DIVORCE WITH CONFIDENCE

HOW TO BE IN CONTROL OF YOUR CALIFORNIA DIVORCE

A PRACTICAL GUIDE

HAMID NARAGHI, Esq.
***WILLIAM E. WOODCOCK, Esq.**
***Certified Specialist, Family Law**
State Bar of California Board of Legal Specialization

INTRODUCTION

The emotional impact of a divorce is difficult to explain to anyone who has not personally dealt with it. To those who have not been touched by divorce, no explanation is possible; and to those who have dealt with divorce, no explanation is necessary. But when faced with any challenge, the ones who persevere are the ones who stay composed, gather qualified information and make wise choices. I hope that the contents of this book provide you with the information that will help you make wise choices and persevere.

When going through a divorce, it's important to know what lies ahead – to have a roadmap of the process so that you can best prepare for it, practically as well as emotionally. By following this roadmap, you will have an overview of the divorce process. This will allow you to become and remain organized. This, in turn, will help you stay in control and achieve the best possible outcome with the least amount of anxiety.

As you progress through the divorce process, it's natural to become overwhelmed. Return to the roadmap often so that you can reevaluate your situation and bring yourself back on course. Use the roadmap to regroup when you feel lost.

The key to the Roadmap of a divorce is to distinguish between the procedural aspects of a divorce (the subject of this book) and the substantive ones (which should be discussed with your lawyer). This distinction is important in your thought process as well as in the organization, discussion, evaluation, negotiation and completion of your divorce.

The procedural aspects, which we will discuss in detail, relate to the red tape that you must go through with the courts. Remember that a divorce is technically a lawsuit. A lawsuit, and therefore this procedural outline, has:

1. A Beginning,
2. A Middle, and
3. An End

The substantive aspects relate to the actual matters that must be addressed and resolved. The details of the law on the substantive aspects are too voluminous to discuss in a book and are filled with exceptions, and exceptions to exceptions... So with the organization structure that I provide, make sure to discuss each as they apply with your lawyer and have a good understanding of the law as it pertains to your specific situation.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

In California, there are basically five substantive categories that must be dealt with – whether it is a complicated high-asset divorce, or the average couple, the same substantive outline will apply. The five categories are:

1. Child Custody & Visitation (aka: parenting plan), IF there are children of this marriage.
2. Child Support (including health insurance for the minor children), IF there are children of this marriage,
3. Spousal Support (aka alimony)
4. Property Division
5. Legal Fees

That's it. Every substantive issue that you will deal with during a divorce will fit into one of the above categories. Realizing this at the beginning, middle and the end of your divorce will help you organize your thoughts, establish a strategy, stay on point in your discussions, and make sure that you have hit all the points in your settlement.

By following this roadmap before and during a divorce process, you will remain knowledgeable and in control, and with knowledge and control comes the confidence to make the right decision as you proceed with this difficult and important financial, emotional and personal time of your life.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

ABOUT THE AUTHORS

HAMID NARAGHI

Hamid Naraghi is a founding partner in the statewide litigation law firm of Nader, Naraghi & Woodcock, APLC, (www.nnwlegal.com), the former president of Divorce Helpline, a statewide family law mediation firm, and a co-founder of Smart Legal Solutions, a nonprofit family law service providing family law assistance for low income individuals . An attorney since 1997, Hamid has gained extensive experience in litigation, mediation and alternative dispute resolution. His background as a litigating attorney, mediator, arbitrator, private judge, licensed real estate broker, former police officer, mediation instructor, and author provide him with a unique perspective that enables him to analyze and formulate a strategy for resolving complicated matters appropriately depending on the specific circumstances of the case and the parties involved.

WILLIAM E. WOODCOCK

Bill Woodcock is a Certified Family Law Specialist, certified by the Board of Legal Specialization of the State Bar of California. He is a founding partner in the statewide litigation law firm of Nader, Naraghi & Woodcock, APLC (www.nnwlegal.com), the vice-president of Divorce Helpline (www.divorcehelp.com) as well as a co-founder of Smart Legal Solutions. Both an experienced mediator and an experienced litigator, Bill has argued before California Appellate Courts on international child custody disputes and Hague abduction cases, is certified as a pro-tem Judge, and acts as an Arbitrator in mandatory fee arbitrations between attorneys and clients. For many years, Bill has worked closely with psychological professionals to address the developmental and psychological needs of children during the divorce process, an area of particular concern for him.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

DIVORCE WITH CONFIDENCE

HOW TO BE IN CONTROL OF YOUR CALIFORNIA DIVORCE

A PRACTICAL GUIDE

HAMID NARAGHI, Esq.
***WILLIAM E. WOODCOCK, Esq.**
*Certified Specialist, Family Law State Bar of California Board of Legal Specialization

Edited by: Amir A. Nader

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Great care has been taken to ensure the accuracy and utility of the information contained in this book, but no warranty is made, express or implied, and neither Nader, Naraghi & Woodcock, APLC nor the authors assume any liability in connection with any use or result from use of the information or forms contained herein.

This book is not intended to interfere with a lawyer-client relationship, the reader should defer to their lawyer for specific legal advice. This book is to be used for reference and education only.

ISBN-13: 978-0-578-54484-7

With permission from the publisher, portions of this book incorporates material from How to Manage a Contested Divorce in California, published by NoloPress Occidental and written by Ed Sherman, Hamid Naraghi and Bill Woodcock.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

TABLE OF CONTENTS

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Dedicated to the millions of Californians
who must carry one of life's heaviest burdens through
a treacherous, dysfunctional legal system.

Special Thanks

With gratitude to the outstanding legal team at Nader, Naraghi & Woodcock, APLC: Bill Woodcock, Amir A. Nader, Harold J. Stanton, Marian Stanton, Neeta Patel and Elvira Romero Cordoba, for their tireless and unparalleled legal representation of clients throughout California.

And above all, to the amazing Ed Sherman, who was the original inspiration to this book and the improvement of the family law system since the early 1970s. Thanks, Ed!

Cover and book design: Hedyeh Nader
Interior: Hamid Naraghi and William Woodcock
Editor: Amir A. Nader

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Start with the right kind of help

If you are contemplating a divorce, or if a divorce has been thrust upon you, among the first decisions you need to make is the kind of help you need, if any. The most common types of help available during a divorce include:

A. Variations on the Do-It-Yourself divorce
B. Mediation
C. Hiring a Lawyer

A. There are many variations of do-it-yourself divorce services available today, ranging from self-help books, document preparation services, and online divorce packages, some even with consulting attorneys who will answer questions about your rights and options but without representing you. Proceed with caution if you decide that one of these services may appropriate for you. They may be suitable for a very simple divorce, but the more issues involved, the more concerned you should be that this option, while probably the least expensive, may leave too much at risk. A "very simple divorce" for our discussion is one where:

1. You've been married for a very short amount of time (less than 5 years)
2. You have no children together
3. There is no need for financial support from the other spouse
4. There are no major assets to deal with, such as any interest in a business, real estate, intellectual property (copyrights, patents, etc.), or retirement accounts.

Under these circumstances, there is little to lose if mistakes are made, or if things are missed. But with the existence of any one or more of the above, you are taking a risk that a mistake, error or omission in the steps in the divorce process, including how well the final paperwork is done, could have devastating consequences. Unfortunately, people understandably assume that because the court accepted the documents, they must be done well, and they must be protected. Nothing could be further from the truth. The court's acceptance of the documents is merely an acknowledgment that the minimum procedural steps were taken to get your documents through the red tape. Proceed with caution.

B. Mediation may be a suitable option, if you and your spouse can negotiate in good faith, AND:

1. the mediator has the appropriate education, experience, ability, and temperament to oversee your negotiations. Not all mediators are created equal and the more issues are involved (see above), the more important the mediator's qualifications and ability become.

2. the mediator is aware of and will remain a neutral and impartial mediator. Too many mediators either misunderstand this necessary component or drift out of this responsibility as the mediation progresses, and begin to express their opinions, take sides, or attempt to predict the outcome if the case were to ever be presented to a judge.

3. Each spouse can stand up and speak for themselves. Mediation is sometimes used by a spouse to keep a case out of the hands of a lawyer and out of the courts so that their position will be unchallenged. Know your spouse, and yourself well. If you have doubts, then you may want to use a lawyer who can watch out for you and negotiate on your behalf. More on this later in the book.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

C. Hiring a lawyer will be the costliest of the options. However, if 1) you have potentially complicated issues, 2) your case has problems, or 3) your case is contested, having a good attorney is a must! Under these circumstances, the right attorney can actually save you from tens of thousands, all the way to millions of dollars in asset value as well as legal fees; but that's assuming you use this book, or some other method of educating and enabling yourself to supervise your lawyer and remain an active participant in your divorce along with your lawyer. Realize that as with any other professional, all lawyers are not created equal in terms of experience, knowledge, temperament, ability, and sensitivity. You must select your attorney carefully. Otherwise, on top of dealing with all of the complications of the divorce itself, you may find yourself dealing with an attorney who actually causes more problems than they solve, and they charge you a lot of money to do it. More on how to select the right attorney later in this book…

1. Potentially complicated issues may exist if:
   - You have a long-term marriage (10 or more years)
   - You and your spouse have children together (natural or adopted)
   - There is a need for financial support from your spouse and/or there is a significant earning difference between the two of you
   - There are, or may be, major assets to deal with, such as any interest in a business, real estate, intellectual property (copyrights, patents, etc.), or retirement accounts.

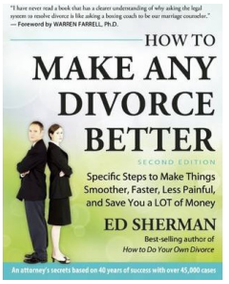
2. Your case has problems if:
   - You are not safe and financially stable for at least a few months, or
   - Your parenting arrangements are not acceptable right now, or
   - You think your ex might try to pull a fast one, or
   - You can't get information needed to decide what's yours, or
   - Too much upset on one side or the other to work anything out, or
   - Things are dragging on and going nowhere and that's not okay

3. Your case is contested if
   - Petition and Response filed; and
   - Your spouse starts legal activity; or
   - You need court orders for custody or support; or
   - A preemptive strike is needed to beat the other side to the punch; or
   - Legal action is required to get information or documents; or
   - Agreement can't be reached through negotiation

While the existence of any one of the above doesn't necessarily mean that your case is complicated, they do elevate the concern for making sure none of your legal rights are left unexplored.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The remainder of this book is written to help those who have decided to hire an attorney. It will educate you in the legal process and should be used as a reference in conjunction with a knowledgeable and experienced family law attorney so that you can intelligently participate and work with your attorney towards a successful divorce. I understand that some of the readers may be representing themselves or may have spouses who are representing themselves. For simplicity, in many places in the book, I refer to "you." This should include you and/or your lawyer. In other places I refer to your spouse, this should include your spouse and/or his/her lawyer. For example, where I refer to you communicating with your spouse, if both of you are represented, then it will be the lawyers communicating with each other.



For additional help to make your divorce and communication smoother, I highly recommend How to MAKE ANY DIVORCE BETTER.
https://nolotech.com/divorce-books/make-any-divorce-better/

It contains specific steps you can take to reduce upset, insecurity, conflict, protect children. How to talk to your Ex, how to negotiate, how to organize your facts, documents and your thinking.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

CHAPTER 1

YOU ARE HERE — which way to go and what it takes to get there.

A. Deal with emergencies first
B. Three ways you can go in your case
C. What it takes to get where you want to go

A Deal with emergencies first

In the legal system, an emergency is something that requires court orders and can't wait the several or many weeks that it takes to get a hearing on a motion. You have an emergency if you have good reason to believe that, unless you get immediate court orders, something bad will happen very soon. For example:

- You or your children are in imminent danger; or
- Property will be taken, transferred, wasted, or hidden; or
- Our children will be physically removed or hidden away from you; or
- Legal papers have been served on you that require you to show up in court very soon.

If you have an emergency, go immediately to chapters 7 and find an attorney using the suggestions provided. Come back here later and pick up where you left off.

B Three ways you can go in your case

At any given point in any case, there are only three things you can do:

1. Take legal action
2. Negotiate
3. Do nothing

As a general rule, you should always encourage and work toward a negotiated settlement unless there is a good reason not to. In many situations, you can take legal action and negotiate at the same time.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

1. Reasons to choose legal action

a. Emergency.....(chapters 10-13)
b. Respond to action from the other side .....(chapter 14)
c. Get needed information.....(chapter 17)
d. Strategic need for action .....(see below)
e. Put pressure on negotiations, move case forward.....(see below)

2. Reasons you would choose NOT to negotiate

You should always encourage negotiation and work toward a settlement unless there is a good reason not to. Using techniques in chapters 3 and 4, people who might otherwise fall easily into conflict can now find new opportunities to make negotiation work. However...

• Sometimes legal action is required to get negotiation to work and you end up doing both at the same time. For example, your spouse has been dragging feet or avoiding you, so you file a motion and the pressure of a court date coming up gets things moving.
• There are times and situations where you should not negotiate, or at least not yet:

a. You are dealing with an abusive or controlling spouse
b. You have a strategic need for legal action first
c. Your spouse refuses to give you copies of essential documents
d. There are uncontrollable levels of upset, fear, or anger on either side

a) Abusive or controlling spouse. Abuse is fundamentally a matter of domination and control, and includes everything from psychological manipulation to physical attack. To the abusive spouse the court looks like a new weapon to use against you. Almost any degree of effort to dominate and control you qualifies your spouse as an abuser and serves as an indication that you have better things to do before you start negotiating. First, you need to take some legal action to get into a position of strength and to establish structure for your negotiations—then you can try to negotiate.

b) Strategic need for action. In certain situations, orders may be needed immediately, before you start negotiating. In other cases, you will use legal action to improve the effectiveness of negotiation. It is often possible to take legal action and negotiate at the same time.

• Emergencies. If you have an immediate need for protection for you, your children, or your property, you need a restraining order right away and there's no time to stop and talk. If your spouse is going to take the kids and go over the border, you need an order to try to stop that instantly. If you have no money to live on and your spouse has some but won't give you any, you need to file a support order immediately.

• Under attack. If the other side is throwing legal action at you, you need to stand up and assert yourself, take some legal actions of your own, and sort things out before you can settle into talks. You don't want to negotiate from weakness while under siege.

• Child custody orders. Here is an unfortunate feature of our legal system: when it comes to custody and visitation, status quo (the way things have been for a while) is everything. If the children are doing okay, then the way parenting has been working when you get to court is the way things will probably stay unless you have a truly powerful case or can get a voluntary agreement to change things. So, if your spouse is unwilling to cooperate in a stable and reliable parenting arrangement that is agreeable to you, you might be better off going straight to court rather than continuing to negotiate to change a situation that you don't want, thereby giving it time to become "status

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

quo." Sometimes, getting the right parenting arrangement immediately is very important if it looks like you are eventually going to end up in a custody battle anyway. Take legal action but keep negotiating too, if possible, trying to get an agreement for a reasonable status quo you can live with.

• First to accuse. Another terrible feature of our system is that there could be an advantage to being the first to accuse the other through an Request for Order (RFO) seeking temporary restraining orders (TROs). If the first to accuse gets an immediate custody order, the court process could drag on for months before you finally get a hearing when, if the child is doing okay, the judge is not likely to change the status quo that the "temporary" order created. This means that in a doubtful situation, you can't wait for the other parent to accuse you of something. You don't want to jump at the other parent's throat, but you must be aware of the problem if your spouse's attorney decides to jump at yours. If you fear this possibility and want to avoid it, you have two choices: (1) get into good communication with your spouse so that he/she won't accuse you, or (2) file your RFO/TRO first. When there is no valid basis for an accusation, it might help to go with your spouse to a counselor or mediator. However, if your spouse is an abuser/controller, it isn't likely to work and you need to realize that you are subject to attack.

• Support order. The legal obligation for support doesn't start until there is an agreement or an order. This means that you can't go back for support that wasn't paid to you before you file a motion for support. Therefore, if you are not getting adequate support right now relative to the amount your spouse earns, you might decide that it is worth it to file a motion at once for support orders. If you do, keep negotiating, if possible. This action could increase the level of conflict, so think carefully and be sure it's worth it before you take this step. On the other hand, if your spouse is a controlling abuser, you may not have much to lose. Keep negotiating, if possible, while legal action proceeds. Another way to create an obligation to pay support that begins now, other than immediately filing a motion, is for you and your spouse to enter into an agreement that any support order made by the court within an agreed-upon period of time will commence on the date you agree upon. For example, you might agree that any support order entered by the court in the next six months will commence on the current week—meaning if negotiations fail, and you file a motion, even if the judge enters the support order three months from now your spouse's support obligation will be deemed to have started this week. This can give you time to negotiate a support order and take away the pressure to file a full motion immediately. This type of agreement is called a stipulation and order: an agreement with your spouse that is reduced to writing and filed with the court and becomes a court order.

• Strategic orders. In some cases, for strategic reasons you will want orders before you negotiate. For example, you are at a disadvantage and want to bargain from strength, so you use a strategic legal action to improve your position. If your case lacks structure and clarity, a motion to advance some small part of your case can give your entire situation some structure. A court hearing can be like a reality check—it strips away illusions. Or, let's say your case is stalled because your spouse won't pay attention, cooperate, and take care of business, so you make a motion to get your spouse's attention focused on the negotiation. If a hearing is fast approaching, the pressure is on to work things out.

c) Spouse refuses to give you essential information. You can certainly start to negotiate and make getting information and copies of documents a top priority, but at some point it becomes a requirement for further negotiation.

First, try to get whatever you need yourself, using the methods in chapter 8. For items you can't get

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

that way, make polite, then firm, requests for what you need, then finally a demand by a certain date. If your spouse still won't give you what you need, you must stop negotiating and start discovery. Don't waste time; start right away. When you have the information and documents you need, you might be ready to negotiate again.

d) Uncontrollable levels of upset, fear, or anger on either side. You can't negotiate business issues when either side is in a highly emotional state and unable to control it. You should not make important decisions if your own judgment is not reliable. Chapters 3 and 4 tell you how to deal with emotional issues so you can get down to business.

3. Reasons to choose to do nothing

Very often, doing nothing, especially in the legal system, is the best thing you can do. Assuming your living situation is reasonably safe and stable for at least the next few weeks or months, and assuming that you don't need court action for any of the reasons discussed above, doing nothing for a while allows emotions to cool and gives your spouse time to get used to the idea that the divorce is happening, or get used to what the law requires, or to new ideas that you have proposed in settlement talks.

C What it takes to get where you want to go

What it takes

Effort. You have a lot to learn and the deeper you get into conflict, the more complicated it gets. Going through a legal divorce is work, even if you have a good attorney representing you, and this might be the most important job you ever undertake. Like any new activity, you have to work extra hard to learn it. Work hard, get help, do a good job, and you will be well paid for your effort.

Organization. You need to be very meticulous and detailed on this job. Don't take this lightly! You need to keep up with the details and stay organized.

Objectivity. It is widely said that a lawyer who represents himself has a fool for a client. This is because a lawyer must be objective. Those who represent themselves very often fail at maintaining objectivity you must struggle to be objective. This is one of the reasons I recommend that you retain a qualified divorce attorney. The right lawyer brings experience and objectivity to your case. The more emotional you are, the more you need assistance.

Confidence. It takes confidence to effectively manage your divorce. You can't be afraid of face-to-face negotiations with the other side or going to court, otherwise you can be bullied into accepting less than you are entitled to. The information in this book, along with having a qualified and reliable attorney, can help you gain confidence.

What to do next

If you need to take immediate legal action, or respond immediately to legal action against you, go to Parts Two and Three. Otherwise, go on to chapter 2 and learn how the legal system works and how to make talking with your spouse effective and productive.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

CHAPTER 2

HOW A DIVORCE CASE BEGINS AND WHEN IT BECOMES CONTESTED

A divorce case starts when one spouse files a Petition and serves it on the other spouse. If the other spouse does nothing, and the petition was done properly, Petitioner goes through some red tape and it's finished. Unless there was a written agreement, the other spouse had no say in the process. If the other spouse does want to participate, he or she must file a Response. The Response gives the other spouse equal standing with Petitioner, so from this point forward neither party has the advantage; they are equals before the law.

Warning: How To Prepare a Petition for Default. When you serve your spouse with a Petition for Dissolution, and your spouse does not respond, you may request that the court enter your spouse's Default, essentially excluding him or her from participating any further in the divorce case. It is important to understand that after a court enters your spouse's Default, and subsequently you either submit a proposed Default Judgment or conduct a Default Trial, you will be limited to the specific requests you made in your Petition. As such, when you suspect that your spouse may not file a Response or otherwise appear in your divorce case, it is important that you detail in your Petition every order that you will wish to request.

If you want to maintain the option of proceeding by default, then your Petition should include a custody plan, should specify assets and debts (and their values), whether an asset or debt is community or separate, and to whom a respective asset or debt will be confirmed. If there is an equalizing payment the amount of the payment, the date of payment, and where the payment will come from should be specified. If there is a request for child or spousal support, the amount, commencement date, day of the month of payment, etc. should all be clear. You should include a provision that the Respondent will sign all documents necessary to effectuate the court's orders, and if he or she does not, the Court Clerk may sign in their stead. You get the picture: every order you would request at a Default Trial should be specified. Otherwise, you will be required to amend your Petition, refile it, re-serve your spouse and start with another 30-day time period.

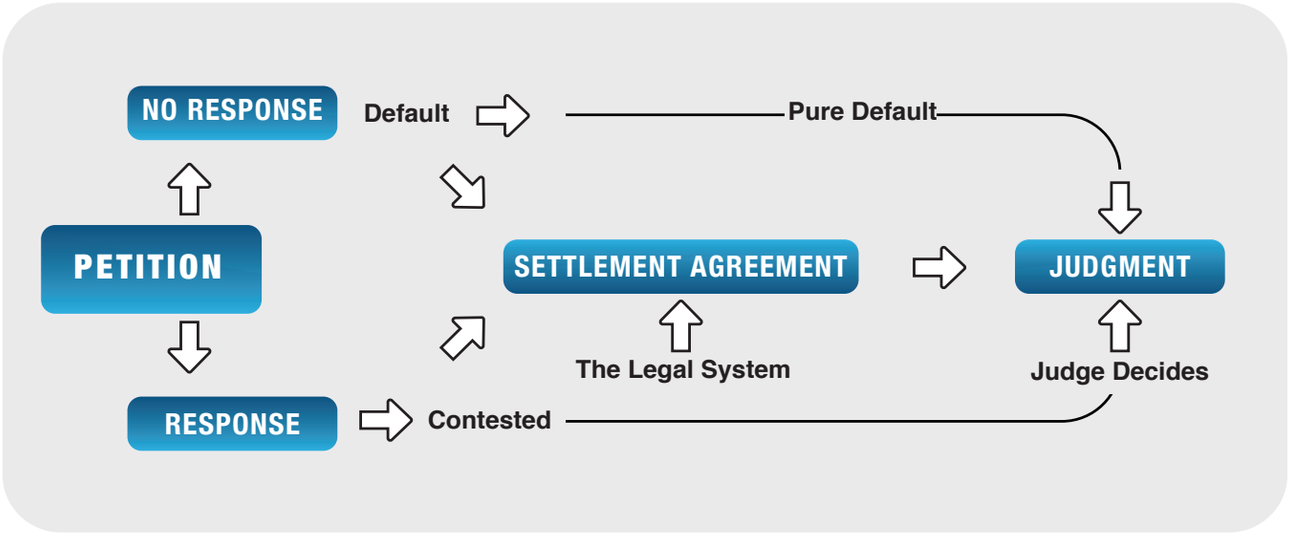
Served with a Petition? You have only thirty safe days to file your Response before Petitioner will be allowed to "take your default." Petitioner can take up to two years, possibly more, to file the Default form, but it can't be done sooner than 30 days after you were served. Once the clerk enters your default, you can't participate in your own divorce without going to a lot of trouble to file a motion to have the default set aside. So, if you want to take part in your own divorce, play it safe and file a Response within the first thirty days after you were served.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

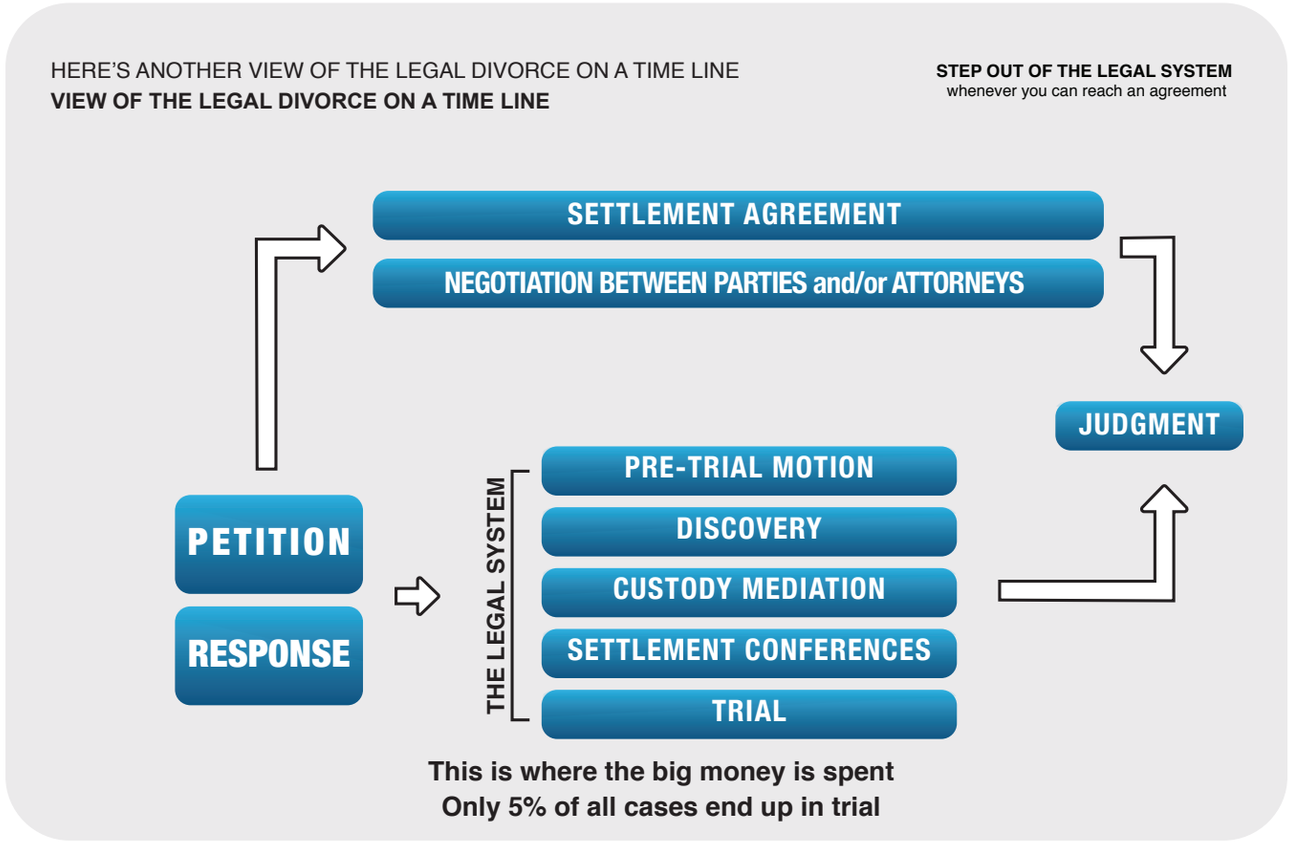
Is it contested yet? Once a Response is filed, the case is "contested," but only technically, because no legal proceeding has been initiated yet. Nothing is happening in court: no motions, no applications for orders, no demands for discovery. Respondent has merely joined the case. Whether or not there is a lot of legal activity depends on how you go about solving problems and resolving differences, and to what extent either party uses legal tools and protections along the way.

Once the Response is filed, there are only two ways you can get your Judgment:
1) the parties reach an agreement on all legal issues (property, support, children), or
2) the parties take their case to court and let the judge decide any issues they can't agree on.

When a Case Becomes Contested



Motions | Hearings | Discovery | Custody Mediation | Settlement Conferences | Trial



This is where the big money is spent
Only 5% of all cases end up in trial

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Pre-trial motions / Notice of Motion. Requests for court orders to address problems that can't wait for trial—typically for such things as support, custody, visitation, restraining orders, legal fees, freezing assets and accounts, but almost any problem related to the case can be raised.

Discovery. Legal tools to dig out information and documents: written questions answered under oath, subpoenas to produce documents, taking of statements in person and under oath.

Custody mediation. Required by law in cases where the par ties can't agree on parenting arrangements. If that doesn't work, the judge might order a home study and report t by a court-appointed counselor.

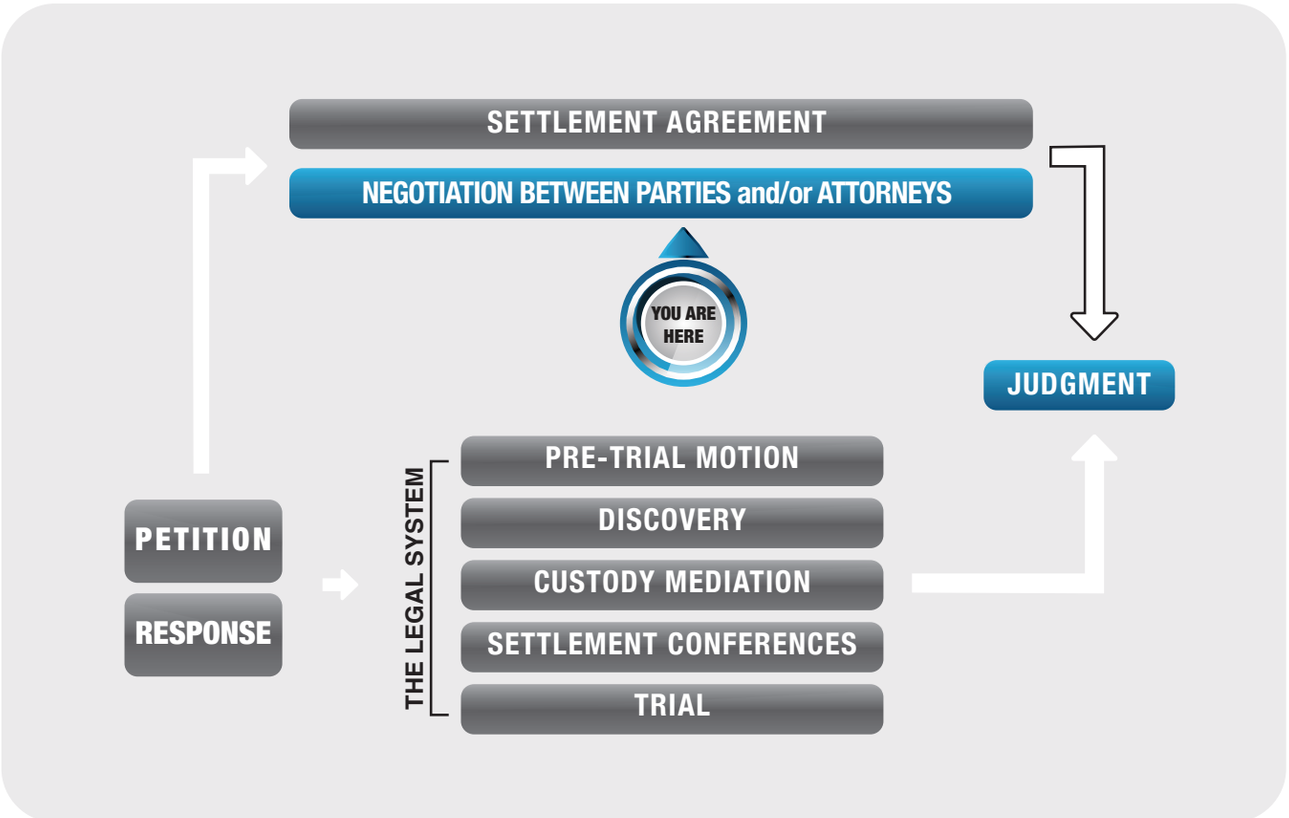
Settlement Conference. A formal meeting between lawyers, par ties, and the a judicial or settlement officer who will give an opinion on likely rulings and try to persuade or pressure the par ties to settle before trial.

The diagram above covers the same thing as the one on the previous page, only this one adds the role of negotiation (which takes place outside the legal system) and all the pieces are organized on a time line so you can see better how they are related. Later, we will discuss each legal procedure in detail, what it's good for and how to handle it. For now, the important thing is to observe that outside the legal system, negotiation and settlement are available at all times. From any point in the legal divorce, you can go into negotiation and work toward agreement. As soon as you get a written settlement agreement, the contest is over and all you have to do is complete some forms to get your Judgment.

Agree about what? The legal divorce has only five concerns: dividing your property (and debts), care of minor children, child support, spousal support, and legal fees. In high conflict cases, it is also about orders for keeping the peace. That's it; that's all. Nothing else is involved in the legal divorce. Make an agreement on these subjects and you are done.

We have a saying: "The Real Divorce is Free." The Real Divorce is about redefining yourself, making a new life, finding a new center of balance. There's very little in the legal divorce that will help with your real life work, but it can get in the way, wipe out your savings, and delay your ability to move forward. This book is going to help you avoid that.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 3

HOW TO GET OUT OF THE LEGAL SYSTEM
Obstacles to agreement and how to overcome them

Unless you are facing an emergency, the most important thing you need to know about the legal system is how to get around it or out of it—how to get your Judgment with as little legal action as possible. Even if you need to take legal action for some specific reason (chapter 1), once you reach a stopping point you should try very hard to negotiate your way through all issues, or as many of them as you possibly can.

Agreement = Out. You already know there are only two ways to get your Judgment: you can make an agreement, or you can suffer and struggle your way through the legal system so that a com- plete stranger (the judge) can decide important issues about your children, your money and your life. Compared to this, a fair agreement with your spouse is worth a great deal of effort and compromise. If you can agree, your written agreement actually sets the terms of your Judgment, so you get to decide everything ahead of time with complete certainty and in far greater detail than any orders some judge might make. Once an agreement is signed, your divorce is essentially finished. More important, divorces settled by good agreements usually work out better afterward: spouses are more likely to comply with terms, have better post-divorce relationships, better co-parenting, and faster healing. Book 1, How to Do Your Own Divorce, chapter 6, discusses settlement agreements.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Understandably, people tend to shy away from talking to their estranged spouses about the issues of their divorce. You might not believe you can handle it or fear you will get into terrible fights or upset if you try to talk about divorce terms. Hiring an attorney to take over starts to look very attractive—but, ultimately, this might not be the best decisionnot all attorneys are created equal. You need to be very selective in the attorney you select and interview them consciously and carefully. Many attorneys are not particularly good negotiators, have no training in it, and almost always, often unnecessarily, drag cases into conflict that could have been settled by other means. They do this because the system works that way and they just tend to go along with it.

The truth is that no one can do it better than you . . . if you know how. If you learn a little about how to negotiate, then—unless you are dealing with an abuser or controller, or emotions are out of control—you probably won't be afraid to talk with your spouse and you'll probably be able to face the ups and downs on the road to your agreement. If and when agreements are reached, you and your spouse can run the agreements by your respective lawyers to make sure they are sound and that they are properly written up and signed. Too many times, when people try to either write up their own agreements, use a template or a paralegal/document preparation service, good agreements are unenforceable because they were not properly documented.With help and advice from a Divorce Helpline attorney- mediator, you can work with even more comfort and confidence.

The next chapters are about how to deal with disagreement, from simple difference of opinion to active upset and anger. I will show you specific steps to take that will help you talk to your spouse and negotiate effectively. As you will see, when it comes to negotiating with your spouse, the things you can do yourself are often more effective than anything a lawyer can do. If you need help, I show you the best way to go about getting it.

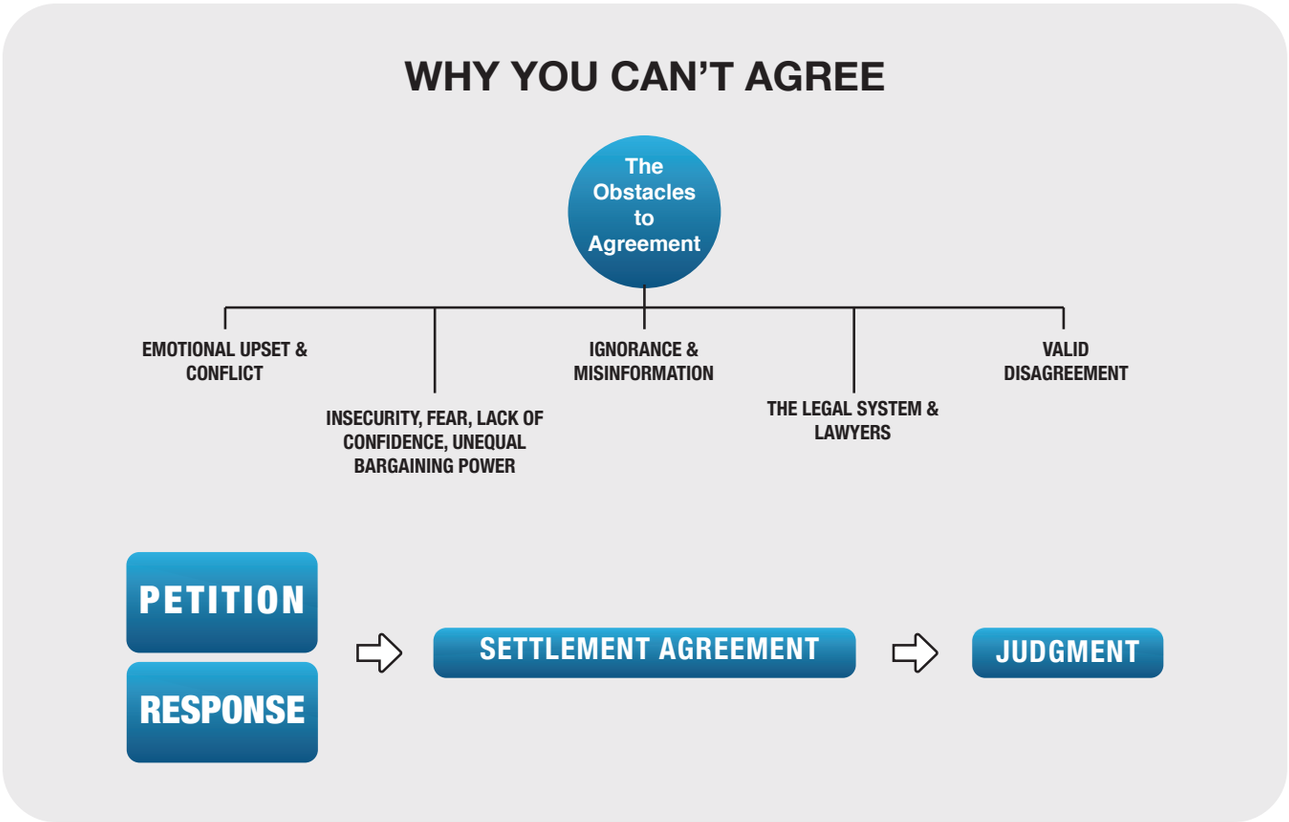
Emergencies. If an urgent or emergency situation comes up while you are trying to work out an agreement, notify your lawyer immediately and turn to chapters 10–14. Better yet, call Divorce Helpline.

Why you can't agree. At least 95% of all cases are settled before trial, but too many are settled only after the spouses have exhausted their emotional energies on conflict and their financial resources on lawyers. So much time and effort spent battling impairs the ability to get on with life and may cause serious psychic damage to spouses and their children. Sure, spouses can save themselves all that pain and suffering simply by agreeing to settle earlier—so why don't they?

Why don't you just go ahead and do it? There are five specific reasons why spouses have trouble negotiating an agreement. Which of these are present in your case?

- Emotional upset and conflict
- Insecurity and fear
- Ignorance and misinformation
- The legal system and ineffective lawyers
- Valid disagreement

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



To get an agreement, in or out of the system, with or without an attorney, you have to overcome the five obstacles, and you have to clear away the first four before you can work effectively on the fifth—the valid disagreement. Look what you're dealing with:

1. Emotional upset and conflict. If one or both spouses are upset, you can't negotiate, have reasonable discussions or make sound decisions. What's worse, complex and volatile emotions become externalized and get attached to things or to the children. When emotions are high, reason is at its lowest ebb and will not be very effective at that time. The other spouse frequently tries to reason with the upset spouse but it never works—you can't reason with an emotion.

There are many causes of upset: obvious ones such as the divorce itself, financial strain, stress of major change, broken dreams, fear of an unknown future, and so on. But there is one root cause of conflict that appears in almost every case that I've seen, and this is something you can do something about. Upset and conflict are always more intense when one spouse can't accept the idea of the divorce. The most constructive thing you can do is take the time to work toward mutual readiness and willingness to accept the divorce. Don't push or rush. If you are the one who can't accept the divorce, you must try to get over it.

Don't try to negotiate when feelings are high. Don't get engaged in emotional arguments and stop discussing who is more wrong; rather, drop out of such conversations as gracefully as possible and wait for a better time. I describe below specific things you can do to reduce the causes of upset.

2. Insecurity, fear, lack of confidence, unequal bargaining power. You can't negotiate if either spouse feels incompetent or afraid or believes the other spouse has a big advantage. Divorce is tremendously undermining and tends to multiply feelings of low self-esteem and lack of self-confidence. Often, there are very real causes for insecurity: lack of skill and experience at dealing with business and negotiation, and lack of complete information and knowledge about the process and financial matters. I'll show you some steps you can take to reduce fear and build self-esteem, for you and for your spouse.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

3. Ignorance and misinformation. Ignorance about family affairs or the legal system and how it works can make you feel uncertain, insecure and incompetent. You feel as if you don't know what you are doing . . . and you are right.

Misinformation is when the things you think you know are not correct. Misinformation comes from well-intentioned friends, family members, television, movies, the misinformation super highway (the internet), and even from lawyers who are not family law experts. It can distort your expectations about your rights and what's fair. It's damn difficult to negotiate with someone who has mistaken ideas about what the rules are. Don't let that someone be you.

Fortunately, both conditions are easily fixed with reliable information. By reading this book, you are well on your way out of this dilemma.

4. The legal system and lawyers. The legal system does not help you overcome obstacles to agreement, but it is itself one of the major obstacles you have to overcome. While there are some valid reasons for going into the legal system, for the most part you want to avoid it as much as possible. Unless there is a reason for it, the legal system should be viewed as a last resort, as opposed to the first option.

5. Valid disagreement. Real disagreements are based on the fact that spouses who once had common interests now have different needs and goals. This is a level you can deal with rationally and negotiate cleanly. If you can dispel the influence of the first four obstacles, valid issues that involve property, debts and support can be cleanly negotiated if you get a neutral understanding of California's detailed rules of law. If you remain at odds over parenting, you should negotiate for both parents to take counseling for separated parents and get advice from a child development pro who knows what's best for kids after divorce.

Overcoming the obstacles to agreement

The solutions are entirely in your hands. Apart from the legal system—which you can avoid—all obstacles to your agreement are personal, between you and your spouse, and between you and yourself.

Take care. Pay special attention to emotional upset and even more to insecurity and fear. These are the forces that drive people into excessive use of the legal system. The upset person is saying, "I can't stand this and I won't take it anymore! I'm going to court!" The insecure person is saying, "I can't understand all this and I can't deal with it. I can't talk to my spouse. I want to be safe. I'm going to court."

Try hard to reduce the causes of upset and fear. Avoid doing anything that might increase it for either of you. If you are self-confident but think your spouse may be upset or insecure, you have to be very sensitive and patient. If you are feeling insecure and incapable of dealing with your own divorce, the information in this book will help a lot.

Please don't just walk up to your spouse and start negotiating. First, you need to do something about the obstacles to agreement. This means that before you get down to negotiating your real issues, you must:

- Calm emotional upset, reduce fears, and balance the bargaining power
- Get reliable information and advice
- Learn how to get safe, reliable help if you need it

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Ten steps

Before you start negotiating, go through these specific steps you can take to overcome the obstacles to agreement—then get down to negotiation. Use this as a checklist to make sure you've built a good foundation for negotiation. If you run into trouble later, come back and double-check these steps.

1. Get safe, stable and secure long enough to work toward an agreement. Your first and most im- portant job is to do whatever you must to arrange short-term safety, stability, and security for yourself, your children, and your spouse . . . in that order. This doesn't mean forever—just for a month or a few months at a time. Don't be concerned yet about the long term or the final outcome. And we are talking about minimum conditions here, not your original standard of living. But don't attempt to do anything else until minimum conditions are met. You can't negotiate if you don't know where you will live, or how you will pay the rent, or if you feel afraid for your safety or for your children, or if you think your house is about to be foreclosed or your car repossessed. Legal action may be useful to help you reach this goal, but the practical things you can do are usually more important and certainly more reliable.

2. Make some "New Life" resolutions. Start thinking of yourself as a whole and separate person. If the divorce wasn't your idea, try to accept that however painful divorce is, it's better than trying to live with someone who doesn't want to be with you.

If you feel wounded, try to realize that you are healing and on your way to becoming whole and complete. Keep that picture in mind. Try to accept the pain and confusion that are part of healing. Let go of old attachments, old dreams, old patterns that don't work; this is your time to build new ones. You can come out ahead in the end. Decide you will not be a victim of your spouse, the system, or yourself. You can lay down the burden of trying to change or control your spouse—or the burden of being nagged and manipulated. That's all over now, it doesn't work, it's contrary to the meaning of divorce.

Stop trying to make your spouse wrong. You can't negotiate if this is your emotional theme song. The only future down this path is prolonged suffering as you go on hurting yourself. After you get your settlement agreement with fair terms, you can do all the blaming you like. Besides, what's the point? Who cares what he/she thinks or realizes? That's over.

Concentrate on yourself, especially on your own actions. You can't change your spouse, but you can change who you are and how you act. The best, perhaps only, way you can break out of bad old patterns is by changing what you do and how you react (or don't react) to things your spouse does.

Concentrate on your physical health, your work, children, and friends. Try to become quiet and calm. Keep your life as simple as possible.

3. Insulate and protect your children. Involving your children will harm them. It will also upset both parents and anger the judge so keep them well away from the divorce. Tell them the truth in simple terms they can understand but don't discuss the divorce or your problems in front of them. Don't involve the children or pass messages through them. Don't let them hear you argue or hear you criticize the other parent. Let your children know you both love them and will always be their mother and father, no matter what happens between you. Tell them clearly and frequently that the divorce is not their fault and not caused by anything they did or did not do.

4. Agree on temporary arrangements. It can take a long time for things to settle down and for the spouses to work out a final agreement. Meanwhile, you have to arrange for the support of two house- holds on the same old income, the parenting of minor children, making payments on mortgages and debts, and so on.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

As a matter of routine, most lawyers take almost any case immediately to court to get temporary orders for child custody and support, etc. If they think about it at all, they probably believe this is the professionally correct way to establish stability until the case can be settled or tried. A lot of money can be spent on this step, and the level of conflict is very likely to escalate. But, if you can work out your own temporary arrangements, you won't need legal action to get temporary court orders by agreement.

Your agreed-upon temporary arrangements (for example for custody and support) can be reduced to stipulations and orders and filed with the court. These documents can make it clear that these agreements are temporary, not prejudicial, and intended to give you the stability to negotiate. Stipulations and orders are helpful to address situations where bargaining power is unequal because one spouse is the higher-earner, or one spouse is the primary parent. Situations where you depend on your spouse to voluntarily contribute funds you need to pay rent, eat, etc., and situations where you depend on your spouse to voluntarily produce your children for parenting time, can have a terrible impact on your ability to negotiate for your rights. It is hard to forcefully assert your position when your spouse holds the purse-strings, or controls access to your children. A stipulation and order will give you a temporary but legally-enforceable right to support or custodial time and can make it easier to approach your spouse on equal footing. It is very much to the advantage of both parties to create stability on both sides without involving lawyers and legal action. Start by agreeing that you want a fair result and that you will both act fairly. Agree to communicate before doing anything that will affect the other spouse, the property or the chil- dren. Then, agree to some terms that will allow both sides to live and parent in a reasonable degree of stability until things can be permanently worked out. It is best if your temporary arrangements are put in writing. If you have trouble working out temporary arrangements, use techniques discussed here. If nothing else works, consider handling the court action without retaining an attorney to do it.

5. Slow down, take some time. If you can make your situation safe and stable for a while—even just for a few months—you don't have to be in a panic to push ahead. Think of divorce as an illness. It truly is a kind of injury, and it takes time to heal. You have to go slow and easy, be good to yourself. Some very important work goes on during this slowdown. Work quietly and patiently toward mutual acceptance of the divorce going forward.

6. Get information and advice. First, organize your facts, records and documents.

Spouses have a right to get a full, open, and honest exchange of information and they have the duty to give it. Even if you don't want to do it, it's the law. Failure to disclose fully can be penalized, so you might as well just go ahead and do it. On the positive side, fairness and openness help to build trust and confidence. If information is not exchanged freely outside of the legal system, you will probably end up in court undergoing expensive time-consuming discovery procedures.

Learn the law as it applies to your case. California has so much law on divorce that almost every conceivable issue has already been decided. Because you can usually get a pretty good idea ahead of time what a judge will do, there's not much to be gained from litigation. The one exception is the terms for parenting of children after divorce, which is still decided on a case-by-case basis.

If you feel it might help, get some advice, but be careful where you get it. Your friends and relatives might be a fountain of free advice, but don't take it—they mean well, but probably don't know what they're talking about. Their cases will have been different from yours, so their experience won't apply to you. If they are wrong, who pays? Use your friends for emotional support but take advice only from an attorney who is an expert in divorce. Be careful about taking advice from paralegals and divorce typing services; they're not trained for it.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

7. Focus on needs and interests. Don't take any positions yet. A position is a stand on a final outcome: "I want the house sold and the children every weekend." In the beginning, there's too much upset and too little information to decide what you want for an outcome. Worse, taking a position is bad negotiating and an invitation to an argument. The other side either agrees or they disagree and you're in an argument rather than a discussion. It's better to think and talk in terms of needs and interests. These are your basic concerns: "I need to know I'll have enough to live on. I want to have a good relationship with my children. I want an end to argument and upset." When put this way, these are subjects that you and your spouse can more easily discuss together.

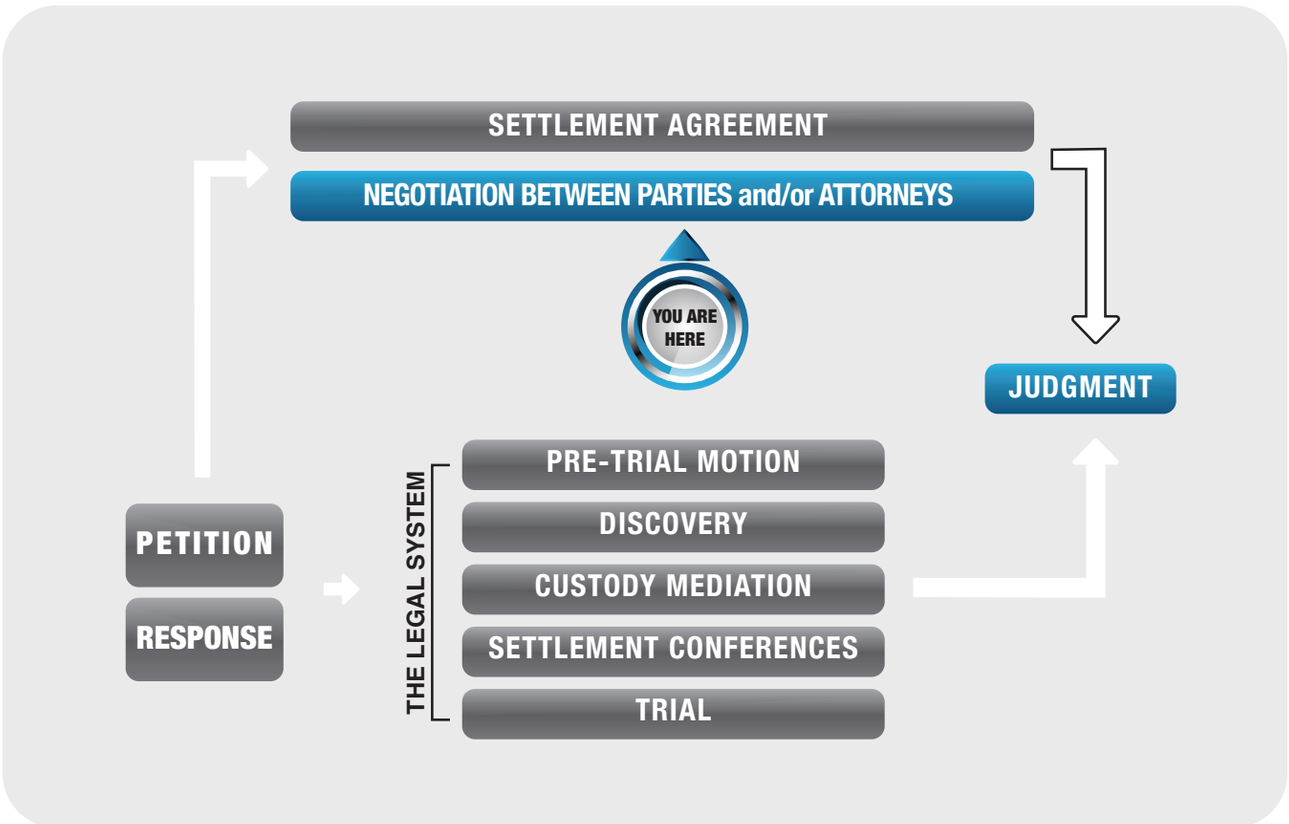
8. Stick with short-term solutions. Concentrate on short-term solutions to immediate problems like keeping two separate households afloat for a few months; keeping mortgages paid and cars from being repossessed; keeping children protected, secure, stable, in contact with both parents. These are things you can try to work on together.

9. Minimum legal activity. You want to avoid legal activity unless it is necessary—zero is best, or the minimum necessary to protect yourself and create short-term stability.

10. Get help if you need it. Consider counseling for yourself or your children. For help with talking to your spouse, consider couple counseling or going to see a mediator. Mediators and counselors are low-conflict professionals who can help with emotional issues, defusing upset or, in the case of the mediator, with making agreements for your temporary or final arrangements.

If you follow these steps, you'll be able to clear away the first four obstacles to agreement. The next chapter will show you how to talk to your spouse effectively and negotiate an agreement. Follow those steps and you will be ready and able to negotiate the real issues of your divorce.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 4

HOW TO NEGOTIATE AN AGREEMENT

The best predictor of a good divorce outcome is client rather than attorney control of negotiation. This doesn't mean you should not be represented by an attorney; it means you are better off if you can heavily participate in the negotiations with your spouse in collaboration with your attorney. There are times where the negotiations happen between the lawyers, and others when the negotiations happen between the spouses. Depending on circumstances and the degree of upset between you and your spouse, one might work better than the other. But in my experience, many great settlements have come about when the parties finally begin to talk and negotiate between themselves after a lot of time and money has been spent on lawyers and court battles.

So, you see, you are likely to end up dealing with the negotiation anyway, and there is evidence that you are better off if you do. With settlements, you get a higher degree of compliance with terms of the agreement, a much lower chance for future conflict, co-parenting is smoother, support payments are more likely to be made in full and on time, and you get on with your life more quickly. But that does not mean you should go at it alone. You don't want to throw out the baby with the bathwater. The key is to hire an attorney who will be helpful, supportive, available and responsive, and for you to do some of the negotiating yourself with the guidance and support of your lawyer.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Negotiating with a spouse is never easy because there are built-in difficulties. But, okay, so there are problems—what to do? Here are ten steps you can take to make your negotiations work:

1. Be businesslike. Keep business and personal matters separate. Make it a condition of negotiation that you will not discuss personal matters when discussing business and vice-versa. Only do business by appointments and an agenda. This is so you can both be prepared and composed. Do not discuss either personal or business matters when you exchange the children. Act businesslike: be on time and dress for business. Don't socialize and don't drink; it impairs your judgment. Be polite and insist on reasonable manners in return. If things start to sneak into the personal, get back on track. If talk becomes un-businesslike, say that you will leave if the meeting doesn't get back on track. Ask to set another date. If matters don't improve, don't argue; be nice about it, but get up and go.

2. Meet on neutral ground. Find a neutral place to meet, not the home or office of either spouse where there could be too many reminders, memories, and personal triggers. Otherwise, the visiting spouse could feel at some disadvantage, and the home spouse can't get up and go if things get out of hand. Try a restaurant, the park, borrow a meeting space or rent one if necessary.

3. Be prepared. Go into the meeting well prepared on what will be discussed and what your options are as well as your expected goals.

- Get control of the relevant facts for the issues you will be discussing, and work with your attorney before the meeting with your spouse so you can get organized.
- Understand the law. Have your attorney explain the relevant law on the issues you will be discussing, develop different options, and form your goals on these specific issues.
- Plan your strategy. You should know before any negotiations what your expectations are, and what the outside limits of your concessions will be. This will allow you to present your potion firmly, but also keep you from giving away too much.
- It will be useful if you try to understand yourself and your spouse. Try to step out of old patterns that did not work. Break old cycles. See if you can stop doing things that push your spouse's buttons and try to stop letting your buttons get pushed, even if your spouse is leaning on one. Just the fact that you are attempting this will help make things a little better.

