

FAMILY LAW INFORMATIONAL PRESENTATION



Legal Aid Society of San Diego, Inc.

No Legal Advice

This presentation will provide you with general information about family law in San Diego County. We CANNOT provide you with legal advice regarding your specific case.

For advice specific to your case, please call Legal Aid to be screened for services, but there is no guarantee of assistance or representation.



FAMILY LAW



What are the words usually used in Family Court?

- Petition: the document filed with the court to start a case
- Petitioner: the person who files the petition
- Respondent: the other person named in the case and is given (“served” with) the petition
- DCSS (Department of Child Support Services): county agency that handles child support
- RFO (Request for Order) – the document filed when a party wants the Judge to make orders
- FCS (Family Court Services) – office in the courthouse appointed by the court to make child custody recommendations. This is where parties go for custody/visitation mediation
- Judgment: the document filed with the court to end a case
- FOAH: Findings and Order After Hearing is prepared after a Request for Order hearing
- Minute Order: Summary of the Court’s orders after a hearing

How do I start a case in Family Court?

You may start a case by filing any of the following:

- Petition for Dissolution or Legal Separation (“Divorce”)
- Petition to Establish a Parental Relationship (“Paternity”)
- Petition for Custody and Support
- Request for a Domestic Violence Restraining Order

How do I know which Petition I should file?

“Divorce” Petition

- If you are asking the Judge to end (“dissolve”) your marriage.
- You can ask for custody & visitation, child support, spousal support, and property orders.
- Only married people can use this.

“Paternity” Petition

- If you are asking the Judge to make the relationship between a child and a parent legal.
- You can ask for custody & visitation orders, and child support orders.
- Unmarried parents use this.

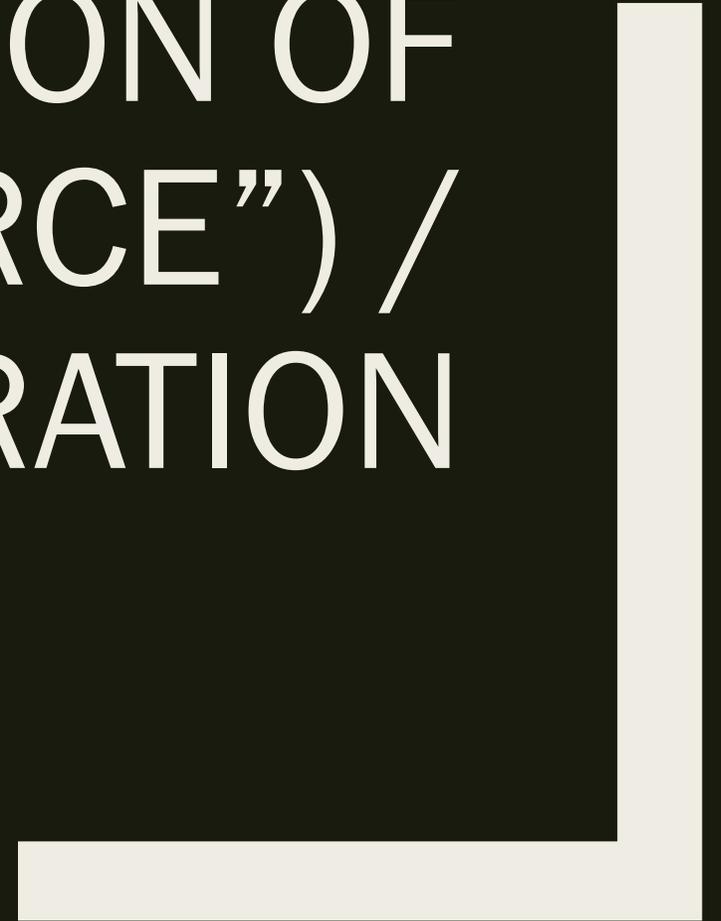
Petition for Custody and Support

- If you are asking the Judge to make custody/visitation orders and child support orders only.
- You can use this if you are not married to the other parent or if you are married but do not want to file for divorce/legal separation.
- You can only file this if the relationship between the child and parents (paternity) has already been established.

