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VOLUNTEER LAWYER
PROGRAM

Pursuing justice | Transforming lives

FAMILY LAW BASICS

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San Diego Volunteer Lawyer Program Mission Statement

To provide equal access to the justice system by serving as a bridge between indigent and other disadvantaged people in San Diego County and the volunteer lawyers and others who are willing to donate their time and resources.

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Roadmap

- Family Law Basics
 - Child Custody
 - Child/Spousal Support
 - Dissolution of Marriage
- COVID-19 Specific Issues
- Remote pro bono assistance

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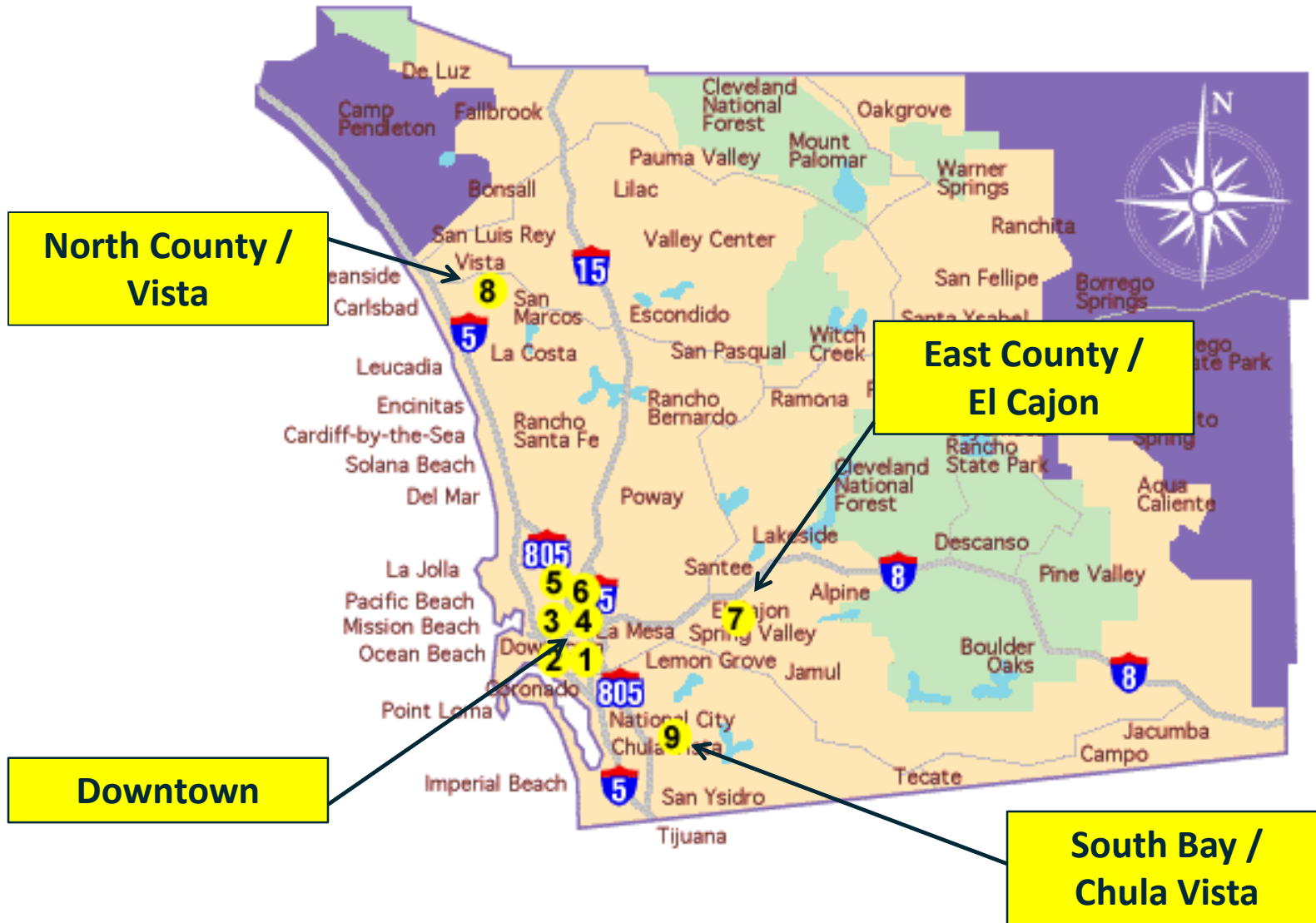


