

# Orders and Judgments: The Lawyer's Role

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ACFLS 23<sup>rd</sup> Annual Spring Seminar  
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Rancho Mirage



## How to Avoid Embarrassment When Making Pendente Lite Requests

Hon. John Chemeleski  
Hon. Alice Vilardi

Statements of Decision:  
The Appellate Point of View

Justice Dennis Cornell

Judgments and Marital Settlement  
Agreements – It All Comes Down to This

Hon. Erick Larsh  
Barbara K. Hammers, CFLS  
Sherry Peterson, CFLS

## Orders Across Borders

Leslie Ellen Shear, CALS, CFLS, IAML  
California Deputy A.G.  
Elaine F. Tumonis

Thoughtful Challenges to Adverse  
Rulings, Orders and Judgments  
in the Trial Court

Stephen Temko, CALS, CFLS

Ask the Judges –  
the Last Word on Mastering  
Rulings, Orders and Judgments

Garrett C. Dailey, CFLS  
Hon. Dianna Gould-Saltman  
Hon. Thomas Trent Lewis  
Hon. Mark S. Millard  
Hon. Marjorie A. Slabach, Ret.

ATRO's §§233(a), 2040(a)

Protective Orders

- by noticed motion §2047(a)

- by ex parte motion §2045

Order Requiring Payment  
of an Encumbrance  
§§2045(b), 6324



Family  
Centered  
Case  
Resolution  
Plan Order



§§2450, 2451,  
*CRC 5.83(e)*

Child Custody and Visitation  
§3120

Child Support  
§3901

Spousal Support  
§3600(a)

Attorney Fees and Costs  
§2030

## *Pendente Lite* Property Order

“At any time during the proceeding, the court has the authority, on application of a party and for good cause, to order the **liquidation** of community or quasi-community assets **so as to avoid unreasonable market or investment risks**, given the relative nature, scope, and extent of the community estate.

## *Pendente Lite* Property Order (con't)

However, in no event shall the court grant the application unless, as provided in this chapter, the appropriate declaration of disclosure has been served by the moving party.”

Fam. Code §2108

## ***Epstein Credit***

In-Spouse pays C/O PITI	4,800/mo
In-Spouse benefits from C/P FRV	<u>(3,800/mo)</u>
Community owes In-Spouse PITI in excess of FRV	1,000/mo
<i>divided by 2 equals</i>	

Out-Spouse owes In-Spouse	500/mo
---------------------------	--------

## ***Watts Charge***

In-Spouse benefits from C/P FRV	4,800/mo
In-Spouse pays C/O PITI	<u>(3,800/mo)</u>
In-Spouse owes Community FRV in excess of PITI	1,000/mo
<i>divided by 2 equals</i>	

In-Spouse owes Out-Spouse	500/mo
---------------------------	--------

IRMO *Hebbring* (1989) 207 Cal.App.3d 1260, 1272

“ . . . the worst alternative [regarding *Epstein* reimbursement] is simply to defer the issue of reimbursement for decision by the trial judge. Although in our experience this practice is followed in many instances, it offers no help to the parties and, indeed, can be a considerable hindrance to settlement.



### *In re Marriage of Hebbring (con't)*

[Deferring the reimbursement decision] provides no incentive to financially strapped separated spouses to make payments to creditors [and] creates a roadblock to settlement by adding one more serious issue to those already in dispute.”