4. Balance the negotiating power.

- If you feel insecure, becoming informed, well-prepared, and using an agenda will help.
- You never need to respond on the spot; state your ideas, listen to your spouse, then think about it until the next meeting. Go back and get advice from your attorney, use friends for moral support and venting, then go back in there. Don't meet if you are not calm, and don't continue if the meeting doesn't stay businesslike.
- If you are the more confident one, help build your spouse's confidence so he/she can negotiate competently and make sound decisions. Share all information openly with your spouse. Be a good listener: restate what your spouse says to show you heard it; don't respond immediately, just say you'll think about it. Tone yourself back; state your own points clearly but don't try to persuade or "win" a point. Don't argue or repeat yourself. Listen, listen, listen.

5. Build agreement.

- Start with the facts: you should by now have gathered and exchanged all information. If not, complete the information gathering, then try to agree what the facts are. Write down the facts you agree on and list exactly what facts you do not agree on. Note any competing versions, then do research to resolve the difference with research and documents. Compromise, because if you can't prove some fact to each other, you may have a hard time proving it in court.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

• Make a list of the issues and decisions you can agree on. Write them down. This is how you build a foundation for agreement and begin to clarify the major issues between you. Next, write down the things you don't agree on, always trying to refine your differences—to make them more and more clear and precise. Try to break differences down into digestible, bite-sized pieces.

6. Consider the needs and interests of both spouses. Avoid taking a position. Consider your needs, interests and concerns alongside the facts of your situation. Work together on brainstorming and problem solving; look for ways to satisfy the needs and interests of both spouses and try to balance the sacrifices.

7. State issues in a constructive way. "Reframing" is when you restate things in a more neutral way, to encourage communication and understanding. For example: one spouse says, "I have to have the house." Reframe: "What I would like most is to have the house, that's my first priority. What the house means to me is . . . "

8. Be patient and persistent. Don't rush; don't be in a hurry. Divorces take time and negotiation takes time. It takes time for people to accept new ideas and even longer to change their minds. It may take time to shift your mutual orientation from combative to competitive to cooperative. So don't just do something, stand there! A slow, gradual approach takes pressure off and allows emotions to cool.

Meanwhile, you may want to work out temporary solutions for certain issues. If the situation of both spouses is stable and secure for a while, you can afford to take some time. If not, work on that, not the negotiation. Settle in, get as comfortable as you can, go on with building your new life. If the going seems slow, remember, working through attorneys usually takes a very long time, many months or even years. You can beat that, for sure.

9. Get help. Negotiating with your spouse may not be easy because you're dealing with old habits, raw wounds, entrenched personality patterns—all the obstacles to agreement all at once. You might decide you just can't face all that alone. Even if you do try and find you aren't getting anywhere, don't struggle too long, don't wait until you are both at war from entrenched positions, don't get frustrated, don't get depressed, don't get mad—get help. A third person can really help keep things in focus. Sometimes, not always, a trusted neutral friend or family member may be the buffer who helps both of you communicate more effectively.

Negotiate what?

Ultimately, you'll want to think about a final resolution of all issues: division of property and debts, child and spousal support, and parenting arrangements. But, along the way, it can be very helpful to negotiate temporary living arrangements while working on the final outcome. If your case ends up in court, you might want to negotiate the resolution of discovery issues or motions that might come up during the divorce, and with successful negotiations, you may be able to reduce the number of issues that end of going in front of a judge.

The tools for negotiation that we've been discussing can help you in all of these arenas.

Full or partial agreement

Of course you would rather have a complete resolution of all issues, but if you can't get that, a partial agreement can be very useful. Agreeing on some part of your case will:

• Narrow and focus the scope of your dispute;
• Limit the effort and expense necessary to finish your case
• Set a pattern and build a degree of confidence in the negotiating process as you will both see that at least some things can be agreed upon;

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

• Leave you with less to worry about; and
• If you can settle some partial issues, it builds momentum so that it becomes easier to take on the remaining issues.

It has to be in writing. A partial agreement means little until you've got it in writing in a properly worded and enforceable format. Of course, your lawyers will be involved in the drafting of the agreement and I will go into this very important subject in detail in the following chapter. But for now, please note that an agreement means very little unless it is properly drafted and signed in an enforceable manner. Remember that a divorce is technically a law suit, and in law suits , details and technicalities matter.

Before you start to negotiate

It is not a good idea to start working on a final agreement until both spouses have a complete picture of all property, debts, income, and expenses. Ideally, you will first exchange the preliminary and final disclosure documents and any discovery required to complete the picture. Read chapters 8 and 17 about getting information. If, in the future, one party can show that important financial information was not disclosed, your agreement and Judgment can be revisited, possibly set aside, and penalties could be imposed. You don't want that kind of insecurity hanging over your future, so be sure that your disclosure is open, honest, and full.

Before you begin to negotiate, give your spouse this book and, if possible, discuss parts of it together. Talk about how you can put these ideas to work and how you can proceed. Go over each step and talk about how it's going and what more can be done.

Counseling, mediation and arbitration

There are times when a third person can reall
y help with some words of advice, feedback on how something looks from the outside, another point of view, a new idea for how to handle a situation. In broad terms, there are three kinds of professional help—counseling, mediation and arbitration.

Counseling. The goal of individual counseling is mental health and emotional growth. A counselor can help you understand and accept yourself, or perhaps make constructive changes in your habits and attitudes. Counseling can be very practical and goal-oriented, or it can be directed more toward therapy and personal transformation. Counselors help with the difficult job of digging into your own process and dealing with your life. Couples counseling is practical and oriented toward mutual understanding and better communications. This can be great stuff if you want to work out an agreement or work on better co-parenting.

Mediation. The goal of mediation is to help a couple reach an agreement. A less popular but still useful goal is to bring some order to your disagreements—to narrow and sharpen the issues so if a conflict can't be avoided, it can at least be limited to real issues, which makes any subsequent legal contest more efficient and less expensive. The mediator is supposed to be an objective, neutral person who is skilled at conflict resolution and negotiation. The mediator works to control upset, calm fears, equalize the bargaining power, and keep you focused on needs and interests. A mediator can help you get unstuck by shedding new light, bringing in new ideas, and other options. If you are unable to work out an agreement on your own, you should definitely try mediation—if the other party and your attorney are willing—and preferably with a family law attorney-mediator. Family law attorney-mediators will know much more about the laws, likely outcomes of cases, and legal aspects of settlement agreements. Lawyers will tend to be more practical and businesslike.

Mediation is not just for friendly divorces. Angry, conflicted couples are especially in need of mediation

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

and stand to gain the most, particularly if they have children. Mediation can be very effective, even in cases with high conflict, especially if conducted by experienced family law attorney-mediators.

Arbitration. If counseling or mediation do not resolve your disagreements, or if you did not want to try one or the other, there is still one more good alternative to going to court. Arbitration is like hiring your own, private judge, except that the proceedings are less formal and much less costly. Arbitrators are typically retired judges or family law attorneys with lots of experience.

Private Judges. If you think it's worth spending some money on special handling, you can hire a private judge to hear your case, make decisions and orders and process your paperwork very quickly. A private judge is an attorney who has been trained and certified to hear cases and process paperwork.

Discuss the pros and cons of mediation, arbitration and private judges with your attorney. They can each be used as part of the bigger picture and, properly used, can bring and end to a divorce faster and less expensively.

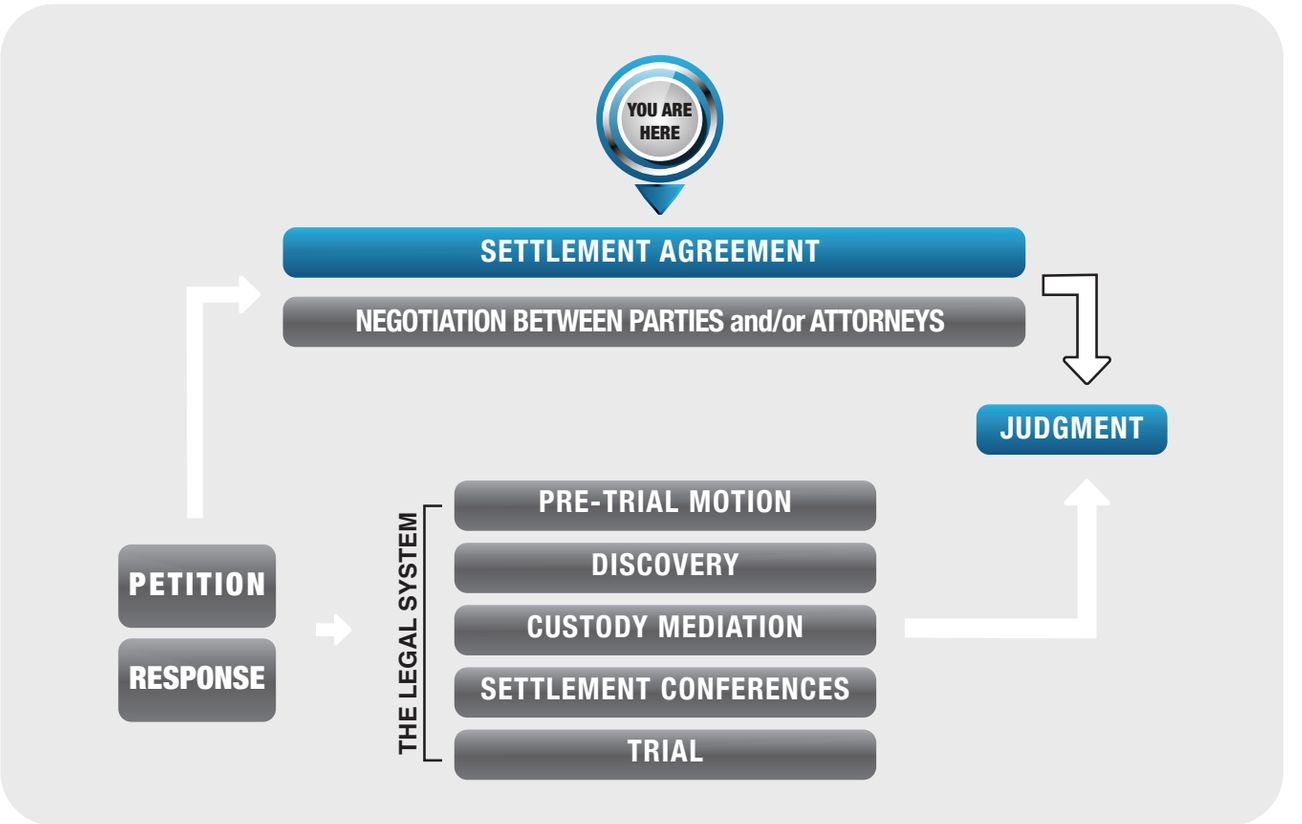
When you reach your agreement

Chapter 5 discusses what to do when you reach a full or partial agreement. Chances are very good that you will work things out by using the techniques discussed in this book—ideally, before legal action, but certainly before trial. Once you have reached an agreement, you can relax a little bit; your divorce is effectively over—all that's left is to get it drafted in legally correct form and then go through some red tape and paperwork to get your Judgment, which your lawyer will do. But I must stress the importance of the paperwork being done properly, buy a qualified and experienced lawyer. Too many options are now available, from do-it-yourself kits, document preparation "professionals", online templates, etc. None of these are a substitute for a properly drafted agreement which is customized to your specific situation. Otherwise, the agreement you worked so hard to reach could be deemed unenforceable, or lack details that may make the financial support or assets vulnerable. More on this in the next chapter.

The last resort

After all our talk about the advantages of reaching agreement, it is finally time to face the fact that you can't always get one no matter what you do. Or, maybe working with your spouse on an agreement is not something you want to do under any circumstances. If you can't settle, you have to litigate. If you have to litigate, you might as well learn how to do it in the most efficient and cost-effective way possible. So, get ready and move on to chapter 6.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 5

WHAT TO DO WHEN YOU REACH FULL OR PARTIAL AGREEMENT

A. Agreements and stipulations
B. Full settlement agreement
C. Partial agreements
D. Stipulated orders

A Agreements and stipulations

It has to be in writing. The goal of any divorce is to reach agreement on all issues. Whenever this happens, you'll make a written settlement agreement (SA) which defines your Judgment. Case over. Once you sign, your divorce is essentially over except for some red tape and paperwork.

Along the way to a full and final agreement, couples are often able to agree on some things, even in difficult cases. You need to know that a verbal agreement isn't worth much until it is written down in good form and signed. So, whenever you reach an agreement on any matter in your case, large or small, you always want to get it in writing. A written contract is better than a signed letter; a signed letter is better than a promise.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Stipulation is a fancy legal way to say agreement, so lawyers and judges love to use it. You can stipulate (agree) to a fact or a procedure, or you can stipulate to an order. In this book, we use "stipulation" when parties sign off on agreed orders. You will use stipulations if you agree to settle all or part of a motion or RFO in your case, and one way you can end your case is by filing a stipulated Judgment.

B Full settlement agreement

Whenever you can reach a full and final settlement of all the issues in your case—division of property and debts, child and spousal support, and parenting arrangements—you will make a written settlement agreement. You need to do it quickly, before anyone changes their mind, so it is best to have most of the agreement worked out and ready to go, with only last-minute changes required. It isn't over until the agreement is signed by everyone.

You must do disclosures before signing a settlement agreement

Do not sign a settlement agreement without making completion of the Preliminary Declaration of Disclosure (PDD) and Final Declarations of Disclosure (FDD) a condition of the agreement, together with a completed declaration of service of the declarations. This is something that must be done either before or at the time of signing. Preferably, this should be done BEFORE you and your spouse negotiate since without the disclosure, you are technically negotiating without full information about the assets and debts that exist, or about each other's financials, which can be a basis for the agreement being deemed "unknowing." Disclosure and the related forms should be discussed with your lawyer. Getting disclosure is essential because it gets your spouse's sworn statement as to what is in the estate, which can be used later if it turns out that some property was hiddenor , forgotten, or misrepresented. The parties can waive the FDD, but unless you are certain there is no property in the marital estate worth worrying about, I recommend that you do not do this.

The danger of under-valuing an asset in your disclosure. If you are taking an asset in the division of property, it is important that the estimate of value in your disclosure be accurate, or at least conservatively high. The reason for this: if you under-value an asset that you take in the division of property, it is exceedingly easy in the next few years after the entry of your Judgment for your spouse to set aside (legally challenge) your stipulated Judgment. The basis for the set-aside boils down to "I never would have agreed to that deal had I known the pension was worth $X."

This ability to set aside the Judgment is available even if your spouse could have easily ascertained the proper value his or herself. This becomes an issue for those assets whose value are not easily verified—primarily this is real estate and defined benefit plans (plans that pay out a monthly benefit based on, among other things, an estimate of how long you will live). A financial account is an easy asset to value—you merely print out the most recent statement. Real property requires more effort—a comparative market analysis or an appraisal. Defined benefit plans require an assessment by an actuarial accountant. If you decide to not have valuations done but guess at value, at least guess high—there is no penalty for over-estimating value, just for under-estimating value.

C Partial agreements

If you are not able to reach an agreement on all the issues, a partial agreement is still progress and will go a long way in making the completion of your divorce easier, less stressful, and less expensive. However, it is extremely important to get your partial agreement in writing using the same format described in documenting all agreements. It should be made clear where, and on what specific issues, you still do not agree. If you later change terms or increase your areas of agreement, a new agreement can be signed providing that your new agreement supersedes the other.

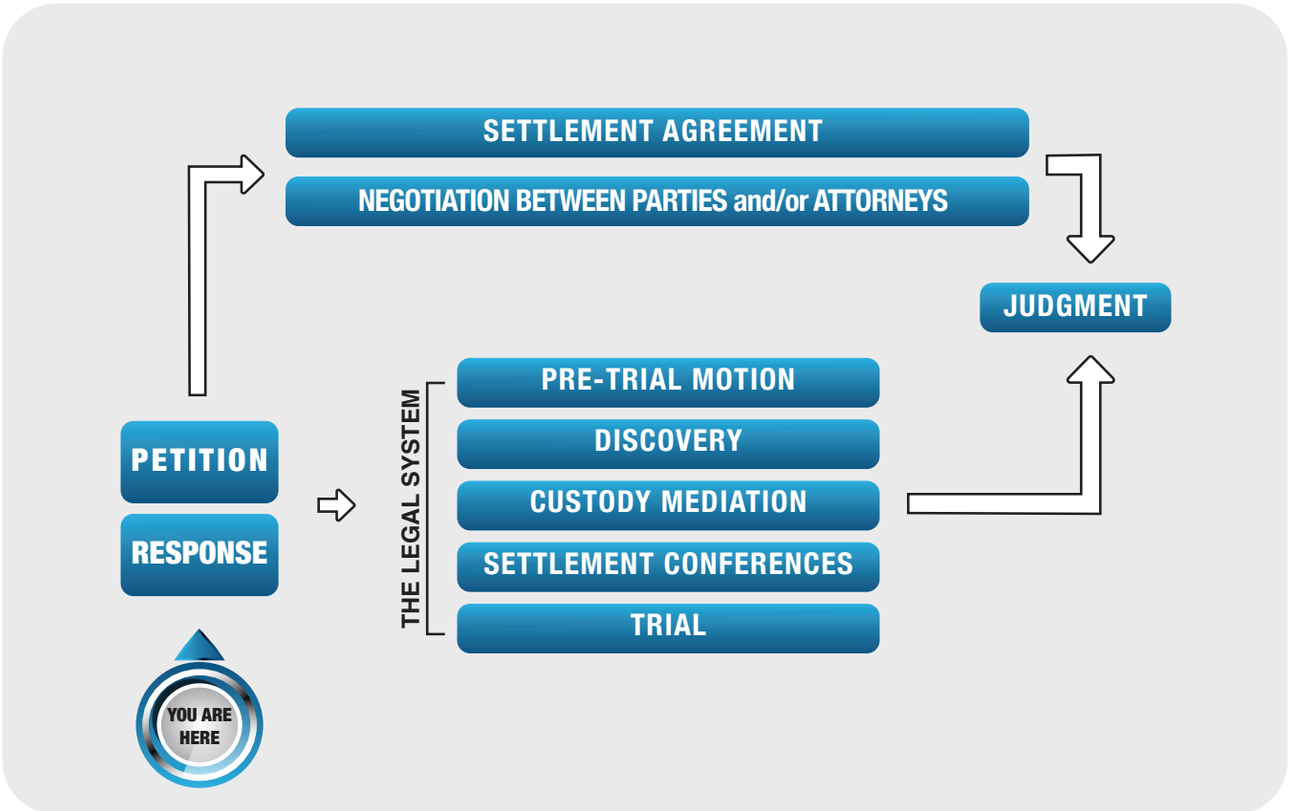
Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Stipulated orders

When a motion is filed, you might be able to negotiate full or partial agreement on issues raised, in which case you prepare a stipulated order that resolves the issues. Let's say your spouse files a motion to get all bank statements over a six-year period. Before the hearing, you send email explaining you have only the last two years, which you are willing to deliver, and you will give your spouse a letter to the bank authorizing them to deliver any documents at your spouse's expense. Your spouse agrees, so you draw up a stipulation in the form of an agreed order that follows your agreement. You either take the stipulation to court before the hearing, get the judge's signature, then have the clerk take the matter off the court's calendar, or you show up at the hearing, submit the stipulation for the judge's signature, and the motion is settled in court.

Note that the wording on stipulations, and agreements in general, must be very specific and precise, as you do not want an order that is subject to more than one interpretation

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 6

HOW TO PLAN AND PREPARE YOUR CASE

A. Why you need strategy
B. Strategy is based on your goals
C. The effect of events and circumstances
D. Tactics based on who you are dealing with

Plan and prepare

It is very important to not be afraid of court, legal documents, or trial. If you are afraid, you are vulnerable to being bullied. A specific remedy for fear is reliable information. This is not information that you get from a well intentionedwell-intentioned friend or family member, from a paralegal or document preparation service, or from the internet or social media. You gain a lot of confidence from knowing what can happen, what you have to do, and how to handle things; so study this book and do the work. If you can afford it, hire the best attorney you can find. But right now, the most important thing you can do, assuming you are not urgently pressed by events, is to organize, plan, and prepare your case.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

- Learn the rules that apply to your case by speaking to a qualified attorney
- Form your goals (this chapter)
- Find out what information you need and how to get it (chapter 8)
- Understand what you can do for yourself outside the legal system (chapters 3 and 4)
- Understand what you can do for yourself inside the legal system (chapters 9–27)
- Plan your strategy for achieving your goals (this chapter)
- Organize your facts and documents (chapter 9H) (a confused file causes you to be confused)
- Reevaluate your goals and strategy as you learn and experience more

From now on, think of your case in terms of the facts you can prove

Everything counts in life; lots of things count when you negotiate; but only facts count in court—and only those facts that are relevant to specific issues in your case and which are presented to the judge under the proper rules of evidence. So many issues have been lost in the courts because they have either not had the proper evidence presented, or the proper evidence was excluded because of the improper way it was presented. Don't let that happen to you. From now on, think of your case in terms of facts that you or your spouse can present in court in the form of documents or statements of witnesses. Documents can be introduced if authenticated by a witness who states from personal knowledge what the document is, where it came from, and that it is accurate. That witness can be you if you can swear to those facts. In hearings before trial, you can sometimes, depending on the manner in which a particular judge runs their court, use live testimony or the witnesses' written declaration, but in a trial only live testimony of a witness present in court can be used. Start gathering documents and list the witnesses who can authenticate each document and witnesses who can say other relevant things about the issues in your case. List witnesses who will be willing to sign a written statement of what they know and, if necessary, appear some day in court. Speak regularly with your attorney about the evidence that is available to prove your position at court and how powerful the evidence is, whether it is admissible, and how, if at all, it could be challenged by the other side. The sooner you and your lawyer build your strategy and file, the more confident you will be in your negotiations and the less likely it will be that you will eventually need a trial.

Why you need strategy

Your strategy is your plan for achieving your ultimate goals for the divorce. Planning is essential. You need a plan—strategy—to define your case and lead it to a fair conclusion. It is more difficult to succeed against someone who has a plan if you don't. Your plan should not be based on waiting to see what your spouse does, which is like having no plan at all; or, worse, planning to let your spouse call the shots. Planning is particularly difficult for formerly dependent spouses because they relied for so long on their mates to plan things for them. If you are such a person, you are less likely to succeed if you don't make extra effort to become a planner now. Even if you are in the middle of a divorce, it is not too late. If you have a plan and your spouse does not, you have an advantage that will guide you through every step.

Tactics guided by strategy

Tactics are plans for any single step. Your case can be seen as a sequence of skirmishes: phone calls, letters, discovery, or motions. Your strategy will dictate what tactics you use at each step. Let's say your strategy is to resolve child issues before you deal with property issues. If your spouse makes an early motion regarding property, your strategy will tell you to figure out some way—a tactic—to postpone the property issue rather than jumping headlong into it. Strategy will tell you what to focus on—that is, the most important thing to you. Each letter, phone call, discovery, or motion is a tactic dictated by your strategy. You can't do everything, so you have to focus on what is most important.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Factors that affect your strategy and tactics

In any case, there are three factors that determine what, when and how you do things. These are:

- Your goals
- Events in your case and in your life
- Who you are dealing with on the other side

Strategy is based on your goals

Strategy means making a plan to get what you want most—your goals. You need to ask yourself what, very specifically, are the most important things to you in your divorce. Your strategy will be a plan for achieving those goals. Throughout your case, while putting your plan (strategy) into effect, keep your goals at the front of your mind. Having a well thought out plan is one of the most important aspects of your case. Strangely, most lawyers do not tailor plans for any particular case. They tend to simply follow a routine of filing one paper after another, handling all cases in more or less the same routine way. So, even if you have a lawyer, you might need to come up with a plan if your lawyer doesn't. If you haven't hired a lawyer yet, or if you are planning on changing your lawyer, this is something you should discuss right from the beginning with the potential attorney.

It would be a good idea to sit down now, get a general idea of what is in the chapters in this book, then start writing your plan. It might be only a few sentences, but it will set your direction and help carry you through the entire case. Your plan should consist of two things: (1) a short list of two to five of your most important goals listed in order of importance, and (2) a short list of ideas for steps you can take to accomplish each goal. For example, if your first goal is to create a stable, stress-free parenting for the children, make a list of some steps you can take to achieve this. You could ask your spouse to find another place to live so the kids won't be immersed in constant tension, and propose a comfortable visitation schedule. If your spouse won't agree, you need backup plans for what you will do next, then next after that. Try ideas you get in chapters 3 and 4; see a counselor or mediator; get a restraining order—whatever you think the next steps should be based on what you know about your spouse and your life. Do the same thing for the other goals on your list. You can refine your plan as you learn more.

Next, you need to be certain your goals are realistic, given your circumstances. Because having a good plan from the beginning is so important, you should speak to your attorney, not his/her assistant, about making a plan for your divorce or evaluating a plan you have already made.

The list of goals and the plan you make will stand behind every step taken and every document you written, particularly the strategically important ones, such as initial motions, letters offering to settle, the settlement conference statement, and the trial brief. As you read through this book, you will see that your plan will be the common thread that pulls everything together and keeps you on track. You won't be blown off course by whatever your spouse does; instead, you will stick to your goals.

Short and long-term plans

The long-term plan is the important one, but you also need a short-term plan to cover the immediate future and the time while the divorce is pending. The short-term plan should lead to where you want to end up in the long term. If it doesn't, you need to take a new look at things. For example, let's say your long-term goal is to encourage contact and bonding between the children and their other parent, and your parents are willing to watch the kids for free while you work your part-time job, but they are very antagonistic toward the other parent and say unpleasant things in front of the kids. This is a clear conflict between short-term convenience and long-term goal. You have to figure out which is more important in any situation where the short-term plan and long-term goals are in conflict.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A reliable generic plan

Most people will be well-served if they go after these things in this order:

1. Short-term safety and stability for you, your children, and property
2. Satisfactory parenting arrangements that you can live with indefinitely
3. Full access to financial information and documents
4. Negotiation and reasonable progress toward resolution
5. A fair settlement

1. Create short-term safety and stability

You can't negotiate if either you or your spouse are afraid or don't know how food and rent will be paid next week or next month. It is in the interest of both spouses to work at creating short-term safety and stability on both sides. While working toward a final resolution, you need to be safe and relatively at peace. You also need to eat, pay bills, parent your children, preserve the marital estate, prevent waste and hiding of assets. No matter what the other side does, you must get this for yourself before you do much else. Looking down the road, you can't expect to live at your former level, but inconvenience and compromise should be shared more or less equally. If you can't arrange a reasonable degree of safety, peace, and financial stability for yourself and your children through other means, then legal action might be in order. While waiting for the legal process to kick in on your side, you still have to solve problems in a practical way, any way you can. For example, you can:

- File a motion for orders that will address your problem, assuming you can get by for the time it takes to get a hearing on a motion in your county. It might be useful to keep negotiating while the motion is pending, as the looming court date can help move things along. You can file a motion requesting orders on any of the following: child or spousal support; establish custody and visitation rights; freeze assets or accounts, prevent transfers of property; distribute funds your spouse is holding, take possession of a particular asset, such as tools, car, computer, and advanced contribution to legal fees and costs.
- If the problem is very urgent and can't wait, you should file an emergency motion (Ex Parte) and ask for immediate temporary orders: for any of the above motion subjects; to keep spouse away from you, your house, your job, and to have no contact; to kick your spouse out of the house.

2. Parenting arrangements

When it comes to children, some judges don't like to change the status quo—meaning "the way things are." If your spouse is unwilling to cooperate in a stable and reliable parenting arrangement that is agreeable to you, your current reality soon becomes status quo and therefore increasingly difficult to change in court; so, you might be better off going straight to court rather than continuing to negotiate to change a situation that you don't want.

Sometimes, getting the right parenting arrangement immediately is very important. If it seems likely that you are eventually going to end up in a custody disagreement anyway, take legal action, but keep negotiating too, if possible, trying to get an agreement for a fair and reasonable status quo that you can live with. The pressure of a pending hearing might help. Many counties can schedule a hearing on a motion fairly quickly, but in others you'll probably want to file an Ex Parte motion for fastest results. If the court is backed up, you should also request temporary orders pending the hearing.

3. Full access to financial information and documents

Spouses owe each other the highest degree of openness and honesty when dealing with marital affairs. You have a right to all financial information and documents. You can't form goals or negotiate when you don't have complete information about your marital estate or the income and expenses for both spouses.

In chapter 8, I tell you how to get information and records the easiest way possible. However, if your

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

spouse won't cooperate (not a good sign for negotiation), and if you can't get what you need any other way, you will have to use legal discovery (chapter 17) and send out interrogatories and subpoenas. Once you have the information you need, you might be ready to start negotiating.

4. Negotiation and reasonable progress toward resolution
There are many effective things you can do outside the legal system to encourage negotiation, as discussed in chapters 3 and 4. These are fundamental techniques that you use before or along with any legal action you might need to take. But, certainly, there are situations where legal action can be useful as a tool of negotiation. For example:

- Moving things along. If you have been patient and given your spouse time to cope with emotions and sudden changes, yet your spouse is dragging his/her feet, not giving the negotiations enough attention, refusing to take care of business, then file a motion and let the pressure of a court date bring some pressure to the situation. Be sure to tell your spouse ahead of time what you are doing and why you are doing it.
- Breaking impasse. If there's one small point that seems to stand in the way of moving forward toward a complete settlement, you should consider mediation or arbitration. Another possibility, depending on the subject, is that it might be a valid subject for a motion that will get you a decision far easier than going to trial.

5. Get what's fair, what you have a right to under the law
This is what the rest of the book is about. Go for your goals. Follow your plan.

C The effect of events and circumstances

Tactics must consider events, but events rarely change strategy. Whatever comes up won't sidetrack you for long if you stick to your plan and work toward your primary goals. If your spouse does something, in or out of court, deal with it and move on. Almost any legal action the other side can throw at you is discussed in Part Three, along with actions you can throw back so, when something comes up, you can be ready to respond quickly. Long before trouble starts, get an attorney in your corner who can coach you through tight spots. If something happens, it's too late to start looking for help.

D Tactics based on who you are dealing with

The emotional dynamic underlying your case is usually the key to the entire divorce. This does not refer to the reasons you are getting divorced but to the way in which you, your spouse, and your attorneys approach problems. It is always the emotions, personalities, and attitudes of the players that drive the divorce process. Calm, reasonable people can divide up millions in a fairly short time, while an angry spouse can make the divorce drag on for years and consume marital assets along the way.

This means that when you deal with your spouse directly, it is more important than at any time in your life that you pay attention to the kind of person your spouse is—what makes him/her tick. You were married to this person; this is someone you know pretty well. Try to see your spouse objectively, not idealized as when you were in love and not demonized as you might feel right now. Be aware of strengths, weaknesses, patterns of behavior. But even more important, there's the matter of your own feelings and attitudes. If you can't keep business and personal stuff separate, you're going to need help negotiating and you'll want to get advice to see if your plan is emotional or reasonable.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

You know better than anyone else what kind of person your spouse is, so don't fight it, use it! Put that knowledge to work; let it be your guide for how to deal with your spouse. When the deal's done, you can do whatever you want, but don't let your emotions get in the way of business. Review chapters 3 and 4 for ideas about how to deal with your spouse and with yourself. Understanding the emotional makeup and processes of your spouse can pay off in a big way. Understanding yourself and breaking bad habits can pay off even bigger. Here are some examples of how the relationship between personalities can affect the way you conduct your case:

Controllers

Controllers are the people who end up in horrible divorces. These are people who need to be in control and to control others. Not being in control—especially for controllers who were abused as children— brings up huge fears, so they fight for control as if they were fighting for their lives. It is very hard to do cost-effective litigation against a serious controller because they will spend a dollar to gain fifty cents.

If your spouse has been controlling you, one of your main goals in the divorce process is to break free. This is done not only with restraining orders but also with fair property, support and custody orders.

In extreme cases, you can't make a controller stop fighting, no matter how many times you win in court. They fight on and on, trying to hold on to control. When a custody/visitation battle goes on for years and years, it is often because one spouse is a serious controller. Use the tools in this book and get advice when you need it.

Abusive spouses

There is some overlap between abusers and controllers. Normal people hate the legal process and want to get out of it as soon as possible. Abusive people welcome it as a new opportunity to abuse their spouse. This is exacerbated if the abuser has a lot of money to pay counsel to join in the abuse. Unfortunately, these people often masquerade as a "victim," and if the judge does not see through the disguise, the judge may join in the abuse. Then, the real victim finds him/herself the victim of "court abuse." This can be an extremely traumatizing process. Abusers like to pair up with mad-dog attorneys, if they can afford to. If your spouse is a serious controller or an abuser, you could find yourself in a battle that goes on for years and years—long after all your funds for an attorney are used up. This book is designed to help you function in that type of long, drawn-out battle as well as helping people whose cases can be settled after one simple motion.

Insecure, upset spouses

You can't negotiate with someone who is insecure, upset, or fearful. They are likely to fight, or worse, retain an aggressive lawyer to fight for them. If your spouse is insecure, there's a lot you can do to calm him/her. Let your spouse know you'll be open and fair, follow all laws, make no sudden moves without letting him/her know ahead of time. Make sure both sides have some stability for the time it takes to settle things. Tone yourself back, listen more, don't argue, repeat yourself, or insist. Take it slow and easy and help your spouse gain the confidence to negotiate. Do not try to con your spouse, because if he/she catches on, your credibility is compromised for the remainder of the expensive lawsuit. Even years later, the con could come back to haunt you. If you are the insecure person, you have to get some confidence or get help. You'll feel a lot better if you understand the laws and other subjects in this book. You'll probably get some advice and learn for certain what you have a right to. You'll come to grips with the financial aspects of life that you let someone else take care of before. This is the new you.

Unresponsive, incompetent or lazy

This looks a lot like being in denial, but it is just plain being slack—mentally, physically, or both.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

This person is unwilling to take responsibility, make decisions, get on with life. Use motions and deadlines to encourage them to pay attention.

Spouses in denial, resisting the divorce

Sometimes a spouse does not want a divorce. Under California law they have no legal basis to stop the divorce from being granted, so they focus on obstructing any way they can. Spouses who are in only mild denial will come out of it when they get the first divorce papers and see that the divorce is really going to happen. Then there are spouses who are not in touch with their own feelings and do not realize that they want to stop the divorce, but they fight each step along the way. One purpose of this book is to show you that you can get a divorce without the cooperation of the other side. Meanwhile, discussion or counseling could help undermine the denial and reduce conflict.

Unreal expectations, wrong ideas

People get unreal expectations from a lot of places: TV, social media, websites, friends, relatives, the hairdresser, or even the lawyer who tells them whatever they want to hear just to be retained. Wherever it comes from, it is almost impossible to settle with a spouse who is operating on misinformation or bad advice. The cure for this is to make sure he/she gets reliable information in a form that he/she can accept. Start by giving him/her this book, then discuss the parts that apply to your case. If you can afford it, pay for your spouse to get advice from a qualified specialist attorney. You might involve a mediator. If all that fails, tell your spouse that you want to let a judge decide, then file a motion on one of the central topics of disagreement. For example, if a spouse believes incorrectly that no judge would award support to the other spouse, then just file a motion for support and let the judge decide. In a letter, explain that you are filing the motion so the two of you can get a resolution on the issue from a neutral party (the judge), so you can go ahead and settle the remaining issues. This could open the way for agreement on all other subjects.

Hanging on

This is about negative involvement. Holding up an agreement is a way of not letting go. Keeping the argument going makes the relationship last longer, even if it's no fun. Some people feel, "I'd rather see you in court than not see you at all." Try to minimize your contact with them and insist that the process move forward. Having your spouse's cooperation is certainly to be preferred, but in most cases, you do not need your spouse's cooperation to get a divorce. If you have a lawyer who says things are going slowly because your spouse won't cooperate, this is probably a poor reflection on your lawyer. Read this book to learn about ways to get your case finished without cooperation.

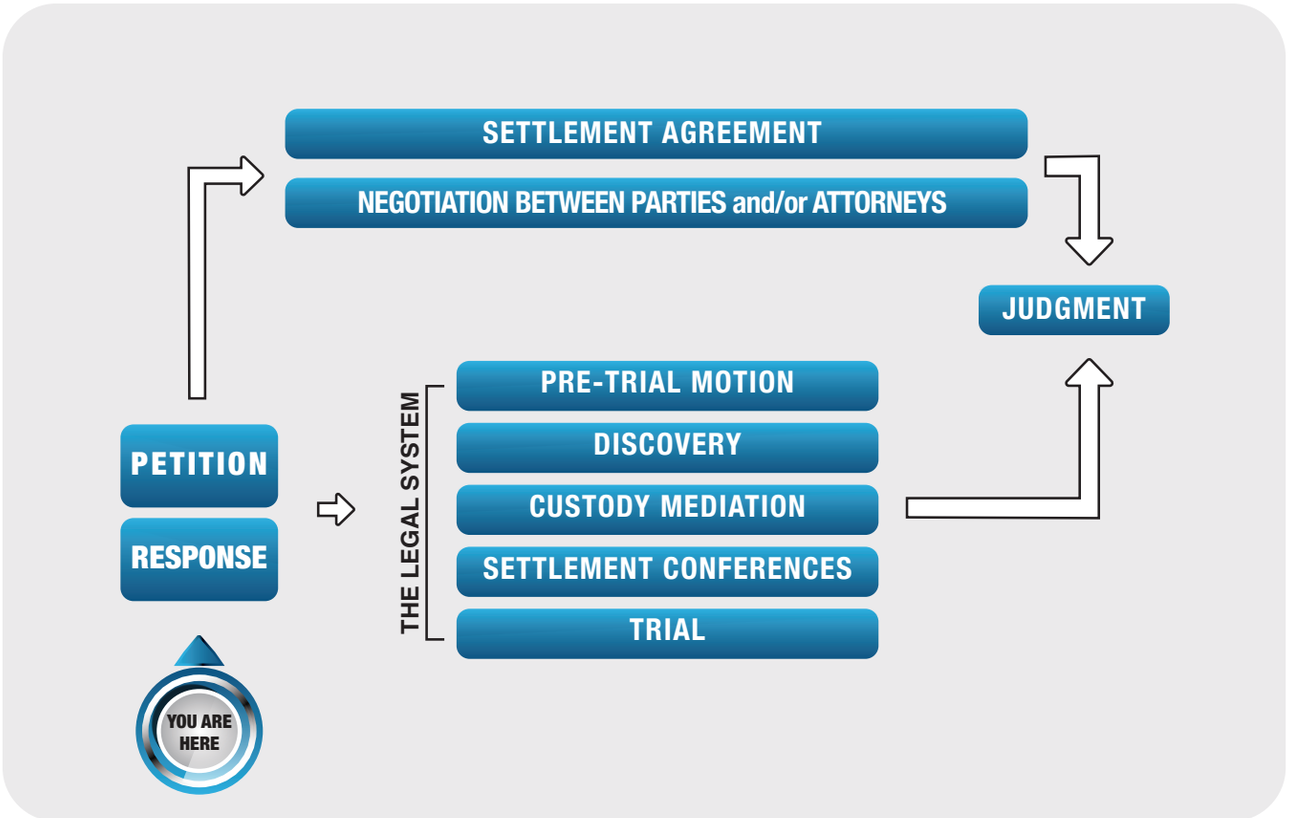
Conclusion

Build the foundation for your case by writing down an outline of your goals in order of priority, then plan how to get what you want most. For each goal, write a brief plan for how you are going to reach it.

Your goals and plan will be based on everything you know and understand at the time, including yourself, your finances, and the other people in your family. As you go along, reevaluate your goals when you learn more about the laws, the courts, and details about the facts in your case. You do not want to be chasing goals that are unrealistic in the light of your overall situation or the law.

Stick with your plan throughout the divorce unless there is a major change of circumstances (your spouse getting upset doesn't count). You knew your spouse when you made the plan. If the most important thing in the world to you is not to make your spouse angry, make your plan accordingly. However, if you have other things such as your children or finances or your home that are more important to you, that's what comes first. This is the time for a realistic, true look at what you want. When you are clear on that, your plan will carry you through the divorce, and it will be reflected in all your major moves and documents.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 7

WORKING WITH AN ATTORNEY

A. What a good attorney can do
B. Limited scope or coach?
C. How to find a good attorney
D. How to get the most from your attorney
E. How to supervise your attorney
F. It's easy to fire an attorney
G. How to work against your spouse's attorney

This book is not intended to replace an experienced family law attorney - no book can. But in whatever capacity you choose to use one, you can save a lot of trouble and money if you first learn how to select a lawyer, how to supervise your case while represented by one, and to always prepare before you contact them. For those who are considering not hiring a lawyer, you need to consider what you have to lose and whether it is worth the gamble to participate in a complicated divorce process without professional help. If your spouse has a lawyer, then you simply need to hire one as well. Otherwise, you are most likely going to be out maneuvered and you risk losing what you are legally entitled to due to technicalities and manipulation.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A What a good attorney can do

Good attorneys know divorce law and procedure in depth and detail, the local rules and practices, and have substantial real-world experience in both mediation and litigation. They can evaluate a situation, dig information out of the other side, plan strategy, re-plan strategy as circumstances change, conduct legal research, properly prepare arguments, defend legal actions from the other side, tactfully negotiate with the other side where possible, and prepare your case and witnesses for hearings, and, if your case goes all the way to trial, can present evidence as well as examine and cross-examine witnesses when necessary.

A good attorney should be able to get a case into negotiation and only fight when appropriate. If they need to fight, they can be tough, effective, and efficient, yet always looking for the right time to get back into negotiation. They do not let cases linger without a stated reason. A really good attorney would tailor his/her strategy to your goals and deal with you as an individual. They would understand and appreciate that this is your life and would work in partnership with you during the entire process. They could (if they would) help you understand the rules, form your goals, and understand the strategy being followed in the case. They answer your calls within 24 hours and keep you abreast of what's going on at each step.

If the attorney is an experienced mediator, he/she probably also knows how to listen and communicate, negotiate effectively, defuse rather than create conflict, balance the negotiating power between the parties, find and suggest alternatives and options the parties haven't thought of, and help the parties get past emotional issues to deal with business.

The problem. I hate to write this, but most attorneys, even so-called Family Law Specialists, are below average, or at least below what I think average should be. In part, this book was written because good attorneys are so hard to find. This book will help you learn how to manage your case as much as possible and choose and supervise an attorney if you decide to retain one. Through my efforts, I hope to raise the average level of divorce practice by educating the readers to know how to insist on quality representation.

B Limited scope or coach?

Using an attorney is not pleasant. However, because our legal system is so excessively complex, if you can find and afford a good attorney to represent you throughout the divorce process, that would be a reasonable choice—provided that you use this book to stay in charge of your own case and supervise your attorney to maintain at least the standards established here.

If you find a good attorney but can't afford the high cost of having him/her handle your entire case, consider using that attorney under a "limited scope", which means hiring them for specific issues or tasks, as opposed to hiring them to handle your entire case—assuming he/she will work in that capacity (many will not). A mildly contested divorce involving only one court appearance can cost $5,000 or $8,000 on each side, but with a difficult attorney or party on either side, it could go far higher. For a moderately contested divorce, plan to spend $20,000–$40,000 on each side, while a hotly contested divorce can cost well over $50,000 on each side. I know many couples who have spent hundreds of thousands and spent years in litigation.

Some sources may suggest that you hire an attorney to coach you while you represent yourself. However, remember that not all cases and not all people are appropriate for coaching. Especially when your spouse is represented, using an attorney as a coach is similar to being in a boxing ring against a

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

professional boxer, and you having a coach instructing from outside the ring - you will get hurt. There are simply certain situations in which proper representation with a good attorney is necessary. A coach may be able to help you treat a mild headache but will not be able to help you perform surgery.

How to find a good attorney

Before you go see any attorney, you are going to get completely prepared, but that comes next. First, let's discuss how to find the attorney you want to use.

The search

Shopping for an attorney is like shopping for a car; you have to explore enough choices until you find the one that feels right. Do NOT make the mistake of looking for the lowest priced attorney. You will often find that you will get what you paid for. If your case is one that could be handled by a "low cost" attorney, then it is most likely one that you should be able to handle yourself.
In looking for an attorney, you need to spend time interviewing as many attorneys as your time and patience will allow. I realize talking to attorneys is not the most pleasant thing on anyone's list, but you need to put in the time and due the work. It's simply too important to go with the first choice. And definitely do not make the assumption that all lawyers are the same. They are not!

Look for the attorneys with the experience and expertise necessary to handle a case of your caliber. Let them ask you what is involved and listen critically. Do they ask enough questions to understand the details of your situation, or do does it sound like they assume your divorce is like all the others? After that, do they explain your rights and options in a way that you can understand? Do they formulate a plan and a strategy for your case and explain it to you with the best and worst case scenarios? Be careful of attorneys who tell you what you want to hear. Far too many attorneys will sugarcoat your situation in hopes that you will retain them, only to later say, "oh well, it didn't work out that way" after you have spent thousands on them. ONLY after you have found a few attorneys who meet the above criteria, then select the lowest cost one of that lot.

You have a right to ask questions and be choosy about whom you hire for such an important role in your life. Don't be intimidated. Call around and ask how much it will cost just to meet the lawyer and see if you want to retain or use him/her. Many attorneys do an initial interview for nothing or a fairly small fee. Ask what their hourly rate is. Rates run from 350 to $700 per hour, but $500 is common; higher in urban areas, lower elsewhere. Family law attorneys will also require a retainer, which is an advanced amount of money that will be deposited into their attorney-client trust account and serve as security or the lawyer's fees. These funds should be refundable to you to the extent they are not used at the end of your case.

Many attorneys—perhaps most—will only want to work if retained as attorney of record, so if you are looking for advice, coaching, and maybe some paperwork while you handle your own case, you should ask at the very beginning if the attorney will work with you in this capacity and at what rate.

You want a lawyer who has substantial experience and expertise in divorce. Do not blindly rely on an attorney's certification as a specialist with the State Bar of California. Neither should you be swayed by their address or the appearance of their office. Neither of these will tell you anything about whether they are a good attorney or not. Far too many attorneys who are certified (have practiced for over 5 years, have met some minimum court requirements and have taken a test) are no better than other attorneys.

Attorneys who are expert in mediation are more likely to give you problem-solving advice, whereas traditional attorneys tend to be oriented to litigation so their advice tends to be adversarial. Ideally, your

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

attorney will have substantial experience in both mediation and litigation. Your attorney must be someone you feel you can trust and work with comfortably. Watch out for any attorney who seems to make things more complicated or who urges you to do things that could lead to more conflict. Avoid situations where you don't like the way the attorney or staff treat you. Avoid lawyers with a pushy, domineering personality; they may not listen to you or be willing to do things your way.

The best way to find a divorce lawyer is on the recommendation of a professional whose opinion you trust—someone who works in a field that gives him/her an opportunity to know about divorce attorneys and their reputations, such as a counselor, accountant, financial planner, etc. Next best is the personal recommendation of someone you trust who has had a divorce in your county and was pleased with a particular lawyer's services. But, if your friend's case was easy and yours isn't, their experience has limited value.

Be very cautious with recommendations from people you don't know well, especially if they didn't have a divorce similar to yours. It won't help you to know that a certain attorney is good at business, personal injury, or criminal work, nor does the fact that your friend's attorney negotiated brilliantly mean he/she can fight your rabid spouse and the mad-dog attorney.

The attorney you choose will strongly affect the temperature in your case. I suggest that you avoid anyone who seems cynical, unnecessarily aggressive, or moralistic. For most cases, you want someone who prefers to avoid conflict in favor of negotiation and compromise. In some cases, however, you know ahead of time that you want someone who can slug it out if the other side gets ugly. Ideally, you want an attorney who is skilled in both negotiation and settlement if possible, and litigation to the extent necessary.

The interview

When you call for an appointment, ask if the person you are talking to can answer questions about the attorney's rates, background, or practice. Ask some of the following questions meant for the attorney. Questions the staff won't answer, you need to ask the attorney when you get there. Be very well prepared before you go in, as detailed in section D below.

About the attorney's background

- How long have you been in practice?
- What percentage of your practice is divorce?

How much experience do they have with actual trials (many attorneys have very little experience with trials, or none at all)Are you a Bar-certified specialist?

- Do you have experience as a divorce mediator?

About fees

- How much do you charge if you take my case as attorney of record?
- Are you willing to work as my coach or consultant? If so, how much do you charge?
- How am I billed for your secretary's time or research by other staff?
- How much do you need to get started (the retainer)?
- Is the initial retainer applied against future billings? If there's a balance, will it be returned?
- What costs can we anticipate?
- Do you bill exactly for time spent, or do you round off to a higher time period?

About other things

- Can I expect you to return my calls within 24 hours?
- Can I expect a copy of all papers and documents and reports on negotiations?
- Do you need any information that you don't have yet?

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Tell the lawyer how you want it to be. Being in control of your own case is the single best thing you can do. You have to actually tell the attorney that this is what you want. Tell the lawyer you will rely on his/her advice, but that you expect to make decisions including strategy, and that you want to discuss ahead of time all steps taken in your case. Find out if he/she can work cheerfully on this basis. Optionally, say you want to see copies of letters to the other side before they go out. This lets you find out how fast work gets done and if you like the way your points are made. This takes time and costs more, so once you are satisfied with their work, you can eliminate this step.

Ask, "How would you proceed in this case? What are the first steps you would take? What would be your goals?" If the attorney cannot make a plan at the beginning of the case, this is not a good sign.

Finally, ask to have a copy of their standard retainer agreement; then go home, read the agreement, and think about all you have heard and seen. If you want to retain the attorney, it is now time to negotiate the terms of the retainer contract. Not all attorneys will negotiate their rates. In fact, most of the better attorneys will not as they have enough business where they don't need to. If the attorney is too eager to retain you or negotiate their rates, it may say something about how desperate they are and that may suggest something about him or her. However, you won't know until you ask.

The retainer agreement

You might not need one of these if you are only going to use the attorney now and then for advice and service, but the law does require a written retainer contract in any case that is likely to run over $1,000, so some attorneys might insist in any case. A retainer agreement should specify in great detail what work is to be done, under what conditions, and the fee or the manner in which the fee will be calculated.

Chances are, the better you understand the agreement, the less you will like it. You will probably be handed a legalistic document, with many requirements mandated by the state Bar, and which is basically designed to protect the attorney from a lot of things—mostly you—and expected to sign it as is. Don't. Here are some things you can do and terms you can ask to have written into the retainer that will help protect your interests.

A retainer contract is something you negotiate like any other deal, and there is no law that says it has to be a take-it-or-leave-it proposition. Attorneys with that attitude may be otherwise hard to work with, so keep looking. Billing practices can work to your disadvantage, so you want to examine and give careful thought to the details of any retainer you are asked to sign. Take it home, study it, make sure you understand everything in it before you sign. Discuss terms you don't understand and terms you want changed or added. It is okay to request and discuss terms that you want but don't expect to get.

Here are some points you can bring to a retainer negotiation, in order of importance to you:

- Be clear that you won't pay for time spent negotiating the attorney's contract. The attorney is working for himself during that time, so billing should start only after the contract is signed.
- Likewise, you never want to pay for time spent discussing the bill or your contract or problems with their service—only for time spent working your case.
- Make sure the retainer paid will be applied to future billings and not kept as a base fee for taking the case. Specify that all unused portions will be returned.
- Specify that you get copies of all documents and letters, either incoming or outgoing.
- Limit rounding off. Try to avoid the common practice of billing a quarter hour for a five- minute phone call. Say that you want no more than six-minute (.1) rounding and you don't care if the software won't do it; that's their problem.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

• Request a monthly billing with detailed itemization on each bill that shows the date and time for each task, total time spent, and amount billed.
• Ask about charges, if any, for secretary and staff time. Request that amounts for time billed to secretaries, research assistants, paralegals, or associate attorneys be billed separately so you can see exactly what is going on and who is doing what.
• Make it clear that you will not be charged for experts retained without your written consent.

D How to get the most from your attorney

Whenever you contact an attorney, even the initial interview, be very well prepared. Know your facts, know what you want to ask about, and know exactly what you want the lawyer to explain or do for you. Plan each conversation: make an agenda; write down the things you want to talk about; take notes on the content of every conversation; keep track of time spent on all phone calls and meetings. Keep a file for all your notes, letters, and documents. Do as much as possible on the phone and by mail to keep office time to a minimum. Work with the attorney's staff whenever possible; it's cheaper.

Regard your attorney as a resource, not someone you depend on for emotional support and stability. Lawyers cost too much to use for sympathy and consolation—that's what family, friends, and therapists are for. When you talk to a lawyer, stick to what's important and don't just chat, ramble, or complain about things your spouse did unless you actually want your lawyer to do something about it. This is not to say that the attorney should not care enough about you to ask how you are and to put things in proper perspective for you. But you are hiring a lawyer, not a therapist.

E How to supervise your attorney

If you retain an attorney to handle your case, you still want to be in control as much as possible—after all, it's your life at stake here—and you want to supervise your attorney to be sure you are being represented competently. Read this book to obtain a standard by which to measure your attorney. If the attorney does not perform at least as well as the guidelines described in this book, that would be a red flag.

Some delays are built into the legal system. Any additional, unexplained delays will be the result of attorney foot dragging and should not be tolerated. Your case should always be going somewhere specific unless there is a conscious plan to wait for a specific reason.

Planning. This is something you might have to bring up, as many attorneys don't do it. After reading chapters 1 and 6, you can tell the attorney your goals and discuss a plan to get what you most want.

Temporary orders. Many attorneys routinely file initial motions or OSCs RFOs in every case, but unless there is a specific strategic reason based on your plan, tell them not to do this. If not essential, this practice merely runs up fees and creates more conflict.

Getting information. If you follow chapter 8, you will know how to get information without using the legal system. From reading chapter 17, you'll know the most cost-effective ways to use legal procedures to demand information and documents, and you'll know how long it takes. At the beginning, discuss with your attorney what information is needed and make sure the process of getting it is underway within a week of the retainer. Monitor the responses from the other side and decide what additional discovery is necessary. If the other side does not respond in a timely manner, a motion should be quickly made. If your attorney can't keep up with the procedures described in this book, start looking around for another attorney.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A case should have definable stages that progress towards a goal without being deflected for long by anything the other side does or doesn't do. If noncooperation can deflect the case, it is not being pursued with sufficient vigor. Your attorney should have a plan for the case from the beginning, including:

- getting temporary orders (if required by your plan)
- getting information and documents
- negotiating toward settlement
- setting the case for trial if settlement isn't forthcoming
- getting experts and evidence ready for trial
- going to trial if settlement proves impossible

The first three steps can be undertaken more or less at the same time, depending on your situation. You need information to negoti- ate and you can start negotiating about getting information.

Negotiating. This is something you might end up doing yourself. Few attorneys have had any training at it, attorney time is very expensive, and, as a statistical fact, most spouses eventually end up settling their own issues themselves.

Delay. In general, the sooner the case is finished, the lower attorney fees will be, so don't let your attorney be slow to request a trial date. After you have pushed through discovery, if negotiations aren't going anywhere, it is probably time to set the case for trial (chapter 22). Ask your lawyer if there is any good reason why this can't be done. You would be surprised how many "experienced" family law lawyers have either never had an actual trial, or had very few trials and are actually intimidated by them.
If some necessary evidence has not been obtained, the lawyer should be able to tell you precisely what is needed, the plan to get it, and how long that will take. However, make sure that your case is actually ready for trial before you demand that your attorney set one. Far too many attorneys do not properly prepare a case in hopes that a case will settle and will only prepare once a case is approaching trial. Also know that when a case is going to be set for trial, most attorneys will request a "trial retainer" which can be substantial.

Legal ability. Use this book as a guide to minimum standards for legal practice. For example, it is not unusual for an attorney to have no idea how to do the records-only deposition package explained here. If they can't subpoena records when you need them, you may need another attorney. As you read this book, ask yourself if your attorney knows this information and why he/she does not use procedures at least as effective as those described here. If you find that your attorney is unaware of these procedures, you should get a second opinion or change attorneys.

If you feel your attorney is not properly representing you

If you feel your attorney is not doing the right thing, the first thing to do is to get a competent second opinion. Divorcing a difficult person can be very difficult and unpleasant. You need a second opinion to determine whether your attorney is failing you or whether the process is merely horrible. What you do not do is tell your attorney you think they are doing a rotten job. If the attorney is really incompetent, saying this will not help; if the attorney is actually okay, they will be offended by your comments.

When you go for a second opinion, have an organized copy of all your information and court papers with you. Without the court papers, the attorney cannot give you any opinion at all. If the second opinion confirms your belief that you are being poorly represented, you should get another attorney. But changing attorneys can be an expensive proposition as the new attorney will need to become familiar with the case file and they will need to charge for that time. So head the warnings at the beginning of this section on selecting the right attorney in the first place and do not just go for the least expensive attorney

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

you find, or blindly rely on superficial elements such as their address, the look of their office or their title as a specialist.

