONY")

[10:15] **General rules:** California now conforms to federal law, and for instruments executed after 12/31/25, spousal support is not taxable to the recipient or deductible by the payor. [Amended Rev. & Tax.C. §§17091(a), 17201.3(a)]

[10:16.1] **Modification vs. new instrument:** For California purposes, payments made pursuant to a modified instrument executed prior to 1/1/26 continue to be deductible to the payor and taxable to the payee after that date. [Amended Rev. & Tax.C. §§17091(b), 17201.3(b)]

#### CHILD TAX CREDIT

[10:213; 10:213.10-213.17] **Personal and Dependency Deductions Eliminated:** Pub.L. 115-97, enacted in 12/2017, eliminated the personal and dependency exemptions and replaced them with the child tax credit.

[10:232.1] **California credit for dependents:** Pub.L. 115-97, enacted in 12/2017, eliminated the personal and dependency exemptions and replaced them with the child tax credit.

#### JOINT RETURNS AND TAX PLANNING DURING SEPARATION PERIOD

[10:262a] **Nullity of marriage:** If a marriage is annulled, the IRS requires amended returns be filed for all years that are open under the statute of limitations. On the amended returns, the parties must file as unmarried persons or head of household (if they qualify). [IRS Pub. 504, pp. 2-3 (2025); Rev. Rul. 76-255, 1976-2 CB 40]

#### RELIEF FROM TAX LIABILITY EXPOSURE FOR SEPARATED/DIVORCED SPOUSES

[10:277c] **Standard and scope of review; record in Tax Court:** Tax Court record included (i) administrative record stipulated into evidence after 7/1/19; and (ii) any additional newly discovered or previously unavailable evidence that was also stipulated into evidence after 7/1/19. [*Walsh v. Commr.*, TC Memo. 2025-91; *also discussed at* ¶10:277.17a]

[10:278b] **"Earned income" defined:** "Earned income" means

wages, salaries, professional fees, and other pay for personal services, but not trade or business income, partnership income, or corporate dividends other than a reasonable allowance for personal services. [See IRS Pub. 504, p. 23 (2025)]

[10:284.2] **“Injured spouse” tax refunds:** The IRS may apply a joint return tax refund to past due amounts of a spouse’s debt, even if the debt was incurred before marriage. However, if a spouse qualifies as an “injured spouse,” that spouse’s share of the tax refund will not be applied to the other spouse’s debt if the injured spouse was not obligated to pay the past-due debt. [IRS Pub. 504, pp. 3-4 (2025)]

[10:284.3] **Estimated tax payments:** If now-separated spouses made joint estimated tax payments during the year but file separate returns, they can allocate the estimated tax payments between their separate returns in any manner to which they both agree. If they cannot agree, the estimated tax payments are divided in proportion to the tax due on each of the returns. [IRS Pub. 504, p. 22 (2025)]

## **DEDUCTIBILITY OF ATTORNEY FEES AND OTHER LITIGATION COSTS**

[10:500] **General rule of nondeductibility:** Miscellaneous itemized deductions are no longer deductible. [Amended IRC §67(g)]

## **CHAPTER 11**

### **TRIAL PREPARATION**

#### **DISCOVERY ACT PROCEDURES AND SANCTIONS**

[11:200.1] **Initial disclosure provisions inapplicable in Family Code actions:** The January 1, 2027 “sunset date” for the current version of CCP §2016.090 has been repealed, thereby indefinitely extending §2016.090’s inapplicability to Family Code matters filed on or after January 1, 2024.

[11:392.1] **Sanctionable discovery misuse includes gamesmanship tactics:** Refusal by attorney for third-party witness to appear on camera during deposition was unusual form of discovery abuse warranting sanctions against third-party witness. [*Agnone v. Agnone* (2025) 111 CA5th 758, 767, 333 CR3d 119, 126]

## **CHAPTER 12**

### **DEFAULT AND CONTESTED HEARINGS**

#### **DEFAULT FOR FAILURE TO RESPOND TO PETITION**

[12:5.3] **Court discretion to vacate default:** Trial court’s grant of default judgment and order for sale and division of home exceeded relief sought in petition, because assets to be divided were not identified in the petition, and thus did not put husband on notice of property division issues. [*Marriage of Jenkins* (2026) 119 CA5th 320, 336-337, 342 CR3d 611, 622-623]

## CHAPTER 14

### ATTORNEY FEES, COSTS AND SANCTIONS

#### FEE AWARD PURSUANT TO CONTRACT

[14:275] **Equitable factors considered:** Court has discretion to consider ability to pay and other equitable factors when determining reasonable fee award pursuant to MSA fee provision. [*Marriage of Bowman* (2026) 119 CA5th 922, 929-930, 342 CR3d 899, 904-905]