## 5 Divorce Issues

1. Child custody  
and visitation  
2. Child support  
3. Spousal  
support

4. Property and debts  
5. Attorney fees  
and costs

# Form FL-180

Page 1  
of 2

ATTORNEY OR PARTY WITHOUT ATTORNEY: Please fill in number, and address:		FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO. (optional): _____ EMAIL ADDRESS (optional): _____ ATTORNEY FOR (name): _____		<div style="border: 2px solid red; padding: 5px; color: red; font-weight: bold;">             To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.           </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
MARRIAGE OR PARTNERSHIP OF PETITIONER: _____ RESPONDENT: _____		
JUDGMENT <input type="checkbox"/> DISOLUTION <input type="checkbox"/> LEGAL SEPARATION <input type="checkbox"/> NULLITY <input type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital or domestic partnership status <input type="checkbox"/> Judgment on reserved issues Date marital or domestic partnership status ends: _____		
1. <input type="checkbox"/> This judgment <input type="checkbox"/> contains personal conduct restraining orders <input type="checkbox"/> modifies existing restraining orders. The restraining orders are contained on page(s) _____ of the attachment. They expire on (date): _____		CASE NUMBER: _____
2. This proceeding was heard as follows: <input type="checkbox"/> Default or uncontested <input type="checkbox"/> By declaration under Family Code section 2336 <input type="checkbox"/> Contested <input type="checkbox"/> Agreement in court a. Date: _____ Dept.: _____ Room: _____ b. Judicial officer (name): _____ <input type="checkbox"/> Temporary Judge c. <input type="checkbox"/> Petitioner present in court <input type="checkbox"/> Attorney present in court (name): _____ d. <input type="checkbox"/> Respondent present in court <input type="checkbox"/> Attorney present in court (name): _____ e. <input type="checkbox"/> Claimant present in court (name): _____ <input type="checkbox"/> Attorney present in court (name): _____ f. <input type="checkbox"/> Other (specify name): _____		
3. The court acquired jurisdiction of the respondent on (date): _____ a. <input type="checkbox"/> The respondent was served with process. b. <input type="checkbox"/> The respondent appeared.		
<b>THE COURT ORDERS, GOOD CAUSE APPEARING</b> 4. a. <input type="checkbox"/> Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons. (1) <input type="checkbox"/> on (specify date): _____ (2) <input type="checkbox"/> on a date to be determined on noticed motion of either party or on stipulation. b. <input type="checkbox"/> Judgment of legal separation is entered. c. <input type="checkbox"/> Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify): _____ d. <input type="checkbox"/> This judgment will be entered nunc pro tunc as of (date): _____ e. <input type="checkbox"/> Judgment on reserved issues. f. The <input type="checkbox"/> petitioner's <input type="checkbox"/> respondent's former name is restored to (specify): _____ g. <input type="checkbox"/> Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below. h. <input type="checkbox"/> This judgment contains provisions for child support or family support. Each party must complete and file with the court a Child Support Case Registry Form (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (form FL-192) is attached.		
<small>Form Adopted for Mandatory Use Judicial Council of California FL-180 (Rev. July 1, 2012)</small>		<b>JUDGMENT</b> (Family Law)

# Form FL-180

Page 2  
of 2

CASE NAME (Last name, first name of each party):		CASE NUMBER:
<p>4. I. <input type="checkbox"/> The children of this marriage or domestic partnership are:</p> <p>(1) <input type="checkbox"/> Name Birthdate</p> <p>(2) <input type="checkbox"/> <i>Otherwise, it is established for children of this relationship born prior to the marriage or domestic partnership.</i></p>		
<p>J. <input type="checkbox"/> Child custody and visitation (parenting time) are ordered as set forth in the attached:</p> <p>(1) <input type="checkbox"/> Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).</p> <p>(2) <input type="checkbox"/> Child Custody and Visitation Order Attachment (form FL-341).</p> <p>(3) <input type="checkbox"/> Stipulation and Order for Custody and/or Visitation of Children (form FL-355).</p> <p>(4) <input type="checkbox"/> Previously established in another case. Case number: Court:</p>		
<p>K. <input type="checkbox"/> Child support is ordered as set forth in the attached:</p> <p>(1) <input type="checkbox"/> Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4065(a).</p> <p>(2) <input type="checkbox"/> Child Support Information and Order Attachment (form FL-342).</p> <p>(3) <input type="checkbox"/> Stipulation to Establish or Modify Child Support and Order (form FL-350).</p> <p>(4) <input type="checkbox"/> Previously established in another case. Case number: Court:</p>		
<p>L. <input type="checkbox"/> Spousal, domestic partner, or family support is ordered:</p> <p>(1) <input type="checkbox"/> Reserved for future determination as relates to <input type="checkbox"/> petitioner <input type="checkbox"/> respondent</p> <p>(2) <input type="checkbox"/> Jurisdiction terminated to order spousal or partner support to <input type="checkbox"/> petitioner <input type="checkbox"/> respondent</p> <p>(3) <input type="checkbox"/> As set forth in the attached Spousal, Partner, or Family Support Order Attachment (form FL-343).</p> <p>(4) <input type="checkbox"/> As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.</p> <p>(5) <input type="checkbox"/> Other (specify):</p>		
<p>M. <input type="checkbox"/> Property division is ordered as set forth in the attached:</p> <p>(1) <input type="checkbox"/> Settlement agreement, stipulation for judgment, or other written agreement.</p> <p>(2) <input type="checkbox"/> Property Order Attachment to Judgment (form FL-345).</p> <p>(3) <input type="checkbox"/> Other (specify):</p>		
<p>N. <input type="checkbox"/> Attorney fees and costs are ordered as set forth in the attached:</p> <p>(1) <input type="checkbox"/> Settlement agreement, stipulation for judgment, or other written agreement.</p> <p>(2) <input type="checkbox"/> Attorney Fees and Costs Order (form FL-346).</p> <p>(3) <input type="checkbox"/> Other (specify):</p>		
<p>O. <input type="checkbox"/> Other (specify):</p>		
<p>Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.</p>		
Date:		JUDICIAL OFFICER
S. Number of pages attached:		SIGNATURE FOLLOWS LAST ATTACHMENT
<p><b>NOTICE</b></p> <p>Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.</p> <p>A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.</p> <p>An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.</p> <p>Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.</p>		
FL-180 (Rev. July 1, 2012)		JUDGMENT Page 2 of 2