Types of Hearings

- SFRC (Self-Represented Family Resolution Conference):
 - *a “check-in” for the court to find out what else needs to be done to end the case.*
- FRC (Family Resolution Conference):
 - *Same thing as an SFRC except used when there is at least 1 attorney representing a party.*
- RFO (Request for Order):
 - *A hearing less than 40 minutes that is set when either party files an RFO to ask for orders such as custody/visitation, child and spousal support.*
- Long-cause RFO:
 - *A hearing set for longer than 40 minutes when the court needs to hear from more witnesses or look at more evidence.*
- MSC (Mandatory Settlement Conference):
 - *A negotiation with a temporary judge (usually an attorney) to settle some or all issues.*
- Trial:
 - *If the parties cannot settle their case, the court will set a trial and make orders.*

DISSOLUTION OF
MARRIAGE (“DIVORCE”) /
LEGAL SEPARATION



What is the difference between Divorce and Legal Separation?

Divorce

- There is a residency requirement. This means that you must have lived in California for 6 months and in San Diego County for 3 months when you start your case.
- It ends a marriage.
- When the Judgment is filed, the parties become single and they can marry other people.

Legal Separation

- There is no residency requirement. The spouses can file for legal separation anytime.
- Does not end a marriage and they cannot marry other people. The spouses can file this if they do not want to be divorced because of their religious belief or other reasons.
- When the Judgment is filed, the parties are legally separated, but they are still married to each other.

What do I need to know about Divorce or Legal Separation in California?

- California is a **community property (CP) state**. This means that the things the married couple bought or had, like money in the bank or pension (assets) and borrowed (debts) during marriage, will be divided in a fair way at divorce or legal separation.
- The assets and debts that a spouse had before marriage, after separation, or things given to that spouse as a gift or inheritance during marriage belong to that spouse only and are called separate property (SP) and are not divided.
- The couple must let each other know all their CP and SP assets and debts.
- California is a **no-fault state**, meaning you do not have to let the Judge know the real reason why you are filing for divorce or legal separation. But you must let the Judge know the general reason for your request, for example, you and your spouse have problems that you can no longer fix (“irreconcilable differences”).
- The soonest that the parties can be divorced or legally separated is 6 months from the time the Respondent was served with the petition. It is common for a case to go on for longer than 6 months.

What are the Orders I can ask for with my Divorce or Legal Separation petition?

- Custody and Visitation (*Discussed later in this presentation*)
- Child Support (*Discussed later in this presentation*)
- Spousal support:
 - *Discretionary, meaning the Court does not have to order spousal support*
 - *Short term marriages (less than 10-years) are treated differently than long-term marriages (10-years or more)*
 - *There is a difference between temporary and “permanent” spousal support*
 - *The Court looks at many reasons before making a permanent spousal support order*
- Property orders:
 - *Divide CP assets and debts*

CHILD CUSTODY AND VISITATION



What does Child Custody mean?

Child Custody is divided into “legal” and “physical” custody:

Legal Custody

- The power to make decisions about the child’s health, education, and welfare.
- One parent can have sole legal custody or both parents can have joint legal custody.
- To decide how to share legal custody the Judge will look at things like:
 - *If there is domestic violence,*
 - *If a parent has abused the children*
 - *If a parent is involved in or has been absent from the child’s life,*
 - *If a parent uses or misuses drugs and/or alcohol use*

Physical Custody

- The parent with whom the child will live.
- A child could live with one parent most of the time (that parent is the custodial parent or CP) or with both parents (“joint” or “50/50”).
- If the child is mostly with one parent, the other parent will have visitation (the parent visiting is the non-custodial parent or NCP).
- The NCP could have
 - *Daytime or overnight visits*
 - *Supervised or unsupervised visits*
 - *If supervised, it could be supervised by a professional or non-professional supervisor*
- The Court will look at the what is in the “best interest of the child.”

What do I need to know about Custody and Visitation?

- It is a **child's right** to have a relationship with his or her parents
- A relationship is supported by “frequent and continuing” contact
- Consistency is important
- Children's needs change over time
- It is not good for a parent to keep the child from the other parent
- Parenting time is not a reward for paying child support and it is not a punishment for not paying child support
- It is never good for children to be told what is happening in the court case
- It is always harmful to hear one parent talk badly about the other
- If you want the Judge to make custody and visitation orders, you must file a Request for Order (RFO). When you file an RFO, you will be given 2 dates: one is for mediation, the other is for the hearing. The RFO hearing is about a month after the mediation.

What is Mediation?

- Mediation (also known as counseling) is a meeting in the Family Court Services (FCS) office in the courthouse where you filed your paperwork. You must participate in mediation.
- At the meeting, you and the other parent will discuss who should have legal and physical custody of your child. You will also talk about a schedule for how you and the other parent will spend time with your child (called visitation or parenting schedule) on regular days and on holidays, special days and vacation.
- A mediator (also known as counselor) will be part of the meeting and help you and the other parent come to an agreement. If you cannot agree, the mediator will write a report that will be given to the Judge and to both parents before the hearing.
- Let the mediator know if you have a restraining order against the other parent or if there is a history of domestic violence between you and the other parent.
- Also let the mediator know if you feel more comfortable talking in a language other than English.

