

## **MARITAL DISSOLUTION IN CALIFORNIA**

### **I. PURPOSE OF THIS GUIDE**

1. To provide general information regarding marital dissolution (divorce), separation or annulment. It provides an overview of the legal process, which will help you do your own uncontested dissolution or separation. This guide is for use ONLY in conjunction with the advice of an attorney.
2. To provide a checklist of papers to complete and bring with you to your appointment with an attorney.
3. To provide a model marital settlement agreement for your use when drafting your own. This document can be downloaded from our legal assistance website at <http://www.monterey.army.mil>. Click on "Offices", then "Legal Services/Staff Judge Advocate (SJA)", then "Family Law" (on the left side of the screen), then "Dissolution: Sample Marital Settlement Agreement".
4. To provide you with filing options. The specific forms you need may be found at <http://www.monterey.courts.ca.gov/SelfHelp/Default.aspx>. Please note that there are two resources here, the California Courts Online Self-Help Center and the EZLegalFile service. The California Courts Online Self-Help Center has .pdf forms that you can fill out on your computer and also has example forms for your use. The I-Can! forms assistance program is an interactive program that asks you questions and takes your answers and puts them in the proper court forms. It will also notify you via email when the next document is due in your case. Please use either of these services to prepare a copy of your dissolution paperwork for the legal assistance attorney to review prior to filing.

### **II. SHOULD I SEEK COUNSELING?**

In a word, "yes". Before the divorce process begins, the parties may want to consider asking a third party to help them mediate their differences. Even if you decide to get divorced, counseling may help you understand each other and help you get along better during and after the divorce. A good relationship during and after the divorce can help you save time, money and trouble and could be essential to the well being of your children. Mediation services are also helpful to some couples that are trying to stay married or want a smoother divorce. These services are listed in the yellow pages. Judges in some cases may also order mediation. Chaplains, other religious counselors, private marriage counselors or even friends and family may be able to help you. The Presidio of Monterey Family Advocacy Program (242-7653) and Naval Postgraduate School Family Support Center (831) 656-3060 provide marriage counseling to active duty members. The Mental Health Clinic at the Presidio of Monterey (831) 242-5741/5234 provides help to active duty spouses. Be sure that you discuss confidentiality rules with whomever you choose to speak to.

### **III. UNDERSTANDING - SEPARATION, DISSOLUTION, and NULLITY**

These procedures are all done through the California courts; the military has no authority to and does not grant any type of change in marital status.

**SEPARATION:** In California a married couple is considered to be a "community". Once the parties no longer hold themselves out to the world as a "community", they are considered to be "separated". There is no requirement in California that a couple be separated before filing for dissolution of the marriage. Other states do have this requirement, however, so you should consult an attorney in regard to the rules for your state.

A married couple may be "separated" in any one of these four ways:

- 1) court order ("legal separation")
- 2) written contract
- 3) mutual oral agreement
- 4) one party leaving the other with the intent never to return.

When problems arise it is nearly impossible to enforce an oral agreement. A signed written agreement is more enforceable, while a court order is the best tool for enforcing rights arising from separation.

The date of separation is very important; it affects the division of your property. The date of separation is the date of a court order, or if no court order exists, the date the couple stops living together with the intent not to remain together. It is not necessary for both parties to intend not to remain together; the intent of one party is sufficient. You can agree to that date, and it may occur while you both occupy the same residence.

The effect of a separation or court-ordered separation is the termination of the marital community, but the parties remain married in a legal sense. This may be important for tax and military entitlement purposes.

**NOTE:** A separation does not abrogate the military member's duty to support their dependent(s) under their service regulations. Failure to do so may result in punitive action in accordance with the Uniform Code of Military Justice (UCMJ). Also, a separation (sometimes referred to as a "legal separation") is **not** considered to be a divorce by any legal authority; meaning that the military member can still be prosecuted for adultery even while separated *since the marriage is not yet terminated*.