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Family Law Basics

San Diego County Superior Courts

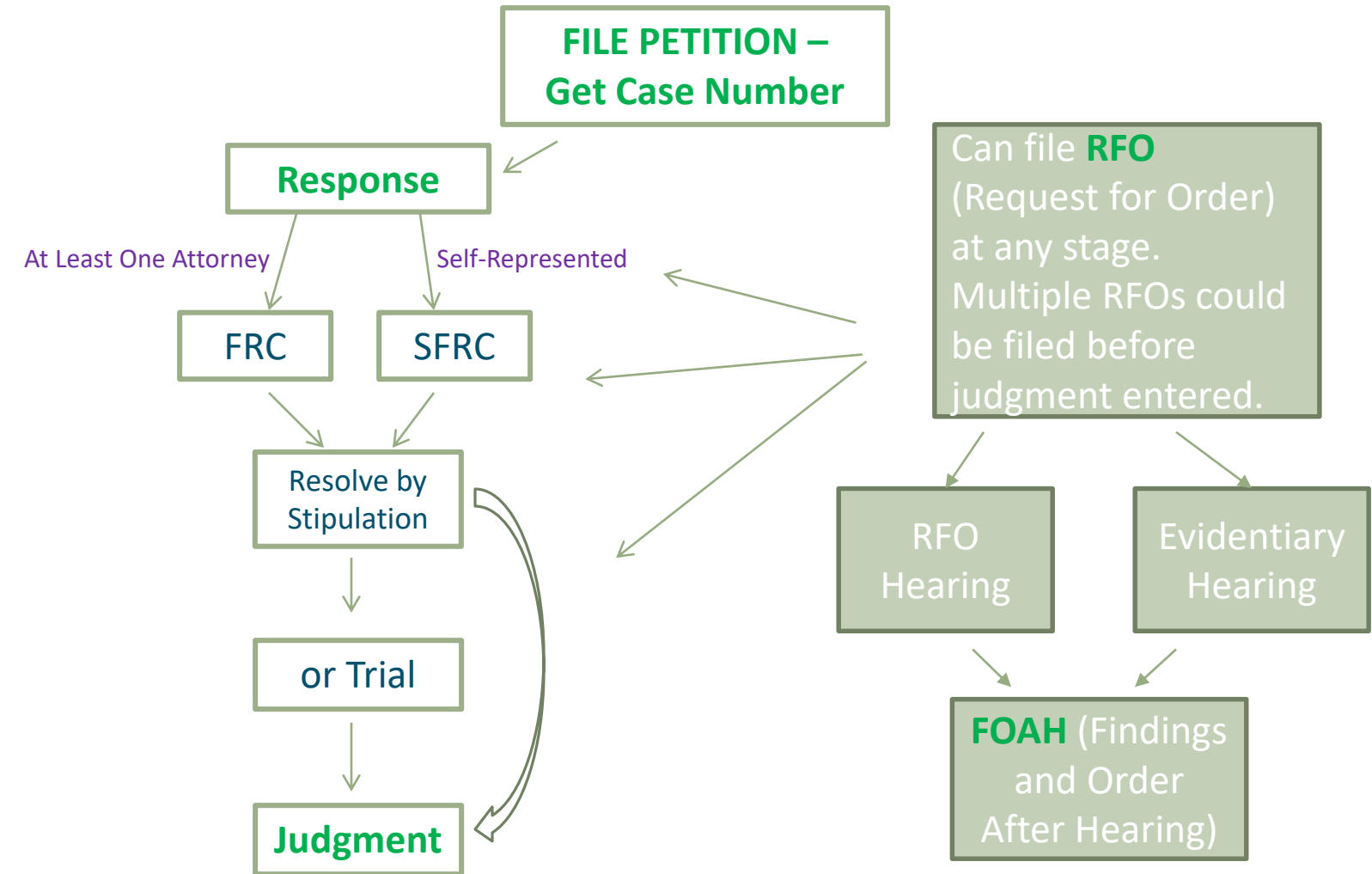


Getting into Family Court

File Underlying Petition:

- **(1) Dissolution of Marriage / Legal Separation**
- **(2) Petition to Establish Parental Relationship**
- **(3) Petition for Custody and Support**
- (4) DCSS Child Support
- (5) Domestic Violence Restraining Order

Life of a Family Law Case



After Judgment has been entered, if either party wants to modify orders the party can file an RFO without the need for a new petition.

Family Law Terms & Acronyms

- FRC = Family Resolution Conference (status conference when there is a pending petition and at least 1 attorney)
- SFRC = Self-Represented Family Resolution Conference (status conference when there is a pending petition and no attorneys)
- RFO = Request for Order
- DVRO = DV Restraining Order Hearing
- LRFO = “Long Cause” or “Evidentiary Hearing”
- MSC = Marital Settlement Conference
- FOAH = Findings and Order After Hearing (resolves RFO)
- Judgment = resolves a pending petition

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Child Custody and Visitation

Child Custody and Visitation

FILE PETITION FOR DISSOLUTION **OR** PETITION FOR PARENTAGE **OR**
PETITION FOR CUSTODY AND SUPPORT

File Request for Order

FCS Child Custody Counseling / Mediation

RFO Hearing

Evidentiary Hearing

FOAH or Stipulation

* This flow chart is subject to change depending on facts of individual cases

Best Interest of the Child

FC § 3011: In making a determination of the best interest of the child, the court shall, among any other factors it finds relevant, consider all of the following:

- (a) The health, safety, and welfare of the child.
- (b) Any history of abuse by one parent.
- (c) The nature and amount of contact the child has with both parents.
- (d) The habitual or continual illegal use of controlled substances and/or alcohol.

Legal Custody

- **Sole** Legal Custody: One parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. *FC § 3006*.
- **Joint** Legal Custody: Both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. *FC § 3003*.

Physical Custody

- **Sole Physical Custody:** A child shall reside with and be under the supervision of one parent, subject to the power of the court to order visitation. *FC § 3007.*
- **Joint Physical Custody:** Each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents, subject to Sections 3011 and 3020. *FC § 3004.*

Visitation

- “. . . The court shall grant reasonable visitation rights to a parent *unless* it is shown that the visitation would be detrimental to the best interest of the child.” *FC § 3100.*
- Unsupervised Visitation vs. Supervised Visitation
- Supervised Visitation:
 - Non-Professional Monitor
 - Professional Monitor
 - Therapeutic Reunification

Modification

- Change in Circumstances – *Fay v. Fay* (1938) 12 Cal.2d 279; *Marriage of McLoren* (1988) 202 Cal.App3d 108
- “[T]he changed circumstances rule is not a different test that supplants the best-interest standard, but rather an adjunct to the best-interest test.” *Marriage of Carney* (1979) 24 Cal.3d 725.

Family Court Services (“FCS”)

- Mandatory Child Custody Counseling / “Mediation”
 - Only attended by parties to the action. No attorneys.
 - Failure to appear could result in SANCTIONS
- The goal is to reach an agreement and try to resolve the case
- If no agreement, FCS prepares Report & Recommendations for the court

Drafting Documents for Custody Cases

- What is required:
 - Making Request
 - FL-300 Request for Order + Declaration
 - FL-105 UCCJEA
 - FCS Screening Form (FCS-046)
 - Proof of Service – Either Personal or by Mail (depending)
 - *FW-001 Fee Waiver & FW-003 Order on Fee Waiver*
 - Answering Request
 - FL-320 Responsive Dec to Request for Order + Declaration
 - Proof of Service by Mail
 - *FW-001 Fee Waiver & FW-003 Order on Fee Waiver*