## FormFL-180

## 4.j. to 4.n.

j.	<input type="checkbox"/>	Child custody and visitation (parenting time) are ordered as set forth in the attached
	(1) <input type="checkbox"/>	Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).
	(2) <input type="checkbox"/>	Child Custody and Visitation Order Attachment (form FL-341).
	(3) <input type="checkbox"/>	Stipulation and Order for Custody and/or Visitation of Children (form FL-355).
	(4) <input type="checkbox"/>	Previously established in another case. Case number: _____ Court: _____
k.	<input type="checkbox"/>	Child support is ordered as set forth in the attached
	(1) <input type="checkbox"/>	Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4085(a).
	(2) <input type="checkbox"/>	Child Support Information and Order Attachment (form FL-342).
	(3) <input type="checkbox"/>	Stipulation to Establish or Modify Child Support and Order (form FL-350).
	(4) <input type="checkbox"/>	Previously established in another case. Case number: _____ Court: _____
l.	<input type="checkbox"/>	Spousal, domestic partner, or family support is ordered:
	(1) <input type="checkbox"/>	Reserved for future determination as relates to <input type="checkbox"/> petitioner <input type="checkbox"/> respondent
	(2) <input type="checkbox"/>	Jurisdiction terminated to order spousal or partner support to <input type="checkbox"/> petitioner <input type="checkbox"/> respondent
	(3) <input type="checkbox"/>	As set forth in the attached Spousal, Partner, or Family Support Order Attachment (form FL-343).
	(4) <input type="checkbox"/>	As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.
	(5) <input type="checkbox"/>	Other (specify): _____
m.	<input type="checkbox"/>	Property division is ordered as set forth in the attached
	(1) <input type="checkbox"/>	Settlement agreement, stipulation for judgment, or other written agreement.
	(2) <input type="checkbox"/>	Property Order Attachment to Judgment (form FL-345).
	(3) <input type="checkbox"/>	Other (specify): _____
n.	<input type="checkbox"/>	Attorney fees and costs are ordered as set forth in the attached
	(1) <input type="checkbox"/>	Settlement agreement, stipulation for judgment, or other written agreement.
	(2) <input type="checkbox"/>	Attorney Fees and Costs Order (form FL-346).
	(3) <input type="checkbox"/>	Other (specify): _____

FormFL-180

4.a.(1)

**THE COURT ORDERS, GOOD CAUSE APPEARING**

4. a. ☐ Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons
- (1) ☐ on *(specify date)*:
- (2) ☐ on a date to be determined on noticed motion of either party or on stipulation.

“Marital . . . status is terminated and the parties are restored to the status of single persons on *(specify date)*.”

# Form FL-341 (E)

## Joint Legal Custody Attachment

**JOINT LEGAL CUSTODY ATTACHMENT**

TO ☐ Petition or Application for Order ☐ Findings and Order After Hearing or Judgment  
☐ Stipulation and Order for Custody and/or Visitation of Children

1. The parents will have joint legal custody of the minor children.

2. In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:

- a. ☐ Enrollment in or leaving a particular private or public school or daycare center
- b. ☐ Participation in particular religious activities or institutions
- c. ☐ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
- d. ☐ Selection of a doctor, dentist, or other health professional (except in emergency situations)
- e. ☐ Participation in extracurricular activities
- f. ☐ Out-of-county or out-of-state travel
- g. ☐ Other (specify):

In all other matters in exercising joint legal custody, the parents may act alone, as long as the action does not conflict with any orders concerning the physical custody of the children.

3. If a parent does not obtain the required consent of the other parent to the decisions checked in item 2:

- a. He or she may be subject to civil or criminal penalties.
- b. The court may change the legal and physical custody of the minor children.
- c. ☐ Other consequences (specify):

4. ☐ Special decision-making designation

- a. The ☐ petitioner ☐ respondent will be responsible for making decisions regarding the following issues (specify):
- b. ☐ Each parent will have access to the children's school, medical, and dental records and the right to consult with professionals who are providing services to the children.

5. ☐ Health-care notification

- a. ☐ Each parent must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within (specify number) \_\_\_\_\_ days of the commencement of the first such treatment or examination.
- b. ☐ Each parent is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
- c. ☐ Both parents are required to administer any prescribed medications for the children.

6. ☐ School notification. Each parent will be designated as a person the children's school will contact in the event of an emergency.

7. ☐ Name. Neither parent will change the last name of the children or have a different name used on the children's medical, school, or other records without the written consent of the other parent.