F It's easy to fire an attorney

You have a right to discharge your attorney at any time for any reason or no reason at all, whether or not any money is owed. It's easy—all you have to do is file a form. Of course, you will continue to owe your former lawyer for time spent working on your case.

If your lawyer is not performing to your satisfaction, you should send a letter (keep copies) setting out very specifically what needs to be changed. If there is no improvement, start shopping for another lawyer. Some things can't be changed. For example, if you lose trust and confidence in your lawyer, get another one. Nothing is worse than feeling trapped in a bad relationship with your own attorney.

If you want to fire your attorney, simply use a form called "Substitution of Attorney."

You have two choices now:
1. Substitute another attorney for your old attorney. In this case, your new attorney will take care of the substitution and get all files transferred.
2. Substitute yourself in as your own attorney and ask that all files be sent to you. Then, when you have found a new attorney, the new one can substitute in as your new lawyer using the same form.

G How to work against your spouse's attorney

If you are represented, it is your attorney's job to handle the other attorney; in fact, the other attorney is forbidden by law to talk to you directly. However, if you are representing yourself, you conduct your own negotiations and contacts with the other side. In all your contacts with the other side, it is essential that you always be businesslike and efficient no matter how they act, chummy or ugly.

You have to work against the opposing attorney a bit to see how he/she works. For example, at the beginning of the case, you start off trying to exchange with your spouse the information you need to get through your divorce, trying to do it voluntarily and cheaply. If you don't get the information or response you are asking for, possibly your spouse is working with an attorney who is dilatory, or not competent, or a shark who cannot work cooperatively. So, you start some formal discovery (chapter 17) and see what happens. If you end up making motions to compel discovery (chapter 18), you are in for a struggle. Unfortunately, it is not unethical to be a poor attorney or unpleasant, difficult, and confrontational, so attorneys who act like that are not subject to discipline by the Bar.

When your spouse's attorney is the problem

If your spouse has an attorney who you feel is creating conflict, say this in a letter to your spouse unless you are already sure that this is what your spouse wants. It is not uncommon for a spouse to blame the "mean" attorney, but if after several events the attorney has not been fired or controlled, you have to assume that the attorney is doing what your spouse wants, or at least with your spouse's consent.

Sometimes an attorney stands in the way of settlement. The two parties may talk and reach a basic agreement, but every time one returns to his/her attorney, the attorney brings up more issues or writes up the agreement in a way that wrecks the agreement. Sometimes this is legitimate because the parties made an agreement that was not thoroughly thought out, so it turns out there really was not a meeting of minds. But other times the attorney is just a troublemaker. When that happens, the only way to get to a settlement

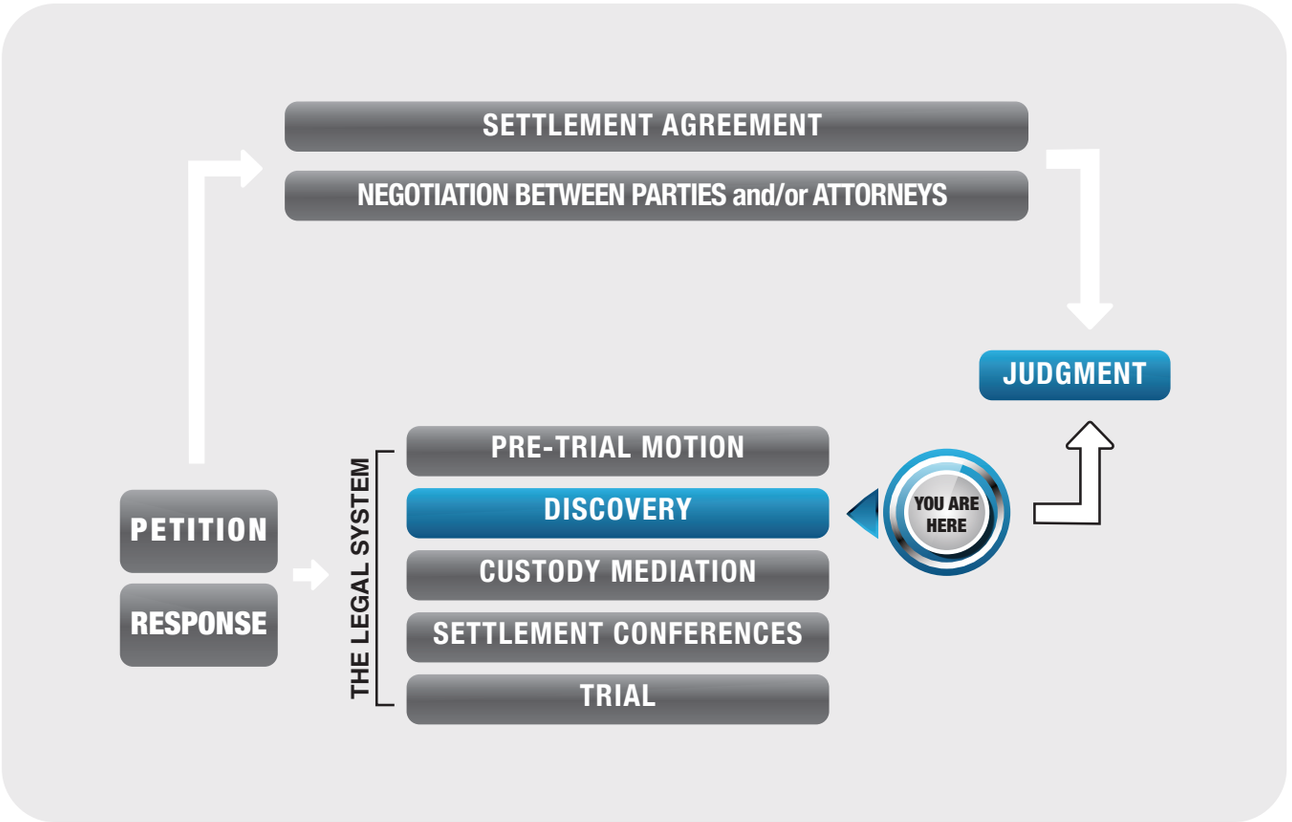
Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

is if the party with the confrontational attorney will tell the attorney to cut it out. This is very difficult to accomplish because such attorneys are masters at flaring up people's emotions.

When your spouse is the problem

Sometimes a party wants it to appear that he/she is personally trying to be reasonable, but that mean attorney is doing bad things. This is different from the confrontational attorney causing the problem. In this situation the party is really the one who opposes settlement but is not honest or assertive enough to say so. He/she hides behind the screen of the attorney—but he/she hired the attorney, keeps paying the attorney, and doesn't put a foot down. In this smoke screen sort of situation, it is the party who is the problem. And, the party may never admit it even if everyone can see it. A party is free at any time to fire his/her attorney. If your spouse chooses not to control or fire the attorney, he/she is in fact responsible for what the attorney is doing, and all you can do is let your spouse know that you see through the screen, and you know it is your spouse who is in charge. Let your spouse know that as long as the attorney proceeds in the same fashion, you hold your spouse responsible.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 8

HOW TO GET THE INFORMATION YOU NEED

A. The information you need
B. Easy ways to get information
C. Rights and duties of a spouse
D. How to respond to requests for information
E. Disclosure and discovery

Guess what will happen if you charge blindly into your divorce without knowing how the law works, what the legal system is like, and the facts of your marital estate? If you want to play Russian roulette with your life or volunteer to be a victim, then okay, stumble on. Otherwise, prepare your case and prepare yourself. Sure, it takes some time and effort, but it is essential, it is worth it.

It's time to make sure you have the facts and documents you need—things you need to know before you can form goals and make decisions about what you have a right to, what you want, or negotiate a final settlement, or press your case toward a conclusion in court. In this chapter, I show you what information you need and how to get it without resorting to legal action.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A The information you need

Local rules. One of the first things you must do is to get familiar the local rules of court for your county, or make sure your lawyer is aware of them; not all lawyers are. State law governs the big picture, but every county has its own rules for little details about how cases are conducted in their courts. In some counties, the rules are out-of-date and not much relied upon, but unless you know this for a fact, you can't take the chance of ignoring them. These rules can change at any time and without notice, so be sure your lawyer is using the latest version.

Facts and documents. You want to learn everything there is to know about your marital assets and debts, and about the income and expenses of both spouses. Your lawyer will need all this information, so you will save a lot of time and money if you collect and organize as much information as you can before you go in. What you can't find, he/she will know how to get.

Organize the facts of your case.

Here's a partial list of important information and documents you will or may need:

- Federal and State tax returns for the last three years
- Bank records for three years: passbooks, statements, and checkbooks
- Credit card statements for the past three years
- Real estate deeds and mortgage papers, lease or rental agreements
- Insurance papers, policies, statements
- Auto license numbers, registration, and insurance information
- Driver's license numbers for both you and your spouse
- Statements and records for stock accounts, mutual funds, pension plans
- Books and records for a private practice or self-employed business (full or part-time)
- Books and records for any rental activities
- Electronically stored information (ESI): business records, financial records, intellectual property, software code, art, music, writing, etc. Records related to anything on this list
- Birth certificates for you, your spouse, and the children
- Social Security numbers for you, your spouse, and the children
- Health insurance cards, copies of medical records
- Your passport and any immigration documents
- Family address books, calendars

Do you already have these things? If you already have access to the facts and documents of the marriage, and your spouse doesn't, then you have a great opportunity to reduce potential conflict and unnecessary expense. Simply make sure your spouse has open access to all records and information in your possession, but never loan or give away your last copy! Your openness will reduce anxiety and increase trust. No tricks now, because they usually backfire and, the way California law works, any effort you make to hide information will probably leave you vulnerable and cost you a lot.

The bare and basic minimum. You need a copy of your joint income tax returns for the last two or three years. If you own a home or other real property—homes, condos, raw land—you must get copies of all the deeds, purchase papers, and mortgage documents. You need copies of statements from banks and other financial institutions for the present and for a year before your spouse knew there would be a divorce (to make sure nothing tricky was done in anticipation of the divorce).

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Some assets are hard to find. Deferred compensation (income your spouse received and put in a savings-type retirement plan) will not appear on tax returns or in a bank account, and might not appear on pay stubs—for example, if the contributions are not being made currently. These records must be obtained from your spouse or from your spouse's employer through a subpoena. Tax-free income—for example, income from municipal bonds—will probably not appear on an income tax return. To locate an asset that produces tax-free income, including tax-free mutual funds, you probably have to get a copy of the checks used to buy the asset, a statement, or find other written evidence.

B Easy ways to get information

When you collect information, make two or three copies of everything. If you "borrowed" your spouse's records to copy, return originals that you don't personally need. One set goes to your lawyer, one set is for your working files, and one set should be put in a very safe place: a safe-deposit box, storage locker, or some other secure place your spouse can't get into. Do not hide things in a house the two of you share or in the trunk of your car.

Ask your spouse. Of course, the simplest thing is to obtain copies of documents from your spouse—just ask nicely. But if you don't want your spouse to know you are collecting documents, or if your spouse is not cooperative, or if you think your spouse can't be trusted, you can obtain a surprising amount of information acting completely on your own.

Collect what you have access to right now. A great deal of information is available to you right now if you just go get it. You have a right to all information about your marital estate and you actually own records related to joint accounts or documents that have your name on them.

The home computer. If your spouse uses a computer and you have access to it, make sure you get a copy of all important or useful data on it. If you don't know how to do this safely, find a computer consultant to do it for you. Make duplicate copies of data and put one copy somewhere safe away from your home or office. If your spouse has put a password on the computer and you can't get into it, take the entire unit, or at least the computer box, and put it where your spouse can't get it. Then, you can file a motion asking the court to order your spouse to give you the password, or ask the court to order a disinterested third party to hold the computer, receive the password from your spouse, and copy all information from it before the computer goes back into your spouse's control. Use an Ex Parte (emergency hearing) instead of a motion if your spouse has an urgent need for the computer; for example, if the family business runs on it. Taking a computer is a hostile act which you must weigh against the possibility of losing whatever information might be on that computer that could be hidden from you later if things don't go well.

Tax returns. You have a legal right to a copy of any joint income tax return that was signed by both you and your spouse. It is best to have complete, certified copies of your returns and all amended returns, together with all schedules and attachments, not just the form 1040. You can get certified copies of federal returns from the IRS and state returns from the California Franchise Tax Board.

If you used a professional to prepare tax returns, you can ask for copies from recent years, but most do not keep W-2 forms and they cannot certify copies; however, your ex will probably admit to the copies of the returns, so it may not be absolutely necessary to get certified copies. Even if your tax preparer is a great friend of your spouse, he/she is obligated by law to give you a copy of any joint return with your name on it. When you first get your hands on copies, look at the first page of each return and see if it refers to any schedules or attachments. If it does, make sure you have the attachments. For example, if it shows a figure next to "Schedule E," make sure you actually have Schedule E. Ask whoever gave you the return for Schedule E and point out that the return shows that one exists. This is usually sufficient to get someone to cough up the schedule. You want all pages of each return.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

You can get copies from the Internal Revenue Service of any forms you signed. Use IRS form 4506 and send it with a check for the amount indicated on the form. The IRS sometimes provides copies within a month, but sometimes they send you a letter that basically says, "We can't find your tax return; ask again in 60 days if you really want a copy." Therefore, you need to make your written request to the IRS long before you actually must have the copy in your possession as you may have to make more than one request to get a copy. Even if your name on your tax return was forged, you should be able to get a copy. In case of forgery, you could have to contact your representative in Congress for help in getting a copy, but this would be an extreme case.

If you want a copy of your California income tax return, contact the California Franchise Tax Board. As with the IRS, you must send a check to pay for the copies and for certification.

Locate properties on the Internet. The Internet is a great way to locate people, personal property (such as cars, boats, airplanes), and real estate. Such searches are becoming easier and more useful. This is, of course, of concern, because people are losing their privacy, but it also means that information is easier to come by than ever before. You can ask an attorney who has Lexis-Nexis software or a private investigator to do a search for you, or you can simply check out software and search on your own. With Lexis software, an attorney can look up your spouse's name and locate properties throughout California and in some other states. This method of locating property can be quite inexpensive, and if you have a spouse with hidden wealth, it may come to light by this method.

County Recorder for property deeds. You can get copies of deeds from the County Recorder of the county in which the property is located. You go to the County Recorder's office and look up your name and your spouse's name in the "Grantor/Grantee Index." A grantor is the person who gave the deed; a grantee is the person who received the deed. If you buy a property, you are the grantee. On the deed of trust that secures a mortgage, you would be the grantor. The Grantor/Grantee Index gives you the information that you need to obtain a copy of the deed at the Recorder's Office.

Get bank statements. For joint accounts, you can get copies of statements from banks and other financial institutions by asking and paying a fee. Banks keep copies of all deposit slips, deposits, and photocopies of the front and back of all checks for about six years. The bank will not give you copies of statements for accounts that are only in the name of your spouse. Unless your spouse will give them to you voluntarily, you will have to subpoena them.

Review documents carefully to locate hidden assets. Once you have copies of tax returns and deeds, read them carefully, even if you have a lawyer. For example, Schedule B of the tax return lists interest income which might help you discover hidden bank accounts. A deed will show which title company recorded the deed, and you can contact the title company to obtain copies of the closing statement issued when you and your spouse bought the property. If you have significant property or complicated finances, these documents might not be sufficient. But without at least this much, you do not have enough information to make intelligent decisions in your divorce.

Personally review all records even if you have a lawyer. If your lawyer gets copies of your spouse's records, such as bank records, you should personally review those records. You might notice things that the lawyer cannot. For example, an accountant working for the wife's divorce lawyer reviewed the husband's business records and concluded that everything was in order. But, when the wife herself reviewed the records, she saw that the husband had his girlfriend, who did not work in the company, on the payroll. The accountant was good, but only the spouse had the vital information that made the difference.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

C Rights and duties of a spouse

Under California law, married persons have a very high duty of trust to each other, called a "fiduciary" duty. A banker, for example, owes such a duty of trust to customers. More to the point, business partners owe each other a very high duty. Likewise, spouses are required by law to be open and honest with each other. When a divorce is filed, both spouses are required to give each other a complete accounting of everything they know about property, debts, income, obligations, and anything that might affect the marital estate, both now and in the near future. This is called Disclosure, and the forms used are called "Declarations of Disclosure."

These fiduciary duties continue throughout the case. Even if your spouse is withholding information, you should comply with your own duty of full disclosure—not because you want to be nice, but because you don't want to lose your discovery request because you acted as badly as your spouse.

The one important lesson you should carry away is this: there are many penalties and sanctions against a spouse who hides information about the marital finances. Any misconduct in this area can come back to haunt you, possibly years in the future. So, if you want your divorce to be final and over forever, be sure you are completely open and honest with your spouse on financial matters.

D How to respond to requests for information

The primary rule is to be open and honest. It's the law, it's the right thing to do, and failure to do so will come back to haunt you. If your spouse makes a reasonable request, you should respond fully. However, you do not have to produce what you do not have and cannot get with reasonable effort. If you are asked for bank statements, you should call your bank and request them. However, if you are asked for records and making a phone call, writing a letter, or filling out a form cannot get them, it is sufficient just to explain this. Finally, if the other side has made an unreasonable request (such as all bank statements and checkbooks during a ten-year marriage), you can send a reasonable amount, say the last three years of the marriage, unless there is some special reason why more documentation is necessary. If they insist, you can balance whether it is easier to give what they want or go to court to resist (chapter 14).

E Disclosure and discovery

There are two legal procedures for obtaining required information: Disclosure, which is supposed to be automatic, and Discovery, which requires you to initiate the procedure.

Disclosure

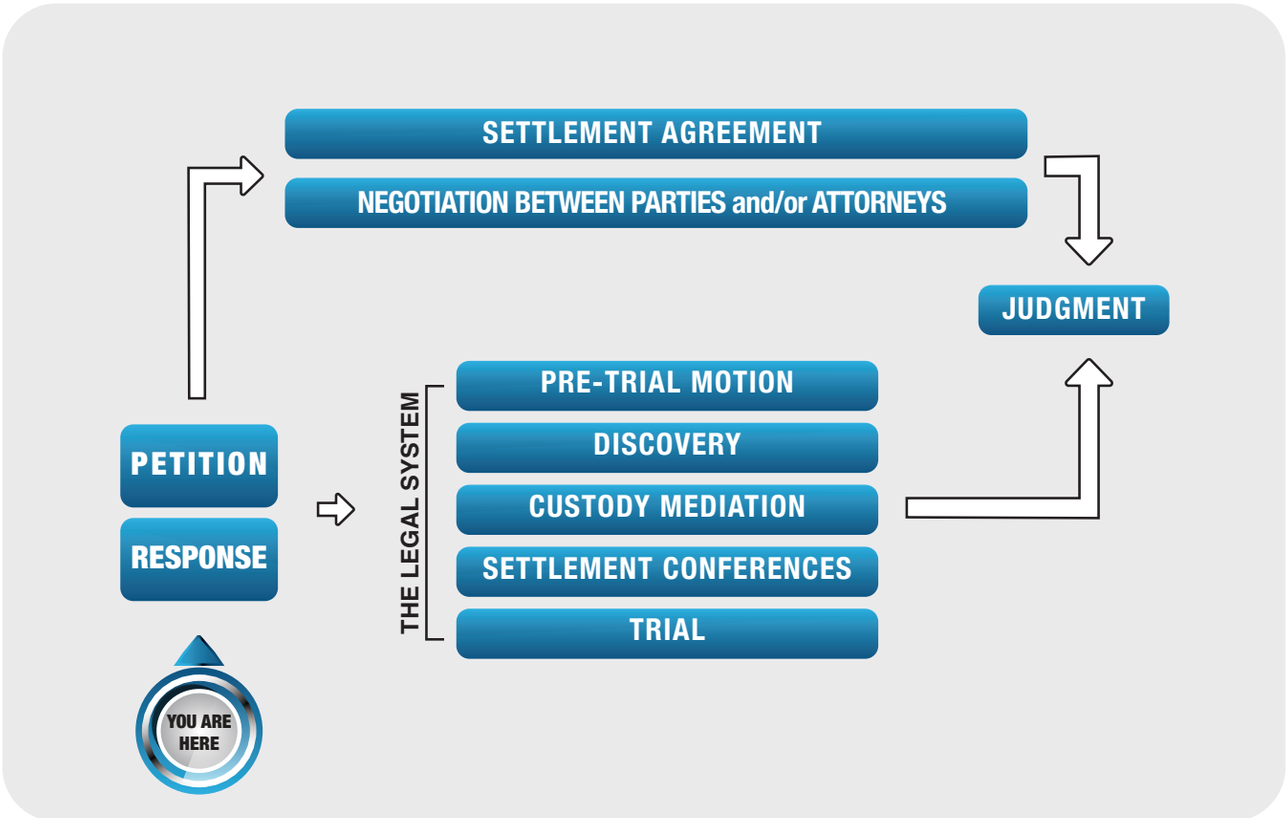
To get a divorce, both spouses are required by law to exchange Declarations of Disclosure listing all information about their property, debts, income and expenses. Disclosure is an extension of the fiduciary duty owed by spouses, discussed above.

No agreement without disclosure. If your spouse has not served you with Preliminary and Final Declarations of Disclosure, do not negotiate a settlement agreement without making the completion of them a term of the agreement and getting them both signed and served before you sign the agreement. Preferably, you will not want to negotiate until Preliminary Disclosure has been done, otherwise, you are negotiating without full knowledge of essential information that your agreement would, or should, be based on.

Discovery

Discovery is a formal legal procedure for getting information from your spouse, possibly under compulsion of law. How to do discovery is discussed in chapter 17.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 9

BASICS –local rules, forms, & case management conferences

A. Petitioner or Respondent –who's who?
B. Learn local rules and conditions
C. Keep a case calendar for deadlines
D. How to keep your papers in good order
E. How to serve documents on the other side
F. Case Management

The following chapters are about action in the legal system, which involves a fair bit of paperwork. This chapter is about the basics of paperwork, no matter what kind of legal action you might get involved with. Chapter 17 is about formal requests (demands) for information that you can use without going to court. If you can't get information you need from your spouse, you should start work there, too.

A Petitioner or Respondent –who's who?

The person who starts the divorce files a Petition and is called Petitioner. If the other spouse enters the case, that person files a Response and is called Respondent. In every respect their positions are equal—

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

there is no advantage in being either Petitioner or Respondent. Either party can make motions, demand information, move toward trial, and negotiate. Parties keep their titles throughout the case, no matter who starts a particular legal action within the case. For example, if Respondent files a motion, that person is still called Respondent, even though in this instance he/she initiated the motion.

Read discussion for both sides. For any legal procedure, you could be the initiating or the responding party. I show you what to do on both sides, both for the person who is asking the court to do something and the person who is responding. Whichever side you are on, read the information for the other side, too, so you will understand what is coming.

Responders: I write each chapter as if we are talking to the initiating party, but the responding party does almost all of the same things. If (when) you are the responding party, you should read everything that is addressed to the initiating party, because most of it applies to you, too.

B Learn local rules and conditions

Every county has local rules for how the courts conduct family law business. If you go to court, your attorney must be familiar with them. In some counties, the rules are out-of-date and not much relied upon, but unless you know this for a fact, you can't take the chance of ignoring them. Make sure your lawyer is familiar with and up to date with the local rules of your court. Do not assume they are. You would be surprised how many do not bother knowing, or staying up to date with them, and their ignorance can harm your case.

Observe your judge

Go to court well before your hearing and watch some cases to see how the court handles things. You want to see how your judge handles cases and what it feels like to be in court. This should make you feel less anxious about going to court and more confident when you are actually there – a big advantage for you.

C Keep a case calendar for deadlines

Missing deadlines could cause you to lose a motion or even your whole case. It is very important to record and honor every deadline for every aspect of your case. Although your attorney is responsible for this, do not just rely on him/her to keep track. You should keep a calendar for your divorce to keep track of all deadlines, tasks, appointments, and court appearances. If you have a very organized personal calendar, you can use that, but it might be better if you keep a separate case calendar.

Whenever a court date is set, you should immediately calendar all the tasks that you need to do to be fully prepared at least two days ahead for the hearing, or a week ahead for trial. Work backwards from the court date to set tasks and deadlines based on state law and local rules. For example, if you have a trial date, state law provides that discovery must be completed at least 30 days before trial. Mark the trial on the calendar, count back 30 days and note the deadline for discovery. Then count back an additional amount of days, such as 35, to do one last round of discovery.

If deadlines fall on holidays or weekends. Under California Rules of Court, if a deadline falls on a weekend or on a court holiday, it is automatically postponed until the next court day. This affects when you must respond to discovery items, but it does not affect the date on which you need to serve moving or responding papers—those dates are not postponed by this rule. The best practice is to not wait until the last minute so you don't have to worry about missing the deadline.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

D How to keep your papers in good order

It is not unusual for someone with a problem divorce to find themselves almost drowned in a shower of paperwork. You would be surprised how many lawyers and law offices fail at the task of staying organized. If you (your lawyer) are not very well organized, you could lose track of things and go under. You are not going to let this happen to you. The more sophisticated lawyers will have better use of technology and will have their files paperless. These lawyers will be more efficient, which, in turn, will save you money and bring you better results.

E How to serve documents on the other side

Whenever you initiate any legal action, you have to give notice to the other side. This is called service of process and is always done by having someone else give the other side a set of documents. Afterward, the person who served the papers must sign a Proof of Service which is then filed with the court. You must serve papers correctly and file the Proof of Service on time, or your legal action will almost certainly fail.

Who can serve papers?

You can't serve papers in your own case, but any friend or relative over 18 can do it, or you can hire a professional process server. Use someone mature and uninvolved; avoid anyone who is openly antagonistic to the other side, unless you have no other choice. Your attorney should have preferences on how different documents are served, and you may want to discuss all options with them, some of which may save you money.

Who gets served?

The Summons and Petition, subpoenas, and Request for Orders are always served personally on the party and on the attorney of record, if any. All other papers are served on the attorney of record. The "attorney of record" is the person whose name appears on the caption of the most recent court documents that were served on you. You must use that name and address on all proofs of service, exactly as it appears in the caption. Just consulting an attorney does not make that attorney "of record" unless the attorney's name and address appear on court documents served on you. If your spouse's name appears on the most recent caption, your spouse is his/her own attorney of record.

An attorney who represents your spouse, and is of record, can be served by mail or in person. Personal service on an attorney is easier than on a non-attorney. The server can simply (1) go to the attorney's office any time it is open and hand an envelope bearing the attorney's name and containing the papers to a receptionist or any adult in charge, or (2) from 9 a.m. to 5 p.m., if nobody is there, leave the envelope in a conspicuous place in the office. Where the Proof of Personal Service form asks for the name of the person served, enter "Adult in charge at office of Attorney (name)." If no one was present, type in "Attorney (name), papers left at address in conspicuous place."

File first, then serve (most of the time)

For motions and RFOs, you need to file your papers first to get a hearing date, then serve them. For other papers, such as the response to a motion or reply to the response, the order is not critical. Remember, when serving by mail, you must include a copy of the Proof of Service with papers served so the recipient can know the date of mailing.

F Case Management

Our courts are swamped, simply overwhelmed with cases and at the same time facing deep budget

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

cuts. This means that judges are more than ever under extreme pressure to move cases through as efficiently as possible. Until 2012, this was addressed by the Case Management Conference, designed more for general civil suits, so not ideal for family cases. Courts must now implement the Family Centered Case Resolution (FCCR) process mandated by Rules of Court, so you'll want to find out if your county is using the new procedure or if they still use case management. If your county is using FCCR, when you file your first papers, they are supposed to give you printed information summarizing, among other things, the processing of your case. So, if you don't get that, your county is likely still using Case Management.

Case Management Conferences (CMC)

Case management is defined generally by California Rules of Court, but much is left to each county's local rules, so forms and procedures will vary. Typically, case management means that no more than 180 days after the Petition is filed, you might receive a questionnaire that you must fill out, serve on the other side, and file with the court by a set date. You might also receive a date for both sides to attend a Case Management Conference (CMC). It is possible that local rules require you to file a case management form without being prompted by the court, so be sure to check on this. In any case, the court needs to know how things stand with your case—what issues are still unresolved, whether you have completed your Declarations of Disclosure, whether you have completed discovery, what steps have been taken to settle, how long you think a trial might take, and so on.

At least 30 days before the date of the first hearing, parties must meet in person or by telephone and consider resolution of as many issues as possible, including all items set out in CRC 3.724 and 3.727. By the time of the hearing, you/your attorney are required to be familiar with all matters in the case and be prepared to commit to a position on all matters listed in the Rules just cited above.

If the court thinks your case is dragging on too slowly, the judge can set deadlines for you to meet and possibly order terms and conditions to move things along. The judge can also assign you to a mediator to try to settle your unresolved issues—especially issues regarding child custody and visitation. Or the judge might try to urge you (gently or firmly) into a settlement that the judge thinks is reasonable given your facts. Judges at case management conferences can be a great help toward resolving issues and getting your case completed, but you should not allow yourself to be bullied into a settlement that you do not think is fair. If you think you are being pushed too strongly into a decision you don't like, stay calm and polite, but say, "I need to think about this before I decide." Or just say no, but do it very respectfully so as not to antagonize the judge.

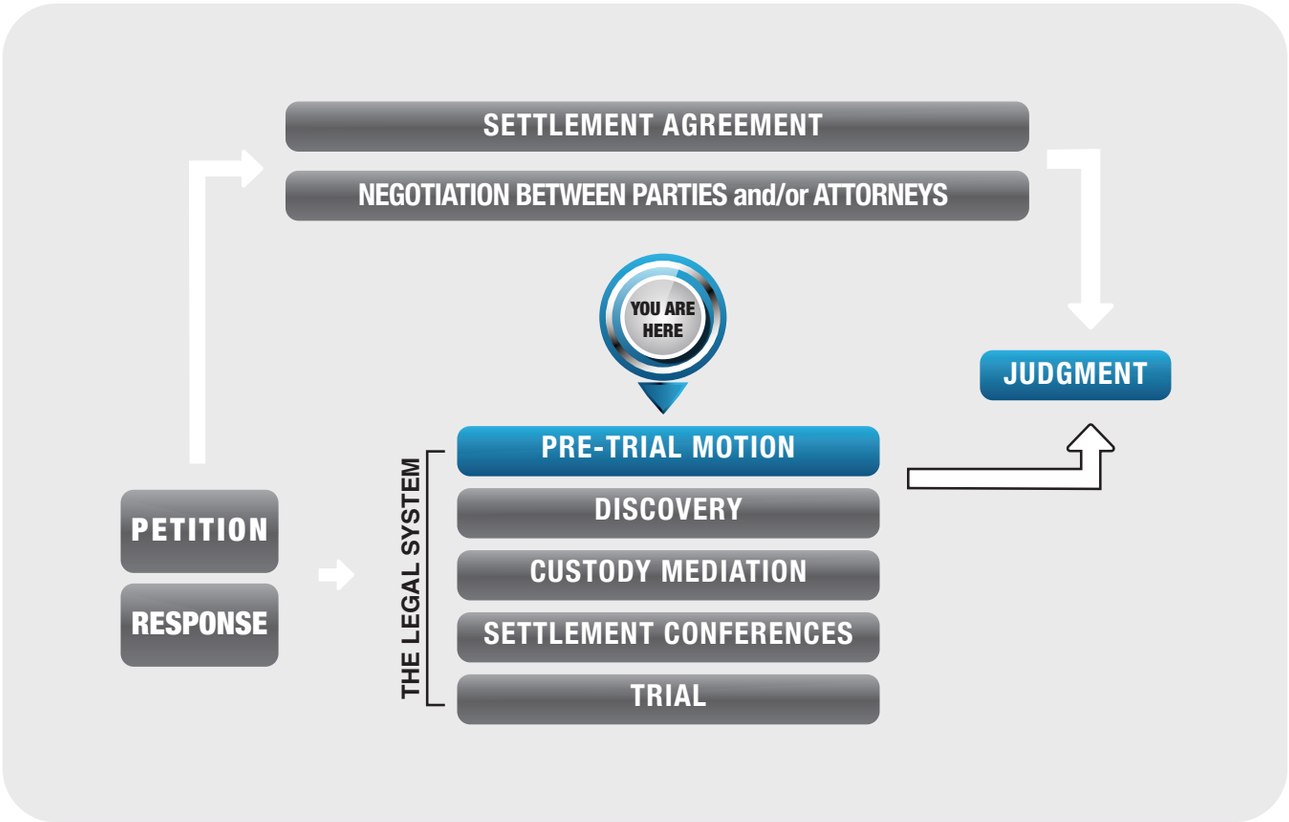
Family Centered Case Resolution (FCCR)

All courts must now use FCCR to manage family cases. Unlike Case Management Conferences, the rules for FCCR are set out generally in Family Code and more specifically in California Rules of Court (CRC), so the practices will be much more uniform in all counties.

Here's good news: when the first papers are filed, the court has to give the filing party a written summary of how the case will proceed through to disposition, a list of local resources that might be helpful, and other useful information.

Hearings. Courts must review all family-centered cases within 180 days from the date the Petition was filed and every 180 thereafter to help move all cases along. The court can set a hearing (conference) to find out the status of the case and determine how best to move things along. Prior to the hearing, both sides will fill out the Case Information form. At the hearing, both parties are required to be familiar with the case and be prepared to discuss positions on all matters. If, for any good reason, the other party can't attend the hearing, explain this to the judge and present a letter or other document or evidence you might have to back up your statement. After the hearing, the judge can issue orders. If the record in the court file is sufficient, the judge can issue orders without a hearing.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 10

Motions:
Request for Order(RFO) or Temporary Restraining Orders (TRO)

Motions -- more specifically a Request for Order (RFO) or a Temporary Restraining Order (TRO) -- this is where the action (and expense) is, the heart and guts of any court battle, gentle or harsh. Apart from procedures leading to trial, almost anything that gets done in court is done with an RFO and sometimes with use of a TRO. This is why this part of the book is so long and why it is so important for you to study it carefully. Very few cases end up in trial because most issues get resolved by these processes.

RFOs can be used for general motions, ones which require a hearing before any orders are made by the judge. The TRO is the process that can be used to request temporary orders pending a hearing. Which one should be used in your case? That's what this chapter is about.

NOTE: Until recently, California used a process where general motions were called Notice of Motions, and the process where temporary orders were sought pending a hearing were called Order to Show Cause (OSC). California has now, for the most part and with very few exceptions that are not relevant here, disposed of the term Order to Show Cause. However, you may continue to hear the term OSC when communicating with about your divorce. Do not allow your self to get distracted from the essence of what we are going to discuss next.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

In many ways similar

The same form (FL-300) is used to request either an RFO or TRO to seek orders on custody and visitation, child and spousal support, attorney fees and costs, ordering a spouse to vacate the family home, stay-away orders, personal protection orders (except for domestic violence protective orders under the Domestic Violence Protection Act), exclusive possession and use of specific community property (auto, tools, computer, etc.), property restraints and controls (don't transfer, mortgage or waste community assets), payment of bills (car payments, mortgage, credit cards), and almost anything else you can think of for which you can justify the issuance of specific court orders. Or you can ask to modify existing orders. The procedure in either case is much the same.

Mandatory Mediation. In either an RFO or TRO, if child custody or visitation is an issue, you must attend court mediation before or at the time of your hearing.

Must meet and confer. Court rules requires that before the hearing, the parties, or their attorneys if they are represented, meet and confer by telephone (or as ordered by the court) to try in good faith to settle some or all issues. Before or while conferring, the all documentary evidence that will be relied upon at the hearing must be exchanged.

Hearing. At the hearing in either an RFO or a TRO, your case is presented by way of documents that can be authenticated by a witness, and by testimony or written statements from witnesses, in an effort to get the judge to see things your way and issue the orders you requested. Of course, the other side might show up and present evidence in opposition. After the hearing, if you succeed, you get orders signed by the judge and, if your spouse was not present in court, the orders must be served on your spouse.

All orders are temporary. With only a few exceptions, orders obtained through RFOs or TROs will be effective only until the Judgment. No order continues past the Judgment unless it is restated in the Judgment itself. However, the effect of your temporary orders can be permanent, because issues resolved this way usually become integrated into a negotiated settlement agreement or a Judgment.

So what's the difference?

1. Other party ordered to appear. Your RFO becomes a TRO if a box on the form is checked ordering the other party to appear in court, in which case a judge has to sign the form before it can be served. If Respondent has not yet appeared in the case by filing a response or a motion, you must have him/her ordered to appear so the court can acquire jurisdiction (authority) and any orders made can have effect.

2. Request that orders take effect pending the hearing. Your RFO becomes a TRO if you check a box requesting that any of your requested orders take effect immediately and last until the hearing. Doing this changes the time line and the way you proceed.

To get a TRO, the emergency must be one recognized by law, which usually means a party or member of the party's household has a reasonable fear of harm or loss of property unless orders are issued right now! Strangely, the law does not consider it an emergency if you have no money to live on and your spouse has money but won't give you any. You can make a motion for support, but you cannot get a TRO for support.

3. You need an order that allows you to give notice of the hearing after the deadline for giving notice has passed (referred to as Order Shortening Time).

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Which one to use?

Neither one. Your lawyer should never file an RFO or TRO unless there is a sound strategic reason for doing so. Being served with notice of legal action is going to have a big and unsettling impact on your spouse, which will almost certainly drive the case deeper into conflict. Is this what you want right now? Is it worth it? Many attorneys serve the other side with an RFO or TRO at the beginning of any divorce as a matter of routine, whether the case requires it or not. This should be discouraged. Make sure there is a clear purpose that requires an RFO or TRO before you allow your attorney to file either one.

Advantages to filing a TRO

The TRO allows you to request immediate orders. If you get your TRO signed, your court hearing must occur within about three weeks, but this will only matter in courts with clogged calendars.

Disadvantages to filing an OSC/TRO

In order to obtain a TRO before hearing, you must state very specific facts for the judge to show that you have a valid legal emergency and are entitled to the TRO. If your case actually might proceed by agreement, you can push it over the brink to hostility by things you might need to say in order to get your restraining order. For example, to kick your spouse out of the house, you cannot just say, "I'm afraid of this person, and they're emotionally unstable right now and make me nervous." You have to say that they have engaged in some form of "abuse," giving dates and saying exactly what happened. A copy of everything you write down has to be delivered to your spouse. If your spouse wasn't enraged before reading your papers, he/she might well be afterwards. On the other hand, if you really need the court's protection, you should go ahead with it.

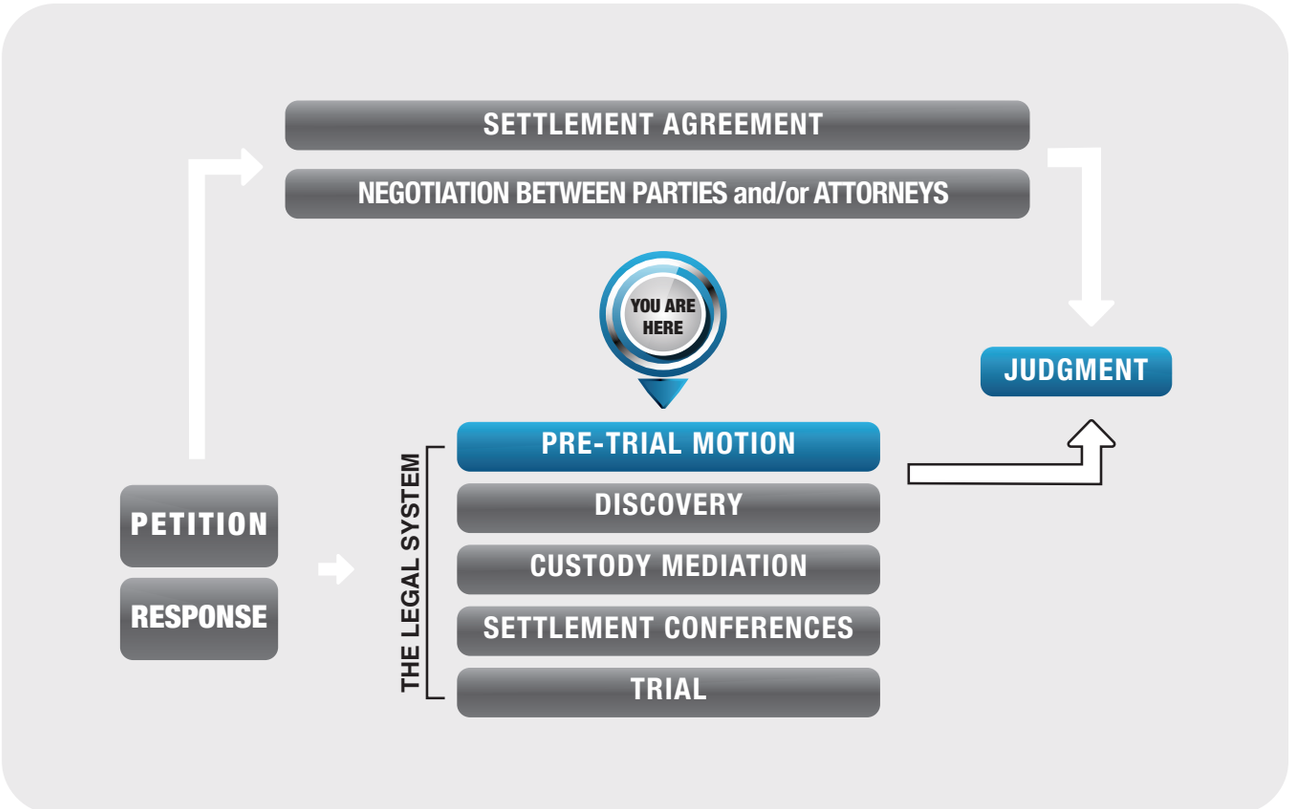
Advantages to filing an RFO

You can file the RFO in a routine manner, and you don't have to obtain the judge's signature.

Disadvantages to filing an RFO

The main disadvantage is that, not being an emergency, the motion is going to be calendared for the court's next available date. Whether or not this is months or more will depend on whether you are in a county where the court has a crowded calendar.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 11

PREPARING FOR AN RFO OR TRO

A. Check local rules and practices
B. Timing is everything
C. Plan how you will serve papers
D. Declarations or live testimony?
E. Build your case
F. How to write a declaration and authenticate documents
G. Relief from error
H. Stipulate if you can agree
I. Child and spousal support preparation
J. Protect your privacy!

Having discussed the difference between a Request for Order (RFO) and the Temporary Restraining Order (TRO) in the previous chapter, for the purpose of simplicity, going forward, I will refer to the RFO and the TRO collectively as a "motion."

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

As with everything else in the divorce process, planning is everything. Don't just rush out or allow your lawyer to just jump into motion prematurely. First, read chapter 16 to get clear about the orders you can request. Next, read this chapter about deadlines you must meet and how to build your case. Yes, you can definitely file a motion—but as you will see, a motion is a tool to be used surgically and strategically. It takes clear thinking, planning, and an ability to concentrate, study and think to do it properly. This is a complex, technical area where rules vary somewhat from county to county or judge to judge. I will show you how to get over these hurdles. You will save a lot of aggravation and money if you study this book before you discuss a motion with your lawyer, so you can organize your issues and questions, prepare the basic facts of your case, and state your plan and goals clearly.

A Check local rules and practices

Before you start doing a motion, look for local rules in your county that apply to family law cases, or ask your lawyer about them. In particular, you need to find out:

- How motions are scheduled for hearing (calendaring)
- Any forms or information the court wants that are not required by state law

Calendaring –how motions are scheduled

Calendaring refers to how the clerk schedules hearings on the court's calendar. In some counties, judges might take certain types of cases only on certain days, or shorter matters (called "short cause" cases) might be heard on different days than "long cause" cases. Find out how your county organizes its calendar.

Memorandum of Points and Authorities

A Memorandum of Points and Authorities (P&As) is a brief statement to the court, setting forth the verified points of your case (the facts), and the authority for your request, i.e., the statutes and cases showing that you have a right to the orders you requested. In civil practice, Rules of Court requires P&As with every motion, but in family law cases Rule 5.92(c) states that no P&As need be filed unless required by the court, so discuss with your lawyer whether a P&A will be prepared for your motion, and if not, why not. P&As become more important when the orders requested are out of the ordinary or if you get a judge who is not familiar with family law.

B Timing is everything

Deadlines

Knowing the deadlines for serving documents is essential to success—miss a deadline and you lose, or at least you have to start over. The general rule is that motion papers must be served at least 16 court business days before the hearing unless you get an order shortening time (see below). This applies to personal service. If you serve papers by mail—which you can do when your spouse has joined the case by filing a Petition or Response or a motion—to the 16 court-day deadline you must add:

- 5 calendar days if mailed within California
- 10 calendar days if mailed to another state in the U.S.
- 20 calendar days if mailed outside the U.S.

So, if you are pressed for time, or if the other party has not filed a Petition or Response, papers should be served personally.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Order Shortening Time (OST)

This is a court order giving you permission to reduce the number of days' notice you give to your spouse and the number of days before the hearing that your spouse has to respond. Because orders shortening time are requested so often, it is included as a standard item on the Request for Order form. Under ordinary circumstances, you would ask for permission to serve your spouse 5 days before the hearing and have any response from your spouse due 2 days before. However, in a real emergency, or where you have reason to fear what might happen when your spouse is served, you can reduce time to 2 days for service and 1 day for the response.

State facts. When you request an order shortening time, you must state facts that justify your request. In any domestic violence motion based on facts that look valid to the judge, you are likely to receive an order shortening time. As to other motions, the judge may or may not accept that your spouse is going to be difficult to serve. If the judge does not grant the order shortening time, when you get the papers back, look at the hearing date and see whether you can still get your spouse served 16 court business days before the hearing. If it is already too late when you receive the papers, the documents will have to be resubmitted to the court with a Declaration page explaining the problem to the judge and again explaining why you need an order shortening time.

In domestic violence (DV) cases, fear of reaction to service will almost always justify an OST.

Here are some examples of non-DV matters that could also get you one:

- A motion needs to be heard before a hearing or trial that is already set in the near future, so it can only be heard first if an OST is granted. For example, a motion to compel discovery to get something for the hearing or trial, and the motion won't be heard in time without an OST.
- You need to have a motion heard on the same calendar with another that you served earlier.
- Need to get appraiser into house before a scheduled hearing on the house.
- Escrow is closing and you need to get funds disbursed by court order very quickly or you will lose the sale of the house.

C Plan how you will serve papers

Plan service before you file

Before you file a motion, your lawyer should have a plan for serving papers immediately, if necessary. You need to know ahead of time who gets served, who will do the serving, how they must do it, and where to find the person being served right away if papers are served personally. You do not want to file your papers and suddenly realize that there is too little time to get them served.

Witnesses

Will you need to subpoena witnesses or records to your hearing? If so, then before your motion is filed, your lawyer must have subpoenas ready to go the instant you learn your court date, just in case it comes sooner than anticipated. See chapter 15, section B.

D Declarations or live testimony?

Before 2011, due to overwhelming case loads, almost all courts conducted pre-trial hearings solely on the basis of sworn declarations. But the Family Code now requires judges to allow any oral testimony that is competent and relevant to substantive issues in the hearing. However, the law also provides that judges can refuse to receive live testimony on a finding of good cause that must then be stated on the record. The court rules define the factors a judge must consider in reaching a decision to exclude live testimony.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

So, if you have a good reason for wanting to examine or cross-examine a witness, make sure your lawyer prepares your witness list and chances are the witness will be heard.

You can still present some or all of your case via declarations of yourself or others, as described in section F below. It seems certain that a party (Petitioner or Respondent) will be allowed to testify, but for other witnesses, in order to be perfectly safe your lawyer should prepare declarations for every witness as instructed in section F below, in case you don't get to present oral testimony. Good attorneys always do this in every case.

Pros and cons

Asking for live testimony could result in a longer wait for a hearing date. The advantage of live testimony is that you get to tell your story to the judge and you can, if you wish, bring other witnesses to testify. Some people make a good impression in person, but others do not. With witnesses, your lawyer needs to know how to prepare and examine a witness. You would be surprised how many lawyers actually don't do this well. The other side gets to cross-examine, trying to trip up the witness. If the other side has live testimony, your lawyer needs to know how to cross-examine well. The advantage of a case based on declarations is that the judge probably prefers it and you don't get caught up quite as much in courtroom tactics. The disadvantage is that preparing good declarations is a lot of work and sometimes evidence that is otherwise not allowed sneaks in. Also, you don't get to question the person who made a declaration to find out how they happen to know what they said they know.

Witness list required

If you want to testify yourself or present a witness at your hearing, then prior to the hearing your lawyer must file and serve a witness list with a brief description of the anticipated testimony of each witness, yourself included. If you don't do this and the other side objects, the judge can grant a continuance and make "appropriate temporary orders" pending the continued hearing. We don't know what those orders might be, but you might not like them, so get your list filed and served. We don't know for sure your deadline for doing this, but a proposed rule would have you do it at the same time you file and serve your other motion papers, so that's when you should do it. If you later think of an additional witness, try filing and serving an Amended Witness List.

E Build your case

Before you start working on forms for a motion, you have to make sure you have a case that you can prove convincingly at a hearing. Go over chapters 12 and 13 to get an idea of the kinds of orders you can ask for and the kinds of statements you must make to justify the orders. Now think about how you are going to convince a judge, especially on the basis of written statements and documents, that your facts are correct and that you are legally entitled to the orders. This is the important part. Thinking is hard, but this is where cases are won and lost. This is case-building.

Just the verifiable facts. Make a page for each issue and list all facts you can think of that you can put on the table. Each fact must be legally relevant and important toward proving your point or undermining your spouse's points. Also write down facts your spouse can present and what points he/she can make with them. For each fact, you must have either a document or the declaration or testimony of at least one witness (perhaps you) to verify your claim, otherwise the judge might think you are unreliable. If it looks like your facts don't beat their facts, then you should negotiate the best deal you can get and get out.

Documents. If any fact can be verified by a record or item, use it. However, every record or item must be accompanied by the declaration or testimony of a person who can state of their own knowledge as to what it is,

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

where it came from, and that it is genuine and accurate. Often, this will be you, but there might be a record or item that requires the declaration or testimony of someone else. Let's say someone sent you a photo of your spouse asleep amid beer cans while supposedly taking care of your baby. The person who took the photo would have to state the time, place and circumstances.

Witnesses. You are a witness. Anyone can be a witness who knows, based on personal knowledge, something relevant and important about your case. This must be something they saw or heard, or your spouse told them something that undermines his/her case, or they have a document or item that proves a relevant point in your case. You need to have what they know in a thoughtful written declaration under oath; otherwise, you have to weigh your chances for getting their oral testimony before the court. Avoid using your children as witnesses unless unavoidable; it's bad for them and can reflect badly on you. Testimony or declarations by different witnesses, even on the same point, will show the judge that a variety of people in the community support you. It can make an impression. Add up all the witness' statements, add whatever documents you have, and see if you have something on each and every essential fact in your case.

Accusations. It is easy to just check a box to accuse your spouse of something, but if you can't prove your allegations with good evidence, you will probably turn the judge against you and possibly get fined as well. You could lose your credibility and damage your entire case. If you don't have it already, you need to get proof of anything you want to charge before you make the charge. This is especially true when charging child abuse or neglect. Warning! Do not make accusatory statements in your forms that you are not prepared to prove when you get to your hearing.

Degrees of proof. Your own declaration or testimony is evidence, but for important matters it would be better to have documents or statements of other witnesses to back up your version of the facts. You must assume the other side is going to claim different facts, and you have to try to anticipate what they know or could come up with to strengthen their view of things.

The degree of proof you need varies, depending upon how intrusive the order will be against your spouse or how strongly it will impact children. If you ask the court to order your spouse not to hit or threaten you, you won't need much proof—perhaps just your own declaration. Likewise, an order prohibiting the transfer of community property would not burden your spouse much unless he/she shows some reason why it would. But, if you want your spouse kicked out of the house, or not to have visitation unless supervised, or change the current and established care pattern of the children, your proof must be pretty good. If you go to a hearing and say, "She drinks when she's taking care of the children," and she says, "I never did, not once," and there is no objective evidence, how will the judge know what's true? Remember, when declarations are used, the judge will not see the witnesses in person. You need witness statements, arrest reports, or whatever else you can think of to support strong allegations.

Case-building tips

Keep a diary and describe every incident, who was present, where the kids were, always noting the date and time of significant events.

Witnesses. Log their names, addresses, phone numbers, email, text. Ask them to give you a statement under penalty of perjury on a Declaration form.

Medical records related to any injury caused by your spouse. You should get treatment even if it might not be absolutely necessary in order to build a record. Even if you only have a bruise, see a doctor and explain that you want the bruise documented. Be aware that medical people are required by law to

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

report to the police any injuries that seem to have been caused by abuse or a deadly weapon.

Police reports. Call the police, make a report, and get a copy. Get copies of any past reports.

Photographs of property damage caused by your spouse or visible injury to yourself or others. Bruises, especially on dark-colored skin, may be hard to photograph. Try photographing from one side so the light of the flash doesn't bounce back and ruin your picture.

Keep notes, letters, recorded phone messages, texts and emails where your spouse threatens you or apologizes. Don't tape over or erase the message. Keep torn or bloody clothing, small broken things.

Receipts. Keep receipts for all medical expenses, attorney fees, costs, moving and rental expenses if you must move due to your spouse's bad behavior.

Financial records. If support is an issue, you will have to prove the income and debts of you and your spouse, what it costs you to live, and any special needs that you or your children have. You'll need evidence such as pay-stubs, W-2 forms, tax returns, etc. If necessary, consider using a subpoena to get payroll records.

F How to write a declaration and authenticate documents

Often people, even lawyers, write as if the reader already knows or cares about the case. Don't do that. Your declaration should be completely clear to an uninterested stranger, which is exactly who the judge is. You need to work a basic understanding of your case into the declaration. Typically, you need to explain who you and your spouse are, what you do for a living, the length of the marriage, and the ages of your children. If you are seeking to modify an earlier order, you need to explain that and explain how things have changed since then. Even though you have a lot to explain, it is important to keep the declaration to the minimum length possible while still including all relevant facts. While this is your only divorce, and you might want to explain everything at length, the judge has too many cases and wants only the bare bones—the basic, essential facts without any elaboration or decoration. You need to strike a balance, where you include all the necessary facts and yet do not go on for page after page.

It is particularly bad to go on at length if you do not use paragraphs and do not underline or bold anything. That makes the judge want to go to sleep instead of reading with interest and understanding. Start each new fact or thought as a new paragraph. In long declarations, separate facts into logical categories and use bold or underlined subject headers to help the reader follow the flow. When a declaration is finished, step back and try to look at it through the eyes of a stranger to see if it is completely clear.

A very good format to follow is to have a heading for each of your specific requests. Under each heading, briefly describe what you want the court to order (in one sentence if possible), and then, relate with the specific instructions provided above why you are legally entitled to your request.

Only state facts

In most counties, your motion will succeed or fail on the strength of the supporting declarations. So, let the facts speak for themselves—plain, undecorated facts. A fact is something that you or someone else personally observed. It does not include what anyone said (other than your spouse) or anyone's opinion. You don't want to guess about what your spouse felt or was thinking—unless you are a mind reader, you can't know that. You can describe observable facts, such as his face was red, he was yelling, had his fists balled up and was swinging them, and he acted upset and angry.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Include only facts you can prove in court and that justify orders you are requesting, and make sure to state all relevant facts. For example, if you requested temporary possession of your own vehicle, don't just say, "This is my car." Explain that you routinely drive this automobile, that your spouse has another vehicle, that you have custody of the children and need to have a car, or whatever are the facts in your case.

When you are done with your declaration, go back and check every item listed in your Application form. Have you stated facts that would make the judge feel justified in granting each order you requested? If not, add the appropriate information.

The opening

Every declaration you write will start with:
I, the undersigned, declare as follows:
1. My name is .
2. I am (petitioner herein / respondent herein/or state relationship to par ties or case).
3. I have personal knowledge of every fact herein and could competently testify thereto if called as a witness at trial.

Numbering each separate factual item, go on to state all relevant facts known to the declarant. If this is your own declaration, what follows next should let the judge know immediately upon glancing at the beginning of your declaration what the motion and your declaration is about. You need what amounts to a headline in bold or underlined type near the beginning, then a couple of sentences that state what your motion requests and also calls the judge's attention to the most important fact(s). For example:

4. Motion to Compel Vocational Examination. This declaration is in support t of my motion requesting that my spouse be compelled to submit to a vocational evaluation. My spouse has a college degree and works only par t-time as a sales clerk.

This reduces the essence of the motion to two sentences. Now you can go on with the details.

Dates and locations

It is important to include a date and location for each fact or event described. The judge can't know how significant an event is without knowing when and where it occurred.

