

CHAPTER 1

INTRODUCTION TO FAMILY LAW PRACTICE

1.1 PURPOSE OF THIS MANUAL

This manual is designed to give new or practicing paralegals, as well as students in legal studies, an overall understanding of the basic concepts and issues in family law practice. The authors hope this book will provide the paralegal with a practical and lasting resource and reference text for use in practice.

This manual provides a practical summary of the fundamental procedures and law related to initiating and responding to a family law dissolution action as well as the numerous issues that arise within the proceedings. This manual also outlines the many alternative domestic relations actions encompassed in family law practice.

❖ **Authors' Note:** All areas of family law proceedings covered in this manual, and more, are discussed in detail in Hogoboom & King, *CAL. PRAC. GUIDE: FAMILY LAW* (TRG). Numerous cross-references to a number of TRG practice guides and treatises are cited in this manual.

1.2 THE PARTIES IN A FAMILY LAW CASE

Unlike other civil proceedings where the parties are usually referred to as “plaintiff” and “defendant,” parties in a family law proceeding are referred to as the “Petitioner” and the “Respondent.”

The petitioner is the person who initiates a family law (“domestic relations”) case by filing initial papers, most commonly a Petition for Dissolution (otherwise known as a divorce).

A petitioner may also be seeking, within the divorce proceedings, adjudication of issues such as legal and physical custody of the parties’ children, visitation rights, spousal support, child support, division of community property,

and other requests for orders, court determinations, and/or resolution during a dissolution proceeding.

Alternatively, a petitioner may be seeking a form of relief other than a divorce, such as a Legal Separation or a Nullity of the marriage. These proceedings have their own characteristics and are also covered in this manual.

The initiation of any of these actions by a petitioner (Divorce, Legal Separation, or Nullity), begins with the filing of a Petition and Summons, as well as other required documents as may be applicable or mandated. Either spouse (or domestic partner) may file for a dissolution or for an alternative proceeding against the other. The party to the marriage (or other family law proceeding) against whom the proceeding is brought is the “Respondent.”

EXAMPLE:

Wendy has been married to Henry for 14 years. If Wendy decides she no longer wants to be married to Henry and files a Petition for Dissolution (or, e.g., for Legal Separation), Wendy will be designated as the Petitioner and Henry will be the Respondent for the duration of the proceedings.

1.3 LAWYER’S AND PARALEGAL’S ROLE

1.3.1 COUNSEL’S ROLE

Usually (but not always) a lawyer will need to do the initial evaluation of a client’s case in order to make determinations as to the client’s needs, the type of action the client is initiating or responding to, and the substantive and procedural elements of the case which may need to be addressed during the proceedings. In addition, counsel should advise the prospective client to seek marital counseling where it appears that the marriage may be salvageable in an effort to save the marriage or domestic partnership. Many times, clients may not be aware of the resources available to them in aiding reconciliation and may think divorce is the only alternative. Both the lawyer and the paralegal should be mindful of possible alternatives to dissolution.

Some of the initial determinations besides what *kind* of case the client is bringing or defending (e.g., whether a dissolution of marriage, legal separation, annulment of marriage, etc.) will necessarily include determinations regarding jurisdiction and venue, whether there are child support, custody and visitation issues involved, and other information that the attorney (and client) will need to address in determining the procedures, scope, timing, and cost of pursuing the client's case through mediation, judgment, and post-judgment proceedings. (The same holds true if you are representing the respondent.)

Counsel will also be handling court appearances and will usually have the majority of contact with the adverse party's attorney.

1.3.2 THE PARALEGAL'S ROLE

1.3.2.1 INITIAL CLIENT CONTACT

The paralegal in a family law practice will be required to have a basic knowledge of the substantive law and the procedural aspects of various family law cases and the issues involved in each of them. The family law paralegal must also have a thorough knowledge and understanding of the numerous Family Law Judicial Council forms and their contents, many of which are mandatory for use in the proceedings.