8. ☐ Other (specify):

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Form Approved for Optional Use  
 Judicial Council of California  
 FL-341 (E) (Rev. January 1, 2008)

**JOINT LEGAL CUSTODY ATTACHMENT**

Family Code, § 3020, 3022  
 www.courtinfo.ca.gov

# Form FL-341 (E)

## Joint Legal Custody Matters

2. In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:
- a. ☐ Enrollment in or leaving a particular private or public school or daycare center
  - b. ☐ Participation in particular religious activities or institutions
  - c. ☐ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
  - d. ☐ Selection of a doctor, dentist, or other health professional (except in emergency situations)
  - e. ☐ Participation in extracurricular activities
  - f. ☐ Out-of-country or out-of-state travel
  - g. ☐ Other (*specify*):

## Section 2



# Form FL-341 (E)

## Joint Legal Custody Attachment

**JOINT LEGAL CUSTODY ATTACHMENT**

TO ☐ Petition or Application for Order ☐ Findings and Order After Hearing or Judgment  
☐ Stipulation and Order for Custody and/or Visitation of Children

1. The parents will have joint legal custody of the minor children.

2. In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:

- a. ☐ Enrollment in or leaving a particular private or public school or daycare center
- b. ☐ Participation in particular religious activities or institutions
- c. ☐ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
- d. ☐ Selection of a doctor, dentist, or other health professional (except in emergency situations)
- e. ☐ Participation in extracurricular activities
- f. ☐ Out-of-county or out-of-state travel
- g. ☐ Other (specify):

In all other matters in exercising joint legal custody, the parents may act alone, as long as the action does not conflict with any orders concerning the physical custody of the children.

3. If a parent does not obtain the required consent of the other parent to the decisions checked in item 2:

- a. He or she may be subject to civil or criminal penalties.
- b. The court may change the legal and physical custody of the minor children.
- c. ☐ Other consequences (specify):

4. ☐ Special decision-making designation

- a. The ☐ petitioner ☐ respondent will be responsible for making decisions regarding the following issues (specify):
- b. ☐ Each parent will have access to the children's school, medical, and dental records and the right to consult with ~~professionals who are providing services to the children.~~

5. ☐ Health-care notification

- a. ☐ Each parent must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within (specify number) \_\_\_\_\_ days of the commencement of the first such treatment or examination.
- b. ☐ Each parent is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
- c. ☐ Both parents are required to administer any prescribed medications for the children.

6. ☐ School notification. Each parent will be designated as a person the children's school will contact in the event of an emergency.

7. ☐ Name. Neither parent will change the last name of the children or have a different name used on the children's medical, school, or other records without the written consent of the other parent.

8. ☐ Other (specify):

**JOINT LEGAL CUSTODY ATTACHMENT**

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Family Code, § 3020, 3022  
www.courtinfo.ca.gov

## Form FL-341 (E)

## Health-care Notification Rights

5. ☐ **Health-care notification**

- a. ☐ Each parent must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within (*specify number*)  days of the commencement of the first such treatment or examination.
- b. ☐ Each parent is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
- c. ☐ Both parents are required to administer any prescribed medications for the children.

## Section 5

# Form FL-341 (E)

## Joint Legal Custody Attachment

**JOINT LEGAL CUSTODY ATTACHMENT**

TO ☐ Petition or Application for Order ☐ Findings and Order After Hearing or Judgment  
☐ Stipulation and Order for Custody and/or Visitation of Children

1. The parents will have joint legal custody of the minor children.

2. In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:

- a. ☐ Enrollment in or leaving a particular private or public school or daycare center
- b. ☐ Participation in particular religious activities or institutions
- c. ☐ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
- d. ☐ Selection of a doctor, dentist, or other health professional (except in emergency situations)
- e. ☐ Participation in extracurricular activities
- f. ☐ Out-of-county or out-of-state travel
- g. ☐ Other (specify):

In all other matters in exercising joint legal custody, the parents may act alone, as long as the action does not conflict with any orders concerning the physical custody of the children.

3. If a parent does not obtain the required consent of the other parent to the decisions checked in Item 2:

- a. He or she may be subject to civil or criminal penalties.
- b. The court may change the legal and physical custody of the minor children.
- c. ☐ Other consequences (specify):

4. ☐ Special decision-making designation

- a. The ☐ petitioner ☐ respondent will be responsible for making decisions regarding the following issues (specify):
- b. ☐ Each parent will have access to the children's school, medical, and dental records and the right to consult with professionals who are providing services to the children.

5. ☐ Health-care notification

- a. ☐ Each parent must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within (specify number) \_\_\_\_\_ days of the commencement of the first such treatment or examination.
- b. ☐ Each parent is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
- c. ☐ Both parents are required to administer any prescribed medications for the children.

6. ☐ School notification. Each parent will be designated as a person the children's school will contact in the event of an emergency.

