



FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA

SERVICE OF PRELIMINARY DECLARATIONS OF DISCLOSURE

LEGISLATIVE PROPOSAL (FL-2015-09)

TO: Office of Governmental Affairs

FROM: Minouche Kandel, Chair of Affirmative Legislation
Alexandra O'Neill, Vice-Chair of Affirmative Legislation

DATE: March 10, 2014

RE: Proposal to amend Family Code Section 2104 relating to service of preliminary declarations of disclosure

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: March 8, 2014
Approval vote: 14-0-0

Section Chair of Affirmative Legislation: Minouche Kandel (415) 572-6482 (cell) (415) 252-3203 (work) minouche.kandel@sfgov.org	Author of Proposed Legislation: Michele B. Brown Procopio, Cory, Hargreaves & Savitch LLP (619) 906-5745 (619) 398-0165 Michele.Brown@procopio.com
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SUMMARY OF PROPOSAL

This proposal would amend Family Code Section 2104(f) to add the words “or legal separation” to the list of cases for which Preliminary Declarations of Disclosure must be served within 60 days of the Petition or Response.

ISSUES AND PURPOSE

Parties to a marital dissolution or legal separation are required to exchange certain financial information early in the process, known as Preliminary Declarations of Disclosure. This requirement is codified in Family Code Sections 2100(c) and 2103. In 2012, AB 1406 (Stats. 2012, ch. 107) was enacted, effective January 1, 2013, to add a time frame in which the

Preliminary Declarations of Disclosure must be served. Family Code Section 2104(f) requires the Preliminary Declaration of Disclosure in dissolution cases to be served within 60 days of filing of the Petition of Dissolution or the Response. This proposal would clarify Section 2104(f) by also including a time frame for serving Preliminary Declarations of Disclosure in legal separation cases, which would be the same as the time frame provided in dissolution cases.¹

HISTORY

Family Code Section 2104 was enacted in 1993, and Family Code Section 2104(f) was last amended in 2012.

IMPACT ON PENDING LITIGATION

This proposal would not have an impact on litigation that is currently pending, although the proposed statutory amendment could have an impact on cases that are pending at the time of the effective date of any such amendment.

LIKELY SUPPORT AND OPPOSITION

We do not anticipate any opposition.

FISCAL IMPACT

No direct fiscal impact is anticipated.

GERMANENESS

The subject matter of this proposed legislation falls within the unique and special knowledge, training, experience and technical expertise of the members of the Executive Committee of the Family Law Section because it amends the Family Code and concerns an issue which impacts the practice of family law.

DISCLAIMER:

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

¹ Nullity is included in Family Code Section 2100, but not Family Code Section 2103. There may be valid reasons for excluding nullity from Section 2104(f), which would make that Section in line with Section 2103. This proposal does not address the issue of nullity, but is solely aimed at adding "or legal separation" to Family Code Section 2104(f).

TEXT OF PROPOSAL

SECTION 1. Section 2104(f) of the Family Code is amended to read:

The petitioner shall serve the other party with the preliminary declaration of disclosure either concurrently with the petition for dissolution or legal separation, or within 60 days of filing the petition. The respondent shall serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition, or within 60 days of filing the response. The time periods specified in this subdivision may be extended by written agreement of the parties or by court order.