Order of facts

After the opening, it is usually best if the rest of your declaration is written in chronological order or reverse chronological order (with the most recent event immediately after your headline). If you are attempting to do an emergency kick-out request (getting your spouse out of the house) by means of a motion claiming domestic violence, you need first to tell the judge about the most recent violence, then the worst violence, then the pattern and history of past violence. In this case, you go from most recent to older. If you are trying to file a motion to obtain an order for discovery, you will proceed in chronological order, covering, for example: when you made your initial discovery request and the history of any response and further demand(s) you might have made. If it has been a long time since the events you write about, you should explain why it is that you are now coming to court and why the delay does not show that the matter is not important.

Declarations by others

A good way to get people to make declarations to support your motion is to use the Declaration form. If you are in a county that will accept handwritten papers, it may be a good idea to have each witness write the declaration by hand if it can be made easy to read. If you give the judge a number of declarations

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

by different people in different handwriting, the judge sees that you did not make the words up, the witnesses did. Also, the judge sees that there are members of the community that support you, and this does have an effect. If you do this, you should first fill out the caption of the Declaration form before you give it to the witness. If handwritten papers are not acceptable in your county, you will have to type the declaration for the witness, then get a signature. As much as possible, do it in the witness' own words.

Have the witness state his/her name, then explain who they are and how they know you and/or your spouse and/or children. They need to say something like, "I am, a close neighbor of the Smith family, and I have known the parties to this lawsuit as well as their children for 10 years." This tells the judge how much weight to give to the person's statements. Then the witness should tell the judge whatever relevant facts he/she knows about your case.

Naturally, you would like witnesses to state facts that make you look good, but if they know something negative about your spouse (like they came to your house on the weekend when you were away and found your spouse passed out drunk and the 2 year-old standing there crying), they need to state the facts directly and plainly, without any opinion or emotional decoration. Let the simple facts speak for themselves. You don't want anyone to say what they think anyone felt, thought, or intended. Only what was observed.

Authentication of documents —attachments to declarations

You might have documents or other items that support your case; for example, medical records, pay-stubs, bank statements or photos. These can be essential to your case but need to be introduced correctly.

Authentication. Every document or item in your case must be "authenticated" by attaching it to the declaration of someone (often you) who states of their own personal knowledge what it is, where it came from, and that is accurate. If the attachment is not the original, state that it is "a true and accurate copy," and bring the original to court unless it has been destroyed or is not available to you. If your request for oral testimony is granted, you could authenticate documents orally, but you should use declarations anyway because a witness might fail to show up or a judge might rush the case and not hear every witness. It is always best to get everything in the written record.

Private information. There are certain documents that some courts do not want attached to your declarations, feeling they are best kept off the public record, such as records related to children. Check your local rules. For example, San Francisco rules state that medical, psychological, educational, or other reports about a child should not be attached to the motion but provided at the time of the hearing. If you want to use documents made private by local rule, you make an advance written request to present oral testimony about the documents (section D) or, alternatively, to present them separately to the judge at the time of the hearing. Again, check your local rules.

Identity information. You don't want Social Security or financial account numbers to be on public view so, following the method described in Chapter 9C, make sure than anything filed with the court substitutes codes for Social Security or financial account numbers. This does not apply to anything served on the other party.

G Relief from error

Running a contested divorce is so complicated that it won't be a shock if somewhere in the process you miss a deadline or make an error or omission in your papers. Fortunately, the law provides the possibility of being excused from almost any error. Code of Civil Procedure section 473 says that the judge can relieve you from a "default" if your error was the result of "excusable neglect." Of course, you

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

never want to find yourself in this position because there is no guarantee that the judge will find your error "excusable."

Excusable neglect is something that to a judge would seem reasonable—not laziness, carelessness, or an attempt to avoid the consequences of legal action. Lawyers make mistakes with calendars and deadlines all the time. The judge will also consider how much the other side will be disadvantaged if you are excused. Of course, this would only work if you act quickly to correct the error.

As soon as you discover that you missed a deadline or that there has been a mistake, the other side should be contacted immediately and a request made for permission to amend, file or serve papers a few days late. If you are making your request in writing, give a specific deadline for their reply. If they agree, you should immediately email a letter to them confirming that agreement and indicating that they should contact you immediately in writing if your understanding of the conversation is not correct.

They agree. If the other attorney doesn't object, you just proceed as if things are OK. For example, if you're filing your Responsive Declaration only 8 calendar days before the hearing, then it's late under the law; but generally, if the opponent doesn't object, neither will the court. Of course, a judge could refuse to consider a late pleading even if the opponent doesn't object, but in most situations if the opponent doesn't make an issue of a missed deadline, neither will the court. If the court does try to enforce the deadline, you could then make the Section 473 motion.

They don't agree. If, by the deadline you set, you don't get the consent of the other side to allow you to correct your mistake, file a motion as soon as possible, preferably the very next day. The statute provides six months within which to make the motion, but that is the absolute, outside limit. The court can say that you should have done the motion earlier even if you do it within the six-month limit. Don't wait. Once the problem comes to your attention, move to correct it.

Stipulate if you can agree

If a motion is filed, the person who filed it can dismiss it if no response has been filed. However, if a responsive declaration was filed asking for affirmative relief, the motion can only be dismissed by the written agreement of both parties. At any time up to and including the time for the hearing, the parties can reach an agreement on issues that were raised. A set of orders—called a stipulation—is drawn up, approved, signed by both parties, then presented for the judge's signature. A stipulation can also be recited orally in court instead of in writing, but afterwards one of you must prepare a written order to reflect the oral stipulation and get the judge's signature on it. How to prepare a stipulation is discussed in chapter 5.

Child and spousal support preparation

If you are requesting child or spousal support, you should start preparing as far in advance as possible because this requires digging up records, thinking, figuring, and filling out detailed financial forms.

Study the order forms first and create the order you want the judge to make. Whatever facts are required in the order must first be presented to the court in your moving papers and proved with an Income & Expense Declaration (form FL-150) and attached records such as pay stubs, tax returns, etc. Depending on your case, more might be required.

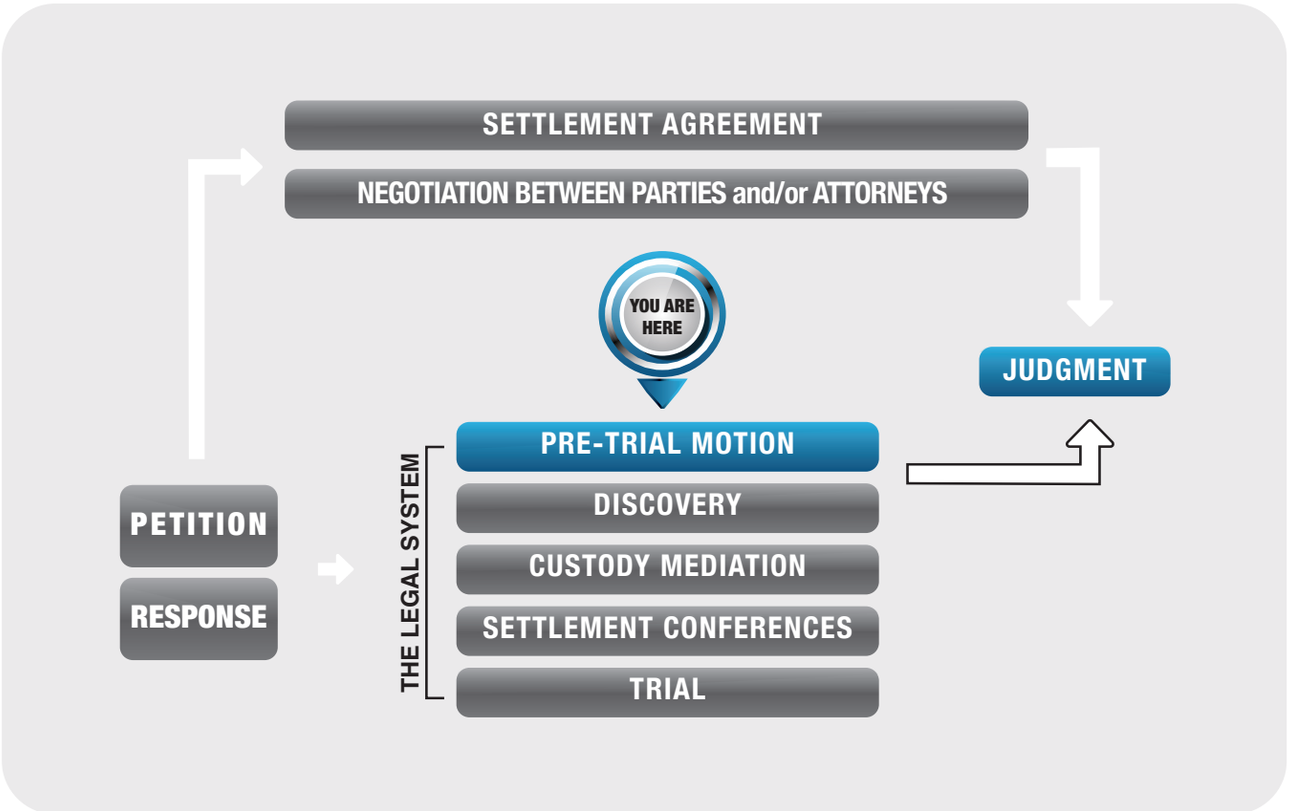
Computer calculation. When support has been requested, every judge wants to see a printout from support software, like DissoMaster (a program available to lawyers and courts). Many counties require one.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Protect your privacy!

Court files are public, so you do not want Social Security or financial account numbers on view for identity thieves. Therefore, on any document filed with the court that requires a Social Security or financial account number, use only the last four digits, preceded by a code number associated with that item. For example: "R1 = ***–**–4321" could be your Social Security number, now identified as "R1" in all documents, and "R6 = ******-7654" could be a bank account. Keep a private list of each code and the related full account number. But note: coding is used only on documents filed in court. Do not use codes on documents that are served on the other party—they have a right to the complete number. If some day you are asked by the court to identify your information, you must file form MC-120. Do not file it unless asked.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 12

HOW TO DO A REQUEST FOR ORDER (RFO)

Read chapter 11 before you start a motion

A Request for Order (RFO) is a request for an order to relieve a specific problem that can't wait until trial. Whether you need to set aside your default, postpone a hearing, obtain documents, force your spouse to undergo a drug test, or a broad range of other things, a motion is probably the tool you need. You can file an RFO on any subject, although you do not want to trouble the court with bizarre or unimportant requests.

The RFO forms have check-boxes that make it relatively simple to request orders for:

- child custody and visitation
- money: child and spousal support, pay debts, attorney fees and costs
- exclusive use and possession of residence, auto, computer, etc.
- property restraints and protections (freeze assets)

You can also use the RFO forms to bring any other issue to the court's attention. For example, you might need an appraisal of the family home, but your spouse lives there and won't let the appraiser in. Solution: file a motion requesting an order that, within a specified number of days after the hearing, your spouse must permit the appraiser access to all parts of the home without interference.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Combining issues in one motion

Many attorneys believe you should include all issues that need to be resolved when you file your RFO, certainly all that appear in check-boxes on the forms. The judge gets a better picture of the whole case, but the down side is that many courts allow only 15-30 minutes to handle an RFO. If you run out of time, the judge will hear the most important issues first and reset the matter for another hearing, but the fear is that some issues will be hurried or lost in the rush. This is especially a problem if your case requires oral testimony (if it is allowed), because testimony takes time. For these reasons, it is often better to file separate m RFO for matters that are not closely related. For example, if you need to compel your spouse to give you documents and your spouse is also late in paying support, you would file two separate RFOs, so each could be given separate attention.

If your spouse responds

If your spouse files a response to your RFO, it is essential that you reply with a Declaration, responding to every new issue or fact that your spouse raises so you get your points into the written record. You must serve and file your reply at least 5 court business days before the hearing if your reply is personally served, or 7 days if served by overnight courier so that the papers are received by the end of the next business day after they are filed. Your proof of service should be filed 5 calendar days before the hearing.

Usually it is best to go through the response paragraph by paragraph and respond specifically to each item. Make sure you respond to every single allegation, otherwise the judge will assume it is true. Do not repeat what you said in your moving papers. Judges do not like reading the same old thing twice to learn nothing new. Don't waste their time.

You might want to consider also filing an RFO to strike out everything in declarations presented by the other side that is technically not supposed to be considered by the judge. This brings the matter very forcefully to the judge's attention. For example, a nonexpert witness is only allowed to state things he/she personally observed that are relevant to the issues in dispute, so you would ask the court to exclude specific statements that lack foundation, are hearsay (about which the witness had no personal knowledge), or speculation or an opinion of a witness who is not an expert, etc. Your attorney should do their own part to raise formal evidentiary objections to the response as appropriate.

If you obtained an order shortening time and served your spouse, say five days before the hearing, and your spouse's papers are filed one or two days before court, as a practical matter you might be unable to produce a reply and file it before the hearing. You can try bringing your reply to the hearing and see whether the judge will accept it. If you have time to respond to their response, do it.

Must meet and confer

Before the hearing, the parties meet and confer by telephone (or as ordered by the court) to try in good faith to settle some or all issues. Before or while conferring, the parties must exchange all documentary evidence that will be relied upon at the hearing.

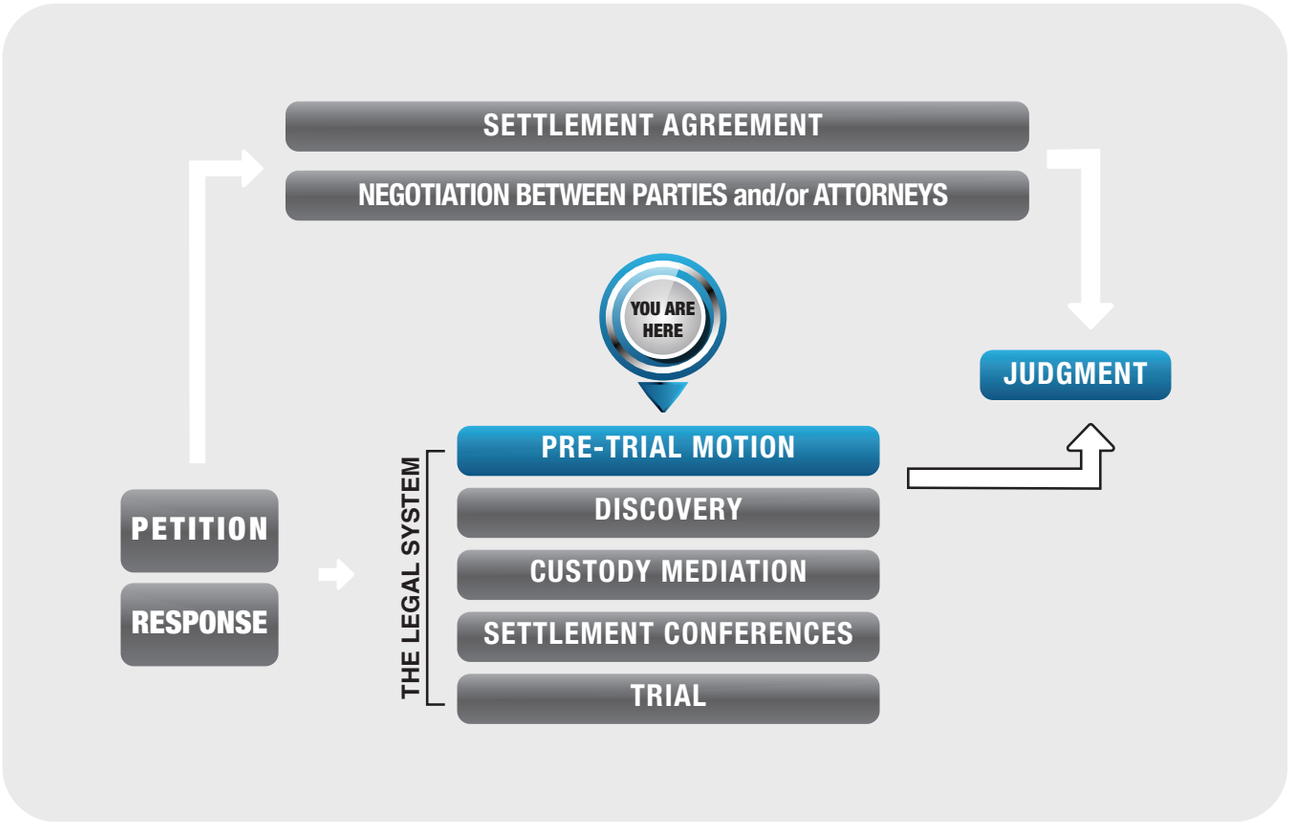
Request for a continuance

If the other side contacts you and requests a continuance, you can agree or not. Either way, you should follow the procedures discussed in chapter 24, section B.

Get ready for the hearing

Go to chapter 15 and learn how to prepare for the hearing and how to present your case in court.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 13

HOW TO DO A TEMPORARY RESTRAINING ORDER (TRO)
creating safety and stability

A. Deadlines and time lines
B. How to do a regular TRO
C. How to file and serve your TRO
D. If there's a response

Read chapter 11 before you start TRO

A Temporary Restraining Order (TRO) is an order signed by a judge directing the named party to come to court to give a reason (show cause) why the judge should not make orders you requested in your TRO forms. If the person served does not respond and come to court, the judge will probably issue the orders.

Orders last only until Judgment. TRO orders are intended to stabilize and protect parties, their children, or their property until the Judgment is entered. Then they expire. Your TRO does not get you permanent protective orders—for that, you must either stipulate (agree) to include such orders in your

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Judgment or at trial ask the judge to include them in your Judgment. Exception! Under Family Code 6340(a), protective orders for child custody, visitation or support will survive the termination.

Automatic restraining orders. On page 2 of the Summons, you will see that when a Petition is served, both parties become bound by certain orders. You would use an TRO if you want orders that are different than those or if you want to call your spouse's attention very forcefully to the matter.

Two types of TROs–regular and domestic violence (DV)

There is a set of forms specifically for an TRO that involves domestic abuse (DV). Family Code §6203 says that "abuse" is any conduct that causes bodily injury or a reasonable fear of imminent bodily injury to you, your child, someone you do or did live with, or a member of your household. While emotional abuse can be devastating, particularly if it occurs over a long period, it alone does not support the use of the domestic violence TRO. If your problem involves abuse as defined by the Family Code, use the domestic violence TRO. If you do not have a clear case of abuse, use the regular TRO.

Orders for a TRO CAN BE USED TO REQUEST

Orders against Child custody, visitation, support

- Spousal support (but not in a DV TRO)
- No contact with protected persons or pets
- Custody and protective orders for family pets
- Exclusive possession of family home
- Possession of family auto or other proper ty
- Pay bills such as car payment, mor tgage, or credit cards
- Refer to Family Cour t Services to deal with custody/visitation

Violence, harassment, or contact with a person, child or pet

- Visitation until after the hearing Drugs/ alcohol during or before visits Possession of firearms or ammunition Entering into any new major obligations
- Transferring, hiding, or wasting community property
- Cashing, borrowing against, cancelling, transferring, or changing beneficiaries of any insurance for par ties or kids.

You can file a DV TRO at any time by itself. The regular TRO can be filed with the Petition or Response or at any time afterward.

Child and spousal support

If all you need is a fast order for child support, consider using the easy Expedited Child Support procedure. Otherwise, you can use a regular TRO to request orders for both child and spousal support. But, with a DV TRO, you can request only child support but not spousal support. If you want both a DV TRO and a spousal support order, you will have to file (1) a domestic violence TRO and a regular TRO or (2) a domestic violence OSC and a motion for support.

Requesting a TRO for support

You can't get a TRO solely for money requests, such as support. A TRO is only for legal emergencies and, for some reason, being totally without funds is not considered a legal emergency. However, if you have a valid action on any of the TRO matters listed above, you can also include money requests, including child and spousal support, in your TRO. However, if you are using the Domestic Violence procedure, you can't request spousal support. Don't ask why; I can't figure it out either.

Put it another way: if you have a valid reason to file a regular TRO (not domestic abuse), you can also include a request for child and spousal support orders. However, if you file a Domestic Violence TRO, you can only request child support. In that case, if you also want to obtain spousal support, you have to file

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

a separate motion for spousal support. Neither you nor the court want two separate hearings on support, so be sure to request that the TRO and the motion be calendared for the same date and time. If for some reason they cannot be calendared for the same time, if motion hearings are not being set too far in the future, consider removing your child support request from the domestic violence TRO and filing a separate Request For Order for both child and spousal support.

A Deadlines and timelines

If you are requesting a TRO, you must give notice or explain why you didn't

If you ask for TROs, you must file a declaration stating that (1) notice was given to your spouse personally (not his/or her attorney) of when and where TROs would be requested, and whether he/she plans to appear in opposition; or (2) you tried but were unable to give notice, specifying what efforts were made; or (3) there is a very good reason not to give notice, detailing why this is so.

When and how. Notice must be given personally by phone, voicemail, or in writing no later than 10 a.m. on the court business day before the hearing. If notice was given later than this, you must explain exceptional circumstances that justify it. The person giving notice must state (1) the relief being requested, (2) the date, time, and place TROs will be requested, and (3) must ask if the other party plans to appear to oppose the application. So, you or someone must telephone your spouse, give the required notice, then sign a written declaration as to what was done. Absent a reason not to, you must have all TRO papers served at the first reasonable opportunity before the hearing, then get a Proof of Personal Service signed and filed right away.

Excuses. For a court to issue orders without notice to the other side, you have to prove that giving notice would create a real threat of harm. For example, your spouse lives in the house and is prone to violence, so if he/she learns of the TRO, he/she will be likely to harm you or the children. Or, your spouse has threatened to take the children to another country and is likely to do so if he/she learns that you are asking for a TRO. Or if giving notice is likely to cause your spouse to hide, this might work, especially if he/she has done anything like it before.

Failed excuses. If the judge does not accept your reason for not giving notice, your papers will be returned and you will be expected to go give notice. However, if you feel that your spouse truly is dangerous but you just didn't express it clearly enough, you could resubmit the papers and explain the problem better; but, if you do this, you have to tell the judge that this is the second submission and your request to skip the notice had previously been denied.

Responders! If you get notice that a TRO is going to be requested, if at all possible prepare a Responsive Declaration and file it immediately or take it to court at the time and place indicated to present your side of the case. At least show up with your attorney if you want to oppose the TROs.

Plan service of papers before taking TRO to court — deadlines

Read chapter 11C on who can serve and how to serve. You won't have much time to serve papers, so your attorney needS a plan all set up and ready to go before you file your TRO. If you don't serve your spouse on time, you'll have to have your TRO reissued. Worse, if your spouse was served late and the judge refuses to hear the matter, your spouse might hide to avoid getting served again. Your attorney should always have an Application for Reissuance on hand to present to the court in case a hearing is continued.

Order shortening time (OST). Read chapter 11B about orders shortening time. For urgent matters, ask that time for service be shortened to 5 days before the hearing and the responsive declaration be due

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

2 days before the hearing. If there is a specific emergency, you can request that service be shortened to 2 days before the hearing and the responsive declaration be due one day before the hearing.

• Time line for TROs. When a TRO is issued, the hearing must be held as soon as the court calendar permits, but no later than 21 calendar days from the date the orders were issued or denied, or 25 days if the court finds good cause to extend the time.

• TRO granted with notice given to the other side. You must personally serve your spouse with a full set of TRO papers at least 16 calendar days before the hearing.

• TRO granted without notice given to the other side. You must personally serve your spouse with a full set of TRO papers at least 5 calendar days before the hearing.

B How to do a regular TRO

First, read chapter 16 to get clear about the orders you can request and chapter 11 about how to prepare and build your case. When you are clear about the orders you want to request, the facts you can prove to justify those orders, and how you are going to serve the papers, you are now ready to discuss this with your attorney and proceed.

1. Serve the TRO package

Although people generally mail motions, you should have a TRO served personally. If your spouse has an attorney of record, a copy should also be served on the attorney. This can be done by mail if you have time to add 5 extra days to the deadline for service, or personally. You need a signed Proof of Service for each person served, which you file in court immediately (safest) or in court when you appear at the hearing.

2. How to get your TRO reissued

If you can't serve your TRO by the deadline, quickly file the Application and Order for Reissuance of OSC (FL-306). When the Order for Reissuance is signed the clerk will write a new hearing date on it. These should be attached to the package of papers you are serving and then you can proceed to serve papers on the other side before your new deadline.

C If there's a response

If your spouse served you with a Responsive Declaration, it is essential that you respond in writing to every new issue or fact. You must serve and file your reply at least 5 court business days before the hearing if personally served, or 7 days if served by overnight courier (where local rules permit). Also, these papers must be received by the close of business on the next business day after they are filed.

Go through the Responsive Declaration carefully and reply specifically to each item that you think is untrue or misleading. The judge can assume that any fact you do not reply to is true. Do not repeat what you said in your moving papers—judges don't like reading the same thing twice to learn nothing new.

You might also want to do a written motion to strike asking the court to strike out everything that is technically not supposed to be considered by the judge. A non-expert witness is only allowed to state things he/she personally observed that are relevant to the issues in dispute, so you would ask the court to exclude anything that lacks foundation, is hearsay (about which the witness had no personal knowledge), is speculation or an opinion of a witness who is not an expert, etc.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

If you obtained an order shortening time and served your spouse, say, five days before hearing, and your spouse's papers are filed one or two days before court, you might be unable to produce a response and file it before the hearing. If you have time to respond to their response, do it; otherwise, try bringing it to the hearing and see whether the judge will accept it.

Request for a continuance

If the other side contacts you and requests a continuance, you can agree or not. Either way, you should follow the procedures discussed in chapter 24B.

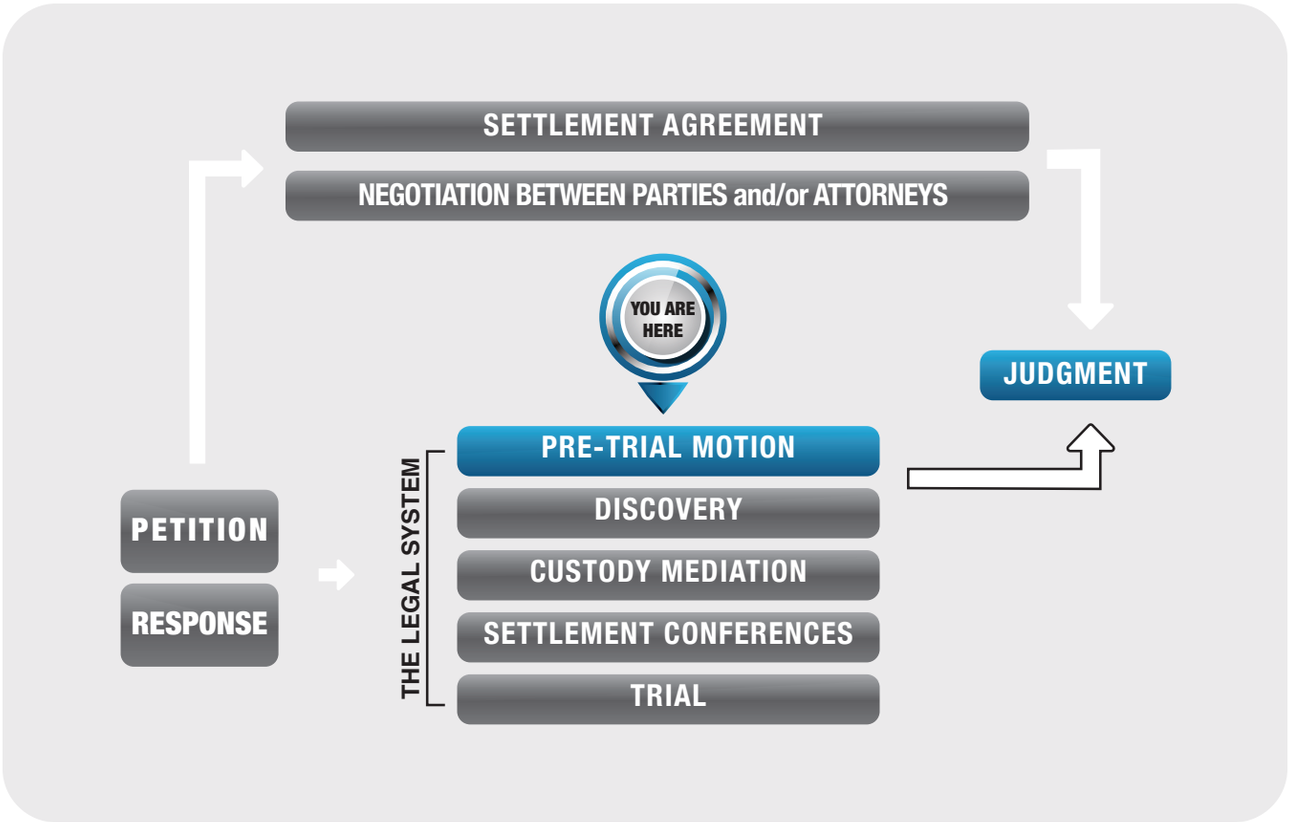
Get ready for the hearing

Go to chapter 15 where you will learn how to prepare for the hearing and how to present your case when you are in court.

D How to do a domestic violence TRO

You would use a DV TRO only if there has been physical harm in your family, or conduct that gives you a good reason to fear imminent harm to you or anyone in your family. Otherwise, you use the regular TRO.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 14

RESPONDING TO AN RFO OR TRO

A. First things
B. Respond or settle?
C. How to object if served at the last minute
D. Asking for a continuance (postponement)
E. How to do a Responsive Declaration

Read chapter 11 before responding

Every action to change marital status starts with a Summons and Petition. It is not unusual for a motion (RFO or TRO) to be served at the same time or shortly afterward—many attorneys do this as a routine matter. Unless there is a justifiable reason to do so, it is a sure way to start a war. If you were served a motion at the start of a case, you need to treat the matter very seriously because the outcome of most cases is determined at this level rather than later at trial.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A First things

Whenever you are served with legal papers, read every word of every paper, even the fine print, including anything that is rubber-stamped. It is all important.

1. Does the RFO form (FL-300) show a hearing date? Have you been given notice of intent to request TROs?

Here's how it works. Unless your Ex can convince a judge that there is a good reason not to give notice, the judge must require at least 24 hours' notice that immediate emergency orders are going to be requested. No hearing will have been set yet, so if you received form FL-300 and the time and date of the hearing have been left blank, even though you should have been given notice with the time and place, this probably means you have just received your 24 hours' notice that your ex is seeking orders to take effect even before the hearing. Of course, if you did get a notice of intention to request immediate orders (TROs) there is no doubt about it. So here's what you do:

First, look to see what orders are being requested and what facts have been stated to support the requests. Do you want to oppose the request? If you do, ask yourself, and your lawyer, if you have facts to state on your behalf and any evidence (declarations, witnesses or documents) to present that might contradict or undermine facts stated in your spouse's papers. If you do, you must move with extreme speed. If you don't have an attorney already, get one immediately! But also:

• Read all the papers carefully—every word, even fine print and things that have been rubber- stamped on the papers—to see if they say when and where your spouse will submit papers to a judge. Some counties require that you be told this and others do not, so look carefully.
• If the papers say when they will be presented to the court, you can show up and be heard before the judge signs. It will be much better if you can also file a Responsive Declaration ahead of time, but at least show up with something prepared to say. If you wanted to get an attorney but have not hired one yet, let the judge know and try to ask for a continuance which would allow you to hire one.
• If you are not told when and where the papers will be presented for signature, you still file a Responsive Declaration within 24 hours. If you can get your side of things in the file before the judge considers the case, you might do some damage control from the beginning.
• Even if you can't get a Responsive Declaration completed and filed before the judge considers the TROs, you have to start work right away to get one filed before the date of your hearing.

Now, go on to item 2, to see if orders have already been signed into effect against you.

2. Orders that are effective when you are served
RFO. The orders requested in an RFO are never effective until after the hearing on the motion and an Order After Hearing or a stipulation is entered. However, mistakes get made, and this paperwork is over the heads of some attorneys and judges. If your motion came with the Temporary Orders form attached and signed (shouldn't happen) read this next bit about the regular TRO.

TRO. Here's how to tell if any orders are in effect when you were served.

• Domestic Violence TRO. If the Temporary Restraining Order form (DV-110) was not signed by a judge at the bottom of page 3, there are no orders against you until after the hearing, if ever. If it was signed by a judge, then any orders checked on the form (items 6–21) became effective when you were served. Other forms contain only requests for orders but are not immediately effective. If you are subject to any orders at all, read page 4 of the TRO very carefully.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

• Regular TRO. If the Temporary Orders form (FL-305) is attached to the RFO form (FL-300) and signed by a judge, those orders are in effect when you are served. Otherwise, they will not go into effect until after the hearing, if at all.
• Nothing in the RFO form (FL-300) is an order, only requests for orders.
If orders are in effect. First, look to see what orders are being requested and what facts have been stated to support the requests.
• Do you want to oppose the request?
• If you do, ask yourself, and your lawyer, if you have facts to state on your behalf and any evidence (documents, witnesses or declarations of witnesses) to present to the court that might contradict or undermine facts stated in your spouse's papers.
• If you do, you have to move fast. If you don't have an attorney already, get one immediately!

You can object to inadequate notice or request a continuance (sections C and D, below), but even if you do, you still want to get a Responsive Declaration on file as soon as possible.

Do not violate any orders. Read each order very carefully and be very careful not to violate any order, no matter how unreasonable or unfair it might seem. To do so could destroy your credibility in court and wreck your case. Orders made at this stage are only "temporary," but they can have a tremendous impact on your case and on your life.

Got guns? If you were served with a Domestic Violence Restraining Order (DV-110 or 130) read item 9 and DV-800 INFO. If you possess firearms or ammunition, then within 24 hours you must sell it all to a licensed gun dealer or take it all to a police department or sheriff 's office. Take DV-800 with you and get it signed, because within 48 hours of the time you were served with the TRO, you need to take your TRO with the receipt and file it with the court clerk. Note that you can't purchase firearms or ammunition as long as you have the restraining order against you. If your employment requires use of firearms, you should let your attorney know immediately. Even if you are convicted of only a misdemeanor, you can never own a firearm again.

3. If child custody or visitation is an issue
If the orders requested include child custody/visitation, there will be a date for you to attend mandatory mediation, screening or a parenting program. This information will appear at item 7 on the RFO (FL-300), or at item 4(c) on the Child Custody and Visitation Order (DV-140). Write this date on your calendar. You do not want to miss this, even though participating in the process can be upsetting.

4. How much time do you have to respond?
Response to the Petition (FL-100). You need to file a Response to the Petition within 30 days of the day you were served in order to protect your rights and get equal standing in the case with Petitioner. If you do not respond, you can lose your right to participate and a "default" judgment can be entered against you. It is a lot of trouble to have the default set aside later.

The Response is a separate document from the Responsive Declaration to an OSC or motion, and they have different deadlines, so be careful! If you were served with both a Petition and an OSC or motion, you must respond to both. Sometimes self-represented people—and even some lawyers—will file a Responsive Declaration to a TRO or RFO and forget to file the Response to the Petition. The opening stages of a divorce can be upsetting, so it is easy to forget about the Response. Don't do that.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Petition is opposed by Response filed and served personally within 30 calendar days of service

OSC or motion is opposed by Responsive Declaration filed and served personally at least 9 court business days before the hearing (unless OST changes the deadline)

Response to RFO. If you were served with an RFO, examine item 2 to see when your matter is set for a hearing and mark that date on your calendar. Unless the judge signed an order shortening time, you need to file and serve your Responsive Declaration at least 9 court business days before the hearing, so mark that date, too. It is very important not to be late, but it is better to file late than to not file at all. Papers should be served personally, no later than by the end of the next business day after they were filed.

Custody issue? If there is an appointment with a mediator (item 7), it would be best to get your Responsive Declaration on file as much ahead of time as possible, in hopes that the mediator will see the other side of the story. For sure, take a copy of your papers to the appointment.

Order shortening time? If there is an Order Shortening Time (OST), your hearing might be in a day or two, so your Responsive Declaration will have to be done with the speed of light. To find out if there is an OST, look at item 5 if you were served with the Request for Order (FL-300) or item 5, line 1 on the Notice of Court Hearing (DV-109).

Make a case calendar

You need to organize and keep track of all activities and deadlines in your case, so set up a calendar that covers the next year or so. Mark the date you were served with the Summons and Petition, then count 30 days later and write down "Deadline for Response." A week before that write, "Prepare Response." If you were served with a RFO (FL-300), you will need to calendar the date for your hearing and the deadline for your Responsive Declaration. Although this is your attorney's responsibility, it will do no harm for you to be mindful of deadlines, and it could be extremely helpful if your attorney's office is less than organized.

Continuances

Because time is so short and you are under so much pressure, it would be only natural to think about getting your hearing postponed by asking the other side or the judge for a continuance. In either case, you might or might not get one. Asking for a continuance is discussed in section D, below.

Filing fees

The first time you file papers in court, you must pay a filing fee for becoming a party to the case. If you have already filed a Response and paid the filing fee, there is no additional fee for a Responsive Declaration to a Request for Order. But if you have not previously paid the Response filing fee, then your Responsive Declaration will trigger the response filing fee and you will have to pay it at that time. Later, when you file your Response to the Petition, there will be no additional cost.

B Respond or settle?

If you can enter into an agreement in writing and avoid the necessity of responding to an RFO or TRO, that is always desirable, assuming it can be done on reasonably fair terms. However, never let a deadline to respond go by just because you are talking. This is a time when you need to proceed on two tracks at the same time: (1) work on a negotiated settlement and hope for a fair agreement, and (2) prepare

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

for the worst—a contested court hearing. Start your response now. Another possibility is where both parties agree to take the matter off-calendar or reset it for a specific later time while they attempt to negotiate the matter. If this happens, you have to file a written stipulation with the court, or have the moving party take the matter off-calendar or set for a later date. The other party should call the clerk to verify.

Review chapter 1, item 2, about reasons not to negotiate. If it makes sense to negotiate, then start talking to the other side by letter, telephone, or email. At the same time, you should immediately begin preparing (1) a Responsive Declaration to any RFO and (2) a Response to the Petition. Particularly if financial requests have been made, it could take some time to do your Income and Expense Declaration, so you can't wait until the last minute then madly scramble to get the documents done. Prepare and file them well in advance. Being prepared will impress the other side and give you a secure feeling for your negotiations. If you reach a settlement, be sure that it is in the form of a written agreement or a stipulation (a formal agreement to be signed by the judge) as described in chapter 5. Even if you agree to terms for an RFO or TRO, you might want to go to court on the date of the hearing to be sure the agreement is submitted to the court and there isn't any funny business behind your back.

C How to object if you were served at the last minute

You are entitled to 16 court business days' notice of any motion or regular TRO against you, unless the court has issued an Order Shortening Time reducing the required number of days' notice. If the papers were served on you less than 16 court business days before the hearing—or fewer days than specified in any order shortening time—at the beginning of the hearing you might want to verbally object that you did not receive adequate notice. If the judge agrees, he/she will refuse to proceed with the hearing and this will give you more time. Now we'll discuss how to make a written motion to object, which can be difficult.

If you object, should you also file your response? If you want to object that you had inadequate service, but you file a good and thorough Responsive Declaration, the judge will feel that you do not need more time because you managed to respond. If you do not file a Responsive Declaration at all, even if there was inadequate notice, the judge could mistakenly proceed by default or refuse to accept your papers or testimony in the courtroom at the time of the hearing. If you do not attend, the judge may forget to check the proof of service to be sure you had proper and timely notice.

There is no clear answer to this dilemma. Your choices are: (1) don't do anything (dangerous, as the judge may not pick up the problem); (2) don't file papers but go to the hearing and verbally object that you had inadequate time to prepare so it should go off-calendar or be continued (dangerous, because the judge may proceed, as you evidently had enough notice to get to court); (3) do papers but don't file them and go to the hearing and object to inadequate notice and file the papers only if the judge proceeds (dangerous, as the judge could refuse to accept your papers or testimony if he/she feels you got adequate notice); or (4) fully and timely prepare and file papers and attend hearing (and risk that the judge will probably think your notice was adequate as you did such a good job of preparing). Given all these lousy choices, it is probably best to do (4) if you can, as it is safest.

D Asking for a continuance (postponement)

You may want to have your attorney go to the hearing on the RFO/TRO and verbally ask the judge for a postponement, which in court is called a continuance. Often, especially for TROs, your hearing will be calendared for a date so near in the future that you will not have time to make a written motion to continue. Whether the judge grants the verbal request for a continuance will depend on so many factors that we cannot predict if it will be granted. Getting a continuance is described in more detail in chapter 24.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

In general, the judge will expect you to have a good reason why you need a continuance. An example related to RFOs and TROs (not trials) would be if there was an order shortening time so that you got only a few days' notice of the hearing. Other good reasons are in chapter 24.

Always hope for the best and prepare for the worst. You must be fully prepared to proceed with the hearing if it turns out that your request is denied.

Got orders? The judge is likely to leave restraining orders in force until the next hearing. So if your spouse got an immediate stay-away order against you, it could be used to deny you contact with your children. You will need to call this problem to the judge's attention at the hearing, as he/she might not be aware that an order made for safety is being used to determine visitation.

E How to do a Responsive Declaration

If you are opposed to any of the orders requested by your spouse in an RFO or TRO, file a Responsive Declaration (FL-320) to present your side to the court. The way you state facts and build your case is discussed in chapter 11. Much of what applies to doing an RFO or TRO also applies to your response, so be sure to review chapters 12 and 13, too. It will help you understand what the other side is doing, as well as what you are going to do.

Order of business

First, complete your papers, then file them, then have someone serve them on your spouse and his/her attorney of record, if any (see chapter 9-I), then file a Proof of Service. Your papers must be filed and served personally on your spouse at least 9 court business days before the hearing, but if there was an order to shorten time, follow that. It is very important not to be late, but it is better to file late than not to file at all. Do not wait until the last minute. The sooner you file your Responsive Declaration, the more likely it is that your side of the story will be in the judge's file by the time of the hearing. However, if you are relying on some sort of surprise tactic, or want to put time pressure on the other side, have papers served personally 9 court business days before the hearing and file them on the same day. Be careful, though; this type of brinkmanship is dangerous as your plans can be destroyed by a traffic jam on the freeway or a dozen other things. We cannot recommend serving your response at the last minute.

How to do the Responsive Declaration to Request for Order (FL-320)

First, think about what facts you are going to state and how you are going to convince the judge that you are in the right. Plan your case with your lawyer and get witness declarations if anyone has anything relevant and useful to your side of things. Read chapter 11D–F about how to build your case and make written declarations.

Reply to every order requested. You must respond to every order requested by your spouse, or it will be assumed that you consent to it.

Suggest an alternative order. The response to the regular TRO offers you an opportunity to suggest an alternative order that you would accept. On any item, you can check a box that says "I consent to the following order," and enter what you would accept on this particular order. For example, for spousal support or attorney fees, you can enter an amount that you would pay, or you could even request that the moving party pay you instead. For child support, you can attach your own calculation of the guideline amount showing a different result. Or, if your spouse wants control of the family's BMW, you could offer the equally serviceable Honda Civic, pointing out in your declaration that you have to drive buyers while he/she drives your two children around. Or, if supervised visitation was requested, you can oppose, or you can suggest other visitation arrangements than the ones requested. If you can't afford supervision,

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

say so, and say that you don't want to be cut off from your kids just because you don't have money for supervision.

State facts. Item 9 is where you state facts and attach documents that justify each position you have taken. This is your own declaration or statement of facts. Do not write your declaration before you read chapter 11F. If you also attach the declarations of other witnesses, or other documents, refer to them here. For example, "Also see attached declarations of (full names), computer report of guideline support, FL-311, and FL-150."

Asking for something new that was not in the RFO or TRO

Sometimes you want the court to consider something new and different than what was requested in the RFO. Perhaps the moving party wants you kicked out of the house, and you want him/ her to pay the mortgage if he/she stays in that house. Or maybe he/she didn't ask for attorney fees, and you want attorney fees ordered.

Domestic violence TRO. If you want a domestic violence restraining order against your spouse, you must file your own DV TRO, not just a Responsive Declaration. Even if your spouse filed a DV TRO against you, you cannot use your Responsive Declaration to obtain a protective order against him/her. You must do your own domestic violence TRO (chapter 13E) if you are fearful for your own safety or the safety of a child or family member. Issuing mutual restraining orders as a routine matter, just on request, is not good law and is becoming rare.

Everything else. State law is not perfectly clear on the subject of what is a new matter and when it can be raised, so results tend to vary from judge to judge. Most judges will let you raise issues that are closely related to (or part of) the requests in the moving papers, but they will not let you bring up completely new issues in your Responsive Declaration.

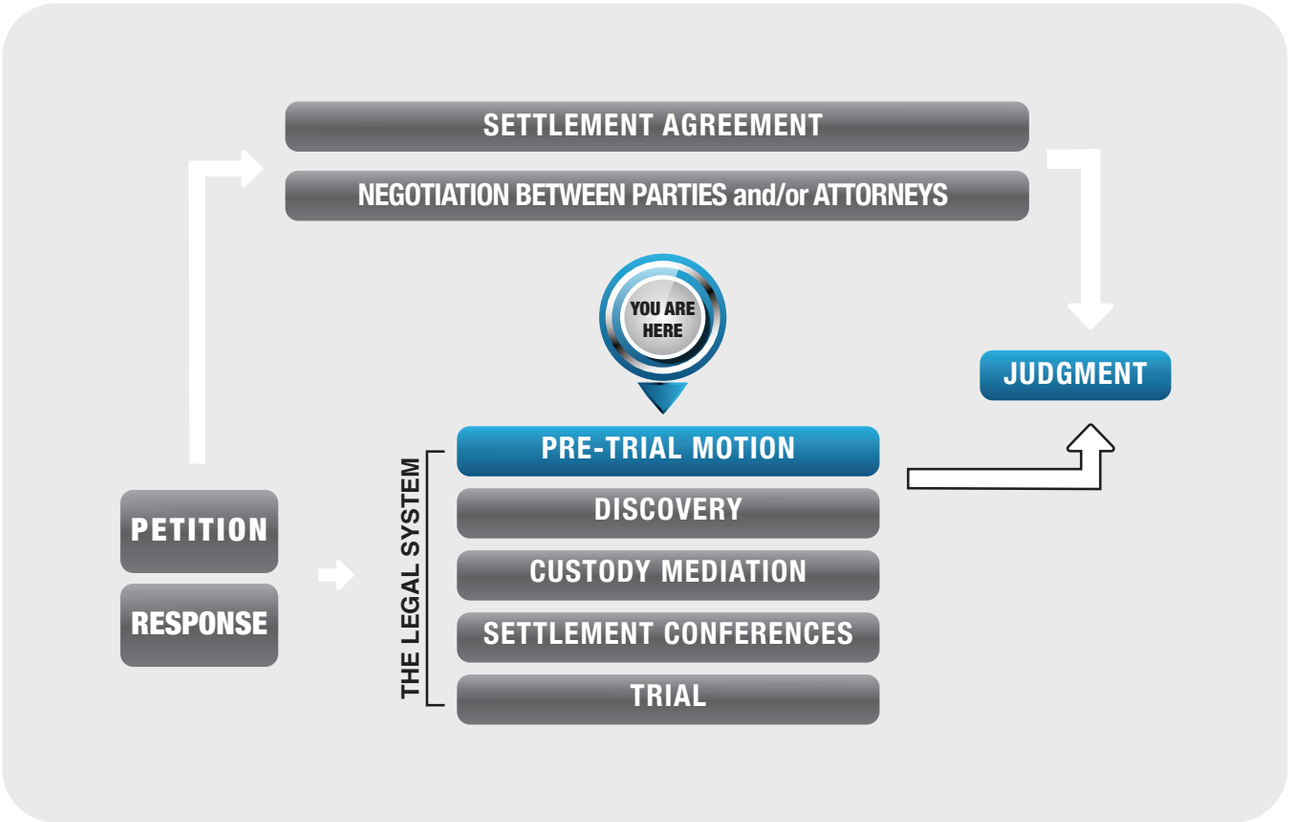
If your spouse wants to increase support, and you want to decrease it, you should say so in your Responsive Declaration because it is the same subject. But, if your spouse wants support and you want attorney fees, you will probably have to file your own RFO.

When you are not sure, the safest thing is to do both: include the (possibly) new matter in your response and file your own RFO or TRO at the same time. You can always take it off-calendar later if the issue is handled in the first hearing. You need to do this because it is possible that the judge who hears your new RFO or TRO might think the issue was properly part of the first RFO or TRO and decide that you gave up your right by not raising it in your Responsive Declaration in the first place. If the first judge already decided it was a new matter, this can't happen.

How to file and serve your Responsive Declaration

Because time is so short, your Responsive Declaration should be filed first, then served personally no later than by the end of the next business day after filing.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 15

PRESENTING YOUR CASE AT THE HEARING

A. Preparing for the hearing
B. How to subpoena witnesses or records
C. How to do the hearing
D. Expired TROs
E. At the end of the hearing

A Preparing for the hearing

Well before your hearing, make sure your case is completely organized and you have notes for what you are going to say, what documents are going to introduced, and what witnesses, if any, will need to be subpoenaed to be present. Much of this is covered in chapter 25, because in many ways a hearing is just like a small trial, so be sure to read chapter 25 after you finish this chapter. If you or the other side will introduce witness testimony at the hearing, also read chapter 17-D2 and D3 about testifying or examining a witness at a deposition.

Subpoena witnesses or documents to court. If you need a witness to come to court to testify, or bring records, or both, your lawyer must be prepared to get subpoenas out as soon as you get a hearing date. How this is done is covered in section B below. Deadlines are in section B(f).

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Go at least one day to visit court and watch divorce motions being heard. Observe how attorneys and individuals conduct themselves, what works and what doesn't. Observe the judge's behavior.

Organize your presentation in writing by bringing a legible outline of what you are going to say and a list of the evidence you want to have introduced. Experienced attorneys often type their presentations to the court, at least in outline. If you have an attorney who comes unprepared to your hearing and just speaks from what he/she remembers, this would not be a good sign.

Meet and confer. Many counties have local rules that require parties to meet and confer before the court hearing to try to reach an agreement, unless there is an allegation of domestic violence. Even if you are very sure that meeting with your spouse is hopeless, if the court rules require it you should figure out a safe way to do it. You don't want your spouse or their lawyer to come to court and say, "Your Honor, my spouse refused to meet with me and to discuss settlement; he/she only wants to drag me into court." You want to look and act like the good guy, even if the only benefit is to show the judge it's hopeless. Besides, it might work.

Exchange documents. Many counties have a local rule requiring an exchange of every document you intend to show the court some number of days before a hearing. Even if your spouse shows you nothing, you should comply because you don't want to risk the judge refusing your evidence because you didn't follow the rules. Sometimes there is an exception for "impeachment" evidence; that is, evidence whose purpose is only to show the other person is a liar. It may not be necessary to exchange that in advance.

Witness List. If you want to present oral testimony at your hearing, you need to file a witness list ahead of the hearing as described in chapter 11D and Figure 11.1. Because this is a state rule, it applies in all counties. It is possible that the judge might decline to allow the live testimony of one or more witnesses, so the safest thing is still to put everything into your moving papers.

Does your judge read papers? Since paperwork is always an important part of any hearing, you would think judges would routinely read the documents in advance. Wrong. Because most cases settle or continue, judges don't want to read papers for cases that are not going to be heard. Anything other than a confident, "Judge X always reads papers," then you should prepare as if the judge will not have read your papers. At the hearing, if you are not sure, ask the judge if he/she has read the papers. If not, you need to ask the judge to please read them or allow you enough time to orally describe every detail that is in them.

Ask for a preread. Some counties specifically provide in local rules that if you want the judge to read your papers, your lawyer should phone the clerk a certain number of days before the hearing. In any county, it can't hurt to ask the clerk if you can request a "preread," especially if your motion is not simple.

If you know who your judge will be and whether he/she wants visual or oral information, how to prepare is fairly clear. However, assuming you do not know, your lawyer should be prepared for both possibilities in case (1) the judge will have read your papers and will get irritated if you repeat everything in them, or (2) the judge will want you to present every detail of the case orally. You need both a short version and a long version of what you will say at the hearing. Both versions begin with a list of issues that are before the court. This part of your talk recites the headings the moving party used in the motion. After that, you should have (1) a short oral statement with only new facts for a judge who reads papers and your case did not include oral testimony, and (2) for a judge who does not read papers, or where important facts were introduced through oral testimony, a longer statement that summarizes the strong points in favor of your position that were developed in court.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

B How to subpoena witnesses or records to court

A subpoena has the power of a court order, requiring the person addressed to come to court. The Civil Subpoena for Personal Appearance is used to direct a witness to appear in court to give testimony when you do not need them to bring records or items with them. The Civil Subpoena (Duces Tecum) is used to direct a witness to bring something to court ("Duces tecum" is Latin for "with you," that is, the witness is to bring something with him/her to court).

How subpoenas are issued. A subpoena must be "issued" by the court clerk—i.e., stamped with the seal of the court. If you have an attorney, the attorney can issue the Subpoena merely by signing it, without having to involve the court clerk.

C How to do the hearing

Read chapter 25 on going to trial as much of what's there is relevant to presenting a case at a hearing. If you or the other side will introduce witness testimony at the hearing, also read chapter 17-D2 and D3 about testifying or examining a witness at a deposition.

Don't be late, not even by one minute. Plan to arrive 30 minutes early. Check out the parking situation in advance. Allow for terrible traffic. Don't take any chances. Arriving late could put the judge in a bad mood toward your case. If it is your motion or OSC, it could get your matter thrown out of court, which would mean you'll have to start over from the beginning with a spouse on full alert.

Calendar call. In some counties, you show up at the courtroom where the hearing will be heard. In other counties, you show up at a master calendar court where cases are assigned out for hearing. In either case, when court begins, the judge "calls the calendar" either to see who is present or to actually hear each case. When your case name is called, your lawyer will stand up and let the court know that your case is ready. The judge might ask how much time your case will take, then either hear your case or assign it to another court. You'll be happy now if you followed our advice and visited court previously to observe some cases so you'll know how things go.

Judge pro-tem? You might be offered an "opportunity" to have your hearing with a commissioner acting as judge pro-tem—an attorney acting as temporary judge. If your attorney knows and likes your real judge, you can refuse the judge pro-tem. If your lawyer dislikes your judge, maybe you should take your chances with a judge pro-tem. If your lawyer dosen't know the pro-tem and is neutral towards your judge, you can refuse the judge pro-tem if you want to stall your hearing. If you want to hurry up and get it done, accept the judge pro- tem. If you object and are sent to the commissioner anyway, you have to object on the record both before and after the hearing. Then you are entitled to have your case heard all over again by a real judge.

If your spouse asks for a continuance. Your spouse or his/her attorney might come to court and request a continuance (postponement). This will usually occur during the calendar call. You will want to tell the judge (1) why you very much need the matter heard right now, and (2) your spouse had plenty of time to respond and prepare, and (3) reasons, if you have any, for why having to return to court would work a hardship on you, your kids, your employer, or any witnesses you have with you. Always bring your calendar to court and be aware of your own schedule as well as your children's and witnesses' schedules for the next several months. Even if you don't expect a postponement, sometimes the case ends up getting continued by the court itself. Be prepared to pick a future date.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Abusive spouse? If your spouse is physically dangerous to you—meaning that he/she has physically hurt you in the past—then a day or two before your hearing, go in and ask the bailiff how your safety can be ensured at the hearing, or make sure your attorney is aware and conscious of the fact that you are fearful of your spouse. Your attorney is not capable of physically protecting you.

Ask to keep TROs in effect. TROs expire at the time of the hearing. If your case is continued, and you had restraining orders through a TRO, your attorney must ask the judge to keep those orders in effect until the next hearing. Otherwise, your orders are gone and you will be unprotected.

Pressure to settle. The judge might insist that you and your spouse, along with your attorneys, go into the hallway and try to reach a settlement. No matter how hopeless you think this is, you have to go out and talk. However, know that you don't have to agree. The judge is there to decide cases for people who don't agree. Who knows, many cases do settle "on the courthouse steps" when both parties see the hearing staring them in the face. If you settle, you must either do it in writing (see chapter 5 about stipulations) signed by the judge or orally in the courtroom and approved by the judge. If you have only a partial settlement, your attorney will let the judge know. You can agree to some issues and ask the judge decide the others. Your partial agreement will be stated first and the approval of the parties and the judge should be placed on the record, then you can have your hearing on remaining matters.

The format of the hearing. Unless the judge is particularly brusque, each side will probably be allowed to open with a statement to the court summarizing: what is requested, on what issues the parties disagree, and a very brief description of the strong points in favor or against each order requested.
Live testimony. A hearing will be decided on the basis of documents and written statements and, if live testimony was allowed, the testimony of witnesses. The judge will allow oral testimony only if a witness list was submitted in advance. Each side has the right to cross-examine witnesses presented by the other side, and to present documents or oral testimony that might tend to contradict (rebut) what any witnesses or document stated, but rebuttal evidence can't go beyond the issues in the testimony you are trying to rebut.

Handling witnesses. Presenting live testimony has a lot in common with preparing a witness declaration, so be sure to read the instructions in sections 11E and 11F. Handling a witness at a hearing is almost exactly the same as the way you would do it at trial, including preparation, examining a witness, and cross-examination, so be sure to read all of chapter 25 very carefully, where those subjects are discussed in some detail. Also read chapter 17-D2 and D3 about testifying or examining a witness at a deposition, as that information is also relevant and helpful here.