There is no waiting period or legal residency requirement for the legal separation action. You could file immediately. However, a permanent separation without divorce is a procedure that was more common in the days when divorce carried a social stigma, but it is still used today when one spouse wishes to "let the other down easy," where the parties have religious scruples against divorce, or where it is important that the civilian spouse maintain military medical benefits. However, if either party meets the six-month residency requirement to file for dissolution then he/she may petition the court to change the separation into a divorce.

**SUMMARY and REGULAR DISSOLUTION (Divorces):** There are two methods to dissolve your marriage in California, a (1) regular procedure and a (2) summary procedure.

Summary Dissolution is a simple procedure and can be used by those with short-term marriages, IF **ALL** the following conditions are satisfied when the petition is filed:

**YES   NO**

- |     |     |   |
|-----|-----|---|
| ___ | ___ | 1. You have been married less than 5 years by the date you file your petition;  |
| ___ | ___ | 2. No children of the marriage (natural or adopted), and the wife is not pregnant;  |
| ___ | ___ | 3. Neither spouse owns an interest in any real estate anywhere in the world;  |
| ___ | ___ | 4. One spouse has lived in California at least six months, and in the county in which you file at least three months immediately before the date you file the Petition; |
| ___ | ___ | 5. There is LESS than \$6,000 in individual or joint debts, not counting car loans;   |
| ___ | ___ | 6. There is less than \$38,000 in community property, not counting cars;  |
| ___ | ___ | 7. Neither spouse owns over \$38,000 separately, not counting cars;   |
| ___ | ___ | 8. Neither spouse is to pay spousal support (alimony); and  |
| ___ | ___ | 9. Both spouses sign an agreement dividing all their property and debts.  |

If any of the answers above are **NO**, this guide will assist you in using the regular dissolution procedure. Any sections concerning children would not apply to those filing for Summary Dissolution. Section IV also does not apply to couples filing for Summary Dissolution. Those filing for Summary Dissolution need to be particularly careful to disclose all community and separate property (i.e., assets and debts) in the Marital Settlement Agreement. Consult an attorney before you attempt to use the summary procedure.

**UNCONTESTED vs. CONTESTED:** The Legal Assistance Office assists clients with preparation of court forms for uncontested cases only. If your case is contested, you will not be able to use the services of the Legal Assistance Office to complete the dissolution, although you may visit this office to determine if you can make your case uncontested. If it is contested, you should consult a private attorney. A contested case is one in which the parties cannot reach an agreement on any one or more of the following issues:

1. Division of property;
2. Division of debts;
3. Child custody and visitation;
4. Child support;
5. Spousal support; and
6. Division of pension benefits.

It is usually worthwhile to put some energy into reaching an agreement on the legal issues of your dissolution, separation, or nullity. Agreement is more easily achievable if each spouse sees and appreciates the other's point of view. Here is what you and your family have to gain with an uncontested case:

1. It is much easier and much cheaper. A contested case in the Monterey area may cost your family several thousand dollars in attorney's fees. An uncontested case allows you and your spouse to split your property between yourselves, rather than paying a lot of attorney's fees.
2. It is more certain. The judge will almost certainly follow the terms of any agreement that is not obviously unfair.
3. It leads to better relations with your ex-spouse and your children.

Regardless of whether your divorce is contested or not, **do not** make related decisions based on emotional or self-destructive grounds; vengeance and/or get-even motivations; fear of displeasing your spouse or a desire to "stay friends".

**NO-FAULT:** California is a "no-fault" dissolution state. That means if either spouse asks the court to dissolve the marriage based on irreconcilable differences, the court will grant the dissolution. Fighting over the terms will not stop the other party from obtaining a divorce, if he or she chooses to be divorced. Fighting can make it more unpleasant and much more expensive. This does not mean you should give up your rights simply because there may be a fight over terms. This means if you are fighting over the terms only to prevent a divorce, you will be wasting your energy, because California grants a divorce at the request of **either** party--both parties do not have to want a divorce. If fault has been an issue in your marriage you may want to discuss with the Legal Assistance Attorney whether or not you should file in another state that might consider the issue of fault.