Sometimes a new client will have their first contact (say by telephone) with the paralegal rather than the attorney (such as when an attorney is not available). It is imperative that the paralegal has the fundamental knowledge sufficient to ascertain from the client the necessary information to inform the attorney(s) of the nature of the client's matter.

In addition, the paralegal may be asked to attend the initial consultation between the attorney and client as well as attend subsequent attorney/client conferences. This is beneficial for the paralegal and the attorney (*as well as the client*), as it will enhance the paralegal's understanding of the client's case in order to be of optimum value to the attorney during the case. Significantly, this will also familiarize the client with the paralegal(s) working on their case.

The client should bring the following documents to the initial consultation:

- (1) Any documents (pleadings) that they have been served with regarding their divorce, legal separation or nullity;
- (2) Their tax returns for the past two years;
- (3) Initial list of all assets and debts.

Since the paralegal will have ongoing contact with the client for purposes of obtaining often extremely personal information and documents from the client and providing status reports to the client, it is imperative that a productive and trusting “paralegal/client” relationship is established.

The paralegal in family law practice has a very unique function in that he or she is likely to have considerable direct contact with clients who are going through difficult emotional times. Nothing is more personal than relations within a family. Thus, the paralegal must balance the practical side of the procedural issues involved and the “human relations” needs of clients who may often look to their family law attorneys and support staff for moral and emotional support.

➤ **Paralegal Pointer:** *As a family law paralegal, don't expect to be an aloof staffer in some corner simply filling out paperwork. A vital part of an exceptional paralegal's role, besides having a thorough knowledge of the basic substantive and procedural issues in the practice, will be their ability to connect with clients and help “hand-hold” them through the complex, often lengthy and emotional process of a family law case.*

1.3.2.2 OVERVIEW OF THE PARALEGAL'S FUNCTIONS

The paralegal must have a working knowledge of substantive family law and a thorough understanding of the multitude of procedural issues involved in a variety of family law matters.

Among the specific tasks the paralegal is likely to perform are the following:

- Initial client contact.
- Preparing and/or assisting in the preparation of client intake forms.

*(An example "SAMPLE INTAKE CHECKLIST" is provided as **FORM A** in the Appendix to this Manual ("SELECTED FORMS").)**

** The forms in the Appendix constitute a number of selected basic forms used in practice. They are included in this manual to give context to the readings where applicable. (For a **comprehensive set of Family Law Forms**, including sample intake checklists, example pre-prepared Judicial Council forms, and sample declarations, see CAL. PRAC. GUIDE: FAMILY LAW FORMS (TRG).)*

- Ascertaining/obtaining necessary information and documentation from clients.
- Scheduling client/attorney meetings and knowing what documentation is needed for these meetings.
- Preparing Mandatory Judicial Council forms (and optional Judicial Council forms) applicable to various types of proceedings.
- Assisting in preparing attorney-drafted forms and declarations and party and witness declarations.

- Assisting in legal and factual research.
- Filing and arranging for service of process.
- Calendaring hearings and dealing with court scheduling issues.
- Providing assistance in the preparation of discovery.
- Providing assistance at hearings and trials.

➤ **Paralegal Pointer:** *As shown in the following sections, family law is very much driven by the use of mandated Judicial Council forms as well as numerous optional forms. A thorough knowledge of these forms will be necessary.*

*One of the primary initial Judicial Council forms, for example, is form FL-100 (“Petition – Marriage/Domestic Partnership” – for dissolution, legal separation, nullity). (See Appendix, **FORM B.**)*

A careful review of this and other forms listed below is advisable during ensuing discussions in this manual to gain a better understanding of how much of the material presented here relates to information which will then be set forth (often by the paralegal) in these forms.

1.4 USE OF JUDICIAL COUNCIL FORMS

More than most other areas of civil practice, family law relies heavily on the use of Judicial Council forms.