The decision. Because family court can get very informal, some (not very good) judges make decisions without any evidence at all. This is not legally acceptable. Statements of lawyers are not evidence. So, if you are whirled through a courtroom and find yourself subject to a bad order, ask yourself whether there was evidence to support the specific order the judge made. An order must be supported by documents or the testimony or written declarations of witnesses. If an order is made against you and there isn't anything in any document, testimony or declaration on the subject of the order, you can file a motion to reconsider within 10 days of the order—although this does not technically meet the requirements of Code of Civil Procedure 1008 re grounds for reconsideration—or you can appeal. The proper procedure is appeal or a writ, but that is beyond the scope of this book. Speak to your attorney about these options, but know that they are extremely expensive and, therefore, not available to most people. Unfortunately, judges know this, and it's believed that the manner in which some of them run their courtrooms is influenced by this knowledge.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Make sure everything is covered. Every order you want and all evidence in support of those orders should be in your paperwork. But, if the judge is doing business with the parties or attorneys orally, you must be sure to quickly mention each order and its supporting facts orally. Use your Application and Declaration as a checklist and take each item in order. After the hearing, if the judge announces his/her orders from the bench, you get exactly and only what the judge says. Details can get lost in the shuffle, so if the judge did not say anything about some particular request, you do not have an order for it. When the judge announces the decision, if any order you requested is not mentioned, your attorney must respectfully remind the judge that you requested the order, and you would like a decision on it. If your attorney has missed this, make sure to gently and quitly remind them before the judge moves on from your case to the next case on the docket.

Is your visitation to be supervised? If it looks like the judge is going to order supervised visitation, make sure the order includes details about who pays how much of the fee and a deadline is set for your spouse to contact the supervisor. You don't want him/her to delay visitation by not contacting the supervisor. Getting a detailed, specific order will help make your visits more likely to actually happen.
Get it on the record. If you have a difficult judge and want to keep open the option of filing an appeal, it is crucial that your attorney file a written request for a Statement of Decision BEFORE your matter is heard by the judge. This requires the judge to layout the reasoning and basis for their decision. Also, it is very important to get everything on the record—that is, with a court reporter or video camera recording every word. Statements in papers filed with the court, including attachments to declarations, are on the record. Letters are not part of the record. Things said in chambers without a reporter or in the hallway are nothing—they are not part of the record. Also, evidence is often returned after a hearing. If you want a full record for appeal, you need to carefully retain all evidence or ask the court clerk to retain the evidence until the order becomes final, which is 60 days after the order was made. If you want letters to become a part of the record, attach them to a declaration and file them with the court before your hearing. It is not unusual for people to have valid complaints about how their case was handled, yet not be able to prove a thing because the problem events occurred off the record. Get everything on the record!

D Expired TROs

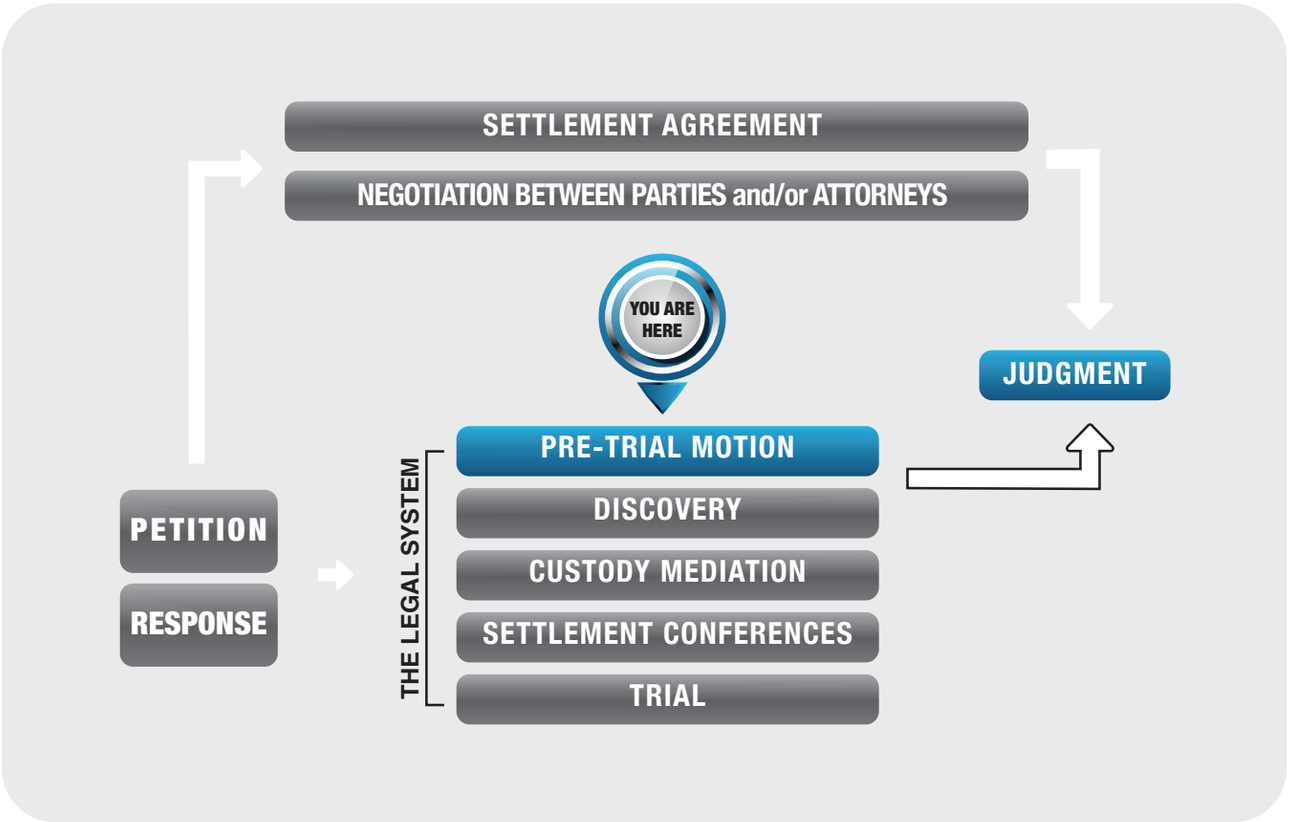
You might face a period of time when you are unprotected. All temporary restraining orders end at the date and time of the hearing and you can't be certain your restraining orders will be signed at the hearing. If the judge takes the case under submission, or if orders need to be prepared for the judge's signature, no orders are in effect until the written orders are signed and during that time you are unprotected. Depending on what TROs you had, you might have good reason to be concerned about this.

E At the end of the hearing

If the judge takes the case "under submission," you'll get a decision in writing and what happens next is covered in chapter 16. However, the judge might give the decision verbally, in which case you must be ready to write down every detail. If you missed something, or if your spouse or their attorney is the sort to cause trouble over almost anything, make sure your lawyer orders a copy of the part of the transcript that contains the judge's decision. Be clear that you do not want a full transcript.

The reporter keeps the word-for-word record of your hearing, not the clerk. Someone at your court keeps track of the court reporters. If your reporter has gone to another court or retired, you might have to find this person to locate the reporter. Of course, it is much easier to buy the video or arrange for a transcript immediately after the hearing instead of trying to locate the reporter later. So, if you are in the kind of case where a dispute seems likely, make sure your lawyer orders it before you leave the courtroom.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 16

HOW TO DO ORDERS AFTER THE HEARING

A. How to get the orders signed
B. Preparing the documents
C. Serving the orders

The decision might be announced orally at the hearing, but if the judge takes the matter "under sub- mission," a written decision will be sent out later. If 90 days pass without a decision, there's a problem. Your attorney will need to reach out to the court.

Who prepares the order and when?

Once the decision is made, the judge can prepare the order and serve it on the parties or order one of the parties to prepare a proposed order and the other party will have to either accept them as prepared or object. No matter if you or the other party is ordered to prepare orders, you both need to follow the instructions in section A below. How to do the paperwork is described in section B.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A How to get the orders signed

When one of the parties is ordered to prepare orders after a hearing on an RFO or TRO, what both parties have to do and when they have to do it is described in fairly clear language in California Rule of Court 5.125, which is set out below. So, here is what you have to do.

Rule 5.125. Preparation, service, and submission of order after hearing
The court may prepare the order after hearing and serve copies on the parties or their attorneys. More likely, the court will order one of the parties or attorneys to prepare the proposed order as provided in these rules. The court may also modify the time lines ... when appropriate to the case.

(a) In general
The term "party" or "parties" includes both self-represented persons and persons represented by an attorney of record. ....

(b) Submission of proposed order after hearing to the court
Within 10 calendar days of the court hearing, the party ordered to prepare the proposed order must:

(1) Serve the proposed order to the other party for approval; or

(2) If the other party did not appear at the hearing or the matter was uncontested, submit the proposed order directly to the court without the other party's approval. A copy must also be served to the other party or attorney.

(c) Other party approves or rejects proposed order after hearing

(1) Within 20 calendar days from the court hearing, the other party must review the proposed order to determine if it accurately reflects the orders made by the court and take one of the following actions:

(A) Approve the proposed order by signing and serving it on the party or attorney who drafted the proposed order; or

(B) State any objections to the proposed order and prepare an alternate proposed order. Any alternate proposed order prepared by the objecting party must list the findings and orders in the same sequence as the proposed order. After serving any objections and the alternate proposed order to the party or attorney, both parties must follow the procedure in (e).

Note: Not liking the decision is not a valid reason to refuse to sign the proposed order. Refusal is only valid if it is believed that the orders do not correctly state the judge's decision.

(2) If the other party does not respond to the proposed order within 20 calendar days of the court hearing, the party ordered to prepare the proposed order must submit the proposed order to the court without approval within 25 calendar days of the hearing date. The correspondence to the court and to the other party must include:

(A) The date the proposed order was served on the other party;

(B) The other party's reasons for not approving the proposed order, if known; (C) The date and results of any attempts to meet and confer, if relevant; and (D) A request that the court sign the proposed order

(d) Failure to prepare proposed order after hearing

(1) If the party ordered by the court to prepare the proposed order fails to serve the proposed order to the other party within 10 calendar days from the court hearing, the other party may prepare the proposed order and serve it to the party ... whom the court ordered to prepare the proposed order.

(2) Within 5 calendar days from service of the proposed order, the party who had been ordered to prepare the order must review the proposed order to determine if it accurately reflects the orders made by the court and take one of the following actions:

(A) Approve the proposed order by signing and serving it to the party or attorney who drafted the proposed order; or

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

(B) State any objections to the proposed order and prepare an alternate proposed order. Any alternate proposed order by the objecting party must list the findings and orders in the same sequence as the proposed order. After serving any objections and the alternate proposed order to the other party or attorney, both parties must follow the procedure in (e).

(3) If the party does not respond as described in (2), the party who prepared the proposed order must submit the proposed order to the court without approval within 5 calendar days. The cover letter to the court and to the other party or attorney must include:

(A) The facts relating to the preparation of the order, including the date the proposed order was due and the date the proposed order was served to the party whom the court ordered to draft the proposed order;

(B) The party's reasons for not preparing or approving the proposed order, if known;

(C) The date and results of any attempts to meet and confer, if relevant; and

(D) A request that the court sign the proposed order.

(e) Objections to proposed order after hearing [meet and confer]

(1) If a party objects to the proposed order after hearing, both parties have 10 calendar days fol- lowing service of the objections and the alternate proposed order after hearing to meet and confer by telephone or in person to attempt to resolve the disputed language.

(2) If the parties reach an agreement, the proposed findings and order after hearing must be sub- mitted to the court within 10 calendar days following the meeting.

(3) If the parties fail to resolve their disagreement after meeting and conferring, each party will have 10 calendar days following the date of the meeting to submit to the court and serve on each other the following documents:

(A) A proposed Findings and Order After Hearing (FL-340) (and any form attachments);

(B) A copy of the minute order or official transcript of the court hearing; and

(C) A cover letter that explains the objections, describes the differences in the two proposed orders, references the relevant sections of the transcript or minute order, and includes the date and results of the meet-and-confer conferences.

(f) Unapproved order signed by the court; requirements

Before signing a proposed order submitted to the court without the other party's approval, the court must first compare the proposed order after hearing to the minute order; official transcript, if available; or other court record.

(g) Service of order after hearing signed by the court

After the proposed order is signed by the court, the court clerk must file the order. The party who prepared the order must serve an endorsed-filed copy to the other party.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

B Preparing the documents

The forms and attachments

Orders are prepared by using FL-340 Findings and Order After Hearing, plus whichever order attachments are relevant to the orders.

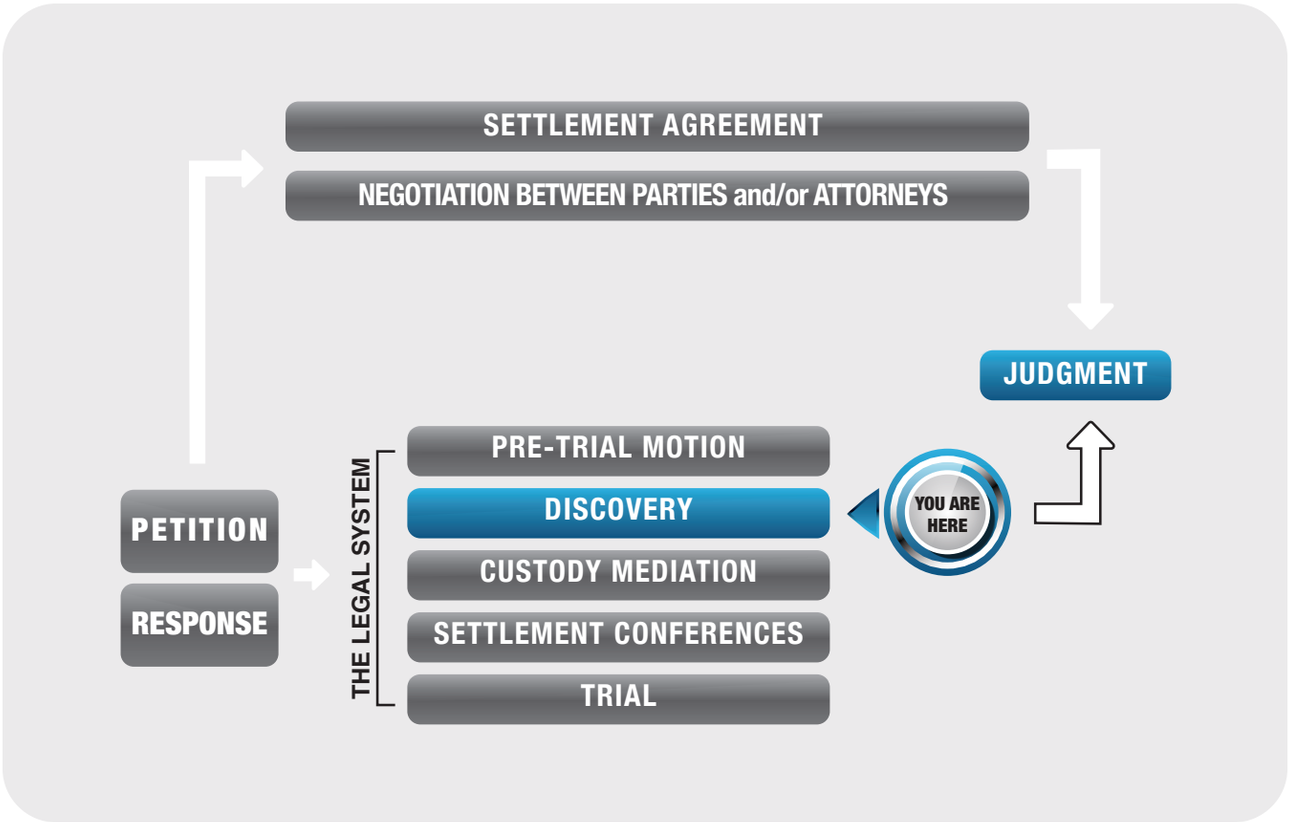
Be precise

For almost all orders, your lawyer may check boxes and fill in details to complete order forms that are relevant to your case. But if you have a unique order that is not covered on a form, your lawyer will have to type that order on an attachment to the form, in which case the wording must be precise, as you do not want an order that is subject to more than one interpretation. Your orders must match exactly the decisions the judge made, otherwise it will be returned. If in doubt as to any detail, your lawyer can contact court reporter and buy a partial transcript of the hearing to get the judge's orders exactly. In some courts, the court clerk may also provide, upon request, a copy of the "smooth minutes" (a copy of the clerk's notes on the order made).

C Serving the orders

If the other party was not present when the decision was announced in court, or if the decision was sent by mail, then in order to enforce the judge's orders, when the orders are finally signed by the judge, the entire order package must be served on your spouse's attorney, or personally on your spouse if he/she is unrepresented by a lawyer.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 17

DISCOVERY –formal requests for information

A. Requests for production
B. Written interrogatories
C. Deposition subpoenas for business records
D. Depositions

How to collect information without using legal forms and procedures is discussed in chapter 8. If you tried those methods and still need certain information, you now turn to legal actions we discuss below. In each section, we also discuss how to respond if that particular type of document is served on you.

Do formal discovery early. A common mistake by lawyers is to wait too long to begin formal discovery. Some do this in expectation of a settlement, and others just procrastinate. But when a case is near the trial date, it is too late to do discovery. Discovery must be completed by 30 days before the first trial date set in your case. If the trial is postponed, the discovery cutoff is not also postponed. If, for example, you send interrogatories (section B) to your spouse by mail, your spouse has 35 days to answer. If he/she does not answer or gives incomplete or evasive answers, you need to file a motion to compel and your spouse is entitled to at least 16 court business days' notice plus time after any hearing to prepare answers. So, just this one part of discovery could require two to three months and, if you have to complete it by 30 days before trial, you must start almost a half year before the trial to accomplish this one thing alone. So, start now!

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Okay, there is an exception to the "start now" rule. Petitioner can't start discovery within the first 30 days after service of the Summons and Petition. However, Petitioner can serve Respondent with a subpoena to bring documents to the first court hearing on a RFO or TRO (chapter 15B).

If your spouse has not filed a Response. If you are Petitioner then you only do discovery after your spouse files a Response. If your spouse does not respond and lets the divorce go by default, normally no discovery occurs—you just go to court and get whatever you ask for within reason. A problem can occur if you can't give the judge enough information to make an order. The most typical example is when you want support and thus need to prove your spouse's actual income. You could simply state in a declaration that when you were married, your spouse was in X occupation earning $Y per month and he/she is still doing that, probably with a raise, so his/her income must be at least $Y. However, if you have zero information about your spouse's income and never filed joint income tax returns together, you will have to subpoena your spouse's employer (see chapter 15) to come to the default hearing with records to show your spouse's wages.

To divide unknown property, such as bank accounts, you can obtain a Judgment directing that all accounts either party had with any financial institution as of date of separation (specifying the date) shall be divided 50/50 including interest, and accounting for market fluctuation. Then you will be doing your discovery after entry of Judgment.

Do not use discovery for harassment. You should do formal discovery only for information that you really need. Do not request filing cabinets full of papers just to harass or to vent anger. There are three reasons for this. First, if you later have to file a motion to have the court enforce discovery, the judge might deny everything if it was so broad as to appear oppressive and burdensome. Second, the judge can make you pay sanctions or attorney fees to your spouse if it appears you were engaging in harassment. Finally, it is not unusual for a spouse to change the names on the papers and re-send the entire request back to you, so you could find yourself burdened by the very same requests you created.

Start with a letter. The easiest, cheapest way to get information is to simply ask for it. If he/she cooperates, discovery can be inexpensive. If your spouse is secretive and controlling, writing a letter is probably going to be a waste of time, but you now have a written record showing that your spouse has been stonewalling and this can be used later if you ask the court to order your spouse to pay your attorney fees incurred in obtaining information through more formal means. The best approach is to set a short deadline for sending the information you request—like two weeks from the date of the letter. Wait just that long, then start formal discovery as described below. This way, you show good-faith effort not to incur attorney fees. If you have a lawyer who writes letter after letter unsuccessfully begging your spouse for information, get another lawyer. This is not the time or place to grovel.

What to do first. Generally, you do the cheapest discovery first and hope that you won't have to do the costly kind. Start with requests for production and written interrogatories. If your spouse starts stonewalling, it might be easier to get information from another source, so you do "deposition subpoenas" to get records from banks and employers. The most expensive discovery is taking your spouse's deposition. Depositions have an advantage over interrogatories in that the answers you get are more spontaneous. If you send interrogatories and your spouse has a lawyer, the lawyer will probably write or heavily edit the answers, but with or without a lawyer, written answers can be evasive or narrowly defined. In depositions, your lawyer asks your spouse direct questions in detail and your spouse must respond on the spot. You can ask the same question many different ways to try to eliminate evasion.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The order of discovery is typically:
1. Requests for production
2. Written interrogatories
3. Deposition subpoenas for records
4. Personal depositions
5. Subpoenas to bring records to court

Responding to discovery requests. In each section, we discuss how to respond to that type of discovery. If you find you cannot meet the time limit, your lawyer may need to obtain an extension of the time to respond. If so, you must act before the deadline runs, otherwise, you will have to use the "Oops" motion under Code of Civil Procedure section 473 described at the end of chapter 11. You don't want to find yourself in that position. If you cannot meet a time limit, before the deadline runs, either (1) your lawyer should write to your spouses attorney and get an extension of time, and, if successful, write a letter confirming that your time is extended to a specific date, or (2) if unsuccessful, file a Request For Order requesting more time to respond.

A Requests for production

Because your spouse is a party to the case (of course) you can use this method to inspect and copy relevant documents in your spouse's possession. Your attorney will mail a Request for Production to your spouse's attorney. See Figure 17.1 as an example. An Exhibit A is attached, listing all the things you want. See Figures 17.2 and 17.3 as an example, showing a variety of things you might ask for. To determine whether any property has been misappropriated by your spouse (such as if he/she took funds from a bank account), you need to see account balances before your spouse began fiddling around with them. You should ask for statements from the period starting with the present, back to at least a year ago, or even better, at least one month before you think your spouse thought there would be a divorce.

If your spouse is self-employed and you want business records to show his/her income or to assess the value of the business, sending the business a Deposition Subpoena is, in effect, the same thing as a Request to Produce. The Request to Produce is easier, so your attorney may use it first and see what turns up. The example Exhibit A shown in Figure 17.4 shows a request for employment records.

Time and place. In your request, you have to set a date for production at least 35 days away. The Code of Civil Procedure, section 2031.030, requires only that production be made at a "reasonable place." You want a place where copies can be made, so since you have a lawyer, production will be made at your lawyer's office. Chances are your spouse will respond by sending copies, especially if represented by an attorney.

What you can request and how to request it. You can request to copy any item that is relevant to your case, including documents, writings, electronically stored information (ESI), audio tapes, video tapes, photographs, etc. The most commonly requested items are bank statements, IRA and 401k statements, stock accounts, credit card statements, deeds to real estate, closing statements for realty, tax returns, paycheck stubs, W-2 forms, and 1099 forms. Your spouse does not have to produce things over which he/she has no custody or control. On the other hand, if he/she can get a copy with a phone call and you can't, then he/she must make the phone call to his/her accountant, bank, attorney or whoever. Just giving documents to an attorney does not bring them within the attorney-client privilege; you can still get a copy. Similarly, "Those documents are with my accountant" is not an excuse for nonproduction.

The Request for Production must be clear enough that your spouse can tell exactly what you are requesting. If you want ESI, be sure to specify the form in which you want it to be produced: e.g., "in a

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

form that is usable on a typical home computer using readily available consumer software." (See Fig. 17.3). You cannot ask for so many records that it will be unfair, such as all bank statements and all canceled checks during a 20-year marriage. You should specify a time frame that is reasonably related to issues in your case. It is as if you were shooting at a target. If the target is too small (your request is too specific and limited), you will probably miss it. But if the target is too broad, the judge will not make the other side produce it. You have to try for a happy medium request.

Proof of service. Your attorney will have someone serve the Request on your spouse (or spouse's attorney) by mail, sign a proof of service by mail, and attach a copy of the proof (signed or unsigned) to the Request being served. Proofs of service having to do with discovery are not filed with the court unless a dispute arises, when they are attached to the motion to enforce the discovery.

Verified Response due in 30 days. You are entitled to a written response, under oath, from your spouse. If your spouse did not sign a verification (Figure 17.7) swearing that the contents of the document are true, and attach it to the Response to Request to Produce, the Response is inadequate and you cannot rely on it. The response must be served on your attorney 30 days after you served your Request, or 35 days if mailed. If the response is late, you could choose to let the technical defect go. However, if there is no response, or if it is unverified or otherwise inadequate, you can file a motion to compel production or to compel the verification (see section B, below).

Time limit to make motion to compel production. If your spouse completely ignores the Request to Produce or if the Response is not verified, there is no time limit to file a motion to compel. But if he/she makes an evasive or inadequate production in a verified Response, you have only 45 days after the inadequate Response was served in which to file and serve a motion to force him/her to produce an adequate Response. If you want to serve your motion by mail, you must do so within 40 days from the date you were served with the Response. Making a motion to compel production is discussed in chapter 18.

Prerequisite to making motion to compel production. Before making the motion, your lawyer must write the other side a letter (Figure 17.8 as an example) explain why the Response was inadequate and demand further response. If the letter does not produce an adequate response, you need to file a motion to compel production (chapter 18, section E). Be sure the order includes a deadline for production, such as saying that the records should be produced within 20 days after the hearing.

How to respond to a Request to Produce

The Code of Civil Procedure prescribes the exact language that you must use in responding to a Request to Produce. The reason the language is so specific is that, over the years hoards of clever lawyers have attempted to evade legitimate requests.

Each item of the request must be responded to separately, and there are only three acceptable responses: (1) will comply; (2) inability to comply, which requires a particularly detailed statement; and (3) a legal objection that, for some stated reason, there is no obligation to produce the item. Each of these three responses has exact language that must be used. The sample response (Figure 17.5) contains examples of the precise language that should used. It is not acceptable, for example, to say, "I have looked through my documents, and I have produced everything that I found." The statute requires much more than that, and the forms in this book will help you comply with the legal requirements for the wording of your response.

Must be served by mail or personally. Your Response to a Request to Produce must be served on the initiating party, and a copy of the Proof of Service should be sent to the recipient and the original (continued after figures) kept in your file attached to your response.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Your response must be served either (1) personally within 30 days after the date the Request was served on you, or (2) within 25 days if you serve it by mail.

Your response must be verified. A verification is a statement under oath that what you have said is true (Figure 17.7). A response made without a verification is legally the same as no response, so don't forget to do the verification.

Burdensome requests. If your spouse requests something ridiculous like every single canceled check from a 20-year marriage (assuming the two of you are not wealthy), you should object. Of course, the other thing to do is to bring the records to the place where they are due, and refuse to leave them. One way to punish people who make burdensome requests is to give them everything they are asking for and interpret the request as broadly as possible.

Motion for protective orders. Litigants and their lawyers have been known to abuse the discovery process, using it for harassment, more to beat the other party into submission rather than for actual discovery. Any time you receive a discovery request, you can file a motion for a protective order, but I think that is unnecessarily complicated. Better to comply with reasonable parts of their discovery and put your objections to unreasonable discovery in your Responsive Declaration, then wait to see what they do. If your spouse files a motion to compel discovery, you can resist it as described in the next chapter.

B Written interrogatories

Interrogatories are written questions that you can send to your spouse which he/she is required to answer in writing under oath. Sometimes you simply want some answers; other times you are seeking information that will help you prepare for further discovery, such as depositions or subpoenas.

Form interrogatories. The Judicial Council has prepared standard form interrogatories that you can serve on your spouse (Figure 17.10) to ask standard divorce questions. You simply put an X in the box of each question you want answered. If you check the item asking your spouse to fill out a Schedule of Assets and Debts, you must include a blank copy of that form when you serve the interrogatories.

Specially drafted interrogatories. In addition to the printed form interrogatories, you can also send up to 35 questions that are not already included in the form interrogatories. Each subpart of each question counts as a separate interrogatory. If you need to ask more than 35 special questions, you must do a declaration explaining the necessity (Figure 17.15).

If you do special interrogatories, the main thing is to keep them simple and break them into small, precise bits that are unambiguous. For example, if you ask, "Do you have any bank accounts?" your next question is, "If your answer to the preceding interrogatory is affirmative, as to each such account, state the name of the bank, the address of the bank, and the account number." If you ask, "On May 17, 1999, at 6:00 PM, did you come to the home and remove the stereo and TV?" you might get the answer, "No," simply because the person was there at 6:01 PM, not 6:00. That question has too many parts. It needs to begin, "At any time after (date of separation) did you ever enter the home at (address)? If so, as to each such instance: (a) state the date and time of such entry; and, (b) list any items you removed when you left the premises."

Answers

Answers are due 35 days from the date the interrogatories are mailed. If you don't get a written, verified response on time, your lawyer should immediately send a letter to the other side requesting answers within a specified number of days. If you still get no response, file a motion to compel (chapter 18).

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Verified response and why you insist on it. A verification is a statement under oath that a document is true, meaning that any false statements would be perjury. One hopes a spouse will hesitate to lie under oath and face possible penalties. Without verification, the answers to the interrogatories are no more legally significant than an informal statement in a letter.

Motion to compel. If your spouse refuses to respond or gives incomplete or evasive answers, or fails to provide a signed verification, you should file a motion to compel answers, which is discussed in chapter 18. The Code of Civil Procedure provides that a motion to compel answers must be made within 45 days of any answers you received if the answers were verified. If you didn't get any answers at all, but were just ignored, or it the response was not verified, you don't have a time limit, but you should probably make the motion promptly if you can.

How to respond to interrogatories

Responding to interrogatories can be fairly simple. You use a face page (Figure 17.17), type your answers to every question using a format similar to the interrogatories you received (but any clear format will work), and attach the verification form (Figure 17.7). Your response will be served by mail and get a proof of service will be prepared. The main thing is to answer the questions, all of the questions, and only the questions that are asked. Don't volunteer any information that was not requested. It can't help you, and it may get you into trouble. This is not the time to start spewing opinions and related or unrelated details. If a question calls for a "yes" or "no" answer, and you don't feel comfortable with that, you can add a one-sentence explanation, but don't get carried away. If the question asks for privileged material, such as your private medical information, your counseling information or what an attorney told you, you object and state the legal basis of the objection.

C Deposition subpoenas for business records

A subpoena is a court order directing a witness to appear to give testimony, either at an office for a deposition or in court. When the subpoena directs the witness to produce records or things, it is called a "subpoena duces tecum" (duces tecum is Latin for "with you," that is, bring something to the appearance).

The "Deposition Subpoena for Business Records" is a special form of subpoena that is a cheap and effective way to get routine business records from a third party. You can get, for example, bank records or employer records regarding wages, retirement benefits (including stock options and stock savings plan), and deductions for 401(k) or other savings plans. If your spouse quit working for a company, you can still get his/her personnel file. In large companies, if they have separate payroll and personnel departments, assume you have to do a separate subpoena for each department. Much about using a deposition subpoena is defined by Code of Civil Procedure (CCP). Speak to your attorney about this if you decide to use a deposition subpoena.

Only inside California. You cannot subpoena records outside California unless you are using the business records subpoena that does not require an appearance. Speak to your lawyer about your options if this is the case.

The "deposition." In the forms, all reference to a deposition is actually a fiction, a historical artifact of legal evolution. There is no deposition. For this particular form of subpoena, the deposition is only the date the documents that you subpoenaed must be produced.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

How subpoenas are issued. In order to command someone to bring documents to court or at a deposition, including a records-only deposition, a Subpoena must be "issued" by the clerk, that is, stamped with the seal of the court to give it the power of the court. Subpoenas are "issued in blank," which means you can get blank forms from the usual outlet that provides court forms in your area. But since you have an attorney, he/she can issue the Subpoena merely by signing it, without having to involve the court clerk.

Understand the timing. Before you start, make sure you understand the timing (deadlines) for serving the subpoena and getting documents in response.

a. Notice of Taking Deposition—Records Only
See Figure 17.18 as an example. Your attorney will choose dates that allow you to comfortably comply with deadlines. The most common errors are (1) forgetting to serve the consumer/employee 5 days before serving the witness and the opposing party (who may be the consumer/employee and then you only serve him/her once) and (2) forgetting that a subpoena must always be personally served, so it cannot be mailed to the witness. However, it can be mailed to the consumer/employee.

b. Interrogatories for custodian of records (the witness)
You are using this subpoena to obtain records that you can use in court without having to bring a witness to court. That would be simple and inexpensive, but there is only one way to get records that can be introduced into evidence at a hearing or trial without the presence of a witness. You must have the custodian of records copy the records and deliver them to you along with a declaration that meets all the legal requirements to authenticate the records and to show that the records are within the business- records exception to the hearsay rule.

See, as an example, Figure 17.19, which has been very carefully prepared to meet legal requirements. Documents can be excluded at court if the custodian of records returns the form and fails to fill in every single question (and saying "not applicable" is not acceptable). The Interrogatories for the custodian of records are very important and must be complied with in every detail. The custodian of records, by filling out this form, becomes a witness.

c. Deposition Subpoena—Business Records
See Figure 17.21 as an example.

The deposition officer. Item 1 would have the name of the deposition officer. At a regular deposition, this would be the court reporter. However, a records-only deposition will not have a meeting or a court reporter. Businesses are used to having professional photocopiers handle this, but to save money you can first ask that records be mailed directly to you. Most businesses will comply, but some might insist on a professional photocopier. Rather than fight them, reissue the subpoena naming a professional.

Where? Box a is usually checked, and although it says "delivering," businesses will mail the documents or send them by a courier.

Records to be produced. The two types of records that you are most likely to request are records of financial institutions and employment records. As to how to draft a list of items to be produced, you can apply the same general rules discussed in section A, above, for a Request to Produce. Also see Figures 17.2–17.4.

Sticky situation. If your spouse is employed in a small company or is very high up in a big company or has friends in the payroll department, the company might ignore or resist your request, in which case you will have to file a motion to compel (chapter 18). However, if they are really resisting, you could end up with a couple of rounds of hassling with motions.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Warning: You can't be your own deposition officer—you shouldn't be (and don't allow your spouse's attorney to be!). A common error made by Family Law attorneys is designating themselves as a Deposition officer, or their own office as the place for production of documents responsive to a Subpoena for Business Records. This violates the Code of Civil Procedure and it's a bad idea.

A Deposition Officer is there to confirm what discovery has been produced in response to a Deposition Subpoena, and if necessary to testify to that. As an interested party you cannot take on that role, and neither can the opposing party or their attorney.

d. Consumer/Employee Notice
In order to protect privacy, the law has special requirements if you want to obtain personal records of a consumer or employment records. In either case, if the requested records are for anyone other than yourself, you must let the consumer/ employee know what you are doing by having someone personally serve a notice (Figure 17.22) 5 days before you actually subpoena the records. Almost anything you are likely to subpoena will be a consumer/ employee record except for police reports or the personal records of the witness being subpoenaed, like a calendar or journal. For everything else, you have to give notice if the documents concern anyone other than yourself.

Bates-number discovery you produce and receive. Your attorney will most likely Bates-number (place identifying numbers and/or date/time-marks on images and documents) every discovery document your produce, and reference the documents and Bates-numbers in the document accompanying your discovery. This prevents the opposing side from claiming you didn't produce discovery when in fact you did.
Likewise, you should request that all discovery produced from the other side, or by third parties, be Bates-numbered. This presents the opposing party and third parties from claiming they produced discovery documents when in fact they did not.
If the other side or third-party refuses to Bates-number, use an attorney service as a receiver.

Using an attorney service as a receiver for discovery. If you are dealing with a duplicitous opposing party or attorney, It would be wise to use an attorney service for receipt of important discovery, either from the opposing party or when produced by you. The attorney service should Bates-number all documents received and keep a copy of what was produced.

Depositions

You've probably seen depositions on TV shows. The parties and their attorneys meet face-to-face in the presence of a court reporter for question-and-answer testimony that is taken under oath. It is typically done in the office of one of the attorneys, or in a rented or borrowed conference space if the initiating party does not have counsel. It is very similar to testimony in court, but there is no judge present. Afterwards, the testimony is typed up so it can be reviewed by the parties and used in court.

Depositions are very expensive. In addition to your lawyer's time, you need a court reporter present who will prepare a transcript of every word spoken at the deposition. If you want a copy, you must tell the court reporter at the end. A typical cost at the time of this book is about $6.50 per page for the original and about $2.50 for a copy. A typical deposition can cover 300 pages or more, making it the most expensive book you will ever own! So you must prepare for high costs before you start a deposition. This is why depositions should be used only when the information cannot be obtained in some less expensive manner or when there is some other strategic reason justifying its use.

One shot. You can only compel a witness or a party to submit to one deposition that can generally take no more than 7 hours unless ordered by the court or impeded by the witness or external circumstance. If your spouse has previously taken one deposition from any person, he/she cannot take a second one without a good reason, and you can stop any attempt to do it. This is one reason why you should prepare well before taking a deposition as you probably won't get a second chance.

Whose deposition? You can take the deposition of your spouse and anyone who is a witness to anything relevant to your divorce. For example, you might want the testimony of a person who would know how a self-employed spouse is diverting money from his/her business to personal use, or you could take the deposition of your spouse's live-in mate or roommate if you have a custody/visitation issue.

Where to do it. The place where a witness' deposition is taken must be within 75 miles of where the witness lives. If your spouse has a lawyer, you can schedule the deposition at the attorney's office, but you might feel at a disadvantage there, so you might want to arrange for a conference room in some place that rents meeting space to the public, or a convenience office center. Wherever you do it, if documents have been subpoenaed to the deposition, it could be important to have access to a copier.

Who may be present. Both parties (the husband and the wife) are entitled to be present at the deposition as well as their lawyers. In cases such as those involving domestic abuse, a support person would be allowed to sit at the conference table with an abused spouse. Anyone can attend a deposition, just as anyone can attend a public trial. On the other hand, a party may file a motion to the court requesting an order that designated persons, other than the parties to the action and their lawyers, be excluded from attending the deposition. The judge would decide such a motion on an individual basis, based on past histories, present circumstances, and the types of issues involved. Certainly if there were an issue of child molestation, the judge might readily exclude persons other than the parties. Or, if one spouse has been abused, and now the abuser wants to exclude a support person, the judge would hopefully see through this tactic and refuse it.

Get a court reporter. You must arrange for a court reporter to record the deposition.

Video and audio taping. There must always be a court reporter at a deposition (unless it is a records-only deposition, discussed below), but you can also videotape or audiotape the deposition if you put that request into the notice of taking deposition. The taping of a deposition might curb a lot of bad behavior that would not be picked up by a written transcript, such as shouting and nasty tones of voice. People tend to behave better in front of a camera or microphone. Also, you might catch some telling eye-contact between witness and attorney. If you decide to tape, you will need a separate person present to handle the video or audio equipment.

Bring documents. If you also want to compel your spouse to bring certain documents to the deposition, you will use either (1) a notice to attorney in lieu of subpoena (Figure 17.27), which can be used only if your spouse has an attorney of record, or (2) a Deposition Subpoena (Figure 17.25) if your spouse has no attorney. The notice to attorney in lieu of subpoena can be mailed to the attorney 25 days before the deposition, but the subpoena must be served personally on your spouse.

Pay up. When you take the deposition of an expert witness, you must be ready to pay an expert witness fee by the beginning of the deposition. The witness can also insist on being paid for a couple of hours of preparation for the deposition.

1. How to take someone's deposition

Here are some tips on the practical aspects of taking a deposition, known to experienced trial attorneys,

that you probably can't find in any other book. Although it will be your attorney who will be taking the actual deposition, it will serve you well to know what is going on and how it is to be done.

There are two approaches to a deposition, but you can only use one: (a) scare your spouse into settling by asking all the difficult questions and confronting him/her openly with the serious conflicts in his/her case, or (b) be nice and gentle so you don't scare your spouse into clamming up, and so you don't prepare him/her for the hard questions you will ask at trial when they are in front of the judge.

The traditional purpose of a deposition is to obtain information that will be used at trial or in settling the case. The second purpose is to psych out the other side so they'll give up and settle. This is much more real than the first purpose, as very few cases actually get to trial. The two purposes conflict. Generally, if you really want information, the best thing is to quietly accept whatever information the witness is giving you and keep trying to draw him/her out more, hoping he/she will fall into a tangle of contradictions. There's a rule: "Don't educate the witness," which means that if you confront the witness directly with the weakness in his/her testimony, they won't repeat it at trial. But there probably won't be a trial. What you really want is to get a settlement as rapidly and favorably as possible, and maybe confronting the witness with his/her contradictions and posturing will, in fact, settle the case faster.

Seating. Experienced trial lawyers will sit right next to their clients so they can kick the client to stop them from doing something or to coach them. If it is your deposition being taken, you will want to sit next to your attorney where opposing counsel and his/her client cannot catch any signals. If you are taking your spouse's deposition, you will want to try to sit so that you can see if your spouse has an attorney who kicks him/her. If that happens, you let your attorney know so they can say, "Let the record reflect that opposing counsel just kicked the Petitioner/Respondent." If you are taking your spouse's deposition and can do it at a glass-topped table, that is the best because it permits you to observe any under-the-table note-passing, kicking, or other hanky-panky.

What you see is what you see. Do not sit where the other side can steal looks at your papers or notes, although it is okay if you can get a look at theirs. Or you could purposely leave something out for "disinformation," if you can think of anything that might be effective. Some people might bring a huge case of notes and records just to impress the other side with their determination and preparation. It could be files from Sunday school, but they wouldn't know that.

Pissing contests. Often, at the beginning of a deposition, the lawyer will test you by seeing if he/she can dominate you and engage in improper conduct. It is not unusual to have to begin a deposition with a verbal battle in which you assert yourself. Have your attorney prepare you for the deposition with some basic instructions. Remember that your lawyer should be with you and will/should know when to step in and stop any inappropriate activity. Also remember that you need to remain calm and rational but very, very firm in your answers.

Swearing. Sometimes the witness will test you by swearing at the deposition, testing to see what he/she can get away with. Even if you swear yourself in private, act outraged and demand that the conduct immediately cease. Insist that you will adjourn the deposition if there is any more swearing.

Priming the pump. One approach is to get the witness to answer some easy questions first: name, address, etc., etc., so that they get used to talking and feel comfortable and less guarded by the time you get to something that counts. Of course, on occasion you use the opposite approach and pop your most devastating question first to take advantage of your spouse's initial nervousness.

Questions. Each question has to stand alone. Items must be referred to clearly by its name each time, never

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

by “it.” For example, if you are asking about the witness’ employment application, you want to ask about “your employment application” every time, never “it.” This sounds quite stilted when its done, but when you get your transcript and want to use it at court, you’ll see why you got this advice.

When asked a question, it is very common for the witness not to answer it. They often deflect you by answering some other question or by offering an enticing tidbit of information. Your attorney must be able to follow up the enticing tidbit, go clear around, and return to your original question. Notes are imperative to accomplish this.

Sometimes a witness will say that they didn’t “really” or “actually” do something. Words like that are clues that you need to do some follow-up. If your attorney asks the witness, “Did you tell Mr. Jones X?” and the witness says, “Not really,” a follow up should be, “Did you tell Mr. Jones anything at all?” or “What exactly did you say to Mr. Jones?”

Don’t let opposing counsel kibitz. If opposing counsel confers with your spouse, particularly if it is after you ask an important question, the court reporter will not write anything down if it is not audible. Therefore, your attorney should to say, “Let the record reflect that counsel is conferring with his/her client.” Do this every time.

End of deposition. At the end of the deposition, hang around and see if you hear anything in casual conversation. As long as the court reporter is still there, if you think of one last brilliant question, you can ask the reporter to stay and set up again. Alternatively, this is a good opportunity to casually ease into a settlement discussion, if you want to, without seeming weak for doing so. When you do leave, make sure you have every scrap of paper and notes with you; don’t leave anything for the other side to find, even in the wastebasket, unless you intend for them to find it.

2. Having your deposition taken

In addition to the notes above, here are some tips for what to do if they take your deposition. Your lawyer should prepare you for the deposition and will have their own instructions, but here are some basics.

Don’t bring documents. If the other side is taking your deposition, and you bring files to the deposition with you, the opposing counsel can ask you to provide documents right there, and you will find yourself opening up your file, looking for papers, and giving them to opposing counsel or to your spouse with no opportunity to review those papers carefully in advance. It is better practice to bring only documents you have been legally notified to produce, a legal pad and court papers to the deposition and, if you are asked to provide documents later that should have been produced by the time of the deposition, make a note of it, and send them to counsel later. (You are keeping your papers in separate files or notebooks as this book instructed, so you already have your court papers separated from other papers.) If opposing counsel abuses the opportunity and asks you to bring in a whole lot of stuff, or if it is a high-conflict case, you may want to tell them to send you a formal written request to produce so there will be no misunderstandings as to what is to be produced. If you say it this way, sounding like you’re working to ensure clarity and full production, you won’t sound like you’re being oppositional.

Never guess. You don’t want the other side to lead you down the “primrose path.” The lawyer gets the witness to guess at what was observed or said in a conversation, then acts as if the answer is absolutely true, whereas it was only an attempt to say what might have been, then the lawyer asks about a zillion details about it and gets you all flustered, sounding like a liar. Never guess what probably happened or might have been said.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Objections. Your attorney will have the responsibility to make objections if a question is improper. If objections are not made at the deposition, it will be considered to have been waived. For this reason, when a question is asked, pause for a couple of seconds to allow your lawyer to object if necessary.

Invasions of attorney-client privilege. If you have consulted an attorney at any time about your case, you must be very vigilant to protect the secrecy of those communications. If a question touches in any way on attorney-client privilege, you can lose that privilege by answering in any way. If the privilege gets waived, the other side can take your attorney's deposition and examine your previously secret files. One lawyer trick is to drop in surprise questions like, "Did anyone ever tell you (anything about your rights or your property or your case)?" "When?" "What did they tell you exactly?" "Who told you?" If you answer the first question in the string, you might have waived the attorney/client privilege. If you are asked, "Did anyone ever tell you . . ." you answer, "Do you mean, 'Except for my attorney'?" You intervene to protect the privilege immediately. The same is true of the question, "Have you discussed your case with anyone?" You say, "Do you mean 'Other than my attorney'?"

Don't answer statements. If opposing counsel is questioning you and makes a statement, don't answer it. Sit there and wait for a question. This will avoid being baited by opposing counsel.

End of deposition. At the end of the deposition, gather up all of your papers and leave immediately. As long as the court reporter is still there, if opposing counsel thinks of one last brilliant question, they can ask you to stay and have the court reporter set up again. Be sure you did not leave one scrap or note that the other side can get their hands on.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.1
REQUEST FOR PRODUCTION

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in pro. per.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re the Marriage of Petitioner: YOUR NAME Respondent: SPOUSE NAME	No. [Your case number] REQUEST FOR PRODUCTION OF DOCUMENTS

SET NUMBER: ONE

PROPOUNDING PARTY: PETITIONER/ RESPONDENT

RESPONDING PARTY: RESPONDENT/ PETITIONER

Petitioner/ Respondent requests that on [date] at [time], or before, at [City], California you identify, produce, and permit the inspection and copying or photographing, by or on behalf of said party, of the following documents, papers, books, photographs, objects, or tangible things: All items listed in Exhibit A attached hereto and made part hereof.

You are requested to produce all documents, objects, and things in your possession, custody or control, and in the possession, custody or control of your agents, employees and attorneys.

Dated: _____

_____
YOUR NAME, Petitioner

1

Request for Production of Documents

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.2
EXHIBIT A –ITEMS TO PRODUCE
(page 1)

EXHIBIT A

ITEMS TO PRODUCE

1. Copies of federal income tax returns (including all returns and all amended returns) of the party or parties for the years [year] through [year], including all attached schedules, W-2 forms, 1099 forms and K-1 forms and requests for extensions and all amended returns.

2. Details of pension or retirement plans, savings plans, insurance plans, profit sharing plans, and stock option and/or participation plans provided by employer of the responding party, whether or not employee contributions are made.

3. All monthly statements reflecting balances as of [date] and [date] through date of production in all savings, checking, credit union, certificate of deposit, mutual funds, IRA's, stock accounts (such as with Charles Schwab) and other types of accounts on which responding party is or has been a signer, regardless of the alleged separate or community nature thereof, and regardless of whether held solely or jointly and regardless of whether held as an individual or as trustee for another and regardless of whether domestic or foreign.

4. All passbooks, check registers, carbon copies of checks and other similar documents relating to the accounts described in the immediately preceding paragraph.

5. All documents relating to the purchase, ownership, and/or sale of real property by the parties or either of them, including deeds, deeds of trust, escrow instructions, statements showing the amount of the encumbrance(s) thereon, date of purchase or sale, and amount of purchase or sale price.

6. All documentation reflecting the lease/ownership of each vehicle owned/leased by the parties as of [date of separation] or either of them, including the registration, any encumbrance thereon, purchase/lease statement, date of purchase/ lease, amount of purchase/lease price, and all documents regarding financing of the purchase/lese price of such vehicles, or, if purchase was not financed, receipt for cash purchase price.

7. All documents relating to any interest of the parties or either of them in any stocks or bonds, including the form of ownership, date of purchase, initial costs, current market value, and a statement regarding the location of the certificates reflecting each stock, bond, or other security.

8. All evidence of ownership or possession or other beneficial interest in or to any safe deposit box or boxes.

EXHIBIT A (continued)

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.3
EXHIBIT A –ITEMS TO PRODUCE
(page 2)

9. Documents of all ownership or beneficial interest by the parties or either of them in any kind of promissory note and other documents relating to a right or claim to money or property, whether or not secured, including the names and addresses of the makers of such notes or documents, and the amounts thereof, along with writings reflecting payment history under each such note.

10. Documents evidencing any and all business entities in which the parties or either of them have any ownership or interest, including the percentage of the interest and the nature of any party's participation, if any, in such business entity and the name and address of the entity and its owner, president, and/or CEO.

11. All writings relating to stock and bond brokers with whom the parties or either of them has had an account or accounts since the date of the marriage if not listed in 7 above.

12. All documentation of all loans and indebtedness of any kind incurred by the responding party from [date], through the date of production/hearing, including copies of any and all loan applications.

13. Statements, notices, and other similar documents reflecting the balance or status of any insurance policies or plans which have an accrued cash value from the date of their inception, in the names of the parties or either of them.

14. Any and all electronically stored information containing or reffering to any of the above items, to be produced in a form that is usable on a typical home computer using readily available consumer software.

Exhibit A page 2 of 2

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.4
EXHIBIT A –EMPLOYMENT RECORDS

EXHIBIT A

ITEMS TO PRODUCE

(1) Payroll records pertaining to [Employee Name] (hereinafter "Employee") whose Social Security number is [S.S. Number], and whose date of birth is [Date], including the following:

(a) gross pay, net pay, itemization of all deductions from gross pay, and expense account or other reimbursement to Employee for out-of-pocket expenses; all payments to Employee are to be shown, including any thing of value received by Employee such as stock options or stock or savings plan and bonuses and deferred compensation;

(b) Employee's W-2 and W-4 form(s) for the year(s)[Year(s)].

(2) Savings plans, 401(k) plans, ESOP plans, profit sharing plans, bonuses, sick pay accounts, vacation pay accounts, and every account of each and every kind held by employer on behalf of Employee;

(3) Stock options, including for each grant: date of grant, number of grant, number of shares, option price, all writings regarding re-pricing of options, date of exercisability/vesting and dates on which options were actually exercised and all funds received by Employee from exercise;

(4) Codes: If any codes are used in the above records, a copy of the booklet or other material needed to understand the meaning of the codes and their applicability to Employee.

The term "Employee", is used for convenience of designation and is not intended to limit production only to records regarding employment as this subpoena includes all payments of any type to [Name], regardless of whether he/she is an employee, partner, independent contractor, or some other legal relationship.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.5
RESPONSE TO REQUEST TO PRODUCE
(page 1)

YOUR NAME
Your Address
City, State, Zip
Your Phone

Respondent in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: Your case number
Petitioner: SPOUSE NAME	RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS
Respondent: YOUR NAME	

TO: Petitioner and his/her attorney of record:

Respondent responds as follows to Petitioner's request for production of documents served on [date].

[Note: For every demand you must choose one of the following responses.]

RESPONSE (if you have only some of the requested documents): Respondent hereby complies in part with demand No. [No.] by producing the following documents that are in Respondent's possession, custody or control:

After a diligent search and reasonable inquiry, Respondent is unable to further comply with said request as such items have been lost, misplaced, never have been, or no longer is, in Respondent's possession, custody, or control.

RESPONSE (if you have all the requested documents): Respondent hereby complies in full with demand No. [No.] by producing the following that are in Respondent's possession, custody or control:

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.6
RESPONSE TO REQUEST TO PRODUCE
(page 2)

RESPONSE (if you have none of the requested documents):

After a diligent search and a reasonable inquiry by the Respondent in an effort to comply with Demand No. [No.], Respondent is unable to comply with this demand as the requested documents never existed OR have been destroyed OR have been lost, misplaced, or stolen, OR have never been, or are no longer, in the possession, custody, or control of the Respondent. The name and address of any natural person or organization known or believed by Respondent to have possession, custody, or control of said documents is:[Name and Address].

RESPONSE (if you object to a demand):

[Note: If only part of an item is objectionable, the response must contain one of the three above responses (a statement of compliance, or a representation of inability to comply) with respect to the unobjectionable part; as to the balance, you object as shown below.]

The particular document to which objection is made is: (for example, doctor's letter to Respondent regarding medical condition). The specific objection to this item is:[Objection] (for example, It is a letter from doctor to patient and is within the physician-patient privilege.).

Dated: [Date]

_____
YOUR NAME, Respondent

[Reminder: You must also attach a signed Verification.]

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.7
VERIFICATION FOR RESPONSE TO REQUEST TO PRODUCE

Marriage of YOUR LAST NAME & SPOUSE LAST NAME

Case No. [Your Case Number]

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF [County]

I am the petitioner/ respondent in the above-entitled action or proceeding. I have read the foregoing [name of document] and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matter which are therein stated upon my information or belief, and as to those matters I believe it to be true.

Executed at [City], California, on [date].

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct.

_____
YOUR NAME

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.8
LETTER REPLY TO THE RESPONSE
(page 1)

Date

Spouse or their Attorney
Address
City, State, Zip

Re: Marriage of [Name]

Dear [Name]:

I have reviewed your Response to our Request for Production of Documents and find that your Responses do not comply with various sections of CCP §2031.210 which requires specific language when responding to document productions.

(Use next paragraph if production comes without labels and tags.)
First, I attempted to make sense of the documents you sent (reviewing them for almost an hour); however, I have no obligation to do so. The way they were produced did not comply with CCP §2031.280 which states, that the documents must be produced "organized and labeled to correspond with the categories in the demand." Therefore, I am asking that you provide me with another copy of the production with the attachments clearly labeled to correspond to my production request.

(Use the next paragraph if they did not produce documents and did not properly make a statement of inability to comply with the demand.)
Second, your Responses to Requests number [number] and [number] fail to meet with statutory language of CCP §2031.230 which states:

> "A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. . . ."

(Use the next paragraph if the other side says they are still looking for documents and they will produce when they find them.)
Third, your Responses to Requests number [number] and [number] fail to meet the statutory language of CCP §2031.210 due to the fact that they do not state that you are complying or not complying with the Request for Production. Stating that you are still looking for documents and that you will produce if you find them is not sufficient. Please comply with the statute.

(Use the next paragraph if there was no verification.)

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.9
LETTER REPLY TO THE RESPONSE
(page 2)

Fourth, there was no verification with your purported responses. Case law indicates that an unverified response is the same as no response. Therefore, your response is late, and you have waived all objections. Nonetheless, you must still supply me with a formal, signed verification.

I expect you to re-do the Response to Request for Production of Documents as well as clearly label the actual documents produced so that they comply with CCP §2031.280 and provide us with same on or before [Date].

Very truly yours,

YOUR NAME
Your Address
City, State, Zip
Your Phone

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.10
FORM INTERROGATORIES
Form FL-145 (page 1)

FL-145

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* TELEPHONE NO.:

ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

SHORT TITLE:

FORM INTERROGATORIES–FAMILY LAW

Asking Party:

Answering Party:

Set No.:

CASE NUMBER:

Sec. 1. Instructions to Both Parties

The interrogatories on page 2 of this form are intended to provide for the exchange of relevant information without unreasonable expense to the answering party. They do not change existing law relating to interrogatories, nor do they affect the answering party's right to assert any privilege or make any objection. **Privileges must be asserted.**

Sec. 2. Definitions

Words in **boldface** in these interrogatories are defined as follows:

(a) **Person** includes a natural person; a partnership; any kind of business, legal, or public entity; and its agents or employees.

(b) **Document** means all written, recorded,or graphic materials, however stored, produced, or reproduced.