7. ☐ Name. Neither parent will change the last name of the children or have a different name used on the children's medical, school, or other records without the written consent of the other parent.

8. ☐ Other (specify):

**JOINT LEGAL CUSTODY ATTACHMENT**

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 Judicial Council of California  
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 Family Code, § 3020, 3022  
 www.courtinfo.ca.gov

Form  
FL-341 (E)

School Information  
Rights

6. ☐ **School notification.** Each parent will be designated as a person the children's school will contact in the event of an emergency.

Section 6

# Form FL-341

## Child Custody and Visitation

FL-341	
PETITIONER/PLAINTIFF: _____	CASE NUMBER: _____
RESPONDENT/DEFENDANT: _____	
<b>CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT</b>	
TO <input type="checkbox"/> Findings and Order After Hearing (form FL-340) <input type="checkbox"/> Judgment (form FL-180)	
<input type="checkbox"/> Stipulation and Order for Custody and/or Visitation of Children (form FL-358)	
<input type="checkbox"/> Other (specify): _____	
1. Jurisdiction. This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (part 3 of the California Family Code, commencing with section 3400).	
2. Notice and opportunity to be heard. The responding party was given notice and an opportunity to be heard, as provided by the laws of the State of California.	
3. Country of habitual residence. The country of habitual residence of the child or children in this case is <input type="checkbox"/> the United States <input type="checkbox"/> other (specify): _____	
4. Penalties for violating this order. If you violate this order, you may be subject to civil or criminal penalties, or both.	
5. <input type="checkbox"/> Custody. Custody of the minor children of the parties is awarded as follows:	
<u>Child's name</u>	<u>Date of birth</u>
(person who makes decisions about health, education, etc.)	(person with whom the child lives)
_____	_____
_____	_____
_____	_____
_____	_____
6. <input type="checkbox"/> Child abduction prevention. There is a risk that one of the parents will take the children out of California without the other <i>(see provisions of Child Abduction Prevention Order Attachment Form FL-344(b) available at <a href="http://www.courtinfo.ca.gov">www.courtinfo.ca.gov</a>)</i>	
7. <input type="checkbox"/> Visitation (parenting time)	
a. <input type="checkbox"/> Reasonable right of visitation to the party without physical custody (not appropriate in cases involving domestic violence)	
b. <input type="checkbox"/> See the attached _____-page document.	
c. <input type="checkbox"/> The parties will go to mediation at (specify location): _____	
d. <input type="checkbox"/> No visitation	
e. <input type="checkbox"/> Visitation (parenting time) for the <input type="checkbox"/> petitioner <input type="checkbox"/> respondent <input type="checkbox"/> other (name): _____ will be as follows:	
(1) <input type="checkbox"/> Weekends starting (date): _____	
(The first weekend of the month is the first weekend with a Saturday.)	
<input type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/> 4th <input type="checkbox"/> 5th weekend of the month	
from _____ (day of week) at _____ (time) <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
to _____ (day of week) at _____ (time) <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
(a) <input type="checkbox"/> The parents will alternate the 5th weekends, with the <input type="checkbox"/> petitioner <input type="checkbox"/> respondent having the initial 5th weekend, which starts (date): _____	
(b) <input type="checkbox"/> The petitioner will have 5th weekends in <input type="checkbox"/> odd <input type="checkbox"/> even months.	
<small>Form Approved for Optional Use Judicial Council of California FL-341 (Rev. July 1, 2012)</small> <b>CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT</b> <small>Family Code, §§ 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198, 3199, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, 3242, 3243, 3244, 3245, 3246, 3247, 3248, 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## Form FL-341

## Dividing the Week

7. ☐ Visitation (parenting time)

a. ☐ Reasonable right of visitation to the party without physical custody (**not appropriate in cases involving domestic violence**)

b. ☐ See the attached -page document.

c. ☐ The parties will go to mediation at (specify location):

d. ☐ No visitation

e. ☐ Visitation (parenting time) for the ☐ petitioner ☐ respondent ☐ other (name):   
will be as follows:

(1) ☐ Weekends starting (date):   
(The first weekend of the month is the first weekend with a Saturday.)

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th weekend of the month

from  at  ☐ a.m. ☐ p.m.  
(day of week) (time)

to  at  ☐ a.m. ☐ p.m.  
(day of week) (time)

(a) ☐ The parents will alternate the fifth weekends, with the ☐ petitioner ☐ respondent ☐ other (name):  having the initial fifth weekend, which starts (date):

(b) ☐ The petitioner will have fifth weekends in ☐ odd ☐ even months.