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Child Support and Spousal Support

Child Support / Spousal Support

FILE PETITION FOR DISSOLUTION **OR** PETITION FOR PARENTAGE **OR**
PETITION FOR CUSTODY AND SUPPORT



File Request for Order



RFO Hearing

Evidentiary Hearing



FOAH or Stipulation

* This flow chart is subject to change depending on facts of individual cases

Child Support

- Money paid by one parent to the other to support a child
- Duty to Support: Both parents have an equal duty of support of their minor children. FC § 3900.
- Duration: Duty to support lasts until child marries, dies, emancipates, reaches age 18 or 19 years of age if still full-time in high school. FC § 3901.

Guideline Child Support

- Court must adhere to the statewide **guideline child support** and may depart from it only in special circumstances. FC § 4052.
- Guideline Child Support is generally based on **parents' income** and **timeshare with the children**. FC § 4055.

Calculating Guideline Child Support

- Guideline child support is based on the following formula under FC § 4055:
 - $CS = K[HN - (H\%)(TN)]$
- K = amount of each parent's income allocated for support.
- HN = higher earner's net monthly income.
- H% = percentage of time higher earner has primary responsibility of the child.
- TN = total net disposable income of both parties.

Guideline Child Support Calculators

- DissoMaster
 - Available for use at Family Court
- CA Online Support Calculator:
www.childsup.ca.gov/Resources/CalculateChildSupport.aspx

Determining Income

- Use gross income based upon most recent pay stubs or annualized (such as through tax return).
- Mandatory Income Considerations under FC § 4055:
 - Commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, spousal support actually received from a person not a party to the proceeding, business income, stock options exercised, gift or inheritance income, and lottery winnings.
- The Court will exclude the following income:
 - Child support payments received for other children, public assistance when based on need (TANF, SSI), student loans, life insurance (if no interest from it), gifts and inheritances (if no income from it), spousal support received from the opposing party, stock received in payment for an asset, and depreciation of rental property.

Earning Capacity

- The Court has the discretion to consider a parent's earning capacity instead of actual earnings as long as it is consistent with the best interests of the child. FC § 4058(b).
- Burden of Proof:
 - Party seeking must show unemployed or underemployed parent has:
 - 1. Ability to work (Ex. Education, qualifications) AND
 - 2. Opportunity to work (Ex. newspaper/internet ads)
 - Burden then shifts to responding party and must show why earning capacity should not be used.

Department of Child Support Services (DCSS)

- Child support matter is assigned to the Department of Child Support Services if a parent is receiving government aid such as CalWORKs or Medi-Cal.
- Parents can request DCSS to be involved in a case even if not receiving government aid.
- DCSS does not represent either parent.
- DCSS assists with establishing and enforcing support orders and provides other needed services along those lines.
- If DCSS involved in case then they need to be served with any pleadings in the matter and must approve of any stipulations and judgments involving support orders.
- www.sdcounty.ca.gov/dcss/

Spousal Support

Temporary

- Ordered during the pendency of a proceeding for marital dissolution or legal separation.
- Purpose: Maintain the parties' marital standard of living pending dissolution of marriage
- Amount based on need and ability to pay.
- Guideline Formula

Permanent

- In a judgment of dissolution or legal separation the court may order a party to pay spousal support to the other in any amount, and for any period of time, that the court deems just and reasonable. FC § 4330.
- Duration: If marriage is less than 10 years, SS will generally be $\frac{1}{2}$ length of marriage (i.e. 8-year marriage = 4 years SS); if marriage is longer than 10 years, SS will generally not have expiration date (but can be modified by RFO later)
- Court must consider the marital standard of living and FC § 4320 factors