**DEFAULT DIVORCE:** If your spouse cannot be found or declines to participate (e.g., doesn't care) after formal notification of the dissolution, you still may end the marriage through a default divorce. This office offers only limited assistance on default cases, but suggests default be used only if you have little property or debts, no children, and no need for spousal support.

**NULLITY:** A nullity (or annulment) is a court order that the marriage never existed. It is only granted on one of several specific grounds, including bigamy and fraud, which must exist at the time of marriage. Brevity of the marriage does not qualify. Unlike dissolution, there is no residency requirement. Nullity must be filed via a private attorney. Consult the Legal Assistance Attorney if you feel you have grounds for a nullity.

**RESIDENCY:** For dissolution either you or your spouse must have lived in California for at least six months and also in the county in which the action is filed for at least three months immediately before filing the petition. One spouse may live either out-of-state or outside the United States and still participate. After the petition is filed, there is no further requirement for residency, so you can move anywhere you wish.

**CALIFORNIA WAITING PERIOD:** California law imposes a six-month waiting period before your dissolution action can be finalized. This six-month period starts the day the respondent files the Appearance, Stipulation and Waiver (ASW) form or the date the respondent is served. You remain married until the date the Judge enters on your Judgment and Notice of Entry of Judgment forms.

**FILING FEES:** The fee to file the Petition and the Appearance, Stipulation and Waiver (ASW) form for dissolution, legal separation or nullity varies among counties. In Monterey the fee is approx. \$395 for both the Petition and the ASW. **The fee for the ASW form is waived if the**

**respondent is on active duty (California Government Code §26857.5).** These are the only fees in an uncontested case and both can be waived if the court orders them waived; you must file an Application for Waiver of Court Fees and Costs, Form FW001 to request a waiver. This form is available online at <http://www.courtinfo.ca.gov/forms/fillable/fw001.pdf>. There are income restrictions for granting a waiver of the filing fees. Before filing for a waiver, check the application packet at the courthouse to see if you qualify. The one and only fee for a Summary Dissolution is approx. \$395 (these fees are current as of 2011; please check the fee schedule for the county in which you file for any updated costs).

#### **IV. SETTLING THE ISSUES**

**MARITAL SETTLEMENT AGREEMENT:** The marital settlement agreement is an important part of the uncontested dissolution, legal separation or nullity. It is an agreement between you and your spouse, which records your understandings on the issues of property, debts, child custody, child support, spousal support, pensions and others. The Legal Assistance Office will assist you in completing an agreement that is to be filed with the judgment in your case.

People using either Summary Dissolution or the regular dissolution will prepare a Marital Separation Agreement. It is not necessary to have a completed, signed marital settlement agreement to file your petition. However, before the Legal Assistance Office will assist you in preparing forms to file with the court, you must have the terms of your agreement worked out with your spouse in writing. Other informative materials on Marital Settlement Agreements are on the Staff Judge Advocate Web Page located at [http://www.monterey.army.mil/Legal/family\\_law.html](http://www.monterey.army.mil/Legal/family_law.html).

A sample Marital Settlement Agreement is included in this packet, created by this office. Remember, you will be working with two packets of papers: this guide from the Legal Assistance Office, and another from the court. The sample settlement agreement is part of this guide. The court papers are in the court's packet. Your Marital Settlement Agreement must be tailored to you and your family's needs and you should discuss your specific agreement with a Legal Assistance Attorney before you and your spouse sign the agreement. The Marital Settlement Agreement may be downloaded from our website to your computer.

Another option: The I-Can! forms assistance program referenced in section I, paragraph 4, above, will generate a Marital Settlement Agreement for you.