## Section 7

# Form FL-341

# Transportation for Visitation

10. ☐ **Transportation for visitation**

a. The children must be driven only by a licensed and insured driver. The car or truck must have legal child restraint devices.

b. ☐ Transportation **to** the visits will be provided by the ☐ petitioner ☐ respondent  
☐ other (specify):

c. ☐ Transportation **from** the visits will be provided by the ☐ petitioner ☐ respondent  
☐ other (specify):

d. ☐ The exchange point at the beginning of the visit will be at (address):

e. ☐ The exchange point at the end of the visit will be at (address):

f. ☐ During the exchanges, the parent driving the children will wait in the car and the other parent will wait in his or her home while the children go between the car and the home.

g. ☐ Other (specify):

## Section 10

Form FL-341

Holiday Schedule

12. ☐ **Holiday schedule.** The children will spend holiday time as listed ☐ below ☐ in the attached schedule.  
(Children's Holiday Schedule Attachment (form FL-341(C)) may be used for this purpose.)

Section 12

Be sure to list birthdays:  
Spouse's, children & yours





## *Pendente Lite* Court Orders

The purpose of a *pendente lite* court order is to maintain the status quo of the parties during the proceedings.

*In re Marriage of Askmo* (2000)  
85 Cal.App.4th 1032, 1038.

## Calculation of a *Pendente Lite* Spousal Support Order

*Pendente lite* spousal support may be ordered in any amount, subject only to the payee's needs and the payor's ability to pay.

Fam. Code § 3600; *In re Marriage of Murray*  
(2002) 101 Cal.App.4th 581, 594.

## Calculation of a *Pendente Lite* Spousal Support Order

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A computer calculation  
can be a “valuable tool” in  
determining *pendente lite*  
spousal support.

*In re Marriage of Wittgrove* (2004)  
120 Cal.App.4th 1317, 1327-1328.

## Calculation of a Trial Spousal Support Order

The object of a trial spousal support order – calculated pursuant to Family Code section 4320 – is to make an equitable apportionment of income between the parties.

*In re Marriage of Dick* (1993)  
15 Cal.App.4th 144.

## Calculation of *Pendente Lite* and Trial Child Support Orders

Absent special circumstances, *pendente lite* and trial child support orders are calculated pursuant to statewide uniform guidelines.

Fam. Code § 4052.

## A *Pendente Lite* Child or Spousal Support Order Is Directly Appealable

As exceptions to the one final judgment rule, *pendente lite* child and spousal support orders are directly appealable – because the orders are substantially the same as final judgments in independent proceedings.

*In re Marriage of Skelley* (1976)  
18 Cal.3d 365, 368.

## A *Pendente Lite* Child or Spousal Support Order Is *Res Judicata*

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When an appealable order has not been appealed, the issues determined by the order are res judicata.

*In re Matthew C.* (1993)  
6 Cal.4th 386, 393.



## Modification of a *Pendente Lite* Spousal Support Order

*A pendente lite* spousal support order may not be modified *pendente lite* without a material change of circumstances . . .

*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 638

*In re Marriage of Freitas* (2012) 209 Cal.App.4th 1059, 1068

*In re Marriage of Biderman* (1992) 5 Cal.App.4th 409, 412-413

(Contra: *Zinke v. Zinke* (1963) 212 Cal.App.2d 379.)

## Modification of a *Pendente Lite* Spousal Support Order

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... whether the order was  
stipulated by the parties  
or decided by the court.

*In re Marriage of McCann* (1996)  
41 Cal.App.4th 978, 982.

Collateral Attack:  
Not Permitted

Without a material change of circumstances, such a modification motion would be nothing more than an “impermissible collateral attack on a prior final order.”

*In re Marriage of Khera & Sameer*  
(2012) 206 Cal.App.4th 1467, 1479.

## A Trial Spousal Support Order Doesn't Modify the *Pendente Lite* Order

A trial spousal support order doesn't "modify" the *pendente lite* order – instead it "supersedes" the *pendente lite* order.

*In re Marriage of Hamer* (2000)  
81 Cal.App.4th 712, 717.

Passage of Time Doesn't Justify  
Modification of a Spousal Support Order

Mere passage of time is not a  
material change of circumstances.

*In re Marriage of Wilson* (1975)

51 Cal.App.3d 116.

*In re Marriage of Heistermann* (1991)

234 Cal.App.3d 1195.

## Modification of a *Pendente Lite* Child Support Order

*A pendente lite* child support order may not be modified *pendente lite* without a material change of circumstances.

*Marriage of Stanton* (2010)  
190 Cal.App.4th 547, 553

### Exception: Modification Up to Guideline

“... no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.”

Fam. Code §4065 (d).

No Exception: Modification  
Down to Guideline

“... a ‘change of circumstances’ must be demonstrated to obtain a downward modification of the child support order to the applicable guideline level or below.”