What should I do and not do at Mediation?

Do:

- Come with a specific plan on how you will be sharing your child with the other parent
- Go to your appointment EARLY!!!
- Say “our” child (not “my” child)
- Stay focused on your child’s “best interest”
- Take notes
- Stay polite, calm and watch your body language
- Dress for the job of “mom” or “dad”

Don't:

- Miss the appointment (finest may be ordered – up to \$1500)
- Speak in percentages (for example, “I want 50-50” or “I want 80% custody”)
- Call the other parent names or get off topic
- Complain without giving a solution
- AGREE TO A PLAN YOU DO NOT BELIEVE IS IN YOUR CHILDREN’S BEST INTEREST
- Discuss what happened at FCS with the children

What do I do when I get the Mediation Report back?

- First, make sure that the mediator got the facts right
- Read the recommendation again and look for any problems
 - *Will visitation hours conflict with appointments?*
 - *Is the exchange location safe?*
 - *Are any important holidays left off?*
 - *You know your family best, so think through potential problems now, before your hearing.*
- Do you agree with the recommendation?
 - *If you agree:*
 - At your RFO hearing ask the Court to make the FCS recommendation be the court order.
 - *If you disagree or agree for the most part but want some changes:*
 - Go through the recommendation and identify specific changes you think should be made in order for the plan to be in the children's best interest.

CHILD SUPPORT



What is Child Support?

- Child Support is the money ordered by the Judge to help raise the child.
- A child has the right to be financially supported by both parents
- Parents have a responsibility to support their children
- Child support is mandatory (meaning, it is not an option)
- It is based on a calculation that is the same throughout California (“guideline” calculation)
- If the County is supporting the child, DCSS will ask the Court to make child support orders

How is child support calculated?

A guideline formula looks at:

- Custodial Parent's (CP's) income
- Non-Custodial Parent's (NCP's) income
- The NCP's time with the children
- Allowed deductions (mandatory retirement, health insurance payment, unions dues, etc.)

- It is also mandatory that parents equally share the cost of unreimbursed medical expenses and the cost of child care that is necessary for work.

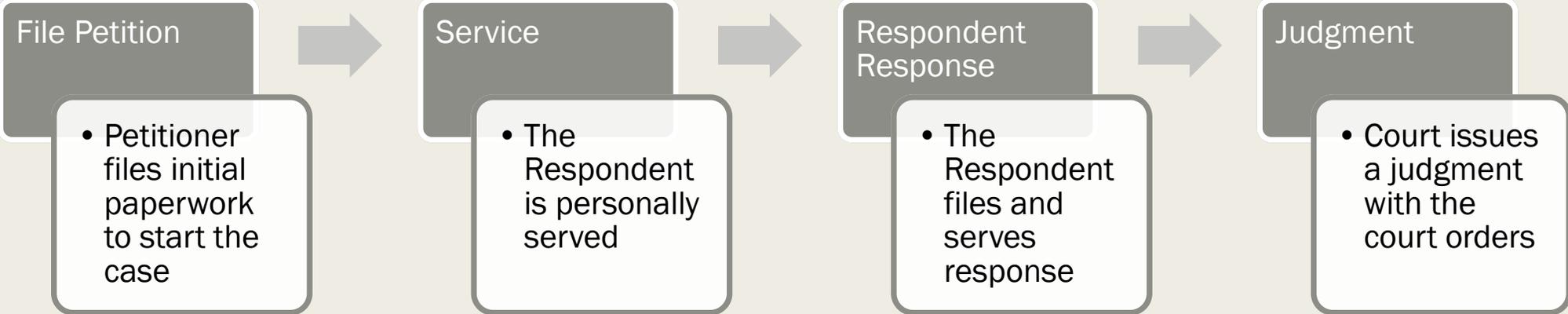
What do I do if I need orders or I need new child support orders?