**DIVISION OF PROPERTY:** Since California is a "community property" state, the court would divide your property by awarding each party their own separate property and one half of the community property. You, however, are saving a lot of money and trauma by reaching your own agreement concerning division of property. The court will adhere to whatever agreement you reach as long as it is clear that you each knowingly and voluntarily entered into it. "Community" property is defined as assets acquired during the course of the marriage prior to separation, except those assets that are separate property. Separate property is defined as property each spouse owned prior to marriage or property that each spouse acquired after the separation. Gifts (including inheritances) made to one member of the community during the course of the marriage, remain separate property unless the spouse or third party specifically made a gift of the asset to the community.

**DIVISION OF DEBTS:** A debt arising before the marriage is a separate debt and will remain with the party who incurred it. Debts incurred by either spouse during the marriage and prior to separation are usually community liabilities and are divided as property is divided. Remember, however, that your Marital Settlement Agreement is between you and your spouse; your creditors are not bound by your agreement. Therefore, if your spouse fails to pay a community debt as agreed, the creditor can still take collection action against you.

**OPTIONS:** Request creditor to remove one party from the loan; or one party refinances the loan, with or without co-signer or in any case use hold harmless clause in paragraph 3 of Marital Settlement Agreement. You should consult a Legal Assistance Attorney if you have any questions about your debts.

### **CHILD CUSTODY AND VISITATION:**

1. Physical Custody is a term that refers to the individual with whom the child actually lives. The court is concerned with the "best interests of the child" and will go along with any living arrangement agreed to by you and your spouse, provided, that you two are looking out for the best interests of your child. It is usually in the child's best interest to maintain a healthy relationship with each parent and to spend as much time as possible with each parent. Physical custody may be either joint physical custody or sole physical custody.

2. Legal custody refers to who makes decisions about issues of health, education, and welfare and includes such things as schooling, religious training, summer camp, birth control information, medical care, and getting a driver's license. Joint legal custody is most common, but a court can award sole legal custody to one parent.

3. Joint custody merely means "shared" custody between the two parents.

4. Visitation rights are granted to the parent who does not have physical custody of the child. Visitation agreements should help ensure frequent and continuing contact with both parents. Parents can agree to any schedule. A provision for payment of travel expenses should be included. A parent cannot deny visitation because of nonpayment of child support.

Custody and visitation can be modified, although it may be difficult and expensive. Modification by the court is allowed, if there is a change of circumstances that would make a modification in the best interests of the child.

**CHILD SUPPORT:** California child support law assumes that each parent will provide their child with an established percentage of their income. The non-custodial parent pays a share of the support to the custodial parent. The actual amount of support paid by the non-custodial parent depends on the net income of both parents, the number of children involved, projected amount of time of visitation, and day care costs.

Net income is generally gross income (from all sources including Basic Allowance for Housing (BAH) and other entitlements) less actual taxes, social security and medical insurance premiums. To determine the exact amount, it is recommended that you use one of the commercially available computer programs; otherwise, you can approximate the amount by working through the formula in "How to Do Your Own Divorce in California", Nolo Press,

available at libraries, bookstores and in our office as a one-page handout. The Monterey County Family Law Facilitator (831) 647-5800 can compute the California guideline amounts using the commercial software.

**BAH:** BAH (Basic Allowance for Housing) is not the amount of child or spousal support that should be written into the agreement; for purposes of California law it is merely another source of income to determine net income. **Note:** After a service member is divorced (has a final decree of dissolution) that service member, as the noncustodial parent, no longer rates BAH at the "with dependents rate."

If the service member is living in the barracks or any single quarters on base and paying child support, he/she will only receive the difference between the "with dependents" rate and the "without dependents" rate (about \$100 to \$250). However, service members are generally not entitled to this "BAH differential" if the amount of child support they pay is less than the amount they would receive in BAH differential for their rank. An exception would be where the service member chooses to pay more than the court-ordered support and at least the BAH differential as evidenced by a finance allotment. If living off-post and paying court-ordered child support, the divorced service member may draw BAH at the single rate plus the BAH differential.

If the service member has physical custody of the child(ren) for 6 months or more, the service member will receive full with-dependent BAH.