Generally, these forms are found in the “FL” (Family Law) and “DV” (Domestic Violence) series of Judicial Council forms, all of which are viewable and downloadable at www.courts.ca.gov. (Note that these forms also include forms relating to adoptions (“ADOPT”) and to family law judgments (“EJ” forms).)

These Judicial Council forms are largely mandated for use in a dissolution of marriage and other domestic relations proceedings. In addition, there are also optional Judicial Council forms and attorney and/or paralegal-drafted forms such as declarations and accompanying exhibits often used during the proceedings.

As stated above, a comprehensive set of these forms, as well as sample declarations and other family law forms, are provided in *CAL. PRAC. GUIDE: FAMILY LAW FORMS* (TRG).

It is important when using Judicial Council forms that the practitioner is using the most current forms. The Judicial Council forms are periodically amended, revoked, or added to account for changes in the law and new procedures.

➤ **Paralegal Pointer:** *New or amended Judicial Council forms sometimes take effect January 1 and July 1 each year (as do California Rules of Court (“CRC”) amendments). Therefore, it is essential that the paralegal working on a form pleading ensure they are using the most recently revised form(s) by reviewing the California Judicial Council’s online list of forms at least every January and July. Always check the Judicial Council’s online list. For example, some forms may have been revised following the publication deadline for this edition of the manual.*

1.5 MANDATORY JUDICIAL COUNCIL FORMS USED IN A DISSOLUTION PROCEEDING

In dissolution of marriage proceedings, the use of Judicial Council forms, including the following, is mandatory. These and other forms are referred to in this manual and many are attached for reference in the included “Appendix of Selected Forms” (*Appendix*):

- FL-100 – Petition – Marriage/Domestic Partnership

- FL-105 – Declaration Under Uniform Child Custody Jurisdiction And Enforcement Act (“UCCJEA”)
- FL-105(A) – Attachment to Declaration Under Uniform Child Custody Jurisdiction And Enforcement Act (“UCCJEA”)
- FL-110 – Summons
- FL-120 – Response – Marriage
- FL-123 – Response – Domestic Partnership/Marriage
- FL-140 – Declaration of Disclosure
- FL-141 – Declaration Regarding Service of Declaration of Disclosures
- FL-150 – Income and Expense Declaration
- FL-160 – Property Declaration
- FL-161 – Continuation of Property Declaration
- FL-165 – Request to Enter Default
- FL-170 – Declaration for Default or Uncontested Divorce or Legal Separation
- FL-180 – Judgment
- FL-190 – Notice of Entry of Judgment
- FL-191 – Child Support Case Registry

➤ **Paralegal Pointer:** *Don't wait until you are asked to fill in or compile information for filing one or another of these forms to become familiar with them. As they are promulgated by the Judicial Council and, in essence, are partially pre-drafted for you, they provide a wealth of information about how family law cases work.*

Most of the forms provide boxes to check that frame the issues in the case and define the scope of relief available. Therefore, it is essential that the paralegal tasked with preparing these forms has an understanding of their contents and import. Checking the wrong box on a petition or other pleading could result in problems and cause the unnecessary filing of amendments.

In addition, there are also optional Judicial Council forms, and attorney and/or paralegal-drafted forms such as declarations and accompanying exhibits, often needed during the proceedings.

The paralegal will be counted on to assist in the preparation of these documents and in obtaining necessary evidence and exhibits. These are more fully discussed in subsequent sections in this manual.

➤ **Paralegal Pointer:** *Although the various Judicial Council forms may seem daunting at first, these forms are often self-explanatory and informative. Again, the paralegal should become familiar with the Judicial Council Family Law Forms ASAP. The Judicial Council also provides a helpful "FL-107-INFO" form (Appendix, **FORM C**), which is also obtainable online, and provides basic instructions on initial filing procedures (as well as procedures for responding to a marital status petition).*

1.6 STATUTORY FRAMEWORK IN FAMILY LAW CASES

The statutes which govern the practice of family law are set forth, generally, in the California Family Code, at §§ 1 through 20043. Additionally, other codes, such as the Code of Civil Procedure, Welfare & Institutions Code, Probate Code, and others, govern many aspects of family law practice.

