

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR13-34

Title	Action Requested
Family Law: Revisions to Family Law Summons	Review and submit comments by
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise FL-110	January 1, 2014
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Donna Clay-Conti
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revisions to form FL-110, *Summons-Family Law*. The changes address the requirements of Assembly Bill 792 (Stats. 2011, ch.851), which, effective January 1, 2014, requires courts to provide a notice upon filing of a petition for divorce, legal separation or annulment, or a petition for adoption, informing the petitioner and respondent that they may be eligible for reduced or no-cost insurance coverage through the California Benefit Exchange (Exchange) or no-cost coverage through Medi-Cal. The changes further respond to SB 1206, which requires that the standard restraining orders in a summons for dissolution, legal separation or annulment include a notice informing the parties that they are restrained from applying for a new or replacement passport for the minor child or children of the parties without the prior written consent of the other party or an order of the court.

Background

AB 792, which adds sections 2024.7 and 8613.7 to the Family Code, requires a court, upon the filing of a petition for dissolution of marriage, nullity of marriage, legal separation, or adoption on and after January 1, 2014, to provide a specified notice informing the petitioner and respondent that they may be eligible for health insurance coverage at a reduced cost through the Exchange or no-cost coverage through Medi-Cal. The legislation requires the notice to include information regarding obtaining coverage through those programs and requires the notice to be developed by the Exchange. The form is revised to include that notice. The notice includes a

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

space holder for a toll-free telephone number, which Covered California expects to provide before this proposal is submitted to the council for consideration.

Senate Bill 1206 (Stats.2011, ch.276), amends section 2040 of the Family Code relating to child abduction prevention. It requires that a summons issued at the commencement of a proceeding for dissolution, nullity of marriage, or legal separation of the parties, contain, in addition to the existing restraining orders, an order restraining the parties from applying for a new or replacement passport for the minor child or children of the parties without the prior written consent of the other party or a court order. The committee has incorporated this new provision into the standard restraining order on the family law summons.

The Proposal

The proposed changes to FL-110 are as follows:

- On page 3, add language notifying the parties of their possible eligibility for health insurance coverage. Covered California, as required by law, provided the appropriate language as follows, “[d]o you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay towards high quality affordable health care. For more information, visit www.coveredca.com. Or, call Covered California at 1-800-XXX-XXXX.”
- On page 2, in the box entitled STANDARD FAMILY LAW RESTRAINING ORDERS, after the first restraining order, insert, “2. applying for a new or replacement passport for the minor child or children without the written consent of the other party or an order of the court;” and renumber the remaining orders.
- Technical changes including updating the web address for the California courts website to www.courts.ca.gov.

A copy of the proposed amended form is attached at pages 5-7.

Alternatives Considered

The proposed changes are required to conform to AB 792 and SB 1206. The committee could take no action, but that would mean that local courts would need to develop their own notices as required by the statutes.

Because of the density of information in the form and the anticipation of adding the notice language from Covered California, the committee is concerned about the impact of a 3-page, rather than a 2-page summons. It considered creating two summonses, one in English and one in Spanish, which would allow the form to remain at two pages. However, Code of Civil Procedure section 412.20 (a)(6) requires that the summons contain the following introductory legend in both English and Spanish:

“Notice! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read information below.”

Thus, under the two-form approach, the English form would continue to include the introductory legend in both English and Spanish, as would the Spanish version. While it appears this would comply with subsection (a)(6), the second sentence of the notice, “read information below” leads to the opposite conclusion. It directs the litigant to read the remaining information on the form. Thus, it follows that the remaining information on the form must also be in English and Spanish. Therefore, the committee rejected this alternative in a favor of a three-page summons containing both the English and Spanish translations.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of revising the forms. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts, except the added cost of printing an additional page. The committee expects that incorporating the required warnings into existing forms will save courts money by not requiring development of additional notices. The committee is aware that some courts are already printing a separate page with the required warnings pending revision of this form and that has led to additional burdens on clerks who would prefer that all required information be contained on the form.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public’s access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. Proposed Amended Form FL-110 at pages 5–7.
2. Link to AB 792: http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0751-0800/ab_792_bill_20120930_chaptered.pdf
3. Link to SB 1206: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1201-1250/sb_1206_bill_20120907_chaptered.pdf

SUMMONS (Family Law)

CITACIÓN (Derecho familiar)

NOTICE TO RESPONDENT (Name):

AVISO AL RESPONDEDOR (Nombre):

You are being sued. Lo están demandando.