*In re Marriage of Laudeman*  
(2001) 92 Cal.App.4th 1009, 1015



A Trial Child Support Order Doesn't  
Modify the *Pendente Lite* Order

A trial child support order doesn't  
“modify” the *pendente lite* order –  
instead it “supersedes” the  
*pendente lite* order.

*In re Marriage of Hamer* (2000)  
81 Cal.App.4th 712, 717.

## Modification of a Non-Final Child Custody Order

A child custody order that is **not final** may be modified in accordance with the **child's best interests**, without a showing of a material change of circumstances.

*Keith R. v. Superior Court* (2009)  
174 Cal.App.4th 1047, 1054.

## Modification of a Final Child Custody Order

A **final** child custody order  
may **not** be modified without  
a showing of a material  
change of circumstances.

*In re Marriage of Burgess*  
(1996) 13 Cal.4<sup>th</sup> 25, 37.

(NOTE: *Montenegro* did not address the  
amicis' child development contentions.)

## Property Issues: YES

“[T]he parties possess the exclusive authority to agree upon the disposition of their property. The court’s only role with regard to a proper stipulated disposition of marital property is to accept the stipulation and, if requested, to incorporate the disposition into the judgment.”

*In re Marriage of Cream* (1993)  
13 Cal.App.4th 81, 91.

## Child Custody/Visitation Issues: NO

“ . . . the ‘right [of parents to agree] with each other as to the custody and control of their offspring . . . is subject to the control of the court . . . and the court is not required to award the custody in conformity with such stipulation . . . .’ ”

*Adoption of Matthew B.* (1999)  
232 Cal.App.3d 1239, 1259

## Child Support Issues: NO

“... parents cannot abridge the right of their minor child to proper support by any agreement.”

*Elkind v. Byck* (1968)  
68 Cal.2d 453, 457

## Spousal Support Issues: NO(?)

*[no specific authority]*

## The Public Is Interested

“The public is interested in the marriage relation and the maintenance of its integrity, as it is the foundation of the social system . . . .”

*Baker v Baker* (1859)  
13 Cal. 87, 93-94



## The Government is a “Party”

“While an action to obtain a decree dissolving the relation of husband and wife is nominally an action between two parties, the state . . . is an interested party.

## The Government is a “Party”

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It has been said by eminent writers upon the subject that such an action is really a triangular proceeding, in which the husband and the wife and the state are parties.”

*Deyoe v. Superior Court* (1903)  
140 Cal.App. 476, 482

## Code of Civil Procedure §577

“A judgment is the final determination of the rights of the parties in an action or proceeding.”



## Family Code §100



“‘Judgment’ and ‘order’ include a decree, as appropriate under the circumstances.”

## Civil Code §§25, 26

Civil Code §25: “A civil action arises out of: 1. An obligation; 2. An injury.”

Civil Code §26: “An obligation is a legal duty, by which one person is bound to do or not to do a certain thing, and arises from: One—Contract; or, Two—Operation of law.”

## Civil Code §1714(a)

“Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person . . . .”

## 1529: Now Chancellors are Lawyers

Beginning with  
Sir Thomas Moore's 1529  
appointment as Chancellor, all  
Chancellors were lawyers.



## 1557: Now Chancery is “on the Record”

Beginning 1557, records of proceedings in the Courts of Chancery were kept. The development of equitable doctrines had begun.





## 17<sup>th</sup> Century Jurist – John Selden

“Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity.

## 17<sup>th</sup> Century Jurist – John Selden

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'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.”

## California's Maxims of Jurisprudence

Many of Common Law's 19  
"maxims of equity" are found in  
California's "maxims of  
jurisprudence."  
(Civ. Code  
§§3509-3548.)