(c) **Asset** or **property** includes any interest in real estate or personal property. It includes any interest in a pension, profit-sharing, or retirement plan.

(d) **Debt** means any obligation, including debts paid since the date of separation.

(e) **Support** means any benefit or economic contribution to the living expenses of another person, including gifts.

(f) If asked to **identify a person,** give the person's name, last known residence and business addresses, telephone numbers, and company affiliation at the date of the transaction referred to.

(g) If asked to **identify a document,** attach a copy of the document unless you explain why not. If you do not attach the copy, describe the document, including its date and nature, and give the name, address, telephone number, and occupation of the person who has the document.

Sec. 3. Instructions to the Asking Party

Check the box next to each interrogatory you want the answering party to answer.

Sec. 4. Instructions to the Answering Party

You must answer these interrogatories under oath within 30 days, in accordance with Code of Civil Procedure section 2030.260.

You must furnish all information you have or can reasonably find out, including all information (not privileged) from your attorneys or under your control. If you don't know, say so.

If an interrogatory is answered by referring to a document, the document must be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer can be found.

If a document to be attached to the response may also be attached to the *Schedule of Assets and Debts* (form FL-142), the document should be attached only to the response, and the form should refer to the response.

If an interrogatory cannot be answered completely, answer as much as you can, state the reason you cannot answer the rest, and state any information you have about the unanswered portion.

Sec. 5. Oath

Your answers to these interrogatories must be under oath, dated, and signed. Use the following statement **at the end of your answers:**

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE) (SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
FL-145 [Rev. January 1, 2006]

FORM INTERROGATORIES–FAMILY LAW

Code of Civil Procedure,
§§ 2030.010–2030.410, 2033.710
www.courtinfo.ca.gov

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.11
FORM INTERROGATORIES
Form FL-145 (page 2)

FL-145

☐ 1. **Personal history**. State your full name, current residence address and work address, social security number, any other names you have used, and the dates between which you used each name.

☐ 2. **Agreements.** Are there any agreements between you and your spouse or domestic partner, made before or during your marriage or domestic partnership or after your separation, that affect the disposition of **assets, debts,** or **support** in this proceeding? If your answer is yes, for each agreement state the date made and whether it was written or oral, and attach a copy of the agreement or describe its contents.

☐ 3. **Legal actions.** Are you a party or do you anticipate being a party to any legal or administrative proceeding other than this action? If your answer is yes, state your role and the name, jurisdiction, case number, and a brief description of each proceeding.

☐ 4. **Persons sharing residence.** State the name, age, and relationship to you of each **person** at your present address.

☐ 5. **Support provided others.** State the name, age, address, and relationship to you of each **person** for whom you have provided **support** during the past 12 months and the amount provided per month for each.

☐ 6. **Support received for others.** State the name, age, address, and relationship to you of each **person** for whom you have received **support** during the past 12 months and the amount received per month for each.

☐ 7. **Current income.** List all income you received during the past 12 months, its source, the basis for its computation, and the total amount received from each. Attach your last three paycheck stubs.

☐ 8. **Other income.** During the past three years, have you received cash or other property from any source not identified in item 7? If so, list the source, the date, and the nature and value of the property.

☐ 9. **Tax returns.** Attach copies of all tax returns and tax schedules filed by or for you in any jurisdiction for the past three calendar years.

☐ 10. **Schedule of assets and debts.** Complete the *Schedule of Assets and Debts* (form FL-142) served with these interrogatories.

☐ 11. **Separate property contentions.** State the facts that support your contention that an asset or debt is separate property.

☐ 12. **Property valuations.** During the past 12 months, have you received written offers to purchase or had written appraisals of any of the assets listed on your completed *Schedule of Assets and Debts?* If your answer is yes, **identify the document.**

☐ 13. **Property held by others.** Is there any **property** held by any third party in which you have any interest or over which you have any control? If your answer is yes, indicate whether the property is shown on the *Schedule of Assets and Debts* completed by you. If it is not, describe and identify each such asset, state its present value and the basis for your valuation, and **identify the person** holding the asset.

☐ 14. **Retirement and other benefits.** Do you have an interest in any disability, retirement, profit-sharing, or deferred compensation plan? If your answer is yes, **identify** each plan and provide the name, address, and telephone number of the administrator and custodian of records.

☐ 15. **Claims of reimbursement.** Do you claim the legal right to be reimbursed for any expenditures of your separate or community property? If your answer is yes, state all supporting facts.

☐ 16. **Credits.** Have you claimed reimbursement credits for payments of community debts since the date of separation? If your answer is yes, **identify** the source of payment, the creditor, the date paid, and the amount paid. State whether you have added to the debt since the separation.

☐ 17. **Insurance. Identify** each health, life, automobile, and disability insurance policy or plan that you now own or that covers you, your children, or your assets. State the policy type, policy number, and name of the company. **Identify** the agent and give the address.

☐ 18. **Health.** Is there any physical or emotional condition that limits your ability to work? If your answer is yes, state each fact on which you base your answer.

☐ 19. **Children's needs.** Do you contend that any of your children have any special needs? If so, identify the child with the need, the reason for the need, its cost, and its expected duration.

☐ 20. **Attorney fees.** State the total amount of attorney fees and costs incurred by you in this proceeding, the amount paid, and the source of the money paid. Describe the billing arrangements.

☐ 21. **Gifts.** List any gifts you have made without the consent of your spouse or domestic partner in the past 24 months, their values, and the recipients.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.12
SPECIALLY DRAFTED INTERROGATORIES
(page 1)

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: [Your case number]
Petitioner: YOUR NAME	FIRST SET OF WRITTEN INTERROGATORIES
Respondent: SPOUSE NAME	(Specially drafted)

SET NUMBER: ONE

PROPOUNDING PARTY: PETITIONER

RESPONDING PARTY: RESPONDENT

Petitioner requests that Respondent answer under oath, pursuant to Section 2030.010 of the California Code of Civil Procedure, within thirty (30) days of the date of service hereof, the following Interrogatories.

Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer to the extent possible.

If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.13
SPECIALLY DRAFTED INTERROGATORIES
(page 2)

response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

Your answers to these interrogatories must be verified, dated, and signed.

Dated: [Date]

_____
YOUR NAME, Petitioner

1. **Identification.** State:

a. Your present name and all former names.

ANSWER:

b. Your present residence address.

ANSWER:

c. Your Social Security number.

ANSWER:

d. Your drivers license number and state of issuance.

ANSWER:

2. **Employment.**

a. State your present occupation.

ANSWER:

b. State the address of your present workplace and/or employer's name and address, the date you commenced work there, and your employee identification number, if any.

ANSWER:

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.14
SPECIALLY DRAFTED INTERROGATORIES
(page 3)

c. What is your present gross monthly income (including all things of value received by you each month from all sources before deducting expenses)?

ANSWER:

d. State your net monthly income, and specifically itemize all deductions from gross income.

ANSWER:

e. If, during the past 12 months, you have worked any overtime, please state the number of hours per month and the overtime rate of pay.

ANSWER:

f. If you will do so without a notice to produce, please attach copies of your four (4) most recent paystubs or other documentation of monthly income along with your most recent W-2 form.

STATE WHETHER ATTACHED:

g. Have any bonuses or commissions been paid to you during the past 12 months, and, if so, what was the amount and source of each?

ANSWER:

h. Do you expect any bonuses or commissions to be paid to you within the coming 12 months, and, if so, what is the amount and source of each?

ANSWER:

i. As of the date of separation from your spouse, did you have the right to any vacation fund, and, if so, state the company or entity holding the fund, the amount of money payable to you upon vacation and the earliest date on which you may draw

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.15
DECLARATION FOR ADDITIONAL INTERROGATORIES
(page 1)

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: [Your case number]
Petitioner: YOUR NAME	DECLARATION PERMITTING ADDITIONAL INTERROGATORIES
Respondent: SPOUSE NAME	[CCP 2030.050]

I, the undersigned, declare:

1. I am the Petitioner herein.

2. I am propounding to Respondent, the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared interrogatories permitted by Section 2030.030 of the Code of Civil Procedure.

4. I have previously propounded a total of [number] interrogatories to this party of which [number] interrogatories were not official form interrogatories.

OR

4. I have not previously propounded any interrogatories to Respondent which were not official form interrogatories.

5. This set of interrogatories contains a total of [number] specially prepared interrogatories which are supplemental to Form Interrogatories.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.16
DECLARATION FOR ADDITIONAL INTERROGATORIES
(page 2)

6. I am familiar with the issues and the previous discovery conducted in the case.

7. I have personally examined each of the questions in this set of interrogatories.

8. The number of questions is warranted under Section 2030.040 of the Code of Civil Procedure because the complexity of this matter involving dissolution of marriage requires information which cannot be gained within the statutory limits of thirty-five specially prepared interrogatories.

9. None of the questions in this set of interrogatories is being propounded for any improper purposes, such as to harass the party, or the attorney for the party to whom it is directed, or to cause any unnecessary delay of needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on [Date] at [City], California.

_____
YOUR NAME, Petitioner

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.17
RESPONSE TO INTERROGATORIES

YOUR NAME
Your Address
City, State, Zip
Your Phone

Respondent in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of Petitioner: SPOUSE NAME Respondent: YOUR NAME	No.: [Your case number] RESPONSE TO WRITTEN INTERROGATORIES

TO: Petitioner and his/her attorney of record:

Respondent responds as follows to Petitioner's written interrogatories, first set, (form OR specially drafted) served on [date].

[Note: As all questions are different, we can't give you examples of answers that will help your specific case. Just answer each question, exactly as asked, not volunteering additional information and not leaving out any parts.]

Dated: [Date]

_____
YOUR NAME, Respondent

[Reminder: You must also attach a signed Verification.]

1

Declaration Permitting Additional Interrogatories [CCP 2030]

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.18
NOTICE OF TAKING DEPOSITION—RECORDS ONLY

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: [Your case number]
Petitioner: YOUR NAME	NOTICE OF TAKING DEPOSITION---
Respondent: SPOUSE NAME	RECORDS ONLY--- NO APPEARANCE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the deposition of the custodian of records of [name of company or organization] will be taken in the above-entitled action before a Notary Public at the following address: [City], California, on [date], at [time], and continued from day to day thereafter, Sundays and holidays excepted, until completed, on behalf of petitioner.

Dated: [Date]

_____
YOUR NAME, Petitioner

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.19
INTERROGATORIES TO CUSTODIAN OF RECORDS
(page 1)

INTERROGATORIES
(Attachment to Notice of Deposition)

1. What is your name?

ANSWER:

2. By whom are you employed?

ANSWER:

3. What is your job title?

ANSWER:

4. Are you the duly authorized custodian of records, and do you have in your care, custody and control all records listed below?

ANSWER:

5. List all attached records:

6. Are these records kept in the regular course of your employer's business?

ANSWER:

7. Are the entries in the records made at or near the time of the event to which they relate?

ANSWER:

8. In response to subpena duces tecum served on you, have you produced any and all records mentioned in that subpoena?

ANSWER:

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.20
INTERROGATORIES TO CUSTODIAN OF RECORDS
(page 2)

INTERROGATORIES
(Attachment to Notice of Deposition)

1. What is your name?

ANSWER:

2. By whom are you employed?

ANSWER:

3. What is your job title?

ANSWER:

4. Are you the duly authorized custodian of records, and do you have in your care, custody and control all records listed below?

ANSWER:

5. List all attached records:

6. Are these records kept in the regular course of your employer's business?

ANSWER:

7. Are the entries in the records made at or near the time of the event to which they relate?

ANSWER:

8. In response to subpena duces tecum served on you, have you produced any and all records mentioned in that subpoena?

ANSWER:

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.21
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS
Form SUBP-010 (page 1)

SUBP-010

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known):*

1. **YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:**

To *(name of deposition officer)*:
On *(date)* : At *(time)*:
Location *(address)*:

Do not release the requested records to the deposition officer prior to the date and time stated above.

a. ☐ by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.

b. ☐ by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).

c. ☐ by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.

2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*

3. The records to be produced are described as follows *(if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):*

☐ Continued on Attachment 3.

4. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PERSON ISSUING SUBPOENA)

(TITLE)

(Proof of service on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-010 [Rev. January 1, 2012]

DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

Code of Civil Procedure, §§ 2020.410–2020.440;
Government Code, § 68097.1
www.courts.ca.gov

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.22
NOTICE TO CONSUMER OR EMPLOYEE
Form SUBP-025 (page 1)

SUBP-025

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	CASE NUMBER:
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3,1985.6)	

NOTICE TO CONSUMER OR EMPLOYEE

TO *(name)*:

1. PLEASE TAKE NOTICE THAT **REQUESTING PARTY *(name)*:**
   SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on *(specify date)*:
   The records are described in the subpoena directed to **witness** *(specify name and address of person or entity from whom records are sought)*:
   A copy of the subpoena is attached.
2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED IN ITEM a. OR b. BELOW:
   a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the **witness** and the **deposition officer** named in the subpoena at least five days before the date set for production of the records.
   b. If you are not a party to this action, you must serve on the **requesting party** and on the **witness,** before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should **not** be filed with the court. **WARNING:** IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.
3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ☐ REQUESTING PARTY ☐ ATTORNEY)

OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS

1. ☐ I object to the production of all of my records specified in the subpoena.
2. ☐ I object only to the production of the following specified records:

3. The specific grounds for my objection are as follows:

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

(Proof of service on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-025 [Rev. January 1, 2008]

NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION

Code of Civil Procedure,
§§ 1985.3. 1985.6,
2020.010–2020.510
www.courtinfo.ca.gov

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.23
NOTICE OF TAKING DEPOSITION

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: [Your case number]
Petitioner: YOUR NAME	NOTICE OF TAKING DEPOSITION
Respondent: SPOUSE NAME	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the deposition of [Name] will be taken in the above-entitled action before a Notary Public at the following address: [City], California, on [date], at [time], and continued from day to day thereafter, Sundays and holidays excepted, until completed, on behalf of petitioner. In addition to being stenographically recorded, the deposition will be videotaped/audiotaped.

[If the person whose deposition is being taken is your spouse, you can also state:] YOU ARE DIRECTED TO BRING WITH YOU TO THE DEPOSITION THE FOLLOWING DOCUMENTS AND ITEMS: All items listed in Exhibit A attached hereto and made part hereof. [Use Exhibit A in Figures 17.2- 17.4, or create one of your own.]

Dated: [Date]

_____
YOUR NAME, Petitioner

1

Notice of Taking Deposition

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.24
DEPOSITION SUBPOENA-PERSONAL APPEARANCE
Form SUBP-015 (page 1)

SUBP-015

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known)*:

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date:	Time:	Address:

a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)

b. ☐ This deposition will be recorded stenographically ☐ through the instant visual display of testimony and by ☐ audiotape ☐ videotape.

c. ☐ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. ☐ If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PERSON ISSUING SUBPOENA)

(TITLE)

(Proof of service on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-015 [Rev. January 1, 2009]

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

Code of Civil Procedure §§ 2020.310, 2025.220, 2025.230, 2025.250, 2025.620
Government Code, § 68097.1
www.courtinfo.ca.gov

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.25

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS Form SUBP-020 (page 1)

SUBP-020

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

TELEPHONE NO.: FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PLAINTIFF/PETITIONER:
DEFENDANT/RESPONDENT:

DEPOSITION SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO *(name, address, and telephone number of deponent, if known)*:

1. **YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:**

Date:	Time:	Address:

a. ☐ As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
b. ☐ You are ordered to produce the documents and things described in item 3.
c. ☐ This deposition will be recorded stenographically ☐ through the instant visual display of testimony and by ☐ audiotape ☐ videotape.
d. ☐ This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

3. The documents and things to be produced and any testing or sampling being sought are described as follows:

☐ Continued on Attachment 3.

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

☐ Continued on Attachment 4.

5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, *AND* CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**

6. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF $500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

▶ _____
(SIGNATURE OF PERSON ISSUING SUBPOENA)

(TYPE OR PRINT NAME) (Proof of service on reverse) (TITLE)

Form Adopted for Mandatory Use
Judicial Council of California
SUBP-020 [Rev. January 1, 2009]

DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

Code of Civil Procedure §§ 2020.510, 2025.220, 2025.230, 2025.250, 2025.620; Government Code, § 68097.1
www.courtinfo.ca.gov

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.26
DECLARATION IN SUPPORT OF SUBPOENA DUCES TECUM

Note: You must attach an Exhibit A to this declaration, listing items that are being subpoenaed. Examples for Exhibit A can be seen at Figures 17.2–17.4.

Marriage of YOUR LAST NAME & SPOUSE LAST NAME

Case No. [Your case number]

DECLARATION IN SUPPORT OF SUBPOENA DUCES TECUM
(TO HEARING OR TRIAL)

The undersigned states:

I am petitioner in the above-entitled action; said cause has been set for hearing at the date, time and location specified in the attached subpoena duces tecum.

On information and belief, the subpenaed witness has in his/her possession or under his/her control the following documents: All items listed in Exhibit A, attached hereto and made part hereof.

[Note: Create an Exhibit A based on Figures 17.2-17.4]

On information and belief, the above documents are relevant to a proper presentation of petitioner's case by reason of the following facts: This is an action for dissolution of marriage, involving issues of support and community property.

The respondent's assets, income and ability to make payments are relevant to the issues herein. The requested records are relevant to said matter.

Executed at [City], California, on [Date].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____
YOUR NAME, Petitioner

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 17.27
NOTICE TO ATTORNEY IN LIEU OF SUBPOENA

YOUR NAME
Your Address
City, State, Zip
Your Phone

Petitioner in propria persona

SUPERIOR COURT OF CALIFORNIA, COUNTY OF [County]

In re Marriage of	No.: [Your case number]
Petitioner: YOUR NAME	NOTICE TO ATTORNEY IN LIEU OF SUBPOENA
Respondent: SPOUSE NAME	

To [name], attorney for Respondent herein:

NOTICE IS HEREBY GIVEN that Petitioner requests that Respondent attend before a Notary Public at a deposition at the following address: [address], California, on [date], at [time], to testify as a witness in this action. Respondent has in his/her possession or under his/her control the items listed in Exhibit A attached hereto and made part hereof.

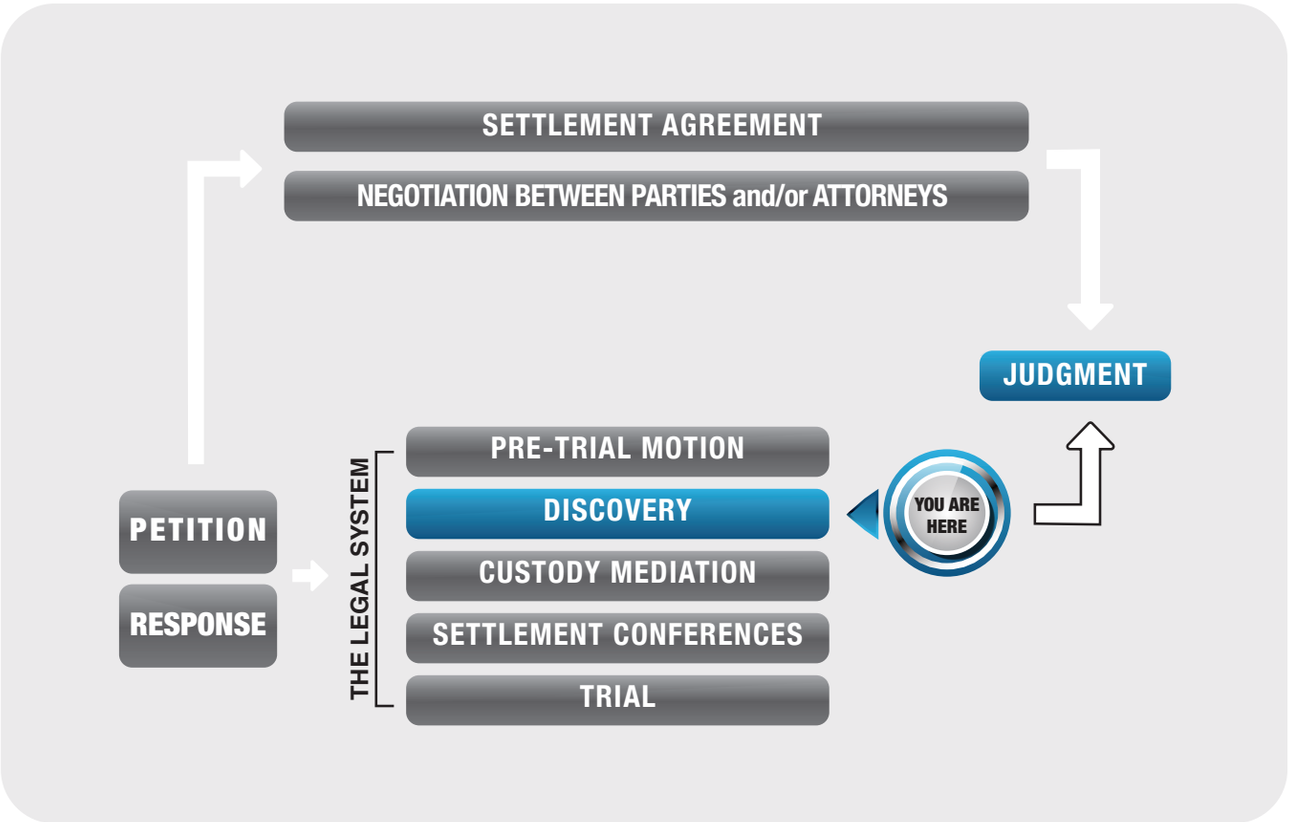
Said party is requested to bring to the deposition said items. This request is made pursuant to sections 1987(b) and 1987(c) of the Code of Civil Procedure which provide that the giving of this notice has the same effect as the service of a subpoena, and that, in the event of noncompliance with this notice, the parties shall have the rights, and the Court may make such orders, including imposition of sanctions, as in the case of a subpoena for attendance before the Court.

Dated: [Date]

_____
YOUR NAME, Petitioner

[Note: See example Exhibit A at Figures 17.2-17.4 showing sample items to produce.]

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 18

COMPELLING DISCOVERY IN COURT

A. Motions to compel discovery
B. Responding to a discovery motion
C. Compelling Declaration of Disclosure
D. Motion to compel production of documents
E. Compelling answers to written interrogatories
F. Motions to enforce or stop a subpoena
G. Motions regarding depositions
H. Discovery cutoff date

These motions are much like any other motions. Use the notes here as a follow up to the basic motion, discussed in chapter 11.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A Motions to compel discovery

If your demands for discovery were ignored, or the responses were inadequate, you must file a motion to compel discovery. However, this can backfire if it is denied because the judge thinks what you were asking for was totally unrelated or out of proportion to the size of the issue. Another ground for denial would be where the judge feels someone's right to privacy outweighs the usefulness of the records; for example, asking for banking records of a new live-in of your spouse where your spouse and the live-in kept their finances separate. If a judge denies your motion to compel discovery, pursuant to the Code of Civil Procedure, sanctions—that is, money fines—shall be awarded.

If your attorney is not confident you will win your discovery motion, maybe you should not make it. On the other hand, your spouse has a duty to disclose all relevant information, so the court should support legitimate requests and not punish you for asking for information. Discuss this and a possible solution or strategy with your lawyer.

Anything relevant to marital finances is discoverable without a showing of good cause (Family Code 721(b)).

Preliminaries –things you must do before making your motion

Before you can compel discovery by motion in court, you first have to make a reasonable and good faith attempt at an informal resolution of each issue in the motion. This usually means that you have to write a letter to the other side explaining why you need the information and/or how their response (if they sent one) is not adequate. If they ignored your request for information entirely, your attorney should write them and call to their attention the necessity of responding by a certain date, say ten days away. Some local rules require you to meet and confer with the other side before making a motion to compel. Your discovery motion must be accompanied by a declaration stating what you did to try to resolve the issue by agreement.

Procedures for discovery motions

If you end up negotiating with the other side about what is due and when, you have to be very careful not to get distracted from the various deadlines (discussed below) for when something must be produced and when you have to file a motion to compel production if you don't get full compliance. In other words, don't get distracted; keep the paperwork deadlines religiously or get them extended.

Order after hearing. If you are compelling the other side to answer questions, produce documents or do any specific act, be sure a deadline is included in your order, such as saying that records should be produced within 20 days after the hearing.

The Code of Civil Procedure permits the judge to send your discovery matters out to a "referee" or "special master," in which case you would have to pay that person to decide your discovery issues. One case, Hobbs v. Superior Court, 72 CA4 446 (May, 1999), indicates that the courts should not send routine discovery matters out for decision by others but only cases that involve more complicated or lengthy issues. However, if the judge does send the matter out, best not to argue the issue without a very good reason for doing so.

Requesting attorney fees

The courts want discovery statutes to be self-enforcing; that is, they don't want you to have to come to court to pry information out of the other party, so, if you make a successful discovery motion, the court may award you attorney fees and costs. If you are requesting attorney fees, you must attach an Income and Expense Declaration to your motion.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

B Responding to a discovery motion

Your spouse is clearly entitled to all financial information in your possession related to marital property and your income and expenses. If the other side wants something, unless it is hugely and obviously unreasonable, discuss with your attorney whether you should just give it to them. If they file a discovery motion because you failed to send information or documents, or you sent incomplete information or documents, you should comply with all reasonable requests as soon as possible. You need to minimize attorney fees that might be awarded and try to keep the judge from getting angry for unnecessarily taking up the court's time.

You use FL-320 Responsive Declaration form to respond to a discovery motion, where you need to address separately each and every item that your spouse claims you haven't produced. You need to explain why such documents never were in your possession (such as you don't get canceled checks with your type of checking account), or they no longer exist (such as you throw away your tax returns after 7 years, which we don't recommend), or some other excuse (such as you moved last week, everything is in boxes, and it will take time to locate the records).

Each type of legal action below, sections D–G, also includes notes on how to respond.

C Compelling Declaration of Disclosure

Both parties are required to serve each other with (but not file with the court) the Preliminary Declaration of Disclosure (PD) and the Final Declaration of Disclosure (FD). The PD is due some by the Petitioner at the time the Petition is served, or 60 days from that date, and the Respondent must serve the PD at the time the Response is served, or 60 days from that date. The FD is due either before signing a settlement agreement or at least 45 days before trial. If what you are after is information, it is much easier to get it by discovery as described above rather than by trying to compel a declaration of disclosure—an involved procedure.

Do not agree without disclosure! You must not enter into a written settlement agreement unless your spouse first serves you with both a Preliminary and Final Declaration of Disclosure, either before the settlement agreement is signed or at the same time. Make serving both disclosures an explicit condition of any agreement. Preferably, you would not even negotiate a settlement without such disclosure since without it, you are essentially negotiating blind.

D Motion to compel production of documents or things

When you make a request for production, if it is entirely ignored, you should file a motion to compel production. If the other side does not produce fully and properly or does not supply a signed verification (oath declaring the truth of the response), you should file a motion to compel. The harder decision is when your spouse provided you with some, but not all, of the documents you requested.

As you have to send a letter requesting more documents, your spouse might send you a further response before you make your motion. If your spouse provides more and more documents, at each step of the way you need to decide whether you now have enough documents or whether you need to continue pressing. Keep in mind that if only one month's bank statements is missing, it could be the one statement that has the information that is crucial for your case. On the other hand, people lose documents, and sometimes documents are missing simply because they are missing.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

You don't want to appear unreasonable to the judge, so you are going to explain very clearly in your declaration supporting your discovery motion why you want the documents you requested.

Time limit for motion to compel production. If your spouse completely ignores the Request to Produce, you do not have a time limit to file a motion to compel. As a practical matter, you should proceed promptly and make your motion within a month or so. However, if your spouse makes an evasive or inadequate response, and if that response was verified, then you have only 45 days from the date you received a verified Response (or the latest verified supplemented Response) in which to file and serve a motion to force him/her to produce. If you want to serve your motion by mail, you must do so within 40 days from the date you were served with the Response. Do not miss this deadline! As soon as you receive the Response, calendar the deadline to serve and file the motion to compel. An appellate court in a non-divorce case held that if a party does not make the motion within 45 days, they can never make the motion and they cannot redo the initial request to produce and thereby restart the deadlines. On the other hand, in family law there is a fiduciary duty to provide information, so a different outcome might result. Don't take a chance. Do your motion well before the last moment.

Prerequisite to making motion to compel production. Before making the motion, your attorney must write your spouse (or his/her attorney) a letter explain why the response was inadequate and demand further response. You are not writing this letter only for the other side—you know a judge might see it, and you want the judge to see clearly why you need your documents. Therefore, your letter is written so that a stranger could understand exactly what you mean without having to refer to any other document. The letter should stand on its own. If the letter does not produce an adequate response, file a motion to compel production. Code of Civil Procedure requires your motion to set forth "specific facts showing good cause justifying the discovery sought by the inspection demand." Your motion will relate that this is an action for dissolution of marriage, and the other party has a fiduciary duty to provide you with information, then explain why each particular item should be produced.

Your motion will be as described in chapter 12, but with the modifications shown below. In these examples, we assume the moving party is Petitioner, but it could be the other way around.

How to resist a Motion to Compel Production

In general, any document reasonably related to your divorce should be produced. Unreasonable refusal will ultimately make the judge angry and could cost you sanctions. However, there may be situations in which it is reasonable to resist production:

1. You don't have it, and you never had it, and you can't get it with reasonable effort.
2. The document has been destroyed for some legitimate reason. For example, you destroy copies of tax returns after 7 years, so you have to contact the IRS to get a copy (and you yourself prepared the return so can't get a copy from a tax preparer) and this will take time. The court will expect you to contact the IRS and get the copy.
3. The document never existed.
4. You have moved and have many boxes of records which you can't check out in the time to respond.

You've tried to find the requested document, but so far cannot. You need more time.

If any of these apply, explain it in your Responsive Declaration. You want to make it clear to the judge that the discovery request is unreasonable or that there is a reason why you can't comply. You can say the discovery motion is "harassment," but if the facts don't show that, merely flinging the accusation won't help. In every other regard, follow instructions in chapter 14 for responding to a motion.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

E Compelling answers to written interrogatories

When you send written interrogatories (form or specially drafted), if they are entirely ignored, you need to file a motion to compel. If the other side made some sort of answers but there was no signed verification (oath declaring the truth of the answers), you should file a motion to compel. The harder decision is when your spouse provided you with vague, evasive or inadequate answers and objected to some of the questions.

Your declaration supporting your motion must contain a separate statement explaining why each question is necessary to your case. Of course, if you are asking a very basic question like, "On what date do you contend that the parties separated?" this is clearly relevant information. On the other hand, if you are asking a detailed question about personal finances, you might want to explain the relevance in more detail. If your spouse wrote initial answers, then you sent a letter asking for more answers, then he/she sent you an additional response, every step will be set out in your motion. Your declaration also must set forth the efforts you made to reach an agreement regarding the need to answer the interrogatories.

The Rules of Court says your statements must set out the text of each question or request that is in issue and the text of each response you received, and a statement of factual and legal reasons for compelling further responses or production. You can't attach anything or refer to it by reference; instead you must reproduce or summarize that other material here in this statement.

Deadline for filing a motion. If your spouse completely ignored your interrogatories, or if the response was not verified, there is no deadline to make your motion. But if you received verified responses, your motion must be filed and served within 45 days of the service of the responses, or any supplemental responses, or on or before any specific later date to which the parties have agreed in writing.

How to resist a motion to compel answers to written interrogatories

If your spouse has asked you reasonable questions that are clear enough that you can understand them, you should answer them as soon as you can, even after the motion is served on you. If you try to avoid answering reasonable questions, you might have to pay your spouse's fees incurred in forcing you to answer. If your spouse sent you extremely burdensome interrogatories that are obviously and solely for the purpose of harassment, you can legitimately object, but you have to explain why. The fact that your spouse knows the answer is not an objection; your spouse is entitled to know what you say about it.

If you feel that your spouse's questions infringe on your privacy in your life since you have separated, such as very personal questions about someone you are seeing, you speak to your attorney about fighting this invasion of your privacy. However, if you are involved in a custody/visitation case, and this new person will be around your children, this could be a valid inquiry. If you refuse to answer the question, explain the privacy issue in your statement. The California State Constitution guarantees privacy as a right, so judges are sensitive to this issue. Your spouse will either accept your refusal or file a motion to compel an answer, in which case you file a Responsive Declaration setting forth your position. Usually, you can merely write a clear explanation as to each question you refuse to answer, but for a complex case more case-specific advice from your lawyer will be necessary.

F Motions to enforce or stop a subpoena

Technically, when someone is served with a subpoena, the burden is on them to file a motion to quash it. However, people will sometime just ignore the subpoena. That puts the one who did the subpoena into the difficult position of having to file a motion against someone who is not a party to the action.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

As with all discovery motions, it is a good idea to write a letter to the spouse and to the witness before you make the motion so the judge will know that you really had no choice but to take it to court.

How to stop or limit a subpoena

You could simply ignore a subpoena, in which case the issuing party would have to make a motion to force you to comply, then you respond. However, if you ignore a subpoena to come to court without a good reason, the judge is going to be very unhappy. Better to file a motion to "quash" the subpoena. If you want protection from a subpoena, or if you want to protect a witness (such as a therapist or new mate), who was served with a subpoena, you can file a motion to "quash" or limit the subpoena. If it is "quashed," the subpoena is completely rejected by the court; otherwise, the judge might choose merely to limit its terms.

If a consumer subpoena was served improperly, you can move to quash it. For example, if there was no consumer or employee notice, then you could stop the production, or if the party was not served at least five days before the witness was served, that is another ground for objection. However, moving to quash is a lot of work and if the records are relevant and the subpoena is reasonable, you would only delay the inevitable.

Object to production of privileged records. If your spouse tried to subpoena your counseling or medical records, unless you have yourself made an issue of your mental or physical condition, you can object to production of such records. The best way to object is to file a motion to quash the subpoena. You should also immediately contact your therapist or doctor and direct him/her not to produce the records without a court order.

G Motions regarding depositions

If you served a person or institution with a subpoena, and he/she ignored it, or if someone came to a deposition and refused to answer or to produce documents under a subpoena, you can file a motion to compel them to abide by discovery rules. However, you must study all of Code of Civil Procedure section 2025 in detail and comply with it.

How to resist a deposition

Any person served with a deposition notice—either a party or any witness—can file a motion to stop or limit the deposition.

To avoid producing documents, the person served with the subpoena or deposition notice must serve the other side with a written objection at least three calendar days before the deposition, specifying the error or irregularity. Any deposition taken after the service of a written objection shall not be used against the objecting party if the party did not attend the deposition and if the court determines that the objection was valid. In addition, a party can move for an order staying or preventing the taking of the deposition, and the deposition will be stayed (put off) until the motion can be heard and decided. This motion must be accompanied by a declaration showing that you tried to resolve the matter informally.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Additionally, before, during, or after a deposition, any party or deponent can move for a protective order. The usual declaration regarding trying for informal resolution must be included. The court, for good cause shown, may make any order that justice requires to protect anyone from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. There are many kinds of protective orders including, but not limited to, orders that:
(1) The deposition not be taken at all.
(2) The deposition be taken at a different time.
(3) The deposition be taken at a place other than that specified in the deposition notice.
(4) The deposition be taken only on certain specified terms and conditions.
(5) The testimony be recorded in a manner different from that specified in the deposition notice.
(6) Certain matters not be inquired into.
(7) The scope of the examination be limited to certain matters.
(8) All or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.
(9) Designated persons, other than the parties to the action and their counsel, be excluded from attending the deposition.
(10) A trade secret or other confidential research, development, or commercial information not be disclosed, or disclosed only to specified persons or in a specified way.
(11) The deposition be sealed and thereafter opened only on order of the court.
If the motion for a protective order is denied in whole or in part, the court can order the deponent to provide or permit the discovery sought.

Discovery cutoff date

Code of Civil Procedure requires discovery to be completed at least 30 days before the initial trial date, and discovery motions must be heard at least 15 days before. Discovery is considered completed on the day a response is due or on the day a deposition begins. Once you have a trial date set, you must be sure to get your discovery done well in advance of these deadlines. Even if your trial is postponed, this does not reopen discovery unless you obtain a court order to reopen it.

If you send out interrogatories to your spouse by mail, your spouse has 35 days to answer; if he/she does not answer or he/she gives incomplete or evasive answers, you need to file a Request For Order to compel, and your spouse is entitled to 21 days' notice (26 if mailed) plus time after the hearing to prepare answers. So you can see that this one part of discovery could easily require several months and, as you have to complete it by 30 days before trial, you must start almost a half-year before the trial to ensure that you can accomplish this one thing alone. Don't procrastinate.

Figure 18.1
DECLARATION RE MOTION TO COMPEL PRODUCTION
(page 1)

Marriage of YOUR LAST NAME & SPOUSE LAST NAME

Case No. [Your case number]
DECLARATION OF PETITIONER RE
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

I, the undersigned, state:

I am the petitioner herein.

This is an action for dissolution of marriage, including issues of support, property and custody/visitation.

On or about [date], I caused a Request for Production of Documents to be served on respondent. Respondent failed to respond to the request (in whole OR in part and if it is in part:) and has failed to identify and/or produce the terms as set out below.

I am informed and believe that the items set forth below are relevant to the subject matter of this action and are reasonably calculated to lead to discovery of admissible evidence, and good cause exists for their production.

ITEM 1:

a. Request: [Set forth the request exactly as it appeared in your Request for Production. Example:] Federal income tax returns of the respondent for the years [year] through [year], including all attached schedules, W-2 forms, 1099 forms and K-1 forms and any an all amended returns and attachments, regardless of whether filed solely or jointly with another individual.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.2
DECLARATION RE MOTION TO COMPEL PRODUCTION
(page 2)

b. Response: [Set forth the response exactly as you received it. Example:] It is objected that the income tax returns for said years are privileged because they were filed jointly with my present spouse.

c. Argument and Factual Contentions: [Explain why the item should be produced. Example:] This action involves issues of child and spousal support, and the income tax returns are not privileged.

On or about [date], I wrote to Respondent[‘s attorney] and requested that he/she respond [further] to the request to produce; see copy of letter attached hereto and made part hereof. I received no further response as a result of that letter OR I received the following response to that letter:

Respondent’s failure to respond, object to the request, or failure to comply with the request was without substantial justification.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on [date] at [City], California.

_____
YOUR NAME, Petitioner

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.3
DECLARATION RE MOTION TO COMPEL ANSWERS TO INTERROGATORIES (page 1)

Marriage of YOUR LAST NAME and SPOUSE LAST NAME

Case No. [Your case number]

DECLARATION OF PETITIONER RE
MOTION TO COMPEL ANSWERS TO WRITTEN INTERROGATORIES

I, the undersigned, state:

I am the petitioner herein.

This is an action for dissolution of marriage, including issues of support, property and custody/visitation.

On or about [date], I caused Written Interrogatories (first set, specially drafted) to be served on respondent. Respondent failed to respond to the interrogatories (in whole OR in part) and/or failed to provide a written verification under penalty of perjury, all as set out below.

I am informed and believe that the items set forth below are relevant to the subject matter of this action and are reasonably calculated to lead to discovery of admissible evidence.

[If some answers were served, give the following information for each item for which you need more information.]

ITEM 1:

a. Question: [Set forth the question exactly as it appeared in your Interrogatories. Example:] State your full name and address.

b. Response: [Set forth the response exactly as you received it. Example:] Joe Jones.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.4
DECLARATION RE MOTION TO COMPEL ANSWERS TO INTERROGATORIES (page 2)

Marriage of YOUR LAST NAME and SPOUSE LAST NAME

Case No. [Your case number]

DECLARATION OF PETITIONER RE
MOTION TO COMPEL ANSWERS TO WRITTEN INTERROGATORIES

I, the undersigned, state:

I am the petitioner herein.

This is an action for dissolution of marriage, including issues of support, property and custody/visitation.

On or about [date], I caused Written Interrogatories (first set, specially drafted) to be served on respondent. Respondent failed to respond to the interrogatories (in whole OR in part) and/or failed to provide a written verification under penalty of perjury, all as set out below.

I am informed and believe that the items set forth below are relevant to the subject matter of this action and are reasonably calculated to lead to discovery of admissible evidence.

[If some answers were served, give the following information for each item for which you need more information.]

ITEM 1:

a. Question: [Set forth the question exactly as it appeared in your Interrogatories. Example:] State your full name and address.

b. Response: [Set forth the response exactly as you received it. Example:] Joe Jones.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.5
DECLARATION RE MOTION TO ENFORCE SUBPOENA
(page 1)

Marriage of YOUR LAST NAME and SPOUSE LAST NAME

Case No. [Your case number]

DECLARATION OF PETITIONER RE
MOTION TO ENFORCE SUBPOENA

I, the undersigned, state:

I am the petitioner herein.

This is an action for dissolution of marriage, including issues of support, property and custody/visitation.

On or about [date], I caused a Subpoena Duces Tecum re Deposition to be served on respondent's employer [company] Company. (A copy of the subpoena along with the proof of personal service is attached hereto and made part hereof.) Said employer failed to respond to the subpoena and has failed to produce the items as set out in the subpoena.

The items set forth in the subpoena are relevant to the subject matter of this action and are reasonably calculated to lead to discovery of admissible evidence, and good cause exists for their production. The subpoena requests payroll information regarding respondent. Respondent has failed and refused to produce any income information including income tax returns. Respondent did produce what purport to be copies of paystubs, but they are printouts from a computer, and I am afraid respondent printed them out at home. Therefore, I attempted to subpoena the wage information directly from respondent's employer, and now the employer has ignored the subpoena.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.6
DECLARATION RE MOTION TO ENFORCE SUBPOENA
(page 2)

The employer did not write or object. They just entirely ignored the subpoena.

The employer's failure to respond, object to the request, or failure to comply with the request was without substantial justification.

I am requesting an order that [company] Company comply with the subpoena that was served on them, and that they produce the requested records within ten days after the hearing of this motion.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct.

Executed on [date], at [City], California.

_____
YOUR NAME, Petitioner

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.7
DECLARATION RE MOTION TO QUASH SUBPOENA
(page 1)

Marriage of YOUR LAST NAME and SPOUSE LAST NAME

Case No. [Your case number]

DECLARATION OF RESPONDENT RE
MOTION TO QUASH SUBPOENA

I, the undersigned, state:

I am the respondent herein.

This is an action for dissolution of marriage, including issues of support, property and custody/visitation.

On or about [date], Petitioner caused a Subena Duces Tecum re Deposition to be served on my friend [name], a friend of mine whom I have been dating since separation. (Copies of the subpoena and notice of taking deposition are attached hereto and made part hereof.) The subpoena and deposition are calculated to harass my friend and interfere with their privacy, not to produce discoverable information. For this reason, on or about [date], I wrote to petitioner['s attorney] and requested that he/she agree to cancel the subpoena; see copy of letter attached hereto and made part hereof. I received no response to that letter.

Petitioner has requested that my friend bring to the deposition all of their financial information and credit card statements as shown on the attached subpoena. My friend and I have completely separate finances, and my friend's information has no relevance to this divorce.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 18.8
DECLARATION RE MOTION TO QUASH SUBPOENA
(page 2)

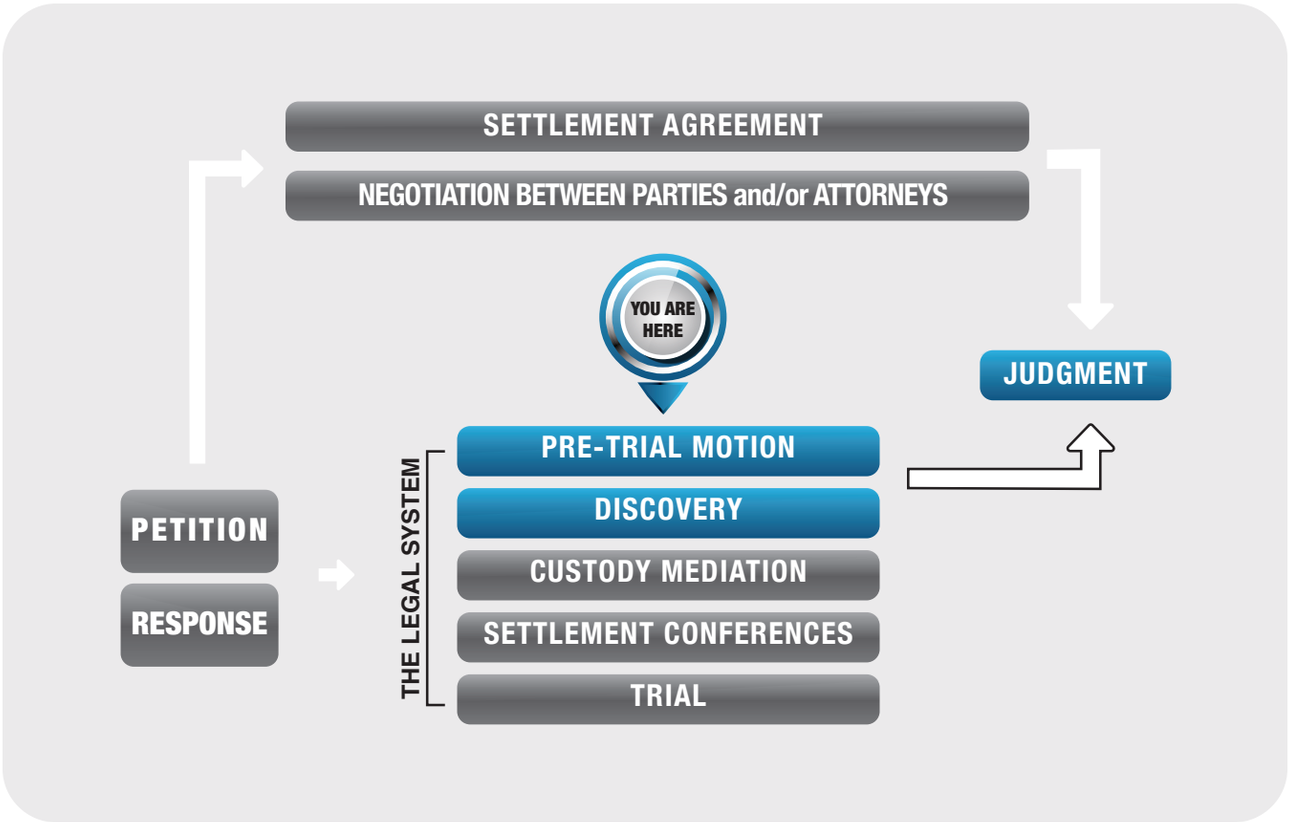
I request that unless petitioner can show good cause for taking my friend's deposition, the subpoena be entirely quashed as it invades my privacy, my friend's privacy and is solely for the purpose of harassment. Alternatively, I request that the court quash each item requested in the subpoena for which petitioner does not show good cause for production, and that the court limit the scope of the deposition to only financial matters relevant to this case or contact my friend may have had with the children. However, my friend has had no contact with the children and has not even met them (as the deposition will confirm).

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct.

Executed on [date], at [City], California.

_____
YOUR NAME, Respondent

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 19

VOCATIONAL (and other) EXAMINATIONS

A. General information
B. ocational evaluation
C. Mental or physical examination
D. Drug/alcohol examination
E. Other examinations

A General information

The most common situation where an examination of a spouse might be ordered would be if you contend that your spouse could get a job or get a better job—in other words, could be making more money. To this end, the court could order a vocational evaluation. Less common is where you have a good reason for wanting a psychological or physical evaluation. In either case, the matter will have to be assigned to a qualified expert to do the examination.

Locating an expert. For any kind of exam, you are going to have to find a qualified expert. The best way would be your attorney refer you to someone with whom they have worked in the past. For those representing themselves, they might find that many experts will not work with non-represented persons. Period. They don't want the bother of working with emotional people who don't understand legal procedures.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Resisting requests for examination is discussed at the end of each section.

B Vocational evaluation

If you feel your spouse is not working at capacity, you can request a vocational examination. Although there are "seek work orders" where a court will order a person to find employment and show the court their best efforts to do so, in reality judges, nor anybody for that matter, can actually force a person to work who is not otherwise motivated to do so. However, if an examiner finds your spouse is qualified for a higher level of income or increased hours of work and that suitable jobs are available, the judge can "impute" income—that is, instead of using actual income to compute support, the judge uses a higher amount to approximate what your spouse could be earning. If the examiner recommends a course of education or training to prepare for higher income, the court could order it, then reevaluate support after the program is or should be completed.

A vocational evaluation should consist of interviews and possibly written tests to determine what abilities and experience your spouse has. The evaluator will write a report for the attorney and/or the court that should review your spouse's education, skills, work experience, interests and goals (or lack thereof). The evaluator should make a recommendation as to what employment and/or educational opportunities your spouse should pursue and indicate specifically how much money your spouse could make if he/she took various employment paths.

If your spouse will not voluntarily submit to a vocational evaluation, a motion can be made to compel him/her to submit to it. Generally, if a spouse is not employed full-time, or if there is some clear indication of not working up to full capacity, a vocational evaluation will be ordered. Of course, you will have to pay for the evaluation, which can be quite expensive, plus the cost of courtroom testimony later if there should be a trial or hearing on the issue.

First, locate a vocational evaluator. Your lawyer should have recommendations for a qualified vocational evaluator who is experienced in family law matters, including testifying if necessary. With the recommendations, you should interview each one and make your own selection based on standards similar to your interview process of selecting an attorney. In other words, ask them about their qualifications, their experience, and what they will be doing for you specifically. After the interview, trust your gut and proceed.

Send a request before making a motion. Your lawyer should write a letter to your spouse (or his/her attorney) and ask your spouse to submit voluntarily to a vocational evaluation. Provide the name, address and phone number of your chosen evaluator. Give your spouse a time limit to respond, such as ten days after the date of the letter, before you make your motion.

Give the evaluator your input. If your spouse agrees to do the evaluation, or if the court orders one, you should contact the evaluator right away and let him/her know your version of your spouse's education, work history and skills. If you have, for example, recent college transcripts—which you can obtain through discovery as discussed in chapter 17—you should give them to the vocational evaluator. You need some input into this process to ensure that your spouse does not tell the evaluator a lot of baloney that might be believed without your input. After the evaluator has talked to your spouse, you need to talk to the evaluator again as a reality check. When you are selecting the evaluator, explain at the very beginning that you want this kind of contact.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

How to file a motion for vocational evaluation

The motion will be basically as described in chapter 12. A copy of the letter asking your spouse to voluntarily submit to this evaluation as well as any written response he/she made will be attached to the motion.

How to respond to a motion for vocational evaluation

See chapter 14 about how to respond to a motion, and consider the following steps. Counter moves to a motion for vocational evaluation include:

- Get a suitable job at about your best level of pay.
- Keep records showing a diligent job search. Keep in mind that your spouse or his/her lawyer might contact the companies you said you contacted seeking work.
- Bring in medical records and possibly call a doctor as a witness (or get the doctor's declaration) to show you cannot work for medical reasons.
- Bring in a mental health practitioner (or declaration of one) to show your emotional problems disable you from working.
- Get your own vocational evaluation.

If you contend that physical or mental problems limit your ability to work, your spouse can subpoena your medical and mental/counseling records and take depositions of your doctors and counselors. Anything embarrassing that turns up can be used against you in the custody case even if discovered as part of vocational evaluation. Therefore, before you raise mental or physical problems, think about what is in your records that you might not want your spouse to read. You could call your doctor or therapist and ask his/her opinion on this. Keep in mind that for purposes of billing an insurance company, your therapist will have listed a diagnosis, so even if his/her notes aren't used against you, the diagnosis could be.

If you are ordered to see a vocational evaluator, you want to be viewed as cooperative. If you act hostile or resistant, this could be held against you in court. You might have been forced to do this evaluation, but you still need to show some semblance of cooperation. You want to win the vocational evaluator over to the position that you are working as hard as you can at the best job you can get and you are going to do this a lot better with honey than with vinegar.

C Mental or physical examination

Because mental examinations and physical examinations are subject to the same rules, they are discussed together. However, physical exams are quite rare, so we focus here on psychological evaluations. Similar considerations apply to both.

Do you really want an exam? A lot of people feel their ex needs his/her head examined, but actually getting it done can be a problem. Unless your spouse put mental or physical condition in issue by saying he/she can't work, the order is going to be mutual, meaning that if you get an order, you can be examined, too. Unfortunately, a lot of dubious mental health "experts" have attached themselves to family courts, making the outcome of any exam something of a gamble. A judge, not being a mental health expert, might direct specific questions to the expert. An ethical psychologist should not answer questions that are really moral or social judgments rather than something that can be based on psychological research. If there are no statistics, no data, no research, the psychologist's opinion is no better than yours or the judge's. It is unethical for mental health experts to give such opinions, but they do it all the time.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The judge can make his/her job easier by having the mental health person answer questions that should really be decided by the judge. The money for forensic (court) work is good, so many psychologists will answer questions they shouldn't for fear the judge will start using someone who will answer such questions. A psychologist might be asked, "Is the father's anger against the mother justified?" Any psychologist who tries to answer that is unquestionably outside his/her area of expertise and is usurping the court's function. The same can even be said as to psychologists who make custody evaluations. Those recommendations are really moral-social-political-personal, and the decision should be made (not rubber-stamped) by the judge. You should be very careful before you open the Pandora's Box of mental evaluations. It could easily make things worse rather than better.

Records remain confidential. Counseling and medical records remain privileged and confidential unless the party raises the issue of his/her condition. Just asking for custody or visitation does not put one's physical or mental condition at issue, but if a party says he/she cannot work because of a medical condition, medical records can be opened. Similarly, if a party says an emotional condition limits ability to work, his/her records lose their privilege. Note that a party can only put his/her own condition at issue. One cannot open up the other party's mental health records by accusing the other of being too emotionally unstable to care for children. However, if your spouse has a history of mental hospitalization and refuses to permit records to be examined, in a custody case a psychological evaluation might be appropriate. Even so, medical/counseling records remain confidential unless the party signs a release. If anyone from Family Court Services, the judge, an expert—anyone at all—asks you to sign a form giving them the right to review your medical or counseling records, you have the legal right to say no.

First, locate an evaluator. Before you can do anything else, you have to make an arrangement with an expert who will agree to do the evaluation and report for you. How you do this is described in section A, above. Once you find someone who will do the job, ask about their fees and if a down payment is required. You can't proceed until you have lined up your evaluator.

Experts must be qualified. The Code of Civil Procedure provides that a mental evaluation can be performed only by a licensed clinical psychologist who holds a Ph.D. in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. More important, you want someone who will be fair to both mothers and fathers and not deal with you in stereotypes. Try to make sure that someone qualified handles your case. Unfortunately, some psychologists who can't maintain a private practice have gone into court work, so there can be a problem.

Send a request before making a motion. Your attorney will write a letter to your spouse (or his/her attorney), and ask your spouse to submit voluntarily to mental (or physical) examination. The letter will provide the name, address and phone number of your chosen evaluator. The letter will give your spouse a time limit to respond, such as ten days after the date of the letter, before you will make the motion. In practice, if a mental exam is really appropriate, it probably won't be done by agreement. Nonetheless, you should try.

Motion for psychological evaluation. Subsection (d) of Section 2032 provides that anyone who wants to get a mental examination must file a motion to get the court's permission for the exam. The law also says, "The motion for the examination shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination." You must also attach a declaration showing that you tried to get a voluntary agreement for the exam. Section 2032 has detailed provisions that are usually followed in, say, an injury lawsuit, but things are often more informal in family court.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Good cause must be shown. Section 2032 indicates that the court shall grant a motion for a physical or mental examination only for "good cause shown." Most judges think the mere fact that there is a divorce with a custody battle is good cause for ordering a psychological evaluation. This is highly debatable and to assume it would leave you open to attack. It would be best if your motion explains why in your particular case there is some indication of a need for the evaluation. Assuming the facts support your assertion, you at least want to say that your spouse is acting erratic, or depressed, or suicidal or whatever, and that this emotional condition is interfering with his/her ability to care for the children.

The code also provides that the order granting a physical or mental examination shall specify the person or persons who may perform the examination, and the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination. Most people making a motion for psychological evaluation have no idea what tests will be done. In fact, it would be most unusual to include this in your motion, but it is required under the law and someday this law might be applied.

The motion would be as described in chapter 12.

How to resist a request for mental or physical evaluation

Code of Civil Procedure section 2032 governs mental evaluations. It is widely treated as if it does not apply to divorces, but it does. If you want to resist a psychological evaluation, you should at least insist that the basic requirements of the Code of Civil Procedure be applied. Even if you don't want to avoid the exam altogether, the code section may be used to ensure that the exam you are ordered to undergo will at least make some sense.

You can object if the motion is too informal. In custody cases, psychological evaluations are sometimes ordered without a specific motion. Family Court Services might try to force one on you, or perhaps the court will order it after someone makes an oral request. Some judges are in the habit of ordering exams under Evidence Code 730 even with no motion at all being made. None of this is proper. An objection should be made if this happens. Your attorney needs at least to say on the record—that is, in the courtroom with the court reporter writing or the videotape running—"Your Honor, I object." That's minimum. Even better to add, "No good cause has been shown for such an examination." And better yet to state, "Code of Civil Procedure section 2032.310 requires a noticed motion before any such examination can be ordered." Unfortunately, objecting to the judge who made the order is swimming upstream, but it should be on the record anyway.