**FAMILY SUPPORT:** Regulations of each service require a service member to support his or her family. In the absence of a court order or agreement between spouses, those regulations specify how much the service member should pay. Military service will not be used to evade family support obligations. Service regulations are as follows: Army, AR 608-99; Air Force, SECAF INST. 36-2906; Navy, MILPERSMAN art. 1754-030 and 5800-10 (paternity); Marines, LEGALADMINMAN, ch. 15; COMDTINST M1000.6A, ch. 8M.

**CHILD CARE COSTS:** California can order as additional child support the child care expenses that are incurred so that one of the parents can work or obtain reasonably necessary education or training for employment skills. The expenses must be shared equally unless agreed otherwise. You should address this item in your agreement in paragraph 8.

**UNINSURED HEALTH CARE COSTS FOR CHILDREN:** The court can order as child support a parent to reimburse the other parent a share of the uninsured health care costs within a specified time. The parent incurring the costs must provide the other parent with an itemized statement of costs, proof of any payment made, and a request for payment of the other parent's share within a reasonable time. The other parent must make the reimbursement or payment within a reasonable time. Address these issues in your agreement in paragraph 8.

#### **CONTINUING HEALTH CARE FOR NONMILITARY SPOUSE**

A civilian spouse generally loses military medical care upon divorce. See **MILITARY BENEFITS** below. However, the Continued Health Care Benefit Program (CHCBP) can give protection in the interim between military health benefits and civilian health care. Following the loss of entitlement to military medical benefits, one may apply for temporary, transitional medical coverage under the CHCBP. Continued Health Care Benefit Program is a premium-

based health care program providing medical coverage for former military beneficiaries.

Website: <http://www.humana-military.com/chcbp/main.htm>

**SPOUSAL SUPPORT:** Spousal support depends on the needs of each spouse. Things to consider are: (1) length of marriage, (2) earning potential of each party, and (3) time which must be spent caring for the children. Marriages near 10 years may be eligible for spousal support for life. Men rate spousal support, as do women. Some states, other than California, may not award spousal support.

**PENSIONS:** Military retirement pay, like other pension plans and annuities, is subject to division as community property. All states divide the pension. The non-military spouse's interest in the retirement benefit is determined by taking one-half of the quotient of the years of marriage divided by the total years of service creditable for establishing the right to receive a pension.

**\*\*Please note that this is not a set rule for division, merely a guideline.**

**Example:** SPC Jane Soldier has been in the Army for 5 years and has been married to John Civilian for all 5 years. If SPC Soldier stays in the Army she will have the right to retire and receive a pension when she has completed 20 years, so John Civilian's interest in SPC Soldier's retirement is  $1/2 \times 5/20$  which is  $1/8$ . To divide the pension, carefully review the pension provisions of the attached separation agreement and see your Legal Assistance Attorney about the proper language to insert in your agreement. For more information online consult the DFAS website at <http://www.dfas.mil/dfas/retiredmilitary.html>. This same formula would apply in regard to any pension that the non-service member spouse is entitled to in order to determine the percentage that the service member would receive under the agreement. Either party may waive their interest in the other's retirement benefits in the agreement.

**SURVIVOR BENEFIT PLAN:** The parties may also agree to award the Survivor Benefit Plan to a soon-to-be former spouse or the court could make such an order. Retirement checks end after a military retiree dies. To enable retirees to provide for their families after their deaths, the government offers a low-cost annuity program. Even before retirement but after 20 years of service, spouses and children automatically receive full SBP benefits. At retirement, service members opt to continue participation in SBP, reduce to a lower amount of coverage, or withdraw. Both spouses must agree in writing to choose less than the full rate. The monthly costs of SBP are deducted from the retirement paycheck. For more information on SBP consult DFAS's Web Page at <http://www.dfas.mil/dfas/retiredmilitary.html>.

**MILITARY BENEFITS:** Generally a non-service member spouse loses his or her military benefits when the divorce is final. There are special provisions, however, for non-military spouses when there has been a lengthy marriage and a lengthy service career.