- If your case is in family court
 - *File an RFO and an Income and Expense Declaration*
 - *Attend the RFO hearing*
- If your case is with DCSS:
 - *Give DCSS whatever information and document they ask*
 - *If your income or your parenting time changes, let DCSS know*
 - *Attend any hearings set by DCSS and complete an Income and Expense Declaration when requested.*

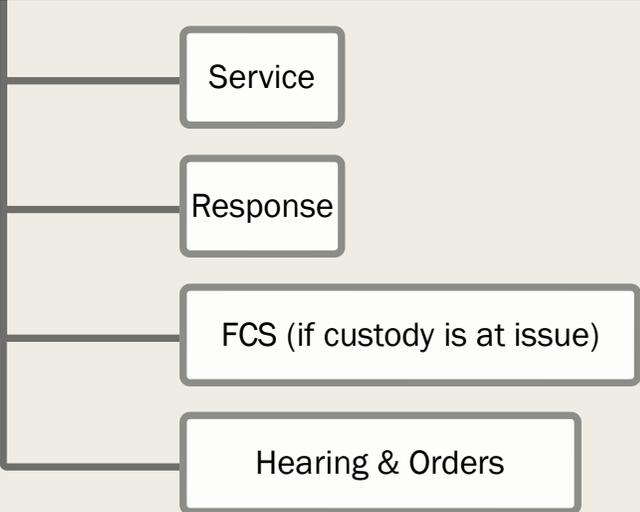
CASE TIMELINE



Basic Timeline of a “Typical” Case: Your case may have a different timeline



Request for Order for custody/visitation, support, property may be filed by the Petitioner after the petition has been filed or by the Respondent after the Response has been filed



PAPERWORK



I am the Petitioner, what forms do I need to fill out?

- If you are starting a Case:
 - *Summons (FL-210 for Paternity or Custody & Support; FL-110 for Divorce/Legal Separation)*
 - *Petition (FL-200 for Paternity; FL-260 for Custody & Support; FL-100 for Divorce/Legal Separation)*
 - *UCCJEA, if you have a child with the Respondent (FL-105)*
 - *Family Law Assignment Form (D-049)*
 - *Fee Waiver Request (FW-001) and Order (FW-003)*
- If you are asking for Orders:
 - *Request for Order (FL-300)*
 - *Supporting Declaration (MC-030 and MC-031)*
 - *If asking for custody/visitation: FCS screening form (FCS-046)*
 - *If asking for support: Income and Expense Declaration (FL-150)*
- If you are filing for divorce, you also need these documents:
 - *Property Declarations (FL-160) or Schedule of Assets of Debts (FL-142)*
 - *Income and Expense Declaration (FL-150)*

I am the Respondent, what forms do I need to fill out?

- The Petitioner should have given you blank forms
- If you are responding to the Petition
 - *Response (FL-220 for Paternity; FL-270 for Custody & Support; FL-120 for Divorce/Legal Separation)*
 - *UCCJEA, if you have a child with the Respondent (FL-105)*
 - *Fee Waiver Request (FW-001) and Order (FW-003)*
- If you are responding to Orders:
 - *Responsive Declaration (FL-320)*
 - *Supporting Declaration (MC-030 and MC-031)*
 - *If the Petitioner asked for support: Income and Expense Declaration (FL-150)*
- If you are responding to divorce/legal separation, you also need these documents:
 - *Property Declarations (FL-160) or Schedule of Assets of Debts (FL-142)*
 - *Income and Expense Declaration (FL-150)*

How do I file my documents?

*** * * At this time, because of COVID-19, the Courts are temporarily CLOSED for filing, so, you will not be able to file for now * * ***

When the Courts re-open, here are the things you should do:

- Always file the original and two copies
- Fees:
 - *There are fees to file certain things:*
 - Petition: \$435
 - Response to Petition: \$435
 - Request for Order: \$60 (+\$25 if custody and visitation)
 - Ex Parte: \$60
 - *Consult the court's website for details*
 - *You may qualify for a fee waiver or payment plan*

Where do I get the forms?

- Superior Court of San Diego website Online at sdcourt.ca.gov
- California Court website at courts.ca.gov

SERVICE



Serving (Giving the paperwork to) the Respondent

- Serving your petition and RFO is best done in person by:
 - *Anyone not a party to the case (not by you) who is at least 18-years old*
 - *The person who served must be willing to complete a Proof of Service that will be filed with the Court. The Proof of Service is a court document.*
 - *The server should note the time, date, and specific address where Respondent was given the court documents*
- Respondent does not have to sign anything
- Respondent can throw the documents away or say s/he doesn't want them, but server should not pick them back up
- RFO must be served on Respondent at least 16 court days before the RFO hearing (plus 5 is serving by mail)
 - *Good practice to serve at least 2 weeks before FCS date*