1.7 FAMILY LAW RULES OF COURT

The Judicial Council Rules of Court pertaining to family law are found at California Rules of Court Rules 5.2 through 5.906. They cover key procedural aspects and other issues relating to family law practice. (These are the rules which, among other things, set forth the required (and sometimes optional) use of the multitude of Judicial Council forms used in practice.)

The following proceedings, for example, are governed in part by CRC 5.2 et seq.:

- (1) Dissolution, nullity, legal separation, custody, and support of minor children, actions under the Domestic Violence Prevention Act, the Uniform Parentage Act, The Uniform Child Custody Jurisdiction and Enforcement Act, or the Uniform Interstate Family Support Act;
- (2) Local child support agency actions under the Family Code; and
- (3) Contempt proceedings relating to family law or local child support agency actions.

The Judicial Council Family Law Rules apply to all actions and proceedings under the Family Code, but not to any other proceedings except as otherwise expressly provided by the rules. [*Marriage of Guasch* (2011) 201 CA4th 942, 947-948, 134 CR3d 358, 362]

Usually, the use of Judicial Council forms satisfies the Superior Court's pleading format requirements. However, attachments such as declarations and attorney-drafted or party-drafted forms must adhere to the standards set forth in the California Rules of Court, Rule 2.100 et seq. regarding "Form and format of papers presented for filing in the trial courts." (See Weil & Brown, et al., *CAL.*

PRAC. GUIDE: CIV. PROC. BEFORE TRIAL (TRG), Chapter 6, for guidelines and formatting requirements.)

1.8 LOCAL RULES AND FORMS

Many counties also have their own local rules and mandate the use of local “non”-Judicial-Council forms which are required when filing an action in these counties.

For example, Los Angeles County (as well as most California courts) has its own local “Family Division Rules,” as well as specified forms. For example, under LASC Local Rule 5.2, the first paper filed by a petitioner in a family law action or proceeding must be accompanied by a “Family Law Case Cover Sheet” (FAM-020 form).

It is essential that paralegals become familiar with the local rules (e.g., Los Angeles Superior Court Family Division Rules, available online at www.lacourt.org), as well as forms particular to the county in which a client’s case is filed or pending.

1.9 TYPES OF FAMILY LAW CASES

The various family law proceedings covered in this manual include the following:

- Dissolution of Marriage
- Summary Dissolution
- Legal Separation
- Nullity of Marriage
- Domestic Partnerships
- Parentage proceedings under the Uniform Parentage Act (“UPA”)

- Domestic Violence under the Domestic Violence Prevention Act (“DVPA”)
- Proceedings to enforce orders/judgments
- Proceedings for post-judgment modifications

1.10 ISSUES ENCOMPASSED WITHIN THE PROCEEDINGS

Within the above listed types of proceedings, there are issues that must be adjudicated and resolved. These issues often include the following:

- Spousal Support
- Child Support
- Child Custody and Visitation
- Restraining Orders
- Division of Assets
- Division of Debts
- Attorney fees and costs

Subsequent chapters in this manual will discuss the basic substantive and procedural aspects of these types of cases and the various issues within them. Other areas covered in this manual include jurisdictional considerations, preparation of pleadings, filing and service procedures, requests for orders and judgments, and post-judgment modifications and orders.

NOTE: This manual does not and cannot cover the many complex variables and other legal permutations, exceptions, and considerations that may arise in family law practice and procedure. For a more thorough understanding of any of the basic principles and issues set forth in this manual, the reader is strongly advised to review the relevant sections in Hogoboom & King, *CAL. PRAC. GUIDE: FAMILY LAW* (TRG) and *CAL. PRAC. GUIDE: FAMILY LAW FORMS* (TRG).