Check the DFAS website at <http://www.dfas.mil/dfas/garnishment.html> concerning the Uniform Former Spouses Protection Act and the possibility of continued benefits for 20/20/20 and 20/20/15 former spouses and the Legal Assistance Office client handout on retired pay division and former spouse benefits. Children of a service member remain military dependents even if they do not live with the service member, and so they retain service-connected benefits.

**SGLI AND COMMERCIAL LIFE INSURANCE BENEFICIARIES:** People on active duty have the option to obtain from \$50,000 to \$400,000 in life insurance. Service members are

reminded that they may want to change the name of the beneficiary for their SGLI and commercial life insurance proceeds. Spouses may agree on the selection of beneficiaries and amount of coverage. Such agreement can make the beneficiary designation irrevocable, if the spouses say so in their Marital Settlement Agreement.

When members designate their government insurance to be paid "by law", an ex-spouse is automatically excluded as beneficiary. The ex-spouse may be designated by name as a beneficiary (for example, to guarantee her an income after the termination of alimony upon his death) but there are hidden hazards in this practice. There is a natural tendency for a member to forget about court-required insurance and revert back to the "by law" designation. Unlike commercial insurance, SGLI will be paid to the "by law" beneficiary even if a court order says otherwise.

If a party is required to maintain SGLI coverage for the children, it's a good idea to require that he also execute a special power of attorney authorizing the other party to examine his military records to ensure that the beneficiary election does not, through choice or mistake, revert to a "by law" election.

**TAXES:** You may want to address in your agreement which parent will receive the tax exemption for children. If it is not addressed in the agreement, without a court order otherwise, the tax exemption for children will belong to the parent with whom the children live more than 50% in a calendar year. The party wishing to claim the child(ren) as a dependent(s) should file IRS Form 8332 available at <http://www.irs.gov/pub/irs-pdf/f8332.pdf> and at your nearest legal office. The party releasing his claim to the exemption(s) must sign releasing his claim on Form 8332.

Spousal support/alimony is a tax deduction for the person paying and income for the person receiving it, if it is paid pursuant to a written agreement or court order. If there is no written agreement or court order, it is neither a deduction nor income. You cannot file a joint tax return if your divorce is final on or before December 31 of any tax year. Property settlements and child support are not treated as income or deductions for either spouse. The IRS will not allow anyone to disguise child support or property settlements as spousal support to shift the tax burden.

See IRS Publication No. 502, "Tax Information for Divorced or Separated Individuals" available at <http://www.irs.gov/pub/irs-pdf/p504.pdf>

**HOUSING AND PAID MILITARY MOVES:** The local privatized housing operates differently than military housing. If the service member moves out of the family residence, family members can stay as long as the service member pays the rent. If the family member(s) move out, the service member can stay. Contact Pinnacle Realty Management at (831) 644-0400 for current housing policies. The U.S. government will not pay the expenses for moving household goods and/or family members unless the service member is on reassignment or end-of-service orders out of the area. Check with the Transportation Office about a "split shipment", any associated additional cost, and temporary storage of household goods. Put in your Marital Settlement Agreement who will pay for specific costs that the Government does not pay.

**WHAT IF MY SPOUSE BECOMES ABUSIVE?** Prior to or during the dissolution proceedings, either spouse may petition the court for a restraining order. The purpose of a restraining order is to prevent irreparable injury to the spouse. The court may issue an order

preventing the abusive spouse from molesting or disturbing the peace of the other spouse. The order may prohibit the abusive spouse from entering the family home or the home of the other spouse or from staying in the family home.

If the judge issues a temporary order, get five free certified copies from the courtroom clerk. Ensure that copies are delivered to the Monterey County Sheriff's Department (831) 647-7702 which will enter it into the nation-wide criminal intelligence computer information database. Also ensure that the Federal Police (831) 242-7851/5634 receive a copy, and if the abuser is military, provide one to the service member's commander. If the order is violated, the police can arrest and take the abusive spouse into custody without a warrant.