## CHAPTER 15

### DISMISSALS, STATEMENTS OF DECISION AND JUDGMENTS

#### STATEMENTS OF DECISION

[15:90; 15:135] **Significant amendments to CCP §632:** Commencing January 1, 2027, significant changes to the procedures for requesting a statement of decision under CCP §632 take effect, requiring the Judicial Council to adopt or amend court rules and prepare forms necessary to implement the new provisions. [Amended CCP §632]

[15:144; 15:147] **Time and manner for request:** Effective January 1, 2027, a request for statement of decision must be made in writing, or orally if on the record, prior to submission of the matter for decision. [Amended CCP §632(a)]

[15:156-156.3] **Objections:** Effective January 1, 2027, objections must be filed within 10 days after service of the statement of decision by the court, otherwise the statement of decision becomes final when time for filing objections expires. The court's ruling on objections must be served on all parties, at which time the statement or amended statement is final. Filed objections not ruled upon are deemed overruled and the statement of decision becomes final 30 days after the objection filing deadline or a hearing if held. [New CCP §632(e)]

[15:157] **Served on all parties:** Effective January 1, 2027, written statement of decision must be filed on all parties who appeared at trial. [Amended CCP §632(b)]

[15:164.10; 15:231] **Proposed judgement:** Effective January 1, 2027, the court may prepare and serve, or order a party to prepare, lodge, and serve, a proposed judgment either before or after the statement of decision is filed, with any objections being due within 10 days of service. [New CCP §632(f)]

[15:165.1; 15:165.2] **Time limits:** Effective January 1, 2027, the court may, by written order, extend any CCP §632 time limits and excuse noncompliance with time limits or shorten time limits for good cause. [New CCP §632(g)]

#### JUDGMENTS

[15:203] **Consent required for legal separation:** W's petition for legal separation properly dismissed when H did not consent to the judgment since both parties must consent to judgment. [*Marriage of Patel* (2025) 117 CA5th 262, 266, 340 CR3d 35, 38]

[15:232] **Entry:** Effective January 1, 2027, for court trials, the judgment must be entered, in conformity with the court’s decision, within 30 days after filing if no statement of decision requested, or within 30 days after a requested statement of decision becomes final. [New CCP §664(b)]

## CHAPTER 16

### CHALLENGING THE JUDGMENT; MOTIONS, APPEALS AND WRITS

#### SPECIAL SET-ASIDE PROVISIONS

[16:166.3a] **Notice requirement:** Immediately upon receipt of the first collection of money from an earnings assignment order or order or notice to withhold income for child support, the local child support agency shall notify the support obligor and the support obligee in writing of the first collection, including the source of the collection, and the commencement of the two-year period to file a set-aside motion. [New Fam.C. §17432(g)(1)]

## CHAPTER 17

### MODIFICATION OF ORDERS AND JUDGMENTS

#### PROTECTIVE ORDERS

[17:321.4] **Custodial parent conduct deliberately frustrating visitation:** Mother requested modification of stipulation giving Father sole physical custody of Child to include joint custody. Instead, court awarded Mother sole physical custody based on findings that Father repeatedly cancelled/denied in-person visitations, was unwilling or unable to facilitate contact between Mother and Child, and lacked credibility at trial. On appeal, Father’s due process challenge to the custody modification was denied; Father failed to object to trial court’s tentative ruling, which was nonbinding and not reduced to judgment for two months (thus Father forfeited right to raise the issue). [*Marriage of R.K. & G.K.* (2025) 113 CA5th 14, 18-22, 335 CR3d 143, 147-149]

## CHAPTER 18

### ENFORCEMENT OF ORDERS AND JUDGMENTS

#### FEDERAL PREEMPTION

[18:259] **Superseding QDRO requirements re ERISA plans:** Federal law preempts state statutes in regard to ERISA employee benefit plans, but state court orders dividing marital property interests in ERISA plans, or ordering support payable out of ERISA pension plan interests, are enforceable against the plan so long as they meet the requirements of a QDRO. [See generally, *Marriage of DeBenedetti & Ensberg* (2025) 110 CA5th 1035, 1043-1044, 1046, 332 CR3d 316, 323-326, 325]

#### ASSIGNMENT ORDERS

[18:688] **Copyrights:** A copyright is assignable under CCP

§708.510(a)(5). [See CCP §708.510; see also *Marriage of Strong* (2025) 116 CA5th 304, 307-310, 339 CR3d 203, 205-206]

## CHAPTER 19

### TERMINATION OF INVALID MARRIAGE/DOMESTIC PARTNERSHIP

#### OBTAINING JUDGMENT OF NULLITY

[19:135] **On ground of force:** Effective January 1, 2027, petitions for nullity of marriage based on force filed beyond the four-year period may proceed with court permission upon a showing of good cause. [Amended Fam.C. §2211(g), (h)]