4320 Factors

- **(a):** the extent to which “earning capacity” of each spouse is sufficient to maintain marital standard of living
- **(b):** the extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party
- **(c):** the ability of the supporting party to pay spousal support
- **(d):** the needs of each party based on the standard of living established during the marriage
- **(e):** the obligations and assets, including the separate property of each party
- **(f):** duration of the marriage
- **(g):** the ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party
- **(h):** the age and health of the parties
- **(i):** documented evidence of any history of domestic violence between the parties
- **(j):** the immediate and specific tax consequences to each party
- **(k):** a balance of the hardships
- **(l):** the goal that the supported party be self-supporting within a reasonable period of time
- **(m):** the domestic violence criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award
- **(n):** any other just and equitable factor

Drafting Documents for Support Cases

- What is required:
 - Making Request
 - FL-300 Request for Order + Declaration
 - FL-150 Income and Expense Declaration
 - Proof of Service – Either Personal or by Mail (depending)
 - *FW-001 Fee Waiver & FW-003 Order on Fee Waiver*
 - Answering Request
 - FL-320 Responsive Dec to Request for Order + Declaration
 - Proof of Service by Mail
 - *FW-001 Fee Waiver & FW-003 Order on Fee Waiver*

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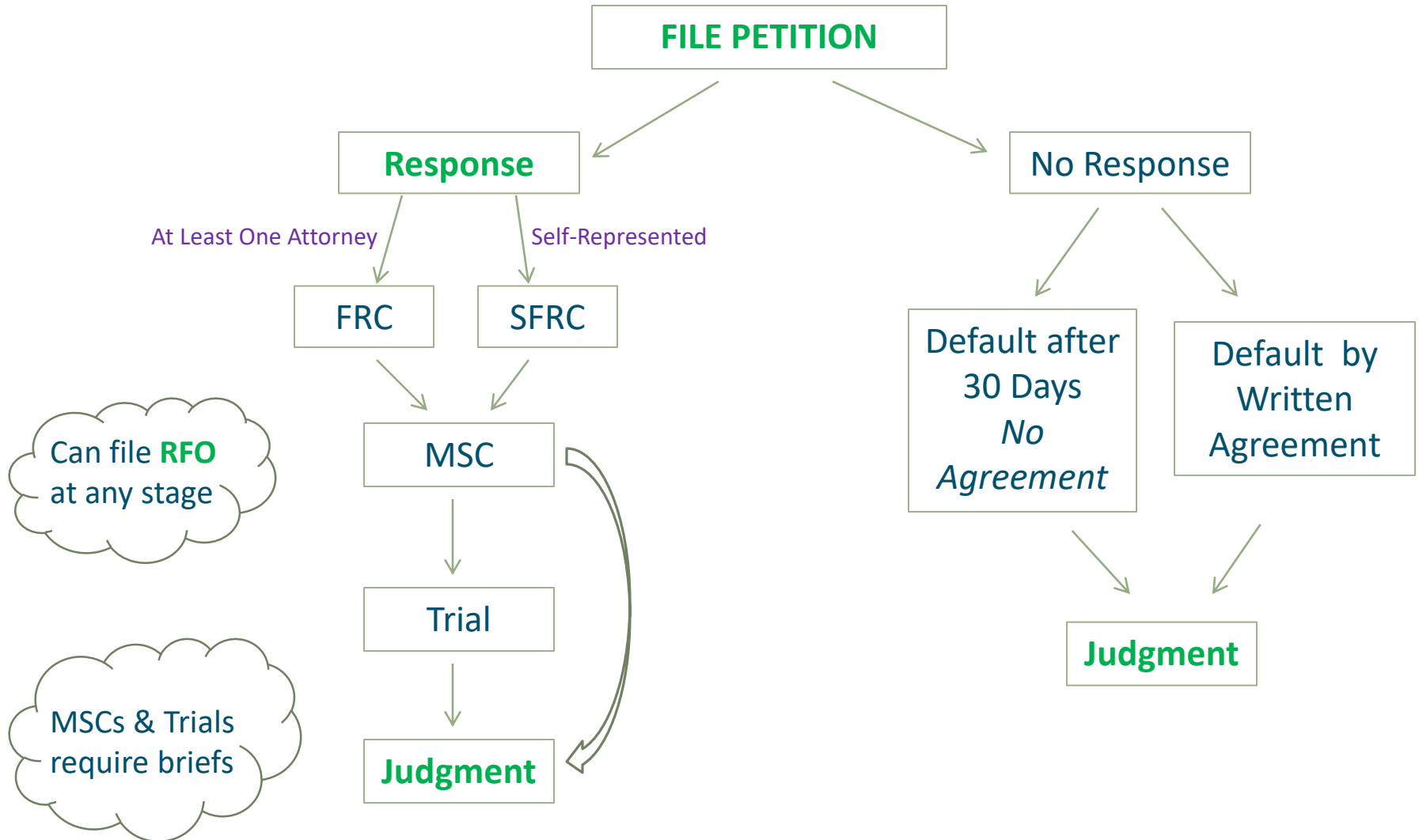