FOR COURT USE ONLY (SÓLO PARA USO DE LA CORTE)
DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Petitioner's name is:

Nombre del solicitante:

CASE NUMBER (NÚMERO DE CASO):

You have 30 calendar days after this Summons and Petition are served on you to file a Response (form FL-120 or FL-123) at the court and have a copy served on the petitioner. A letter or phone call will not protect you.
If you do not file your Response on time, the court may make orders affecting your marriage or domestic partnership, your property, and custody of your children. You may be ordered to pay support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form.
If you want legal advice, contact a lawyer immediately. You can get information about finding lawyers at the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), at the California Legal Services Web site (www.lawhelpcalifornia.org), or by contacting your local county bar association.

Tiene 30 días de calendario después de haber recibido la entrega legal de esta Citación y Petición para presentar una Respuesta (formulario FL-120 o FL-123) ante la corte y efectuar la entrega legal de una copia al demandante. Una carta o llamada telefónica no basta para protegerlo.
Si no presenta su Respuesta a tiempo, la corte puede dar órdenes que afecten su matrimonio o pareja de hecho, sus bienes y la custodia de sus hijos. La corte también le puede ordenar que pague manutención, y honorarios y costos legales. Si no puede pagar la cuota de presentación, pida al secretario un formulario de exención de cuotas.
Si desea obtener asesoramiento legal, póngase en contacto de inmediato con un abogado. Puede obtener información para encontrar un abogado en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en el sitio Web de los Servicios Legales de California (www.lawhelpcalifornia.org) o poniéndose en contacto con el colegio de abogados de su condado.

NOTICE—RESTRAINING ORDERS ARE ON PAGE 2: The restraining orders on page 2 are effective against both spouses or domestic partners until the petition is dismissed, a judgment is entered, or the court makes further orders. These orders are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them.

AVISO—LAS ÓRDENES DE RESTRICCIÓN SE ENCUENTRAN EN LA PÁGINA 2: Las órdenes de restricción que figuran en la página 2 son válidas para ambos cónyuges o miembros de la pareja de hecho hasta que se despida la petición, se emita un fallo o la corte dé otras órdenes. Cualquier agencia del orden público que haya recibido o visto una copia de estas órdenes puede hacerlas acatar en cualquier lugar de California.

- 1. The name and address of the court are (El nombre y dirección de la corte son):
2. The name, address, and telephone number of the petitioner's attorney, or the petitioner without an attorney, are: (El nombre, dirección y número de teléfono del abogado del solicitante, o del solicitante si no tiene abogado, son):

Date (Fecha): Clerk, by (Secretario, por) _____, Deputy (Asistente)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
AVISO A LA PERSONA QUE RECIBIÓ LA ENTREGA: Esta entrega se realiza
a. [] as an individual. (a usted como individuo.)
b. [] on behalf of respondent who is a (en nombre de un respondedor que es):
(1) [] minor (menor de edad)
(2) [] ward or conservatee (dependiente de la corte o pupilo)
(3) [] other (specify) (otro - especifique):
(Read all pages for important information.)
(Lea todas las páginas para obtener información importante.)

WARNING—IMPORTANT INFORMATION

WARNING: California law provides that, for purposes of division of property upon dissolution of a marriage or domestic partnership or upon legal separation, property acquired by the parties during marriage or domestic partnership in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language in the deed that characterizes how title is held (i.e., joint tenancy, tenants in common, or community property) will be controlling, and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.

STANDARD FAMILY LAW RESTRAINING ORDERS

Starting immediately, you and your spouse or domestic partner are restrained from

1. removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court;
2. applying for a new or replacement passport for the minor child or children of the parties without the written consent of the other party or an order of the court.
3. cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their minor child or children;
4. transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life; and
5. creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court. Before revocation of a nonprobate transfer can take effect or a right of survivorship to property can be eliminated, notice of the change must be filed and served on the other party.