A commander may issue a separate military order related to the judge's restraining which, if violated, subjects a service member to punishment under the UCMJ. A no-contact order may be issued without regard to whether a judicial restraining order is in place. That being said, however, having both a judicial restraining order and a military no-contact order provides additional coverage for the victim spouse, as a judicial restraining order vitiates the requirement for an arrest warrant in the event that the order is violated.

Restraining orders affecting residential placement of children, freezing funds in accounts, and preventing the transfer of property can also be obtained. The YMCA conducts a temporary restraining order clinic by appointment. Call (831) 649-0834 for details. The Staff Judge Advocate (831) 242-5081 will assist victims of abuse in referrals to the proper agencies.

**WILLS AND OTHER DOCUMENTS:** Divorce alters the legal effect of wills made during the marriage. Both wills should be rewritten. This is a good time to review all your documents, including life insurance beneficiaries, "pay on death" beneficiaries on certificates of deposit, emergency data cards at work, and powers of attorney.

## **V. PROCEDURAL CHECKLIST FOR REGULAR DISSOLUTION PROCEDURE**

### ***"What do I do next???"***

1. It is important to read this guide thoroughly. If you have any questions are unsure of any of the discrepancies, please ask your attorney! You may also want to read "How to Do Your Own Divorce" by Nolo Press. More information is available at:

<http://www.courtinfo.ca.gov/selfhelp/family/divorce/guide.htm> and I-Can! forms assistance program at <http://www.icandocs.org/ca/>.

2. MOST IMPORTANT! You and your spouse should start working on your "**Marital Settlement Agreement**" as soon as possible. An example is included at the end of this packet for your benefit. Remember, be honest and work together as a team! The faster you complete the Settlement Agreement the faster you can move on.

3. These are a list of the forms you will need if your case is uncontested (i.e. both of you agree to the terms and will sign off on the paperwork).

_____	FL 100	Petition-Marriage (Family Law)
_____	FL 105	Declaration under Uniform Child Custody

		Jurisdiction and Enforcement ( <i>only if you have children</i> )
<input type="checkbox"/>	FL 110	Summons
<input type="checkbox"/>	FL 120	Response-Marriage
<input type="checkbox"/>	FL 130	Appearance, Stipulations, and Waivers (Family Law – Uniform Parentage – Custody and Support)
<input type="checkbox"/>	FL 140	Declaration of Disclosure (Family Law)
<input type="checkbox"/>	FL 141	Declaration Regarding Service of Final Declaration of Disclosure
<input type="checkbox"/>	FL 142	Schedule of Assets and Debts (Family Law)
<input type="checkbox"/>	FL 150	Income and Expense Declaration
<input type="checkbox"/>	FL 170	Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)
<input type="checkbox"/>	FL 180	Judgment (Family Law)
<input type="checkbox"/>	FL 190	Notice of Entry of Judgment (Family Law – Uniform parentage – Custody and Support)

#### Optional Fee Waivers if Qualified

<input type="checkbox"/>	FW001	Request to Waive Court Fees
<input type="checkbox"/>	FW003	Order on Court Fee Waiver

Don't worry! All these forms are conveniently located for free online at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi> (Use the scroll menu and select "Family Law – Dissolution, Legal Separation and Annulment FL 100-199" and "Fee Waiver" for the optional forms) and at your local Clerk of Court's office. It is recommended that you visit the website and print out a few copies of each of these forms before your meeting with an attorney. In the alternative, please go to <http://www.monterey.courts.ca.gov/> and select the I-Can! Forms assistance program and use the interactive program to fill out the dissolution forms and Marital Settlement Agreement for you. This should also be done prior to your meeting with an attorney. Next we will tell you in which order you are to fill out these forms. Remember, keep working on your Marital Settlement Agreement!

4. Here is a check list of what you should have before your first meeting with an attorney: Please do not sign any of these documents.