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Dissolution & Legal Separation

Dissolution



* This flow chart is subject to change depending on facts of individual cases

Dissolution / “Divorce”

- Is a formal, legal ending of a marriage.
- Certain issues can be resolved in a dissolution: division of assets and debts, custody of children, child support, spousal support, attorney’s fees, restoration of former name
- CA is a “no fault” state

Residency Requirement and “Waiting Period” for Dissolution

- In order for San Diego to have jurisdiction over the dissolution at least one of the parties must have:
 - 1. Lived in CA for at least 6 months AND
 - 2. Lived in the County for at least 3 months. FC §2320.
- There is a 6 month waiting period in California before parties to a dissolution of marriage can be restored to the status of single people. The six months begins to run on the date:
 - 1. The respondent is served OR
 - 2. Respondent appears in the action. FC §2339(a).

Legal Separation

- Identical to Dissolution except parties not restored to status of single persons.
- Allows married parties to obtain orders for custody, support, property division, etc.
- No residency requirement.
- If a party responds to a legal separation requesting a dissolution, then the Court will move forward with the dissolution.

Forms Needed to Start Dissolution

- 1. FW-001: Application for Waiver of Courts Fees and Costs
- 2. FW-003: Order on Application for Waiver of Court Fees and Costs
- 3. D-049: Family Law Assignment Form
- 4. FL-100: Petition-Marriage
- 5. FL-110: Summons
- IF THERE ARE CHILDREN, ADD:
 - FL-105: UCCJEA
 - FL-105(A): Attachment to UCCJEA (if applicable)

Forms to Disclose Financial Information

- FL-150: Income and Expense Declaration
- FL-140: Declaration of Disclosure
- *Either* FL-142: Schedule of Assets and Debts
- *Or* FL-160: Property Declaration (need 2 – one for Separate Property and one for Community Property)
- FL-141: Declaration Regarding Service of Declaration of Disclosure

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Important Issues due to COVID-19

Virtual Hearings

- Hearings are Virtual via Microsoft Teams
 - Court website has links to each department
 - Preference to appear via Teams rather than by phone
 - Log-in 30 minutes early to check-in with clerk
 - Test microphone and sound
- Clients must follow courtroom decorum
 - Proper dress, no interrupting, etc.

Filing Documents

- Business office has reopened
- Drop-filing also available for certain pleadings
- Courtesy copy box available
- E-filing was implemented in May 2020
 - Review list of excluded docs on court website (DV docs, FOAHs, judgments, etc.)
- Processing times are delayed, so be sure to file timely

Child Custody during COVID-19

- All child custody and visitation orders from the court remain in full force and effect until and unless modified by the court
- Parents are encouraged to work together
 - Focus on “best interests” of child
 - Do not use COVID-19 as excuse to withhold visitation
 - Be flexible and work with other party to co-parent

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Pro Bono Remote Legal Assistance

SDVLP's Child Custody Clinic

- SDVLP is providing remote family law assistance to low-income clients on a variety of family law matters, and needs volunteers to assist with child custody cases
- Seeking volunteers to assist with Zoom consultations to provide advice and counsel, & draft basic forms
 - Assistance is for self-represented litigants
- No experience necessary: Zoom training, template documents, mentor staff attorney

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Questions?

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