Serving (Giving the paperwork to) the Petitioner

- Serving your Response to the petition and RFO may be done in person or by mail by:
 - *Anyone not a party to the case (not by you) who is at least 18-years old*
 - *The person who served must be willing to complete a Proof of Service that will be filed with the Court. The Proof of Service is a court document.*
 - *The server should note the time, date, and specific address where Respondent was given the court documents*
 - *If the server is serving by mail, the server may mail the court paperwork to the Petitioner's address on the petition.*
- Petitioner does not have to sign anything
- Petitioner can throw the documents away or say s/he doesn't want them, but server should not pick them back up
- Response to the RFO (also known as Responsive Declaration) must be served on Petitioner at least 9 court days before the RFO hearing plus 5 for mailing

I'm the Respondent, are there other things I should keep in mind?

- You have 30 days after you were given Petitioner's paperwork to file and serve your Response. If you do not file and give the Petitioner a copy of your Response, the Petitioner can ask for a Default Judgment. A Default Judgment is when a Judge grants the things that the Petitioner asked for in the petition.

*** * * Because of current court closures the Court may give you more time to serve your documents. Make sure to follow-up with the court when it re-opens * * ***

What do I do with the Proof of Service (POS)?

- When the Courts re-open,
- If you are the Petitioner, take the original and copies of the Proof of Service of Summons (FL-115) to file at the courthouse
- If you are the Respondent, take the original and copies of the Proof of Service (FL-330, if Petitioner was served in person or FL-335 if Petitioner was served by mail) to file at the courthouse

DOMESTIC VIOLENCE

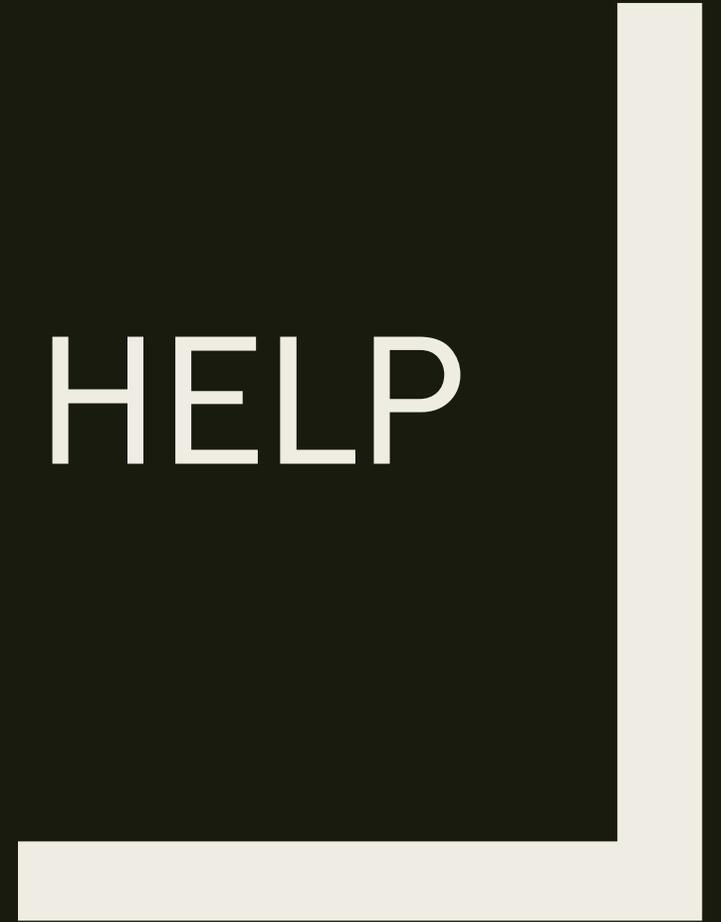


What do I do if I need Domestic Violence Restraining Orders?

*** * * The Courts are OPEN for emergency Restraining Orders * * ***
See Legal Aid Society of San Diego, Inc.'s website for its DV Clinic information

- Same process as the Petition for Divorce/Legal Separation and Paternity:
 - *Request*
 - *Service*
 - *Response*
 - *Hearing*
- Can include custody, visitation, support, and property orders
- If you have experienced domestic violence, harassment, or stalking, you can request assistance at the domestic violence restraining order clinics located at each courthouse

I NEED HELP



Who can I ask for help?

- Legal Aid Society of San Diego, Inc.:
 - *Call 1-877-534-2524 to be screened*
- Legal Aid Society of San Diego, Inc.:
 - *DV Clinic 1-877-534-2524*
- San Diego County Bar Association
 - *Call 619-231-8585 to be screened for Modest Means Panel or get referrals*