Good cause should be required. Regardless of whether it is your spouse, the judge, or Family Court Services that wants the exam, good cause should be required. Having to submit to a mental exam ordered by the government is intrusive. Merely entering into a divorce with custody issues should not by itself be considered good cause to order a mental evaluation. That can be said too, as part of your objection.

What tests should be specified in the order? Judges virtually never specify what tests should be used. That makes sense from their point of view, as virtually no tests have anything to do with custody or ability to parent, and certainly not with the parent-child relationship. The most commonly used test is the MMPI2 test, and there is no evidence that it is of any use at all in a custody case. It is merely convenient and, because it is computer-scored, it appears to be objective. But if you study these tests, you will find that a great deal of personal judgment is involved. The judges think they are receiving Scientific Truth and tend to over-rely on the psychological reports. If you want to resist such a test, you should object and insist that the order specify the tests. At the hearing on the issue, you could bring an expert Ph.D. psychologist to say these tests have nothing to do with custody. At present there is major overreliance on these tests. The overreliance amounts often to an abdication of judicial responsibility which is virtually handed over to the so-called expert psychologist.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

What to do after such tests are ordered? If the psychological evaluation was crammed down your throat suddenly at court by a verbal request from your opponent or by the court itself, you can attempt to file a motion asking the court to rescind its order. This might not be successful, but it will help you to "make a record." If you end up getting crucified by the psychological examiner, this motion could at least lay the legal basis for appeal or later objection. Also, even if it is lost, you hope it will begin to make your judge think about the fact that possibly these tests are not God's Truth.

If you end up having to be examined, it is very important to cooperate with the examiner. You want the examiner to make a recommendation in your favor, right? Be even-tempered, respectful and thoughtful. Stay calm and open. Because psychological evaluations are highly subjective, charming the examiner is very important. Even if you did not want the exam, it will not help to let the psychologist know how much you resent being there. Show your best side. If this person is examining your spouse as well, you need to bring objective documentation that will support any concerns you have, such as a copy of court records showing that your spouse has a drunk driving or spousal abuse conviction, or the kids never do their homework when they spend the night at your spouse's house, or your spouse always brings the kids to school late. Don't just say, "My ex is an alcoholic and was convicted of drunk driving." Bring copies of documents or declarations of others. Even if the examiner does not ask for them, offer them.

Drug/alcohol examination

Blood and urine tests will determine what substances (drugs, alcohol, etc.) the parent has taken during the past four to eight hours. Obviously, this is useful only where someone is so deeply sunk into addiction or alcoholism that they don't ever go without for any period of time, or where you get a surprise order from the court that the person must go straight from court to the testing center. However, we now have a hair test available, too. Hair is like a diary, recording all the substances that have been taken for the last couple of months. Shaving one's head won't avoid the test as hair can be taken from wherever. The hair test is a good tool for finding the truth.

Parents should stop using drugs and alcohol. In the past blood and urine tests would not reveal the use of marijuana, but it can now be proved by means of hair tests. So, we are now seeing cases where a parent is limited to supervised visitation because a hair test revealed marijuana use. You can't prove you only use it when your children are not present. If you are in a custody or visitation case, you would be foolish not to give up all alcohol and drugs, even marijuana. This is very practical advice, and has nothing whatever to do with morality or social values.

To obtain a drug/alcohol exam, you need more than an accusation. Drug and alcohol testing is ordered regularly in family court. However, a party will probably not be ordered to submit to testing just on the basis of an accusation by a spouse. Some independent evidence of substance abuse is usually required; for example, a recent conviction for drunk driving or a drug- or alcohol-related crime, or the declaration of an independent witness. If a parent just quietly drinks into oblivion nightly, or smokes marijuana in private, getting a test could be difficult. However, when testing is ordered, it is sometimes ordered for both parents, even though there is only proof that one parent might have a problem.

Before you ask for the exam, you should know the name and address of the facility that will do the tests as well as the cost. Your specialist attorney or Family Court Services should be familiar with a local facility that does the test you want. Contact them and find out what tests they do and what they charge. Ask what procedures the facility uses, particularly if a urine test is ordered. Unsupervised test takers might bring clean urine with them or otherwise trick a urine test. To avoid this, you would prefer a facility that watches the whole process. If you really want this test to get done, you should deposit the fee for your

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

spouse with the facility in advance (as your spouse will claim he/ she doesn't have money for the test). This should be explained in your motion, and the name, address and phone number of the facility should be in your motion.

Motion needs to specify times and conditions. Your motion needs to state something very specific for when the test must be taken and which test, for example, within twenty-four hours after the hearing, your spouse must go to the named facility and submit to the hair test. Without a time limit, the order is nothing.

You may want a random blood or urine test as well as a hair test. Your spouse might admit to having used drugs but claim that he/she has now given them up, or he/she might have an excuse for certain substances showing up in the blood, such as claiming he/she took certain types of cough syrups or asthma inhalers, etc. Even with a hair test, your spouse could claim they have recently reformed, gone sober, attend AA, and so on. This is why you want an order that permits you to call for a blood or urine test on a random basis, to occur within 4 hours of asking for the test or the opening of the test facility (if you make your request on, say, a weekend when they're closed) whichever comes first. This will not clarify the marijuana situation, but it may eliminate other claims of new good behavior.

Protecting child when parent flunks might be difficult. If testing shows that there was drug or alcohol abuse, parents will typically have excuses for why they have such a residue, perhaps claiming that they used a decongestant with pseudoephedrine in it, such as Sudafed. So even flunking the test may not guarantee that visitation will become supervised or cut off. People who have substance problems are used to making excuses and may be very good at it. The judge may or may not see through the excuse.

Enforcement. There may be serious enforcement problems even with an order for drug/alcohol testing. The court may simply order the parent not to use drugs or alcohol before or during visitation, and if the parent breaks this order and shows up drunk to take the child, you may have to call the police to avoid sending your child in a car with someone who is under the influence. If you simply withhold the child and do not call the police, your spouse may accuse you of refusing to permit visitation and could charge you with contempt of court, which is punishable by jail. If you call the police, and your spouse turns out not to have been under the influence, you may find yourself accused of unfairly attacking your spouse by making false accusations, and you may be accused of stressing out the child by exposing him/her to the police. So enforcing an order can be quite problematic.

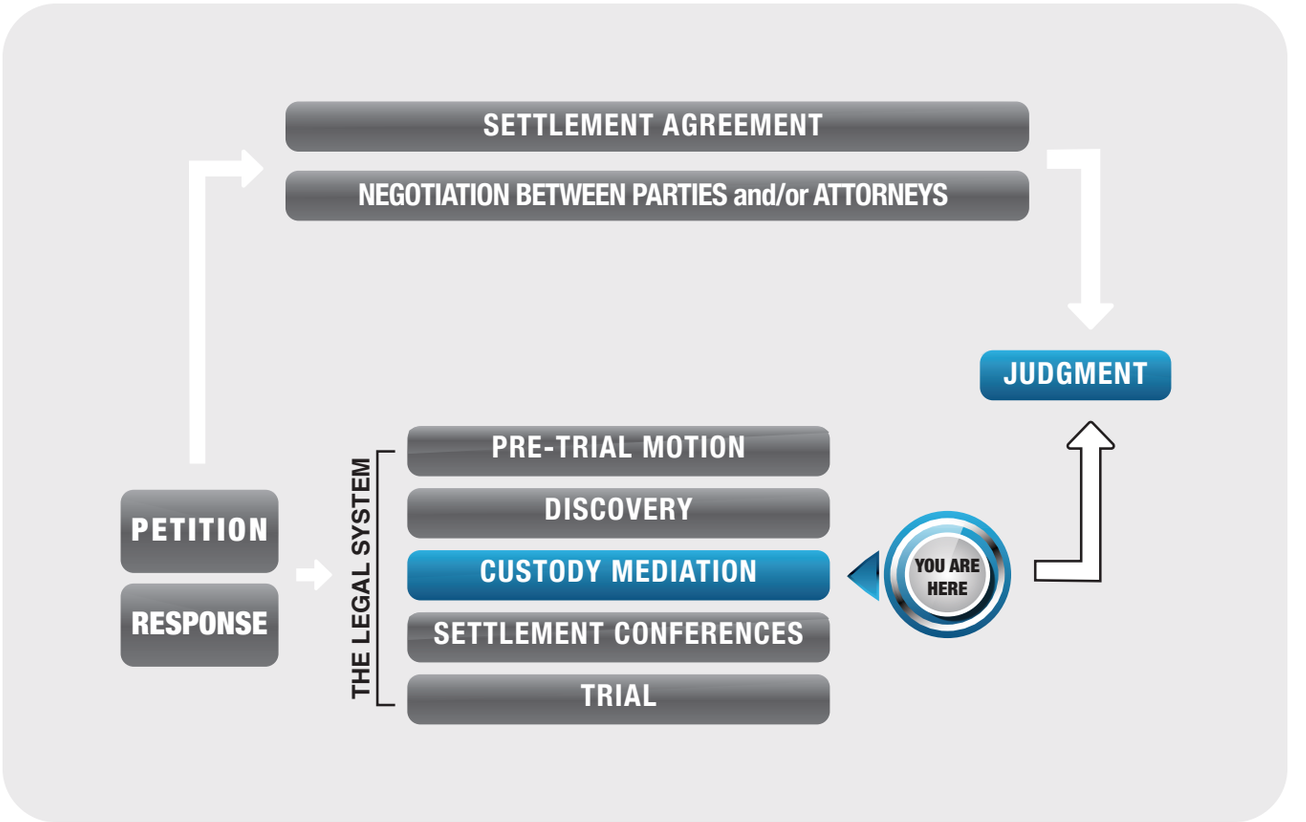
How to resist a motion for drug/alcohol exam

The best way to resist an examination is to point out to the judge that there is absolutely nothing objective in your background to suggest that you have any drug/alcohol problem—you have never been arrested for driving under the influence, you never lost a job due to drugs/alcohol, etc. Also, it will make a difference to the judge if you simply look like a decent, healthy person, not one whose health may have been damaged by substances. You might even have a job that already does random drug/alcohol testing, and adding another for the court does not make sense.

E Other examinations

The court can, upon motion and a showing of good cause, order whatever tests it feels are necessary, such as ordering a party accused of forging documents to submit handwriting exemplars to an expert. Such orders are rare, but the court has the power to order whatever tests the judge feels are necessary based on the facts and issues in your case.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 20

PARENTING PROGRAMS AND MANDATORY MEDIATION

A. Parenting programs
B. Mandatory mediation
C. Motion to require participation
D. If your spouse ignores the order to participate
E. Custody/visitation issues can proceed separately

A Parenting programs

Many counties have found it very effective to hold classes for divorcing parents to give them some insights into what is important to children, how to parent after a divorce, and how the court deals with disagreements over parenting. If you have children, and if your county has such a program, both parents will be required to attend. From long experience, judges understand how important it is for parents to agree how to share parenting rather than fight over it, keeping the children's interests above their own. If your county has a parenting program, you will probably be given information about it when you file your first divorce papers. Check your local rules or ask your attorney.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

B Mandatory mediation

Before the court can make orders regarding custody or visitation, state law requires the parents to attempt mediation. It is required; you have to do it. If an emergency situation exists, the court might make a temporary order before you have attended mediation, but mediation must be attempted very shortly thereafter. If your spouse won't cooperate, use an OSC and get an order requiring it.

You can select your own private mediator and attend as often and as long as you like, or you could be assigned to a county-appointed mediator at Family Court Services where you typically attend very few sessions. Costs and rules vary, so check your local rules of court and ask your lawyer for more information. If you have tried private mediation and failed, the court will likely want you to try the court-appointed mediator, too.

Mediation is sitting down with a neutral person who is expert at helping parents reach agreement about custody and visitation—in other words, how they will be parents to their children after divorce. You will not be allowed to take your custody/visitation issues to court without first trying mediation.

Take it from me, based on a lot of experience: if you can get a reasonable agreement, it is always better to resolve parenting issues yourselves, rather than letting a judge impose a decision. People who agree are far more likely to follow the terms than people who are told what to do. By failing to agree, you give the power to decide one of the most important and intimate issues in your lives to a judge—a busy, preoccupied stranger who doesn't know about you, your children or your life. Many judges just want to get the case out of their court as quickly as possible. Judges do not like to decide your parenting for you, but if they have to do it, the chances are good that you are not going to like the result. Far better if you and your children's other parent can keep control of your own lives by working it out yourselves. In most cases, mediation can work if you give it a chance. On the other hand, you should not make concessions that jeopardize the physical or emotional health of your children just for the hope of peace and quiet.

Mediation is not arbitration. Don't confuse mediation with arbitration. Arbitration takes place in a more informal environment than court with relaxed rules, but an arbitrator is just like a judge—a stranger who makes a final decision for you. You are still giving control to a third person. In mediation the neutral third person helps the parties communicate, balances the power, suggests alternatives, and in other ways helps you reach your own agreement, or at least this is how mediation is supposed to work. There are too many mediators who take it upon themselves to tell the participants what should or should not be, or what the judge will or will not do anyways. Do not stand for this. If you have such a mediator, insist that the mediator stick to their role as a neutral who is charged with the responsibility to facilitate conversation and attempt to mediate an agreement between the two of you. If it is not successful, that is what the judge is for.

Confidential counties and reporting counties. The law leaves it up to each county to decide whether or not the mediation is confidential. In counties which do not have confidential mediation, if parents fail to agree, the mediator will make a report or recommendation to the judge, so those counties are called "reporting" or "recommending" counties. In a reporting county, you need to keep in mind that anything you say in mediation might be reported to the judge. In all counties the mediator must report child abuse or molestation; even confidentiality rules do not stop that. Ask your lawyer or contact the court's Family Court Services to find out whether your county is confidential or reporting. If you are in a reporting county, you must approach mediation with the same seriousness as you would have for a court appearance.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The judges hire and supervise Family Court Services, so they tend to have great faith in them; in fact, there is an unfortunate tendency to rubber-stamp their recommendations. In many ways, what goes on in little rooms at Family Court Services will have more effect on your life than what goes on in the courtroom. Obviously, you want the mediator's recommendation to be favorable. You could attend private mediation first to try to reach an agreement in a confidential manner; in that case the law says that the mediation is confidential. Then, if that fails, you would go into the court's process in which mediation may be confidential or non-confidential, depending on the county.

Who else attends mediation? Different county rules vary from saying that nobody but mother and father can attend mediation to saying that lawyers must attend the first session and requiring children's attendance. In some counties, mediators virtually never speak to children, and in other counties mediators routinely involve more family members. Before you go to mediation, you must find out what happens in your county so you bring the right people.

Mediation when there has been domestic violence. When there have been allegations of domestic violence, you are entitled to bring a support person to mediation (although they cannot participate), or you can ask to be seen separately from your spouse. However, as much as possible, you want to be present, otherwise you won't know what your spouse is saying. Ask the mediator if they can guarantee your safety. Usually, mediation will not work where one person is abusive or very controlling. If your spouse has abused you, and you are used to giving in to their dominance, you must be very, very careful not to repeat this harmful pattern in mediation. Do not agree to an order that you cannot live with or that is unsafe for your children. You do not have to make an agreement. You can go to court.

When do you mediate? In the best counties, mediation occurs even before the hearing of your emergency TRO. That way the parties get a chance to settle by agreement and, if the county is a reporting county, by the time the case first gets to court, someone will have seen the father and mother and will be able to make a report to the judge. In other counties there may be a backlog, and mediation can be more than a month away. In this case, temporary orders could issue before the mediation takes place.

Motion to require participation

Urgent cases. If you are in an emergency situation which requires immediate child custody/visitation orders, as soon as you get into the court process the judge is going to make an order for mediation. Your local rules may even require certain language to be in your RFO or TRO, so you need to check with your lawyer. You don't want your emergency TRO rejected because it failed to mention the need to contact Family Court Services.

Non-emergency situations. If you are dissatisfied with current parenting arrangements and can't get your spouse to do mediation on it, you can file a motion to compel mediation.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

D If your spouse ignores the order to participate

Sometimes a parent who is under a court order to mediate will delay, miss appointments, or just flatly refuse to participate. If it looks like this might happen to you, you must keep a journal listing every communication and event with the date and time of each and good notes on the details of what happened. You will use these notes in making a follow-up RFO or TRO.

First, your lawyer will write your spouse and tell him/her or the attorney that it is necessary to comply with the order or you will go back to court for a stronger order or contempt of court.

If you want to continue to press for mediation (and fill the record with indications of your spouse's bad conduct), you have three choices:

1. An TRO to find your spouse in contempt for violating the order to attend mediation,
2. An RFO to prohibit all visitation until your spouse completes mediation, or
3. An TRO to the same end.

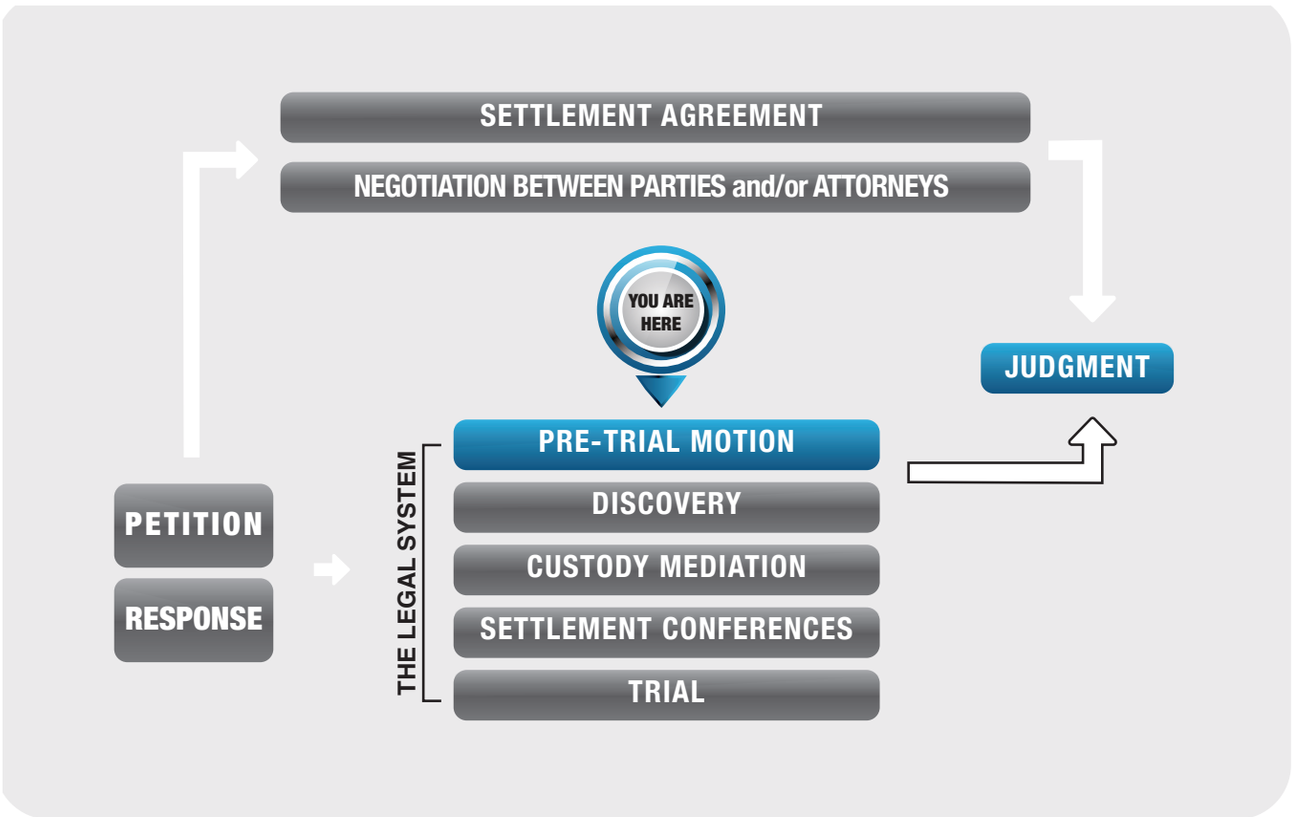
Any one of these would be a real attention grabber, but the goal is to get your spouse's cooperation, not to interfere with visitation. Using children as a pawn is harmful to them and can poison the relationship between the parents forever. For this reason, you may want to try the contempt TRO first. Do not use the other options unless there is other evidence that sole custody and restricted visitation might be appropriate. You don't want the judge to think you are the kind of parent who would lightly use the child-parent relationship for your own ends.

E Custody/visitation issues can proceed separately

State law provides that custody/visitation issues have "preference" on the court's calendar, as children need to know what is happening to them and where they will live. Your court will honor this law, so that these issues might go to trial earlier than and separate from all other issues. Often, these issues will be split off from the other issues in your case when you are referred to mediation. The process with Family Court Services could then take on a life of its own, with Family Court Services referring you on to the next step in the custody/visitation process. This eventually results in a written recommendation to the court as to your custody/visitation situation. Once that report is received, and discovery (if any) is completed, the custody/visitation issues can proceed to trial. The timing is not related to the trial and resolution of other issues.

If your county doesn't have an automatic splitting of these issues, and you want the custody/visitation issues to get decided early while you don't mind the money issues waiting until later, you can file a Request for Separate Trial. Discuss the possibilities and benefits of "bifurcation" of issues with your lawyer.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 21

STATUS-ONLY JUDGMENT
Divorce now, resolve other issues later

A. Pros, cons and preconditions
B. Stipulation for status-only judgment
C. How to resist a motion for status-only judgment

A Pros, cons and preconditions for status-only divorce

Status-only divorce means you split off—"bifurcate" is the legal term—your dissolution (the end of your marital status) from all other issues so you can have your marriage dissolved any time after the six-month waiting period is over, then you continue trying to resolve other matters, in or out of court.

Dissolving your marriage before you resolve all other matters will impact health insurance, life insurance, wills, bank and investment accounts, social security benefits, and so on. Also, the automatic restraining orders on page 2 of the Summons are terminated—go now and look at them—leaving either party free to move off with the children, sell, transfer or mortgage assets, and so on. Before you get your early divorce, you need to make sure both spouses are protected on all matters that have not yet been settled. Important!

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Because the status-only Judgment can be so problematic, we show you how to get one only when you both agree to do it and agree to the protections under which it will be granted. If your estate has significant assets or cash-flow, you should discuss this with your lawyer before making any decisions on this subject. Doing it over the other party's objections involves so many complexities and variables that we believe you and your lawyer should have a very careful discussion of the advantages, disadvantages, as well as the costs involved.

NOTE: BIGURCATION DISCOVERY TRAP

The general rule is that your right to obtain Discovery (documents and information which allow you to investigate the issues in your divorce action and develop evidence for trial) is cut off for many issues just prior to a trial.

When you seek a Bifurcation and Termination of Marital Status, or a bifurcation of any issue in a Dissolution action and an entry of an order, you are seeking a separate trial on that one issue. When the court bifurcates the issue of the termination of your marital status, and enters and order, they have conducted a trial on that issue. Here is the problem: there is currently no provision in the Family Code or the Code of Civil Procedure which exempts or tolls the discovery cutoff when the court has bifurcated an issue and conducted a separate trial. This means that after such an order, either party could argue that discovery has been cut-off. Certain types of discovery are allowed after a trial in family law cases, but many vital types of discovery are not.

As such, if you and your spouse are stipulating to a Bifurcation and Termination of Marital Status, your attorney should include a specific provision tolling or waiving the Discovery Cut-off and agreeing that discovery remains open on all issues after the separate trial on Marital Status.

Advantages

Emotional and legal freedom. You're more clearly on your own. You can get married again.

Tax filing status. The lower your income, the less important this is. Taxes are higher if you are a married person filing separately. If you have custody of a child, no problem; you can file as head of household. If not, and your income is good, you would rather be divorced by December 31—when tax status is determined—so you can file as single. This is only possible if the Petition in your case was served on or before June 30. If this is your motive, and if your Petition was served before June 30, work with a tax accountant to see how much a status-only judgment is worth to you.

Confirmation that the marriage is over. On many occasions, one spouse may not be able to come to terms with the fact that the marriage is over. They may use the legal process to drag on the divorce in an attempt at reconciliation. Sometimes, the bifurcation and termination of the marital status is what it takes for that spouse to finally accept that reconciliation is not an option for the other spouse.

Things you should consider first

Social Security. If a couple has been married for 10 years (being legally separated is okay), each spouse is eligible for derivative Social Security benefits equal to about half the amount of the other spouse's benefits, unless his/her own benefits would be greater. So, if one spouse's own benefits are not greater than half of the other spouse's benefits, that spouse would not want the marriage dissolved after, say, 9 years and 6 months. Ideally, you would wait to divorce until you pass the 10-year mark.

PX privileges. If you are married to a serviceman on active duty for 20 years during the marriage, you are eligible for military PX privileges and other benefits. You wouldn't want to dissolve the marriage, say, after 19 years and 6 months. You would wait the other 6 months. If you are approaching this 20- year

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

anniversary, check with the military about your possible benefits. The judge will listen to these practical considerations in determining the date of dissolution of marriage.

Mandatory preconditions (FL-347, items 1–4)

All preconditions are discussed in the order they appear on form FL-347, the order attachment.

Item 1. You must complete the Preliminary Declarations of Disclosure (PD) unless deferred in writing. Before requesting a status-only Judgment, either you both do the PD, including a current Income and Expense Statement, and you both file a Declaration re Service of the PDs, or you both stipulate in writing to waive it for the purpose of obtaining a status-only Judgment.

Items 2 and 3. You must join pension or retirement funds. If either spouse participated in one or more pension plans or retirement funds during the marriage, each such plan or fund described on FL-318 must be joined as a party to the case. In addition, FL-348 must be attached to the status-only Judgment and a copy served on each plan's administrator, whether or not that fund was joined.

Item 4. The court will retain jurisdiction (power over) all pending issues in the case.

Optional preconditions — protecting spouses, children and property rights (FL-347, item 5)

In addition to mandatory preconditions above, both spouses need protection from possible adverse consequences of dissolving the marriage before all issues are settled, so various preconditions can be agreed to by the parties or unilaterally imposed by the judge. If either party requests any of the protections below, they would probably be granted, but if a motion for status-only dissolution goes through with no opposition, these protections might not be included in the court's order. So, if a motion is made and the other spouse wants preconditions that were not requested in the motion, the motion must be opposed. To avoid an expensive and complicated court battle, you'll need either a final settlement agreement or arrange for both spouses to join in a stipulated order as described in section B below.

5a) Division of Property. Spouses can be ordered to assume responsibility for any taxes, reassessments, interest or penalties payable by the other party if the status-only divorce results in a liability that would not otherwise occur.

5b) Health insurance. If either spouse depends on the other's group health insurance through employment, it will be lost once a judgment of divorce is entered. Read this clause carefully and decide if you want to ask the court to order the employee spouse to obtain comparable insurance or pay medical expenses until such time as a divorce would ordinarily be entered, and prove financial ability to do so. If you have dependent children, use this clause to order that their health insurance must be maintained.

5c) Probate homestead. If a spouse dies, the surviving spouse is entitled to a certain degree of protection from creditors who do not already hold a lien or mortgage against the deceased spouse's property. In this clause, the spouses indemnify one another against loss of this homestead right by a surviving spouse due to early dissolution and the death of the other spouse before property rights are resolved.

5d) Probate family allowance. Upon the death of a spouse, the surviving spouse and children are entitled to a family allowance during the probate period, which can be lengthy. If this right is lost due to early dissolution before the division of property and determination of spousal support is decided, this clause requires the estate of the deceased spouse to cover that loss.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

5e) Retirement benefits. This protects against the loss of survivor benefits or other options under any retirement or deferred compensation plan (like stock options) not already covered under item 3).

5f) Social Security benefits. This protects against the loss of social security benefits due to early termination, including survivor benefits or dissolution a bit short of the ten-year period that would have given a surviving spouse rights under the other spouse's Social Security.

5g) Non-probate transfers. Assets such as insurance policies, bank and investment accounts have a named beneficiary in case of the death of the account holder. Other notes, contracts or securities might also. These are called non-probate transfers, and this clause protects a surviving spouse against losses that would not have occurred but for the early dissolution. You need to attach a page with the list of assets you want covered.

5h) IRA accounts. If a spouse has an IRA account that was not covered under item 3, this is where protection is provided.

5i and j) Other protections. These are for special circumstances not already covered whereby early dissolution could create a burden of enforcement of community property rights or cause some kind of disadvantage. Read Family Code 2337(c)(9) and speak with your lawyer if you have a situation in your case that might come under this catch-all.

B Stipulation for status-only judgment

If you and your spouse can agree to a status-only judgment, and the conditions that will be imposed, and if you have both filed Proofs of Service of the Preliminary Declaration of Disclosure or waived them in your stipulation, and if you have already joined any pension or retirement fund listed on FL-318 that either spouse contributed to during marriage, then you can proceed with the Bifurcation and Termination of Marital Status by stipulation, which will substantially simplify the process and save a lot of legal fees.

C How to resist a motion for status-only judgment

If you want to oppose a motion for status-only Judgment, you have to prepare and file and serve your opposition papers very quickly. Discuss the possible basis for your objection and determine the likelihood of the motion being successful over your objection. In my experience, with the exception of the preconditions mentioned below, most judges proceed with a procedurally proper motion for a status only judgment.

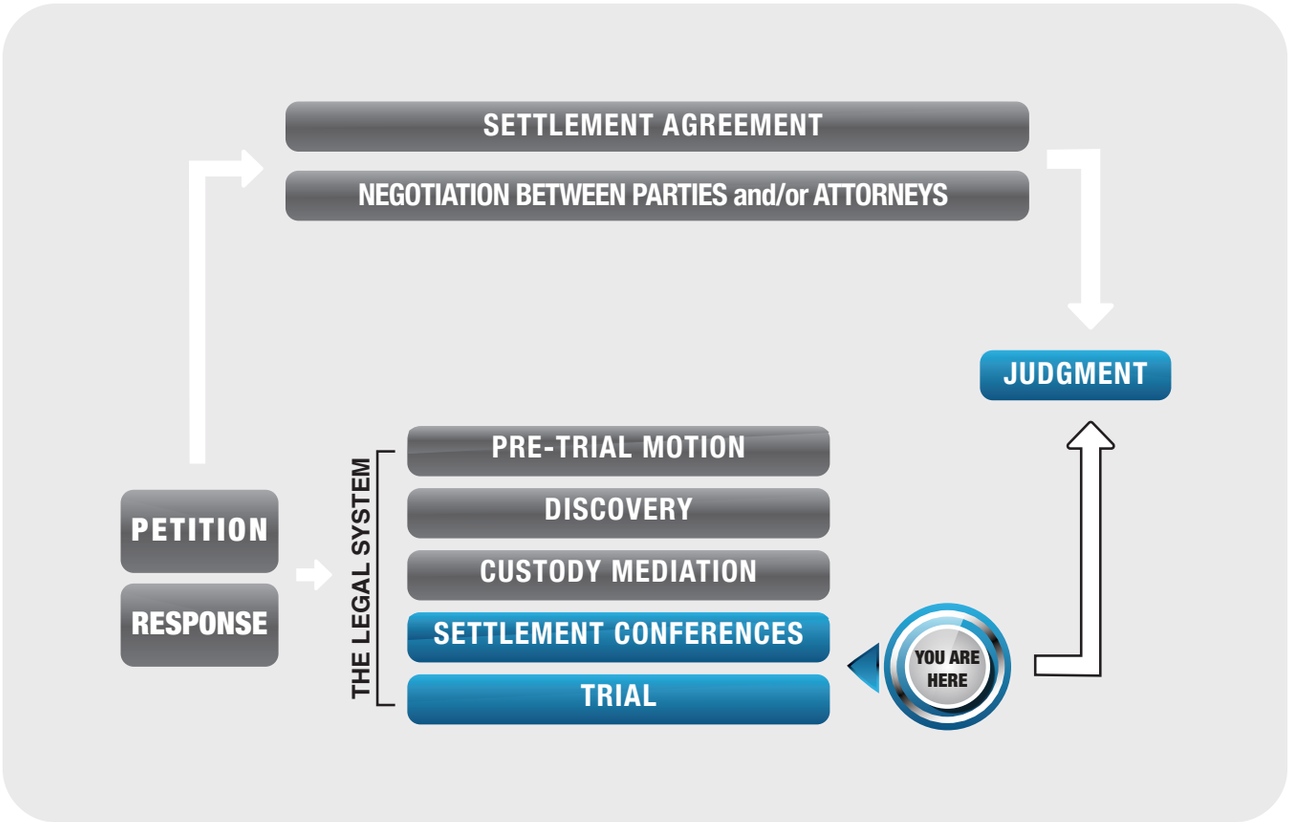
The Request for Order that was served on you should have had FL-315 attached to it. This form runs closely parallel to the preconditions described in section A above and it will tell you which preconditions the moving party has requested. Examine it very carefully and decide whether the facts stated in the motion are correct, that it proposes sufficient protections, and lists every pension, retirement fund or IRA in which the moving party participated during the marriage.

Grounds to oppose. To oppose the motion, you need a good reason. If your grounds for objecting are frivolous, just trying to get in your spouse's way, the judge might be irritated and could award sanctions against you for wasting everyone's time. Only legal or practical matters will work—that the facts stated in the motion are incorrect in a way that matters, or the preconditions requested are not adequate. Any protection not requested that you feel is reasonably required by your situation would give you grounds to oppose the motion, but only to request additional preconditions or to correct some fact or facts that are important and stated incorrectly in the motion. Or perhaps you haven't received the Preliminary

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Declaration of Disclosure and you didn't defer it in writing, or perhaps you'll have trouble getting health insurance for yourself or the children if the divorce is granted early, or . . . you get the point. Due to the complexities of the numerous possible protections, the short time you have to think it over, then prepare, file and serve your response papers, you should speak to your lawyer about your options in depth and decide accordingly.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 22

AT-ISSUE MEMORANDUM
push the case toward to trial

A. Setting a trial date brings your case to a close
B. Responding to an At-Issue Memorandum
C. What to do when you get a trial date
D. Start planning for the Settlement Conference

A Setting a trial date brings your case to a close

Assuming your side of the case is in order, and that you hired an attorney who understood the wisdom of preparing your case properly and early, as opposed to many lawyers who rest on the statistics that most cases don't go to trial as an excuse for not properly preparing a case, setting the case for trial is a good way to put pressure on cases that are dragging because, once a trial date is set, the other side must enter into an agreement or go to trial. To do this, you file a document telling the court that a Response has been filed, you have not settled, discovery is complete, and you now want to set a trial date to finish the case.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Various names. There is no state form for this and every county is a little different; most have local forms but some don't. The document you file might be called an At-Issue Memorandum, Request for Trial, Memorandum to Set, or Request for Status/Trial Setting Conference. In this book, we use "At- Issue Memorandum" for all of them.

Here's how it works. Filing an At-Issue Memo will cause the clerk to set a date for trial and, before trial, most counties will also schedule a Settlement Conference or Case Management Conference. At the Settlement Conference, the judgea settlement officer (this should not be the judge that is assigned to your case) will probably try to talk (or pressure) the parties into a settlement or at least a partial settlement. This is discussed in the next chapter.

Things can happen very rapidly after you file an At-Issue Memorandum, so don't file one until you've read chapters 23 and 25, and have done everything discussed there. Wait until you are really ready, before you crank it all into action. This is not a time to bluff your readiness for actually conducting a trial on all of the issues. Many people and lawyers do this, and it's a mistake that could be very dangerous to your case. Make sure your lawyer has all the evidence and experts that are necessary lined up and ready.

After reading this chapter, you will understand how many things you have to get just right according to local rules and how, if something goes wrong or you miss something, you could undermine your case or lose outright.

Preparation = confidence. If you are well prepared and not afraid to go to trial, you won't cave in to accept less than is fair. Okay, sometimes it's worth it to buy some peace, but even that decision should be based on reason rather than fear.

One way to avoid a trial is to ask for one. Of course you are reluctant to undertake a big step like going to trial—who wouldn't be? However, if you request a trial, you'll have legal mechanisms pressing both parties to settle and the judge's assistance as well. Maybe. Some judges, anyway. Only about 5% of all cases actually end up in trial.

If your spouse did not file a Response. If no Response was ever filed with the court, the case is not at issue and you do not use the At-Issue Memorandum. Instead you will take Respondent's default.

Reasons not to file an At-Issue Memorandum yet

Discovery cutoff. All discovery must be completed at least 30 days before the first date set for trial and discovery motions must be heard at least 15 days ahead. You can't assume the other side will cooperate, which means motions to compel discovery might be required. You need to allow up to six months before trial for discovery and you do not want the pressure of a trial date looming ahead. If you are not finished with discovery, do not file an At-Issue Memorandum.

Appraisals and other preparation. In addition to discovery being near completion and having your case well organized and prepared, you want all major assets (such as a home, business, or stock options) to be appraised before you file your At-Issue Memorandum. If you file too early, you could find yourself at trial unprepared on some important issue and it will be too late to do anything about it. For example, getting appraisals and financial documents can sometimes be difficult and might require motions. Don't rush into a trial before you are really prepared.

The Expert Demand Trap. A common discovery mechanism is a demand for Exchange of Expert Witness Information. This demand may only be made after your matter is set for trial.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The date of exchange must be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date.
EXAMPLE 1: Given October 1 as the trial date and a demand made on July 10, 20 days after service of the demand is July 30; 50 days before the trial date is August 12. Thus the date of exchange will be August 12, the date closer to the trial date.

Warning: if you fail to disclosure the identity of your expert and what your expert will be testifying about, the opposing party can block you expert from testifying at trial.

What goes in the At-Issue Memo

How long your case will take to complete at trial. The court wants you to estimate (guess) not only how long your case will take to put on, but how long the other side might take. Without trial experience, this will be extremely difficult, particularly as it depends in part on how fast judges push trials in your county. Some proceed in a rather leisurely fashion while, in other courts, getting a full half-day of court time is a major achievement.

Dates you are unavailable for trial. Consider yourself unavailable if you have future obligations that you really can't get out of (or really, really, really don't want to), such as prepaid vacations and required business travel. Attorneys consider anything that occupies their own schedule to be "unavailable." For an attorney to be unavailable, they should be on prepaid vacation, or in another trial or major court proceeding. Trial should take precedence over other things like motions and depositions.

Assuming the clerk gave you a time period for trial settings, you should start listing your unavailable dates a month before the first likely trial date, and over a six- or seven-month period of time. You can't be too careful. If they can't or won't give you an estimate, list dates you will not be available starting one month after the date of your At-Issue Memorandum and continuing for the next year (which presumably won't be too burdensome as most people don't have their time calendared out for the next year).

B Responding to an At-Issue Memorandum

If your case is ready

Even if you don't mind the case being set for trial, you might want to file a reply At-Issue Memorandum to inform the court of dates on which you are unavailable for trial. You don't want the trial to be set on a date when you are in Europe on a prepaid vacation. In counties that require some sort of pretrial statement, you can take this opportunity to put your own case in front of the judge. Who knows, you might be assigned to a reader.

You have ten days to respond. Remember, if you serve your Counter At-Issue by mail, you must mail it 5 days before the 10 days expire. If you received any other documents along with the At-Issue Memorandum, you must respond to those, too. Be sure to check with your lawyer for applicable deadlines on those documents.

Warning: In some counties, if you do not promptly reply to the pretrial statement (or whatever they're called in your county), this can be conclusively interpreted as an admission to all of your spouse's positions! Be careful that you don't find yourself in this position. In some counties, you must respond or you lose, but this depends on your local rules, of which your lawyer will be familiar, but make sure it is not missed.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

If your case is not ready

Sometimes a party who holds all the family financial information or all the information on some other crucial issue will try to rush you into trial so they will have an unfair advantage. If you have been making diligent efforts to prepare and you are being rushed into trial before you are ready, you should file a motion to strike your spouse's At-Issue Memorandum. This is different from a motion to continue the trial date (chapter 24). You use the motion to strike to stop a trial date from being set. You use a motion to continue if the trial date has already been set.

Judges get tired of parties asking for delays—it makes it harder for them to manage court work—but if your spouse is rushing you into trial, you are forced to ask for one anyway. You need to make it clear that you have been diligent, but your spouse is rushing the case too fast. You file a declaration listing everything you have done to get ready. If, in fact, your lawyer has not been preparing diligently, you are probably not going to be granted a continuance, so you had better make your lawyer scramble as fast as possible to catch up.

You should check with your lawyer to find out approximately when they are setting trials like yours. If similar cases are being set a year away, you might decide not to file a motion to strike the At-Issue Memorandum now but try to prepare your case fast enough to be ready by the expected trial date. However, if trials are being set only a month or two away, and your case is not prepared, you need to move immediately to strike the At-Issue Memorandum. If motions are being set to occur in say, five weeks, and your trial is set to occur in four weeks, you may need to include in your motion a request for an order shortening time so your motion will be heard before the trial.

What to do when you get a trial date

Be sure you have discussed all deadlines and procedures with your lawyer. When you receive your settlement conference date or trial date, deadlines start running on your case. They won't be written on documents or forms, so they can easily pass by unknown and unnoticed. In some counties, for example, if you do not do certain things, such as disclose in writing the name and address of every one of your expert witnesses by a certain date, you will lose your right to use them. And many counties require pretrial statements to be filed and served by a certain date.

Because of the importance of these deadlines and the ease with which they can be overlooked, once you know a court date is being set, this would be a very good time to meet with your attorney to discuss deadlines and what you must do to protect your rights and get your case going. If you decide to do this, hurry! You haven't a moment to lose.

Calendar your discovery cutoff. All discovery must be completed by at least 30 days before trial, and discovery motions must be heard at least 15 days before trial (chapter 17). Now that you have a trial date, you are under considerable pressure to complete any discovery that is still unfinished.

Final Declarations of Disclosure must be served at least 45 days before trial, or 50 days before if you mail them. As soon as you have your trial date, calendar this deadline and put a note 20 days before the deadline that you should prepare the documents. Don't just calendar the final deadline. Calendar enough time ahead get the task done on time.

Pretrial settlement statement reminder

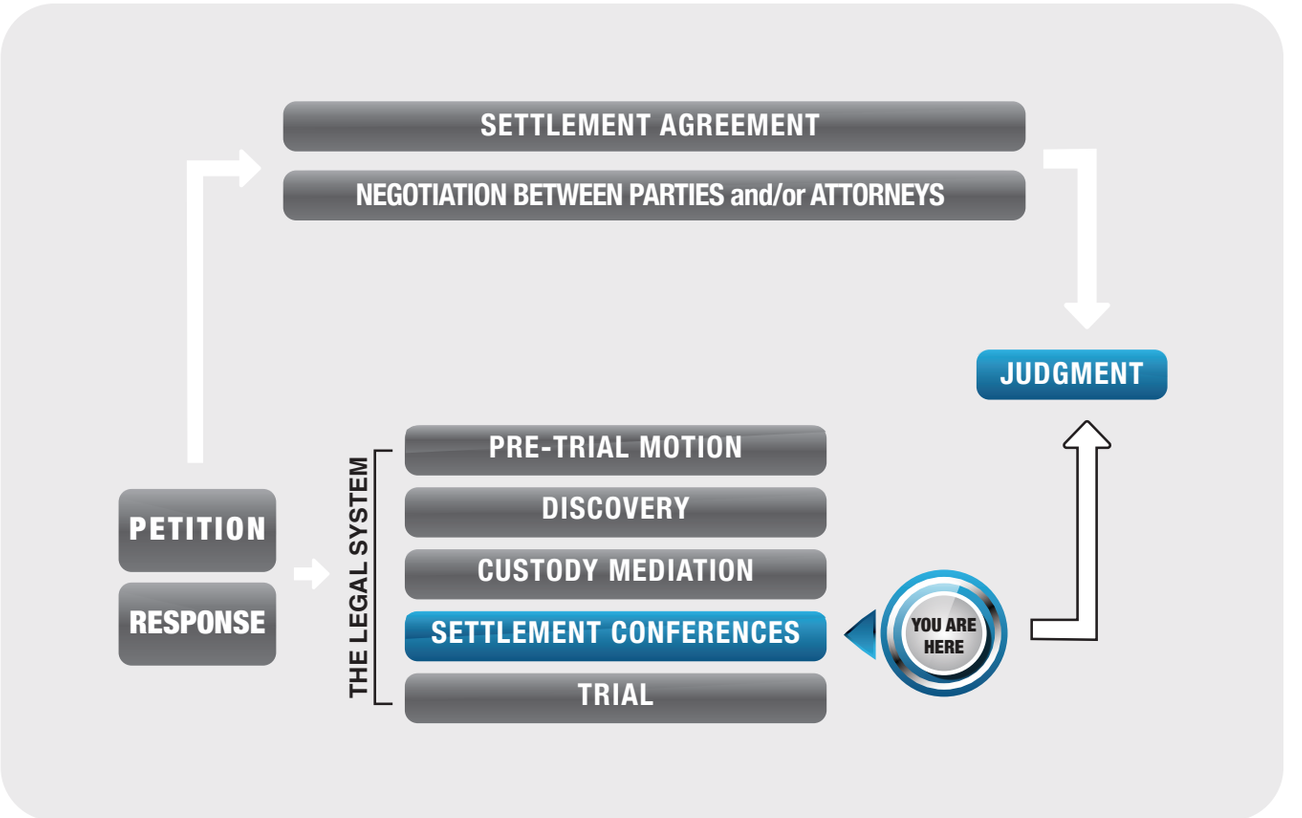
Speak with your lawyer to see if a pretrial settlement statement (or whatever it might be called in your county) is required with or after the At-Issue Memorandum. Failure to do a good job on this can be disastrous.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

D Start planning for the Settlement Conference

Long ago, you and your lawyer made a plan for your case. You are still working on it and it has been reflected in all the work you and your lawyer have done. Your settlement offers reflected it. Any documents you were required to file with your At-Issue Memo reflected it. Now you are getting ready to do a settlement conference statement and/or trial brief which will continue to pound away at the same issues, evolving as some issues settle and others may have developed more clearly. Go on to the next chapter.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 23

SETTLEMENT CONFERENCES
judge helps you settle

A. What is a settlement conference?
B. Planning for the conference
C. The settlement conference statement
D. How to do a settlement conference
E. If you reach an agreement
F. After the conference

A What is a settlement conference?

All large counties and many small ones require parties to attend a settlement conference before a case can go to trial. Fortunately, neither party has to ask for it, which could be taken as a sign of weakness; rather, it is automatically set by the court as a result of filing an At-Issue Memorandum (or whatever your county calls it).

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A settlement conference is an informal meeting between a settlement officer and the parties (or lawyers, if there are lawyers) for both sides to explore the possibilities for settlement. Judges don't want trials—they want you to agree. This is not because they are lazy, but because they know they will never understand your life and family as well as you do; that it will be far better for any children if you can agree; and better for both of you in the long run. They also know that trials are terribly expensive, both for you and for the county. Nonetheless, it takes two to agree, so if your spouse is not cooperative, you have no choice but to prepare for trial and actually have one if necessary.

Every judge will have his/her own style. Some don't give it much effort, but other judges play an active role in working out a settlement. They might, for example, tell the parties what decision is likely given the stated facts. Once you know what a judge is likely to do, you might as well accept the inevitable unless you can round up other evidence than you presented at the conference. Sometimes a judge will shuttle between lawyers and the parties, or perhaps talk separately to each party and point out in private the problems with his or her position.

Do it again. If the judge feels you made good progress toward an agreement but there wasn't enough time to finish, he/she might insist on another conference or even a series of settlement conferences. This could result in your trial date being postponed, even indefinitely, if the judge feels it will be worthwhile. Ironically, if one has counsel, going through a series of settlement conferences can cost more than a short trial. Nonetheless, in the settlement process you need to stay positive and try in good faith to settle.

Do it formally. At the end of any settlement conference, if anything important was agreed, you want to pin it down formally—either in writing and signed by the judge or on the record in the presence of a court reporter. This avoids any backsliding that might occur.

B Planning for the conference

You will use your Settlement Conference Statement as your outline for the settlement conference itself. This is a continuation of the plan you made and followed from the beginning (chapter 6). By the time you show up, you should be completely familiar with all the facts, issues, and prior orders. In particular, you should know what you want and be prepared to make decisions.

There are two basic—and opposite—approaches to the settlement conference:
1. Begin with issues on which you are most likely to get agreement.
2. Begin with the toughest issue or the one with the greatest dollar value.

The point of the first approach, beginning with the easiest issue, is to get some momentum going in which you and your spouse are saying "yes." You want to begin a pattern of yes, yes, yes that will carry into the more difficult issues. When you reach difficult and emotion-packed issues, stop and formalize (put in writing) the matters you have agreed on before you go on, otherwise when everyone gets upset, you might blow away the agreements you thought you had.

The second approach, beginning with the toughest or biggest issue, can also be a good idea. If you can settle one or two big issues, all the rest might fall almost automatically into place. If you could agree, for example, about the house and support, remaining items are small enough that neither of you might care to fight over them. Use the first approach if you have a very difficult, conflicted case in which agreeing on anything at all, no matter how small, would be a new approach and set a new tone of cooperation. Use the second approach if things have gone fairly well, and your ex seems pretty reasonable.

As you go through your settlement conference and are, hopefully, agreeing on issues, use your Settlement

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Conference Statement as a checklist to make sure that nothing falls through the cracks. You don't, for example, want to overlook health insurance when doing support. Your Settlement Conference Statement will focus you on your strategic issues but also serve as an exhaustive checklist.

C The settlement conference statement

You can turn this burden into a powerful weapon if it is done well. Many counties require you to prepare a detailed Settlement Conference Statement (sometimes called a Pretrial Statement) which must be served and filed a certain number of days before the conference (check with your lawyer).

Calendar deadlines and tasks. Pay special attention to all deadlines. Every time a local rule says something like, "Ten days before the settlement conference, each party must file and serve a settlement conference statement," you enter a whole series of dates on your case calendar, like this: 10 days before the settlement conference, write "deadline for serving SC statement;" 15 days before settlement conference, write "deadline for mailing statement;" 30 days before settlement conference, write "begin writing SC statement." Find every deadline your local rules contain and calendar deadlines for serving by mail (which is easier), personal service (if it is too late to mail), filing with the court, and preparing the statement.

1. How to do it

Your Settlement Conference Statement will be considered in detail by the judge and will also be used at trial. Many attorneys do this important document carelessly, but you will make sure yours won't, because you have been thinking about the facts in your case and working with your lawyer on this since chapter 6.

Just the facts. The purpose of the Statement is to summarize your entire case at trial in one document. The rule now is that facts = documents + testimony. The testimony will be your own and that of whatever witnesses you can bring to court voluntarily or by subpoena. Each fact is a stone that you use to build your monumental statement. This is a very important opportunity for your attorney to get the strength of your facts and your analysis of those facts in front of a judge. You attorney is going to prepare an outstanding statement.

Each county has its own requirements that will usually be clearly (if not exhaustively) defined in local rules, but here is a general format with comments for you to consider for your own statement:

I. INTRODUCTION

A. SUMMARY. The first paragraph should give the judge a summary of your basic perspective on the case, based on facts—documents + witness testimony—that you can prove. It should be objective, not be accusatory or critical.

B. BACKGROUND and CHRONOLOGY. If your case is relatively simple, you don't need much more than dates of marriage and separation, children's birth dates, date the Petition was filed (and served if there was a delay between filing and serving), and what both parties do for a living or are capable of doing, including experience, education, training and past employment. If your case is complicated, it can go through all the major facts and arrange them in chronological order.

Next, the statement will deal with every single issue that has not already been decided. It should be organized under categories like the ones suggested below. They are usually put in order of what's most important to you and, of course, omit any categories that are not in dispute.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

II. CHILD CUSTODY and VISITATION

The statement should explain your case to the judge in the same manner as discussed above: Introduction, chronology (if complicated at all), then discussion of the separate issues. If these issues were separated onto another track (as happens in some counties) and decided, and if they are relevant to any presently pending issues, there should be a thumbnail outline of any custody/visitation order, but it should be clear that these issues are not presently pending for trial. In discussing child custody, always, always focus on the child's needs, not on your own. The standard followed by all judges is "best interest of the child." This means you have no interest. The parent's anguished cry of "I need more time with my child" will not move a judge. You need to explain why your child needs you and will benefit from more time with you.

III. CHILD and SPOUSAL SUPPORT

You need (1) a current Income and Expense Declaration of your own, with (2) your four most recent pay stubs, and (3) a computerized support printout. The printout will be prepared by your specialist attorney.

As to child support, if the judge accepts the data and options used in your computer calculation, the support reported will be ordered. Explain how you calculated the percentage of timeshare and how you arrived at the input data on the computerized support printout. As to spousal support, this is resolved on a case-by-case basis, not by any guideline amount. Family Code section 4320 contains a list of "factors" which the court must consider in setting spousal support. Your statement should discuss each of these factors. If your attorney advised you to get an expert to provide an opinion on the 4320 factors in your case, which the good attorneys most often will do on this issue, the opinion will be referenced here. The statement should tell the court why it should set a certain amount of support, whether it should be stepped up or down over time, and what should be the duration of spousal support. Finally, for any kind of support situation, discuss health insurance, life insurance, and any other types of benefits you want addressed. All temporary orders for insurance will be lost if not repeated in the Judgment.

IV. SEPARATE PROPERTY

Separate property is anything you had before marriage, earned after separation, or which you received as a gift or inheritance. Also, rent, interest or dividends received from separate property is separate. Sometimes you can retain separate property even if you added your spouse's name to the title. Your statement should list every piece of separate property and explain where it came from and why it is separate.

V. COMMUNITY PROPERTY

Under this heading, your statement should list A, B, C, etc. to address each significant item (or group of items) of community property, beginning with the most valuable and going down to the least. The statement won't, or shouldn't, list every single piece of furniture, but group smaller items into categories like "Tools," or "Furnishings," or, if you think it will help, you can attach documents or a separate list or set of lists of where each item is referred to as an "exhibit." Each item on the attached list should be clearly labeled as Exhibit A, B, C, etc. and identified in words—"copy of deed to family home," or "household furnishings."

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

VI. RESTRAINING ORDERS

Make sure you request the continuation of any existing orders that you want to keep effective over the next three years. The statement should explain briefly the nature of your ex's conduct that required the initial protection. Don't assume that just because the court granted an initial restraining order, the judge will automatically repeat it now. Make your case. If your ex has violated orders, that should be explained. If you need more specific orders to try to control the conduct, that should be explained with a statement of what orders you want.

VII. ATTORNEY FEES and COSTS

There are two types of fee orders the court could make: (1) based on disparity of access to funds, and (2) based on misconduct. Judges are much more inclined to make orders based on disparity of access to funds and less likely to sort things out enough to actually punish someone, though it does happen.

• The first type of order is based on a significant difference in access to funds and the ability of one side to pay for attorneys for both sides. However, keep in mind that even if one spouse earns much more than the other, after payment/receipt of support and taxes, the parties may be pretty much in an equal position. When judges make orders for fees, they sometimes take the approach that if one has, for example, 60% of the combined net spendable family income, that one should pay 60% of the total attorney fees. Therefore, that spouse will be ordered to pay only a part of the other's fees and costs on a need-and-ability basis.

• The second type of order is based on the other party's misconduct, which would have to be explained in detail. Additionally, judges want to know how much it cost you to fight the misconduct. For example, you might have paid $50,000 in attorney fees no matter what, but your total fees were $100,000, and you feel the extra $50,000 was caused by your ex's misconduct. You need to explain this in specific detail to the judge, not just accuse your ex in vague terms.

If your issues include support or attorney fees, you must attach a completed Income and Expense Declaration with any attachments required by local rule, such as pay stubs. It also is useful to attach a Schedule of Assets and Debts although you may not want to include account numbers in the copy filed with the court.

The judge wants an overview, not 50 pages of homework. A judge once asked a lawyer why he wrote such a long brief, and the lawyer said, "I didn't have time to do a short one."

Include all claims. The statement should include all claims that you are making, including even the ones that you expect to give up in the course of negotiations. The Settlement Conference Statement is not a settlement offer. It is a list of every single claim that you can reasonably assert at trial. If you leave out a claim, you lose it.

Attach appraisals and exams. If division of property is an issue, and if there's no agreement on values, then any property of significant value should be appraised, or you should explain in your statement why you didn't do this (for example, the other side wouldn't cooperate, and you didn't have time before trial to file a motion). You need to appraise everything from expensive furniture to businesses to residences. Most counties require that appraisals and reports such as those of vocational examiners be attached to the Settlement Conference Statement. Failure to do so can result in the judge refusing to hear your evidence.

People often think they have an agreement on the value of property, but it isn't written. Then, when they come to the settlement conference, they find out that their spouse doesn't acknowledge the agreement.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

This can happen in any case where there is no written, signed agreement on values. Due to the high cost of appraisals, you might want to negotiate an agreement on the value of all or some of your property, assuming you can research its likely fair market value. An oral agreement is not enough; you need written agreements on values, signed by parties and counsel, or you need appraisals.