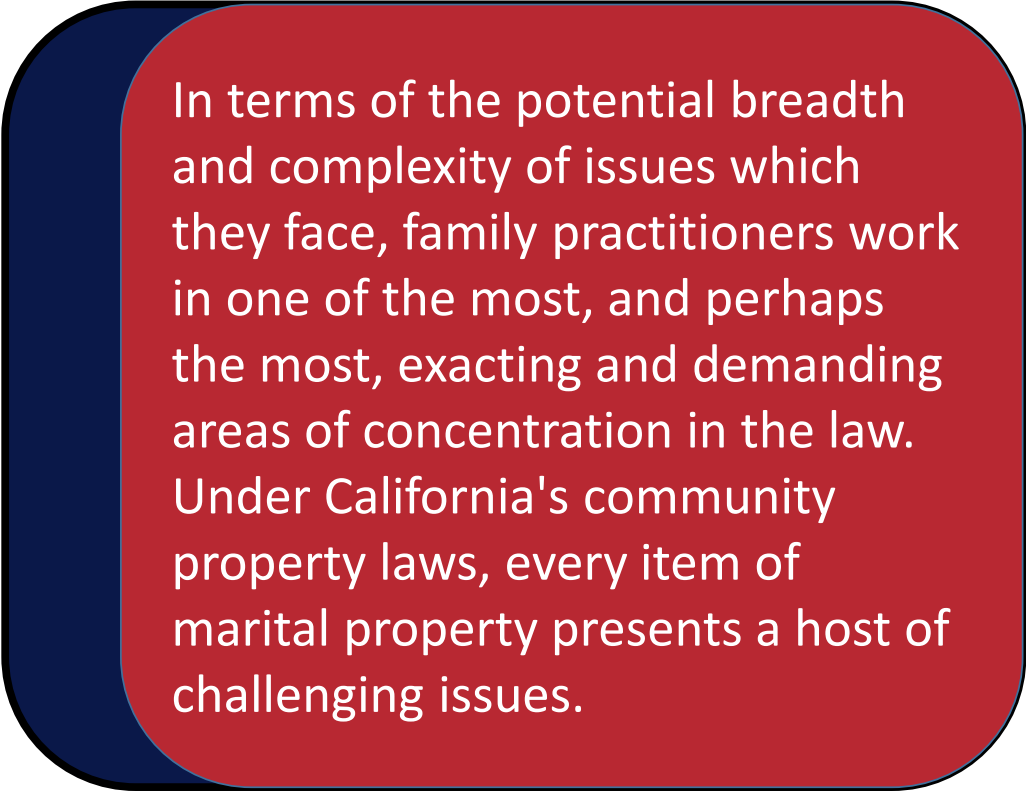


## 7<sup>th</sup> Amendment to the U.S. Constitution

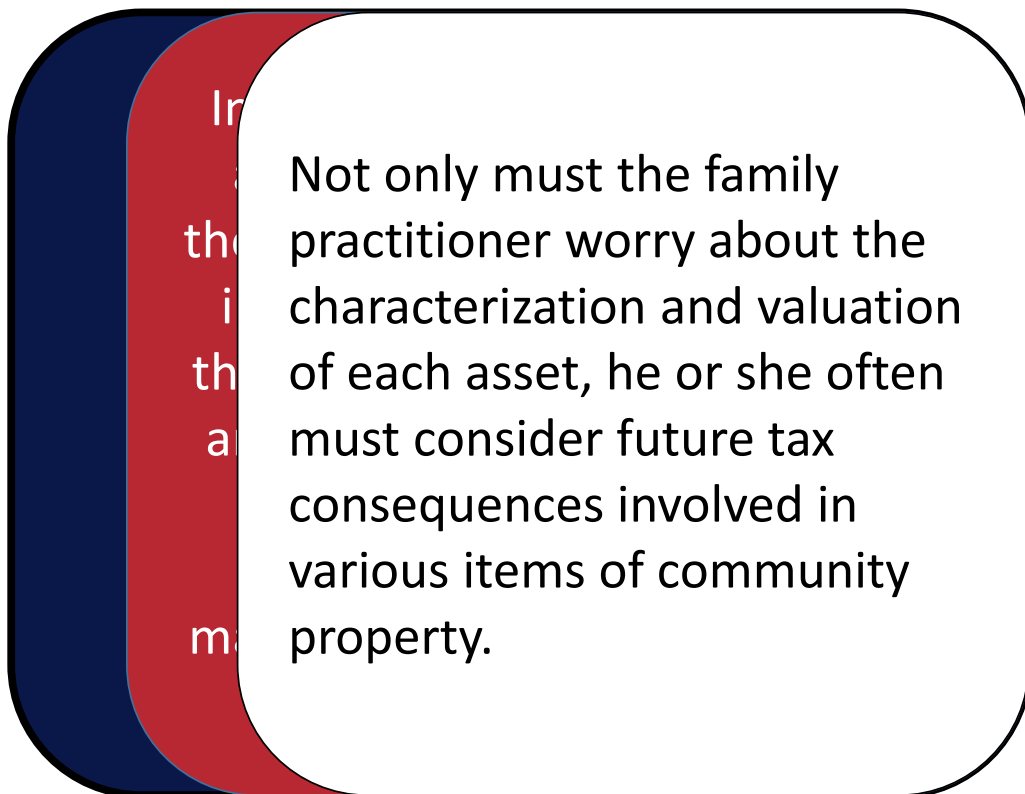
“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .”



“Family lawyers  
do not get the  
respect they  
deserve.”



In terms of the potential breadth and complexity of issues which they face, family practitioners work in one of the most, and perhaps the most, exacting and demanding areas of concentration in the law. Under California's community property laws, every item of marital property presents a host of challenging issues.







The Conclusion is Obvious:

Divorce  
Lawyers  
Rock!

# The End

Robert C. Brandt  
Ronald S. Granberg  
John D. Hodson