- ☐ Completed (and unsigned) Marital Settlement Agreement
- ☐ Completed FL 140 – Declaration of Disclosure
- ☐ Completed FL 141 – Declaration Regarding Service of Final Declaration of Disclosure
- ☐ Completed FL 142 – Schedule of Assets & Debts
- ☐ Completed FL 150– Income and Expense Declaration
- ☐ Blank copies of all the forms mentioned above

You are now ready to visit the attorney.

5. Follow your attorney's instructions and make any corrections to either the forms or the Marital Settlement Agreement. You must now have completed the following forms **individually** (one for you, one for your wife – Remember, please do not sign the forms):

- \_\_\_\_\_ Finalized FL 140 – Declaration of Disclosure
- \_\_\_\_\_ Finalized FL 150– Income and Expense Declaration

These documents should also be completed after your initial meeting with your attorney:

- \_\_\_\_\_ Finalized FL 100 – Petition
- \_\_\_\_\_ Finalized FL 105 – Declaration under Uniform Child Custody Jurisdiction Act (*if you have children of the marriage*)
- \_\_\_\_\_ Spouse's Finalized FL 130 – Appearance Stipulation and Waiver
- \_\_\_\_\_ Finalized FL 141 – Declaration Regarding Service of Final Declaration of Disclosure
- \_\_\_\_\_ Finalized FL 142 – Schedule of Assets & Debts

6. Time to file your paperwork. After completing the FL 100 and FL 105 (if applicable) forms, take these documents and file them at the local Clerk's Office at the Superior Court.

7. It is important to notify your spouse of the pending separation. You must mail your spouse a copy of the following forms you have completed:

- \_\_\_\_\_ FL 130 – Appearance Stipulation and Waiver  
(Your spouse will have to return this to you, make sure your spouse has signed the document)
- \_\_\_\_\_ Blank copies of forms FL 140, 142, and 150 for your spouse to fill out and return to you. It is important to tell your spouse not to sign these documents.

8. Once you have received FL 130 – Appearance Stipulation and Waiver back from your spouse (which should be signed), consult your attorney to make sure it is done correctly. With the attorney's approval, you will be instructed to file FL 130 with the court.

9. Once the FL 130 ASW form is filed with the court, you and your spouse will exchange the following completed forms: FL 140, 142, and 150. Keep track of the date you mailed or delivered these documents so you may properly fill out your FL 141 Form – Declaration Regarding Service of Final Declaration of Disclosure.

IMPORTANT: These documents must be dated after the ASW signature date.

10. You and your spouse should now have seen FL 141. You may now finally sign the Marital Separation Agreement.

11. File both completed FL 141 with the court. Remember to make copies of all documents you send each other for future records.

12. Schedule your final appointment with an attorney to prepare the last set of court forms. Bring all documents you have completed/filed with the court and the following:

☐ FL 170 – Declaration for Default or Uncontested Dissolution

☐ FL 180 – Judgment

☐ FL 190 – Notice of Entry of Judgment

13. Follow your attorney's instructions and finalize the above mentioned forms. File the completed forms along with two self addressed stamped envelopes (one to you, one to your spouse) to the Clerk's Office.

14. You may make a new will while the divorce is pending, disinheriting your spouse to the extent permitted by law.

15. Wait. This process will take a minimum of 6 months, and possibly up to 1 year. Please note that you are still married until the divorce decree is signed by the Judge and, if you are a service member, you are still required by regulation to support your dependent(s).

16. When you receive your copy of the divorce decree, make sure the Judge has signed your judgment. You are still married until the Judge signs the judgment! Make note of the day the judgment is made (this is your official divorce date).

17. Get a "Certified Copy" of your judgment from the court for your permanent records. Service members must provide a copy of the divorce decree to their Pay Office to update their pay status. \*\*Please note that continuing to receive BAH at the with-dependent rate without entitlement is considered to be a fraud against the U.S. Government and is a prosecutable offense under the Uniform Code of Military Justice (UCMJ).

18. Start a new, happier life! Get a new will indicating your new status as an unmarried person.