Trial of minor issues might not be allowed. The court may not permit you to go to trial about minor matters such as the furniture, furnishings, appliances, etc. (These may not be minor to you emotionally, but the judge will regard them as such.) If minor matters are not agreed on by the end of the settlement conference, the court can send those issues to arbitration. The arbitrator will charge more than $400 per hour, and this could buy a lot of furniture. It makes sense to agree on these issues. On the other hand, you should not give all the furniture to your spouse just because your spouse will not agree to a fair division. It takes two to agree. You can't do it alone.

How to do a settlement conference

Be prepared to spend an entire half-day, or even a full day at the conference. Unless you already have an all-purpose judge, you might be assigned to a judge pro-tempore, who is almost always referred to as a "judge pro-tem," meaning a deputized lawyer serving as a temporary judge.

You will use the settlement conference as a good opportunity to settle your case according to the plan you've been working on since the beginning (chapter 6). If your settlement conference is in front of the judge who will hear the trial, then, even if you don't settle you can use this as an opportunity to make a good impression. You want to come across as very reasonable and ready to compromise, but also as firm and ready to fight if the other side won't follow law and reason.

Most conferences in judge's chambers. If the parties have lawyers, initially only the lawyers go talk to the judge. If a party does not have a lawyer, that party will talk to the judge. The parties do have to be present, but if there are one or two lawyers in the case, the judge will try to avoid the wear and tear of having direct contact with parties and will try to settle the case with lawyers only, if that will work. The conference usually occurs "in chambers"—the judge's personal office—rather than in the courtroom, but it can also be in a courtroom or a conference room in the courthouse.

How the case is presented. The judge reviews the Settlement Conference Statements of both parties, then the parties (or their lawyers) and the judge discuss issues. Each party indicates that at trial, he/she would present certain evidence and there could be a debate as to how the law should be applied. For example, if there is an argument about support, your spouse could tell the judge about evidence that you have additional income and you could explain why you never had it or don't have it now that you're divorcing. The judge then lets the parties know how he/she would decide if the matter were to go to trial on the evidence just indicated. If the judge does this, there is not much point in going to trial unless you can get more evidence. Different judges tend to respond to cases in pretty much the same way, so even if you get a different judge, you would probably get the same result.

Possible penalty for not taking judge's advice. If there's no agreement, the judge might write his/her recommendations on a paper which will be placed in a sealed envelope and not viewed until after decision. Even if this trick is not used, whether the parties were reasonable in their positions will show in their Settlement Conference Statements. After trial, if it appears that one of the parties was unreasonable in not settling along lines suggested by the judge, that is, if one party did not achieve anything by insisting on a trial, then the trial judge may award attorney fees or sanctions due to that party's unreasonableness. For example, let's say that at the settlement conference the judge tells the parties that a certain amount of

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

spousal support should be paid, but the husband refuses to agree. If the case goes to trial and the trial judge decides on a similar amount for spousal support, then that judge might make the husband pay the wife's attorney fees or part of them because of his unreasonable refusal to settle.

You need to give very serious consideration to the recommendation of the judge at the settlement conference. If he/she tells you something you don't like, don't ignore it; consider it very seriously, or you could end up paying if the judge was right.

E If you reach an agreement

If you reach an agreement at your settlement conference and you want to make sure it is binding and neither of you can back out, there are two ways to do this. You can ask to have the agreement recited on the record (a court reporter takes down every word), or ask to have it written down and signed by the judge after the parties have signed it.
If there appears to be an agreement, but you aren't sure it is what you really want, it is okay to ask for a brief recess so you can take a few minutes to think things over. It is also okay to say that you want to give it careful consideration and decide in a few days. On the other hand, if the other side is willing to agree and you delay your decision, they might change their mind later. A settlement conference requires a clear mind. You shouldn't let yourself get rushed into something you don't agree with because time runs out, but if you've reached a settlement you want, you should use this opportunity to make it final.

Judgment now? If you have a complete agreement on all issues, the judge may want to go on the record, detail the agreement, take testimony on the jurisdictional facts, and render a Judgment.

Pretrial orders? If the judge wants to do a Judgment on the record, be sure to bring up the question of pretrial orders, if you had any and still want them to continue. Any orders made by the court before trial—whether as the result of an OSC, motion, or agreement (stipulation)—will cease to be effective if they are not restated in the Judgment (with the possible exception of domestic violence orders).

Prepare and present the Judgment. Once you leave court, one of the parties will have to prepare a Judgment exactly along the lines spoken by the judge, then present it for signature along with a Notice of Entry of Judgment and envelopes. Read about doing the Judgment in chapter 26.

Partial agreement. If you reach an agreement on some but not all issues, then you should ask to recite whatever agreement you reached in open court, or the judge will sign a written summary of your agreement. By getting it pinned down on the record, you will go to trial later only on issues that have not been resolved. Even if one party wants to insist on a "package deal" with all issues settling or none of them, the judge will usually resist going to trial on issues where there is no disagreement just because there is disagreement on other issues. But sometimes the judge will let someone demand a "package deal," so you will proceed to trial on all issues unless you have a complete agreement.

F After the conference

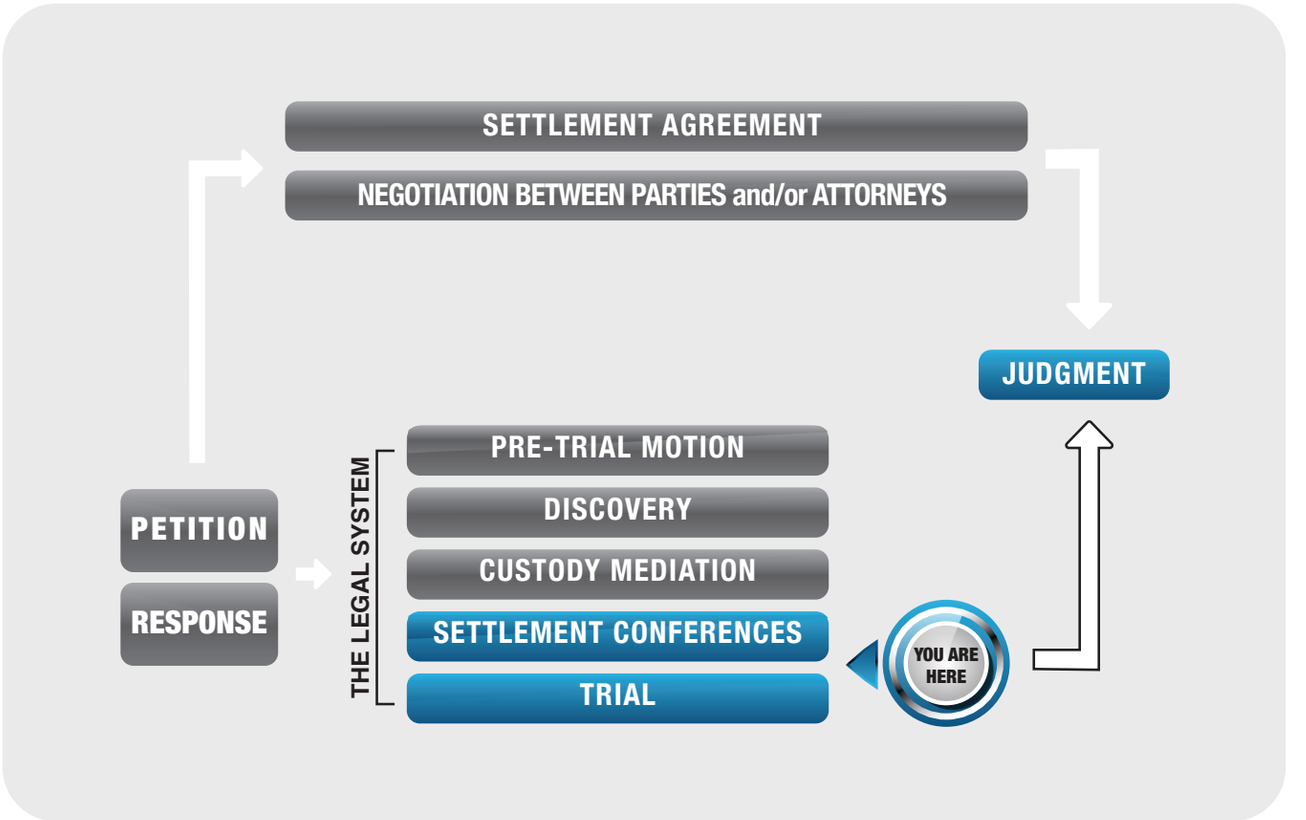
If you do not settle your case at the conference, you now have to speak with your lawyer carefully to see what they want you to do before trial.

Many counties have a procedure with a deadline for giving the other side information about any expert witnesses you intend to use at trial. Some counties also require you to exchange information for non-expert witnesses, so you have to list everyone you might even possibly call to testify.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Most counties require exchange of documents that will be used at trial. These deadlines are absolutely crucial to your case. If you miss a deadline, you could find yourself at trial with the judge prohibiting you from using witnesses or documents that were not listed, which, simply put, means you would lose.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 24

MOTION TO POSTPONE THE TRIAL

A. Reasons to get your case postponed
B. Try to arrange an agreed continuance
C. Motion to continue trial and extend discovery

A Reasons to get your case postponed

In order to continue a trial, you must show "good cause," but with or without good cause, continuances are generally disfavored by judges, so you will be swimming upstream if you try to have your trial continued. You will need to show the court a very good reason why you cannot proceed at the time scheduled.

Good reasons for a continuance

• Unavailability of an essential witness. If you have a crucial witness who cannot be available at the time of trial, this is a good reason to continue it. However, the mere fact that a witness says he/she is busy on the date of trial does not make him/her legally unavailable. If you could have subpoenaed the witness and neglected to do so, this would undermine your motion. On the other hand, if the witness was outside the United States at the time

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

you received your trial date and has not yet returned, this would be a good reason to obtain a continuance.

• Trial set too early. If your opponent asked too early for the matter to be set on the trial calendar and you are within 45 days of trial, but declarations of disclosure have not yet been completed, the trial would need to be continued. If you had plenty of time to prepare, but you were just too upset to do it, this is not a reason that is likely to inspire a judge to continue your case. You must show that you have tried diligently, and it was the other side that did things like delaying discovery, then a court might continue your trial.

• Time to get an attorney. Judges definitely prefer people to be represented. Keep notes of your efforts to get an attorney and be prepared to tell the judge who you called, date and time, and what they said. If the judge sees that you are really trying to get any good lawyer or a particular lawyer, this could help you get your continuance. On the other hand, if issues of domestic violence are involved and safety is an issue, the judge may want to hear that matter right away, with or without you being represented. The judge will not be happy to see you show up the next time without an attorney, so don't use this excuse unless you plan to follow through. Of course, you could ask for a continuance to consult an attorney, in which case show up later with proof that you did that and are now ready to proceed.

• Prepaid vacations. Often, people have prepaid vacations, then later get a court date that falls during their vacation. Most courts are sympathetic to this problem and won't want to make you lose your money. However, if your case puts forth the notion that you are financially strapped, the court could disapprove of your taking a very expensive vacation and deny your motion or remember it when you cry poverty at trial.

• Family emergencies. If you, your children, or a close relative are terribly ill, or there is a death in your family, you might get a continuance. However, as to the death, many judges seem not to understand how long it takes people to recover, so they might expect you back in action a week or two later.

• Miscellaneous possibilities. You had to move, or you have had serious health problems, or it is the busy season in your business and you have been required to work very long hours.

Reasons that might not fly

Sometimes you really want a continuance because you or your lawyer didn't prepare for the trial, but you can't use this as an excuse. Even if you try to conceal your true motive, the judge might figure it out and deny your continuance, especially if you float some lame excuses like:
• Didn't do the work on time.
• Upset, couldn't get started. However, if you were under a doctor's care or hospitalized for, say, depression, that might work.
• Don't want to be divorced.

Prove it if you can. If you have documentation to back up your reason—other than your own statement—attach it to your motion or take it to the appearance. For example, if you have a prepaid vacation, you need to attach copies of tickets or a statement to show the dates, payment, and the fact that it is not refundable. If you are required by your job to travel on the date of the hearing, you should get a letter from your employer and attach it.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

The judge will also want to know how much time you need for a continuance—a week? Two? A month? More? Be prepared to say how much time you need and to justify why you are asking for a particular amount of time.

When making a motion, you need to present specific facts, not just make general assertions. For example, if you weren't able to prepare for the trial because your spouse stonewalled you and refused to give you information, you need to present facts to show the judge just how long it took to get essential information and how flimsy your spouse's excuses were. All of this should be put into your declaration along with letters and documents, perhaps a log of phone calls, to support your facts. Merely stating it as a conclusion is not sufficient.

Warning! Prepare as if your request will be denied

It is always possible that a judge will deny your request for a continuance, no matter how good your reasons. If you have the bad luck to make your motion when the court is on a campaign to clear up its calendar by being tough on continuances, your motion could be denied even though it otherwise would have been granted. It is absolutely imperative that while you make your motion to continue and wait for your hearing, you still prepare for trial on the assumption that your motion might be denied. You need to (1) move to continue the trial and (2) serve subpoenas and prepare vigorously for trial in case you lose the motion. How to prepare for trial is discussed in the next chapter.

Reasons for continuing a hearing on OSC or motion

When it comes to a hearing on an OSC or motion, you can often get away with showing up at the hearing and making a verbal request to continue. Those hearings are different from a trial in that you get shorter notice, so it could be reasonable not to do a written motion. However, if you had notice of a hearing on a motion to take place many weeks in the future, it would be expected that you would file a written motion to continue. If the judge feels you waited too long to make your motion, you will be less likely to get your continuance. Reasons for continuing a hearing of an OSC or motion would be the same as those discussed above for continuing a trial.

B Try to arrange an agreed continuance

If both you and your spouse (or his/her attorney) agree to continue your hearing, settlement conference or trial to another date, the court will almost always permit it. However, judges sometimes take a harder line on trial and settlement conference dates. If both sides want to continue a trial, but the judge doesn't want to, the judge might take the case off-calendar entirely. Then you will have to file papers again to get another trial date.

Contact the other side

Your attorney should contact your spouse, or his/her attorney, and explain why you think a later date would be more appropriate.

You can also agree that the other side will arrange the continuance. If that happens, an email confirmation with dates that are acceptable to you is essential. Find out if they will arrange the continuance by phone or in person at court on the day of the hearing. If it is done in court, it would be a good idea for your attorney to be there to make sure the next date which is chosen is one that works for you. If they do it by phone, your attorney should call the clerk to make sure it was done as agreed.

If the other side agrees

If your attorney gets your spouse (or his/her attorney) to agree to continue the appearance, be sure to ask for an email confirmation of the agreement, with a letter to the same effect sent by mail. If

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

they won't do this, an email confirming the agreement should be sent requesting that they reply if your communication does not state the arrangement correctly.

Stipulated orders. In some cases, you will need to get an order in addition to the continuance. If you appear in court at the time set for the appearance, your attorney can make your request orally; otherwise you will need to prepare a stipulated order, signed by the other side, that continues the hearing to another date and, if necessary, makes additional orders, such as:

- If there are restraining orders against your spouse, you need the judge to order them to stay in effect until the date of the next hearing.
- If it is a trial that is being postponed and you need the discovery date to be extended, you will need an order extending the cutoff date for discovery.

If the other side does not agree

If the other side refuses your request to continue, your attorney will most likely email them a letter that restates your request, with reasons, and state your understanding that they refused. If the first time you ask for a continuance is orally in court, sometimes the opposing party or opposing counsel will act as if this is a very inconvenient surprise. But if your attorney has the confirming email, they probably won't try to pull this. If they do act surprised and inconvenienced, your attorney can show the letter to the judge.

Trials. If your spouse does not want to continue a trial, you need to file a Request For Order to continue the trial.

Hearings. If the other side does not agree to a continuance and you have time to file a motion, do it, probably with an order shortening time. Otherwise, your lawyer needs to go to court at the appointed time. The best thing is to do both. You must be ready to proceed as best you can in case the judge does not grant your continuance.

C Motion to continue trial and extend discovery

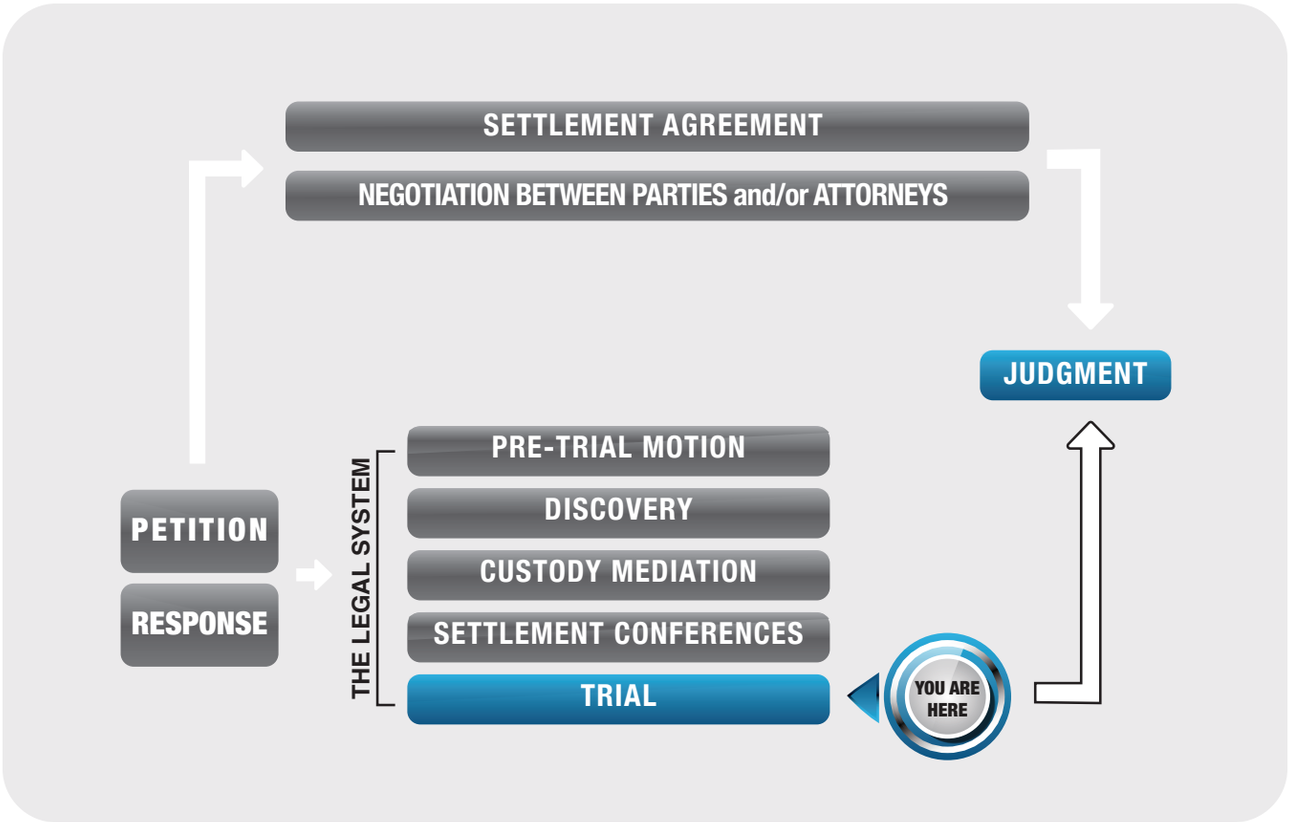
A motion to continue a trial should be made in writing as early as possible, just as soon as you know you'll need the continuance. If the judge feels you waited too long, that could work against you, especially if the other side has already got witnesses lined up and subpoenaed. The judge doesn't like to see the other side spend attorney fees, time and effort preparing for a trial that doesn't occur, so you might be asked to pay their fees if you have been slow. Don't delay.

Timing of motion. To be of maximum benefit, your motion to continue will have to be heard not only before the trial date, but also before the Settlement Conference Statement is due.

Extending time for discovery

Discovery is automatically cut off 30 days before the date for your trial. Even if the judge orders your trial postponed, this does not mean that discovery is reopened. If the reason you need to continue the trial is that you are lacking essential information, in your motion you must also ask to reopen discovery. The motion should explain why you have failed to obtain the information in a timely manner and convince the judge to give you more time. This is not easy. The judge is more likely to grant your motion if your spouse resisted discovery and yet asked the court for an early trial date than if you just were so upset that you couldn't do the work. All facts that support your need for a continuance, and your claim that you have diligently prepared your case, must be presented in your continuance motion. Judges don't like continuances. A lot of people ask for continuances just because they didn't do what they were supposed to do on time. You need to convince the judge that is not the situation in your case.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 25

GOING TO TRIAL

A. Preparing for trial
B. How a trial is conducted
C. How to be a good witness
D. Pretrial orders lost if not restated
E. At trial's end

A Preparing for trial

Subpoena witnesses. Will you need to subpoena witnesses or records to your trial? Your attorney will have to do this far in advance, at least 30 days.

Visit the court. Well before your trial, you should visit a courtroom to watch some trials, get familiar with how things work at your courthouse, how witnesses are examined, and how judges conduct trials, especially with unrepresented people. The trick is to figure out which court to watch. Ask your attorney in which department your case will be tried. While watching, listen carefully to anything the judge tells the people who are in trial about how he/she likes the evidence to be presented.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

B How a trial is conducted

The trial is the time to present your witnesses, including your own testimony, and present documents that will be identified and verified by those witnesses.

No jury. In a divorce trial there is no jury. The judge makes all decisions.

Should you accept a judge pro-tem? When your case is called for trial, you might be asked if you will accept a judge pro-tempore, or "judge pro-tem." Lawyers never say "yes" to that question without knowing who the specific judge pro-tem is and being sure that he/she is a fair-minded person. Rejecting a judge pro-tem could result in delay of your trial. If you know and like your judge, you can refuse the judge pro-tem. If you dislike your judge, you can take your chances with a judge pro-tem. If you don't know the pro-tem and are neutral towards your judge and you want to stall, refuse the judge pro-tem. If you want to hurry up and get to trial, accept the judge pro-tem. Your lawyer should help you evaluate and decide.

If no courtroom is available. At the time and date set for trial, it sometimes happens that no courtroom is available, so you might have to wait anywhere from an hour to several days, weeks or even months for a courtroom. You need to be prepared to begin immediately, but you also need to be prepared for the possibility that your case will be continued. This is why you have had all your subpoenaed witnesses sign the agreement to appear on phone notice. When trial of your case actually begins, your lawyer will phone the witnesses and tell them to come to court. You must have arranged this with them beforehand, and you must be very sure they will come promptly and that they know that the judge might issue a bench warrant for them if they don't show up.

Call the day before. On the day before trial, your lawyer can phone the clerk in the courtroom to which your case is assigned, or the master calendar clerk, and ask whether cases set for trial are actually getting courtrooms on the next day. They might sigh and say, "Nothing is getting out." That means that there are a lot of cases showing up ready for trial, but all courtrooms are full and everything is getting postponed by the court. Or they may indicate that they are not sure. Of course, you can never rely on a clerk telling you that there will not be a courtroom, but it is some indication. If you are almost 100% sure that your case will not go to trial, you should put your witnesses on phone-call standby. If you are almost 100% sure your case will go to trial, confirm with all your witnesses by phone the time they should come to the courthouse.

The trial begins

Who testifies at trial. In most divorce cases, only the husband and wife testify, although you are entitled to present any witnesses who have relevant information. If custody/visitation is an issue, the court's evaluator can testify and either party can present an opposing expert or other witnesses. If the value of property is an issue, experts such as real estate appraisers, actuaries for pensions, and business appraisers for businesses can testify regarding values. Anyone with relevant information, including a child, may testify, but a judge can refuse to permit a child to be involved.

Petitioner goes first. First the petitioner presents his/her case. The judge can decide to take witnesses in a different order, but is not likely to do so unless there are unusual circumstances, such as an out-of-town expert who needs to be called early or late. After each witness finishes his/her testimony, the other party or lawyer will be allowed to question or "cross-examine" that witness, then back to the first side for any necessary clarification of new points raised. Once all of petitioner's evidence has been presented, the respondent will be permitted to present all of his/her witnesses, followed by cross-examination by petitioner or petitioner's attorney. After that, the petitioner can present rebuttal evidence, if any, to try to counter whatever respondent presented, then the respondent can present rebuttal evidence. However, it

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

is not proper on rebuttal to repeat what you already presented or go into any new matters that were not presented in the other party's case. Rebuttal is only to respond to new evidence the other just raised.

Anatomy of a trial

• Opening statements. This is a brief statement of the facts you are going to prove. You do not argue. Just state the facts in a very brief, objective but compelling story of your case.

• Petitioner's case. Petitioner presents witnesses, including him/herself. After each witness testifies, Respondent gets to cross-examine (ask questions), but only on subjects testified to by the witness on direct examination. After cross, Petitioner can ask questions on new subjects raised on cross-examination. Petitioner rests, case over.

• Respondent's case. Respondent presents witnesses, Petitioner cross-examines, Respondent can do re-cross if there's anything new raised on cross.

• Rebuttal. Petitioner puts on witnesses or introduces evidence to oppose new points made by Respondent that were not addressed by petitioner's original evidence. Respondent can cross-examine. It is not proper to repeat what you already presented or go into any new matters that were not presented in the other party's case.

• Closing statements (argument). Each party gets a chance to sum up their case and argue their point of view based on all evidence and law. This is the time to discuss the facts you've proved and how the law applies to them. You cannot argue facts on which no evidence was introduced and admitted.

Issues with partial agreement. Sometimes parties agree on some of the facts in an issue, such as the value of the home, and only disagree, for example, as to whether it should be sold, or one party be allowed to continue living in it. If this kind of situation arises, when the matter first comes up, your lawyer will state to the judge what facts both parties agree on and get the other side to state out loud that he/she agrees, too. Also, what the issues are that remain to be decided. Then you proceed to present evidence on matters on which there is no agreement.

Objection, sustained, overruled. In trial, someone might ask a question that is legally objectionable, not proper. When that occurs, it is appropriate to say, "I object." However, the person who is objecting is supposed to state the legal basis of the objection, such as, "I object, hearsay" or "I object, irrelevant." The judge might ask the party who objects to say why he/she thinks the question is improper, then the other side can say why it is proper. When an objection is made, the witness should not answer the question but should wait until the judge indicates whether or not the question is proper. After every objection, the judge should say that the objection is either "sustained" or "overruled." "Sustained" means that the objection is good and the witness should not answer. "Overruled" means the objection is not good and the witness should answer the question. After all this, the witness might be confused. At any time, if the witness is confused or doesn't understand the question, the witness should simply say, "I don't understand the question," or "Could you please repeat the question?" Your lawyer can ask the court reporter to "read back the question." That way, if it was a good question that withstood an objection, you don't have to think it up all over again. Sometimes a judge will not rule out loud on an objection. If your lawyer wants a clear record, he/she will say, "Your Honor, for the record, I'd appreciate a ruling on my objection."

If an objection is sustained, you must either drop it or try to rephrase it to avoid the objection. For example, if the objection is that the question was compound, you could try to break it down into smaller parts. Or if the objection was "assumes a fact not in evidence," you can try to ask foundation questions about facts that were not earlier in evidence, then ask your question based on those facts.

No hearsay allowed (if there's an objection to it). Generally, a witness cannot talk about anything he/ she did not personally see or hear. Among other things, this means they usually can't say what someone else said. It also means that you can't present a letter or declaration at the trial in place of live testimony.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

You can present a bill to show the amount of the bill, but you can't present letters. The difference is that the bill is not asserting a "fact." The bill itself is the fact. The letter that states facts is hearsay. Not even a notarized statement under penalty of perjury will be allowed if your spouse objects. If the other party tries to submit letters or declarations or even police/hospital reports, your lawyer needs to object that these are hearsay. However, there are many exceptions to the hearsay rule, and the judge might accept certain types of hearsay such as a confession or admission against the declarant's interest.

Two common examples of hearsay are medical reports and police reports. If you want to introduce into evidence medical matters or facts that occurred when the police were called, you must have the doctor or law-enforcement person present in court to testify. What they wrote down at some other time is hearsay and such an objection will be sustained. You need the actual, live witness present in court, not just the report, record, letter, or notarized statement.

Entering a document into evidence. You can't simply bring letters or declarations from other people. If you want the court to know what someone has to say, you must bring that person to the trial. Hearsay is when the document is offered to prove the truth of the facts stated in the letter. But if the letter is not offered to show that what it says is true but only to explain the state of mind of, say, the person who received the letter, then it is not hearsay. You can overcome the hearsay objection by saying "I'm not offering it for the truth of the matter asserted," but then the writing must be relevant to something else, like a party's state of mind.

How to introduce a document into evidence. When your lawyer wants to have the judge consider a writing, he/she must introduce it into evidence. This is done when you are testifying or one of your witnesses is testifying. Your lawyer will say, "I'd like to have a document marked for identification." Then they hand copies to the attorney for your spouse and the attorney for the child, if the child has an attorney. The original is handed to the court clerk, and a copy is kept. The clerk will mark the original "Exhibit X," whatever is next in order. After a document is marked for identification, you have testimony about it. Your lawyer will ask your witness, "Can you tell me what Exhibit X is?" and have them describe what it is, where it comes from and what it says. Then your lawyer will say, "I'd like to move Exhibit X into evidence." If the other party objects, both sides tell the judge their positions and the judge decides. Some judges are lax and will simply listen and not state a ruling.

When you are done. At the end of your case, your lawyer will likely say, "I'd like to have admitted into evidence any of my exhibits that have not yet been admitted." Generally, this will cause the judge to check with the clerk as to whether everything is in evidence (the judge isn't supposed to look at it if it is not in evidence). Any objections the other side has to your evidence will be discussed and the judge will decide what goes into evidence and what does not. If the judge fails to rule on any piece of evidence, your lawyer must ask whether it is in evidence or not so you end up with a clear record.

Closing statements. When both sides have finished their cases, your lawyer may ask if the judge will permit a closing argument. The judge will probably have most of the points in mind so will want only brief argument, if any, particularly if they are experienced in family law. On the other hand, if you had evidence whose relevance is not easily apparent, your lawyer might want to comment on what it shows.

Restatement of existing orders. If you have existing orders from an OSC or motion, they will be lost when the Judgment is entered. If you want any of them to continue, your lawyer must ask the judge to do so at the end of your case.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

How to be a good witness

Ensure the truth is clearly told. When you testify in court, of course you will tell the truth in simple, clear terms. Don't memorize your testimony or it will seem artificial but do think carefully ahead of time about what you are going to say so you don't stumble and seem vague or uncertain. Do not ramble around but stick very closely to the exact question asked or the point being made.

It is difficult for anyone to handle highly emotional issues and remain calm. In testifying you need to avoid becoming angry, excited, frightened, or intimidated. You need to stay calm. Get plenty of sleep the night before court and be sure to eat breakfast and lunch on court days. Even if you don't feel like eating, just regard the food as medicine and take it. You won't run well on empty. Tell yourself over and over how calm you are going to be. If you are in court and you find yourself responding emotionally, you need to take a deep breath. Sometimes your mind can start racing, spewing out ideas, questions, fears, all at once. That's a good time to take a deep breath and tell yourself to be calm. Just focus on what is going on. At times like this, you'll be glad if you have a good support person at the table with you.

How to answer questions. Answer questions very directly and very simply. Answer only the question asked and do not expand. The best answer starts with a "yes" or a "no" (if the question can be answered "yes" or "no"), and then has one to three sentences of explanation. For example, "Yes, we have three children." "Yes, we put a down payment on the home. My parents loaned $20,000 just to me and that entire amount was used for the down payment."

Listen to the question. Listen carefully to the question that is asked and answer only what is asked. This is particularly true when it is the judge who asks the question. Don't ramble. You can explain your answer but answer only the specific question asked.

Do not worry about looking stupid. Do not worry about whether you look stupid, or good or bad. Just tell the truth; always tell the truth. Do not try to answer when you are not sure; just say, "I'm not sure." For example, if an attorney says to you in an indignant and shocked manner, "Didn't you read that before you signed it?" If you did not read it before signing it, just say "no." Do not let the attorney's manner bully you into an incorrect answer. Do not let your fear of looking stupid push you into making up answers.

No guesses. Do not guess. If your answer is an estimate or only an approximation, say so. It is okay to say you are making an estimate, but you should not just guess at an answer.

It is okay not to remember. If you do not remember something, say, "I don't remember." This is very important. If you are asked about doing something and you do not specifically remember what you did, say so. You can offer to testify as to your usual practices and tell the court this is what you are doing: "I don't remember what I did on February 27, but usually I go straight home from work, arriving about 6 p.m."

It is okay to talk to people about your case. If you are asked who you discussed your case with, be honest and tell the court who you talked to. On the other hand, discussions with an attorney are privileged and confidential, so while you can say you talked to an attorney, you should never reveal what was said by you or by the attorney.

State only what you personally saw or heard. In court if you are asked if you "know" something, this usually means you are being asked whether you personally saw or heard something. If your answer is

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

based solely on what someone told you, say so. In everyday life people feel they "know" things that others have told them, but in court this is not acceptable.

Be careful of questions with "all" or "none." In court, if a question has the word "all" or "none," you need to understand that this does not mean "almost all" or "hardly any." "All" means absolutely every single one with no exceptions, and "none" means not even one. Be very careful about such questions. When asked "Is that all?" you may want to say "That is all that I can think of right now." Do not say "That's all he said," or "Nothing else occurred." You might remember more later.

Do not guess about lawyer's motives. Do not try to guess why you are being asked each question. Just focus on giving truthful answers. This is the best way to respond to tricky questions—with truth.

Miscellaneous guidelines
• Do not put your hand over your mouth while you testify.
• Do not chew gum.
• Do not allow yourself to get angry while on the stand, no matter how insulting the questions may be. Some lawyers purposely make witnesses angry because then they cannot think as well and are likely to make mistakes. This is one good reason for having a support person with you at the trial—a friendly face to look at and give you confidence or to give you a look that says, "Cool it."
• Do not memorize your testimony. You should have a checklist with you so you present your testimony in an orderly fashion and don't leave anything out.
• Address all your remarks to the judge, not to your spouse or spouse's attorney.
• Never discuss the case in any way in courthouse hallways, rest rooms or elevators. That nice lady near you may be your spouse's lawyer's secretary or investigator.
• Be very careful not to allow your opponent to peek at your papers. Be aware of this when you stand in an elevator, talk to your opponent while holding a file, sit in the audience waiting for your case to be called, sit at the table in the courtroom, wherever. If you have notes or papers, unless you are reviewing them or presenting your case to the court, turn the papers over so they can't be seen. Don't leave them facing up on the counsel table or anywhere else that is not private.

How to dress for court. Make sure your clothing is neat, clean, and does not make much of a fashion statement. Dress as you would for an important business appointment or for church, unless you are being asked to pay support, in which case you will want to dress down a little.

Don't bicker at trial. Never argue with your spouse in front of the judge. Arguing will only make both of you look bad. Address all of your comments to the judge, not to your spouse, unless it is your turn to question your spouse on the stand.

Pretrial orders lost if not restated

Any orders made by the court before trial—whether as the result of an OSC, motion, or agreement (stipulation)—will expire when your Judgment is entered (with the possible exception of a domestic violence order). If you want any of those orders to continue, your lawyer must request that they be made a part of the Judgment. For example, if there was previously an order that your spouse pay for health insurance for you and the children, if you do not restate that order in the Judgment, it is lost. If a party failed to make payments under a temporary order and accrued an arrearage, the arrearage would still be due, but it is best to specify the amount of arrearages in the Judgment.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

E At trial's end

The judge might verbally announce the decision at the end of the trial, or the judge can "take the matter under submission." When the judge takes the matter under submission, this means the judge is going to think about the decision for a while and maybe do some legal research on the issues, then he/she will issue a written decision later. The judge is required to decide the case within 90 days after the end of the trial.

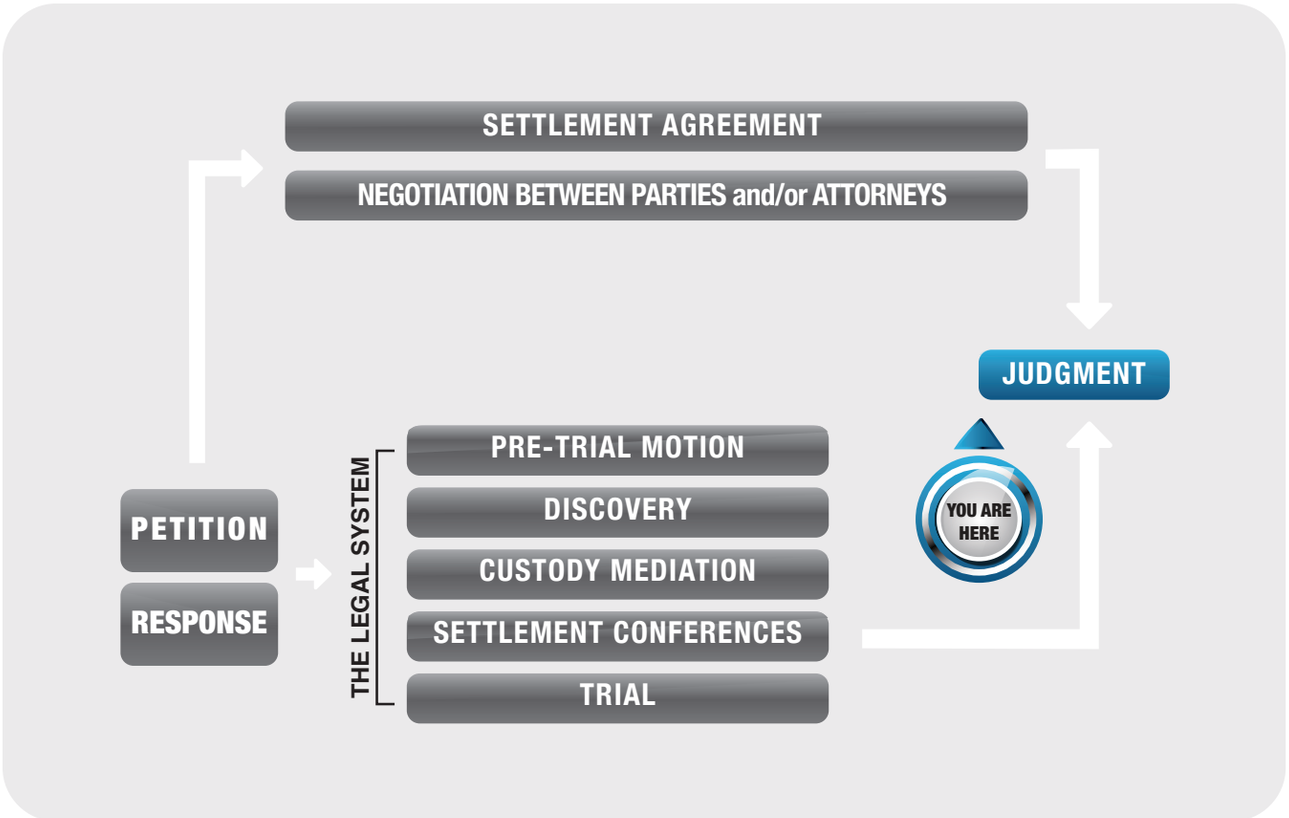
Make sure the verbal decision is complete. If the judge states the decision immediately in court, although your lawyer will do this, have pen and paper in hand and also write down in detail everything that is said. Use a checklist to be sure the judge has covered every single thing that is important to you. If something was not clearly decided, let your lawyer know immediately. Once the judge steps down or calls the next matter, you've lost your chance so, if necessary, ask your lawyer to give you a minute to look at your notes and don't be afraid to ask for clarification or a repeat of some point.

Restatement of existing orders. If your lawyer asked the judge to continue any existing orders, make sure they are included in the verbal decision. If not, you the judge must be reminded to cover them.

DV restraining orders. If you obtained domestic violence restraining orders before the Judgment, examine the DV-130 order form at item 4 to see when they expire. If you need to have them extended, you can ask to have similar orders included in your Judgment.

Take your things. Don't get flustered and forget to take your papers and things with you when you leave the courtroom.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 26

GETTING YOUR JUDGMENT

How to get your Judgment

This is the end of the long road you have traveled. Your Judgment will resolve all property, support and child-related issues and, if necessary, include protective orders to keep the peace. Unless there is a timely appeal (or someone lied on their disclosure forms), the orders are final. However, orders on custody, visitation and support can be modified later if circumstances change in a legally significant way.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

How to get your Judgment

Who prepares the Judgment? If the judge doesn't do it, and most don't, one of the parties must. In some counties, local rules resolve who does it, so ask your lawyer. My suggestion is that if possible, you want your lawyer to prepare the Judgment, and do it as soon after trial as possible. Details matter and you want to make sure the language of the judgment reflects every detail that is important to you.

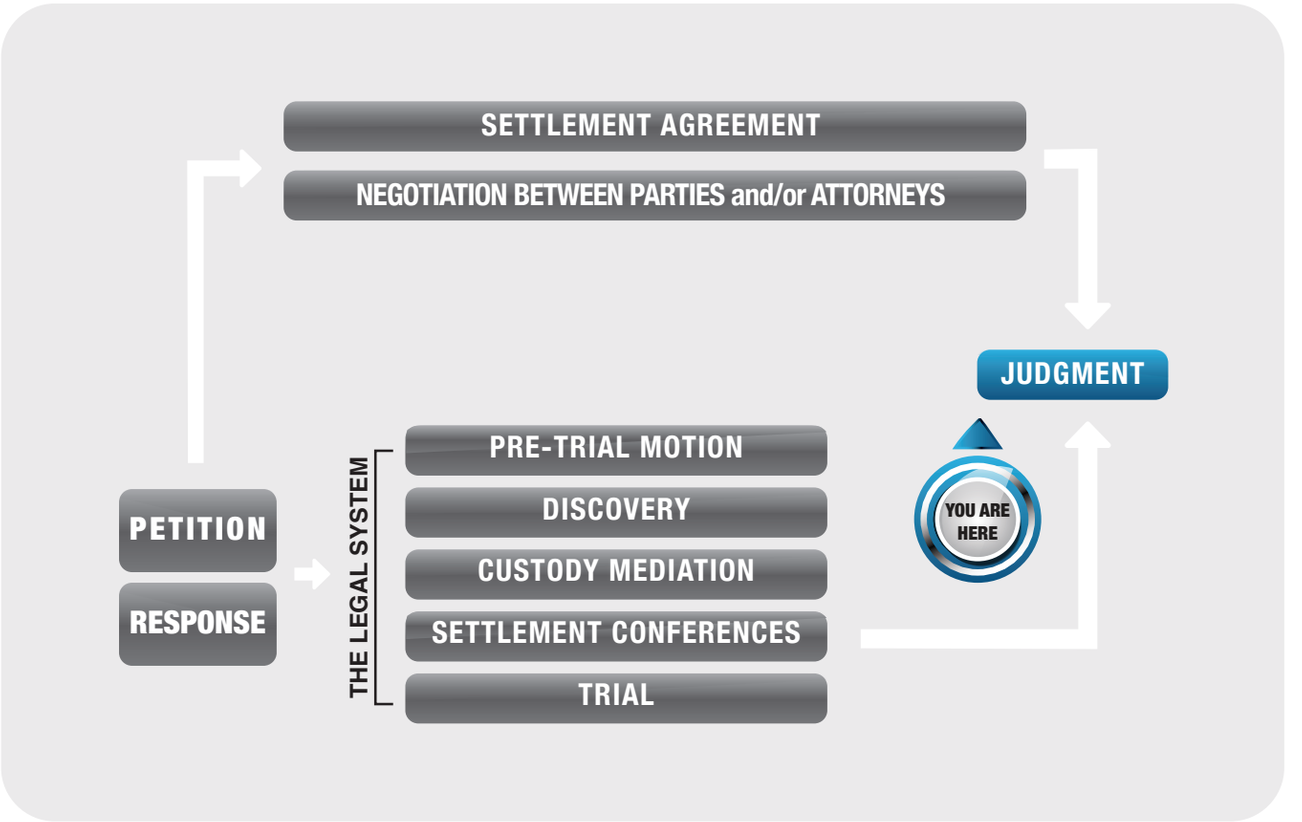
Written decisions. At the end of your trial, the judge will either announce a decision verbally from the bench or send a written decision later. If the judge does not also send a signed order, you need to make one based exactly on the judge's decision. Only orders go into a Judgment, not the judge's findings or reasoning. For example, on the issue of spousal support a judge could discuss the parties' ages, health, education, job histories, incomes and expenses, length of the marriage, etc. None of that goes in the Judgment. What goes in the Judgment is what the parties get or must do, such as, "As and for spousal support, X shall pay to Y $ per month on the first day of each month, beginning on (date) and continuing until death of either party, remarriage of the payee or further order of the court," and so on.

Verbal decisions. If the judge announces the decision verbally, should order a transcript of the decision. Your lawyer may want a "partial transcript" that includes the judge's orders, or they may want the entire trial. Your completed judgment will then be taken to the court for the judge's signature and court's stamp.

Approval by your spouse

Some counties require you to get your spouse (or spouse's attorney of record) to sign off on the Judgment, stating that it correctly reflects the judge's orders. Signing the Judgment is not an indication that the other side agrees with the decision, just as you don't necessarily agree with everything, even though you prepared the Judgment—it just means the Judgment correctly states what the judge ordered. This is one of the main reasons to have a transcript since many times, there will be a disagreement as to what the judge actually ordered.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255



CHAPTER 27

AFTER THE JUDGMENT

A. You must keep your contact information current
B. Keep track of payor's or recipient's income
C. Always make changes official
D. Modify orders if circumstances change
E. Enforce your judgment
F. Restoring your former name
G. Moving away with the kids

Now that you have your Judgment, your case might be completely finished. However, there is still important ongoing business—such as keeping your address current in court records—and the possibility of various post-judgment activities that might come up; for example, if one party or the other wants to modify part of the Judgment, or if the Judgment needs to be enforced.

Some things that come up after Judgment are easy and you can handle them with no further discussion; other things will require some assistance. Here is a discussion of many of the things that can come up and what you can do about them.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

A You must keep your contact information current

When your divorce is finished, your attorney should be filing a Notice of Withdrawal of Attorney form with the court. This will notify the court, and all parties, that their representation is complete and that any future notices should not come to them as they may be unable to communicate with you about the notice. The form will provide the latest contact information for you. Thereafter, it will be your responsibility to keep the contact information current because the contact information on file with the court is what must be used to serve notice on you. So, for example, as long as a child in your orders is a minor, or spousal support is being paid, your Judgment can be modified. If you move and do not correctly change your contact information in the court file, documents will be served by mail at your old address or notice given by phone and you might lose a motion without ever knowing about it, or you might find out too late—and there is nothing you can do because it is your responsibility to keep your contact information current. So whenever you move or change any contact information that appears on the most recent court document, use MC-040 Notice of Change of Contact Information to keep the court and your ex-spouse updated. Fill it out, make three copies, have a friend serve a copy on your Ex by mail, complete the Proof of Service on the back, then file the original with the clerk of the court.

If you move frequently or need to hide from your Ex, consider using a permanent address for court business. You could rent a post office box, but then you must check it almost daily. You could also use the address of a friend or relative, but this too must be 100% reliable. Someone there would have to contact you instantly if legal papers arrive. You can lose important rights if you fail to keep the court and your Ex informed of how to contact you.

B Keep track of payor's or recipient's income

If you have an order for child support, or an order for spousal support that has not effectively limited the court's power to modify either the amount or duration, then a change in either party's income could be the basis for modification of the support order. Either party has the right to serve on the other a demand for a completed Income and Expense Declaration together with copies of the last federal income tax return. If you check and find out that there has been a significant increase in the payor's or recipient's income, you might decide to go back to court to request a modification of the support order.

No matter how sweetly you present it, a demand for income and expense information is not going to make the recipient feel warm and fuzzy. If things are going smoothly and you are getting paid regularly, you might not want to disturb the status-quo, even if it might gain you a few dollars. On the other hand, if you are fairly sure your ex-spouse has experienced a significant increase in income and you have nothing much to lose in the way of good relations, you might as well do it.

Use form FL-396, Request for Production of an Income and Expense Declaration After Judgment. At that point, you can either contact your lawyer to the form for you, or you can fill it out as shown in Figure 27.1.

C Always make changes official

People often work out different arrangements but don't make the small effort it takes to change their court order. They might drift into new and different visitation schedules or adjust the amount of money paid for support. Everything is calm and cool with the parties, but the old court order just keeps running along unchanged. Let's say the payor's income goes down, so the recipient feels comfortable taking a little less. Meanwhile, the original order keeps running and the unpaid amount accumulates. If the order is not modified, there will be no defense to a future action to collect unpaid support. Or, if Dad is

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

ordered to have visitation every other weekend, but increases later to three days a week, the order should be modified while everyone is happy, because if a problem comes up, Mom can insist at any time on a return to the schedule that was ordered. It is fairly easy to change orders by agreement of the parties—you just have to prepare, sign and file a stipulated order.

D Modify orders if circumstances change

Orders regarding children—support, custody, visitation—can be changed if circumstances change in a legally significant way. Spousal support orders, too, are subject to change if circumstances change, unless the order effectively restricted the power of the court to modify spousal support in the future.

If you want to modify orders for support, custody or visitation or some other part of the Judgment, you'll need to file a motion following the general forms and instructions presented in chapter 12 of this book.

E Enforce your judgment

In some cases, enforcement will be the most important aspect of your divorce. You have gone through all the work of getting your Judgment, so now, if your ex-spouse does not comply with every order, you need to enforce it. In most cases, if you make an effort to enforce your order, you can probably get compliance. The main thing is to not be passive or let yourself get worn down, but be firm and insist that your spouse obey the Judgment from the moment it is entered.

Below are some typical methods for enforcing a judgment that are available to you. Many are focused on support orders—the most common enforcement problem—but any kind of court order can be enforced with some of these methods. Some are possible for you to do without further instruction, but for others, you will need help.

1. County Agencies. The government is interested in enforcing support orders. Each county has a Family Court Facilitator and a Department of Child Support Services. They are more focused on child support, but will probably help you if you have spousal support that is part of the same order with child support; go see them and ask. The services are free and they can do certain things a private attorney can't, such as revoke licenses, intercept taxes, get copies of income tax returns, seize your ex's income tax refund, and so on.

2. Abstract of Support Judgment. This is a one-page statement you can record where your ex-spouse owns real property. Then if your ex-spouse tries to sell or refinance the property, they will first have to make sure that all support payments are brought current.

3. Motion to Set Arrears and Enforce Support. If your ex-spouse pays support on an irregular basis, and you would like to obtain a writ of execution or other enforcement, you can use a motion to set arrears, and you can also ask for other relief such as an order that your ex-spouse keep you informed of the name and address of his/her employer and inform you in writing of any job changes (hiring or firing) within five days of each such change.

4. Writ of execution. A writ of execution is a court order that the Sheriff seize an asset, for example, a bank account, and turn it over to you. If your ex-spouse owes you a set amount of money which is specified in the judgment or order, or if you have obtained an order establishing the arrearage, you can obtain a writ of execution and take his/her wages or bank account.

5. OSC re Contempt. This is a very dramatic way to get someone's attention. An Order to Show Cause (OSC) re Contempt directs a party to come to court and explain why they should not be held in contempt

of court. If a person is found guilty of contempt, he/she can be sent to jail for five days for each count of contempt, although usually a lighter sentence is imposed, at least the first time. An OSC re contempt is used when a person has engaged in deliberate disobedience of a court order. For contempt, you use a special form, Order to Show Cause and Affidavit for Contempt.

6. Police and District Attorney may help. In California, it is a felony for a parent to hide the child from the other parent with the intent of preventing court-ordered contact with the parent. In fact, even in the absence of an order, it is usually illegal for one parent to hide the child from the other. If this happens to you, contact the police.

7. Orders to ensure health insurance benefits. Sometimes your ex-spouse provides health insurance coverage for the children, but when you take a child to the doctor, you must pay first, then the insurer sends a reimbursement check to your ex-spouse. By use of a qualified medical child support order you can avoid this problem.

F Restoring your former name after divorce

The law is gender neutral, so technically speaking, either the husband or wife can restore a former name at the time of a divorce, but it is quite rare for the husband to do this. If, in your case, the husband had a former name and wants it restored, simply reverse gender in the rest of this discussion.

Restoration of former name is typically done at the time of Judgment, but it is possible to do it after the Judgment, too. If the wife did not request her former name (which can be either a maiden name or a former married name) at the time of the divorce, she can request it later. There is no time limit for doing this. Requesting restoration of a former name is a very simple process in which she fills out a simple form (FL-395), gets the judge to sign it, and files it with the court clerk.

A husband cannot request restoration of the wife's former name; only she can make this request. The ex-wife who wants a former name restored does not have to give her ex-husband notice of this request, as he has no right to object. On the other hand, if he pays support, after her name is changed, he needs to know the name she uses so he can make out the check correctly.

Before going to court to change your name, be sure you really want to do this. Changing your name with the court is the easy part. Changing all your other documents such as driver's license, Social Security card, passport, etc. is the difficult part. Before you do the legal paperwork, be sure you are willing to go through the bureaucratic hassle to make all these changes. Do not change your name just because you are angry. Women sometimes ask for their maiden name to be restored because they are angry with their ex, but they do not want to jump through all the hoops to change their documents. In fact, they sometimes keep right on using their married name. If you are not really going to resume using your former name and you are not going to change your documents, do not have your name changed.

G Moving away with the kids

We left the most difficult issue for last. Sometimes, one party wants to move away with the children to a different city or state or country. This can be a huge stress on the existing parenting relationship and is a common cause of post-Judgment litigation. It is a very knotty problem that takes a lot of discussion. If this comes up for you, you should get some advice from your attorney. You want to learn how the law applies to your situation, and you are looking for alternatives, options, and practical solutions—ways to negotiate and settle this difficult issue. It is far, far better for everyone if you work hard to settle this issue without having to fight it out in court.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

Figure 27.1
REQUEST FOR PRODUCTION OF INCOME AND EXPENSE DECLARATION AFTER JUDGMENT Form FL-396

FL-396

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address):* TELEPHONE NO.:	
ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
REQUEST FOR PRODUCTION OF AN INCOME AND EXPENSE DECLARATION AFTER JUDGMENT	CASE NUMBER:

(NOTE: This request must be served on the petitioner or respondent and not on an attorney who was or is representing that party.)

To *(name):*

1. a. As permitted by Family Code section 3664(a), declarant requires that you complete and return the attached *Income and Expense Declaration* (form FL-150) within 30 days after the date this request is served on you. Family Code section 3665(a) requires you to attach copies of your most recent state and federal income tax returns (whether individual or joint) to the completed *Income and Expense Declaration* (form FL-150).

   b. The completed *Income and Expense Declaration* (form FL-150) should be mailed to the following person at the following address *(specify):*

2. You may consult an attorney about completion of the *Income and Expense Declaration* (form FL-150) or you may proceed without an attorney. The information provided will be used to determine whether to ask for a modification of child, spousal, or family support at this time.

3. If you wish to do so, you may serve a request for a completed *Income and Expense Declaration* (form FL-150) on me. Each of us may use this procedure once a year after judgment even though no legal matter is pending.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

WARNING: If a court later finds that the information provided in response to this request is incomplete or inaccurate or missing the prior year's tax returns, or that you did not submit the information in good faith, the court may order you to pay all costs necessary for me to get complete and accurate information. In addition you could be found to be in contempt and receive other penalties.

Published by:
Nader, Naraghi & Woodcock, A Prof Law Corp
(818) 461-0255

This book has been written as a guide to anyone going through one of life's most difficult challenges – divorce. It is designed and written to do several things:

- Provide a roadmap of a contested divorce in California
- Help you select an attorney to help with your divorce
- Actively, knowingly and intelligently participate in your divorce in partnership with your attorney
- Stay in control of your divorce
- Get the best outcome of your divorce possible
- Move forward with your post-divorce life never looking back wondering if every possible option was taken by you and your lawyer

Although this book is written with a lot of detail, it is NOT written as a do-it-yourself guide – it is NOT as a substitute for an experienced family law attorney. However, the information in this book should be used as a reference and should provide you with what you need in order to make intelligent choices as you go through an overwhelming process. As a result, you will have a much better chance for getting through this phase of your life in one piece.

HAMID NARAGHI, Esq.
*WILLIAM E. WOODCOCK, Esq.
*Certified Specialist, Family Law State Bar of California Board of Legal Specialization

Two expert California attorneys show you how to solve divorce problems, find the best path, and take the smartest steps in managing your divorce. Here are things you can do to protect yourself, your child and your assets, even when you have an attorney. Here are the things you need to know to find a good attorney, on how to manage your attorney, and how to know if your attorney is doing a good job. Through their state wide litigation firm as well as their state wide mediation and divorce coaching firm, Hamid Naraghi and Bill Woodcock have helped over a thousand people get better divorces over the past 20 + years. Hamid and Bill bring you decades of experience as litigators, mediators, divorce coaches, private judges and arbitrators.

NADER NARAGHI & WOODCOCK
A PROFESSIONAL LAW CORP

ISBN 978-0-578-54484-7
90000>
9 780578 544847