You must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, you may use community property, quasi-community property, or your own separate property to pay an attorney to help you or to pay court costs.

ADVERTENCIA – INFORMACIÓN IMPORTANTE

ADVERTENCIA: De acuerdo a la ley de California, las propiedades adquiridas por las partes durante su matrimonio o pareja de hecho en forma conjunta se consideran propiedad comunitaria para los fines de la división de bienes que ocurre cuando se produce una disolución o separación legal del matrimonio o pareja de hecho. Si cualquiera de las partes de este caso llega a fallecer antes de que se divida la propiedad comunitaria de tenencia conjunta, el destino de la misma quedará determinado por las cláusulas de la escritura correspondiente que describen su tenencia (por ej., tenencia conjunta, tenencia en común o propiedad comunitaria) y no por la presunción de propiedad comunitaria. Si quiere que la presunción comunitaria quede registrada en la escritura de la propiedad, debería consultar con un abogado.

ÓRDENES DE RESTRICCIÓN NORMALES DE DERECHO FAMILIAR

En forma inmediata, usted y su cónyuge o pareja de hecho tienen prohibido:

1. Llevarse del estado de California a los hijos menores de las partes, si los hay, sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte;
2. Solicitar un pasaporte nuevo o un pasaporte de repuesto para los hijos menores de las partes sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte.
3. Cobrar, pedir prestado, cancelar, transferir, deshacerse o cambiar el nombre de los beneficiarios de cualquier seguro u otro tipo de cobertura, tal como de vida, salud, vehículo y discapacidad, que tenga como beneficiario(s) a las partes y su(s) hijo(s) menor(es);
4. Transferir, gravar, hipotecar, ocultar o deshacerse de cualquier manera de cualquier propiedad, inmueble o personal, ya sea comunitaria, cuasicomunitaria o separada, sin el consentimiento escrito de la otra parte o una orden de la corte, con excepción las operaciones realizadas en el curso normal de actividades o para satisfacer las necesidades de la vida; y
5. Crear o modificar una transferencia no testamentaria de manera que afecte el destino de una propiedad sujeta a transferencia, sin el consentimiento por escrito de la otra parte o una orden de la corte. Antes de que se pueda eliminar la revocación de una transferencia no testamentaria, se debe presentar ante la corte un aviso del cambio y hacer una entrega legal de dicho aviso a la otra parte.

Cada parte tiene que notificar a la otra sobre cualquier gasto extraordinario propuesto, por lo menos cinco días hábiles antes de realizarlo, y rendir cuenta a la corte de todos los gastos extraordinarios realizados después de que estas órdenes de restricción hayan entrado en vigencia. No obstante, puede usar propiedad comunitaria, cuasicomunitaria o suya separada para pagar a un abogado o para ayudarle a pagar los costos de la corte.

NOTE—REPAYMENT OF WAIVED FEES AND COSTS: If a judgment or support order is entered, the court may order you to pay all or part of the fees and costs that the court waived for yourself or for the other party. If this happens, the party ordered to pay fees shall be given notice and an opportunity to request a hearing to set aside the order to pay waived court fees.

AVISO—REEMBOLSO DE CUOTAS Y COSTOS PREVIAMENTE EXENTOS: *Si se emite un fallo o una orden de manutención, la corte puede ordenar que usted pague, ya sea en parte o por completo, las cuotas y costos de la corte previamente exentos a petición de usted o de la otra parte. Si esto ocurre, la parte a la que se le ordenó que pagara estas cuotas debe recibir aviso y la oportunidad de solicitar una audiencia para anular la orden de pagar las cuotas exentas.*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay towards high quality affordable health care. For more information, visit www.coveredca.com. Or, call Covered California at 1-800-XXX-XXXX.

AVISO—ACCESO A SEGURO DE SALUD MÁS ECONÓMICO: ¿Necesita seguro de salud a un costo asequible, ya sea para usted o alguien en su hogar? Si es así, puede presentar una solicitud con Covered California. Covered California lo puede ayudar a reducir el costo que paga por seguro de salud asequible y de alta calidad. Para obtener más información, visite www.coveredca.com. O llame a Covered California al 1-800-xxx-xxxx.