



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2008-01) *WAIVER OF PRELIMINARY DECLARATION OF DISCLOSURE*

TO: Larry Doyle, Chief Legislative Counsel,
State Bar Office of Governmental Affairs

FROM: Diane Fetzer

DATE: August 10, 2007

RE: Family law: Would permit waiver or receipt of a preliminary final declaration of disclosure under specified circumstances to permit entry of a judgment of dissolution.
An act to amend §§2103, 2104, 2106 and 2107 of the Family Code

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: September, 2006
Approval vote: Unanimous

<u>Contact</u>	<u>Section Affirmative Legislation Chair</u>
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ISSUES AND PURPOSE:

1. What do you see as the key issue(s) raised by this proposal?

SHOULD A PARTY TO A DISSOLUTION OF MARRIAGE BE PERMITTED TO WAIVE RECEIPT OF THE PRELIMINARY DECLARATION OF DISCLOSURE UNDER SPECIFIED CIRCUMSTANCES, AS THEY NOW CAN FOR THE FINAL DECLARATION OF DISCLOSURE, IN ORDER TO OBTAIN A JUDGMENT OF DISSOLUTION?

2. What is the deficiency in existing law that this proposal seeks to remedy?

Existing law requires each party to a proceeding for dissolution of marriage to serve on the other party a preliminary and final declaration of disclosure regarding their income and property, and to file proof of such service with the court. If the respondent fails to respond to the petition for dissolution, the petitioner, having served her/his final declaration and proof of service, may waive his/her right to receive a final declaration from the respondent and obtain a judgment of dissolution. However, existing law does not permit the petitioner to waive receipt of a preliminary declaration of disclosure in order to achieve the same end (Family Code §2110); it only permits a party to bring a motion to compel the non-complying party to comply (Family Code §2107(b)(1)(2)), and provides only monetary sanctions as a remedy. The court is powerless to enter judgment of dissolution even after making an order compelling the non-complying party to comply which that party chooses to ignore.

In many cases, one party does not serve her/his declarations of disclosure and file his/her proof of service, thereby preventing the court from granting the complying party a judgment. The result is numerous judgments submitted and rejected, or held in limbo, awaiting the non-complying party's compliance.

Many cases involve pro per litigants and minimal or limited assets. Many pro per litigants do not understand the strict service and filing requirements provided in Family Code §2103 et seq. Some litigants simply want to stall the process and, under the current statute, they actually prevent the court from entering a judgment by not serving and filing the required documentation.

3. How does this proposal remedy the problem? Provide at least one specific example of how the bill would do so.

This proposal would expand the limited sanction remedies provided in Family Code §2107 (1) and (2), and would add a third option that allows a complying party to bring a motion before the court wherein the complying party can request that the court grant their right to waive receipt of the other party's documents and to obtain a judgment. The court would be permitted to grant the waiver and enter judgment of dissolution if it found good cause for doing so. The proposal requires that the other party receive notice of the requested waiver and entry through noticed motion. The good cause requirement allows the court to use its discretion to review the facts allegedly justifying the requested waiver and entry of judgment. Hence, if the court feels that the facts do not justify waiver and entry then it can deny the motion and order further actions be taken before entry of judgment (such as a motion to compel as is set forth in the existing statute).

PRIOR LEGISLATIVE HISTORY

A variation of this proposal was contained in AB 2303, an Assembly Judiciary Committee omnibus bill, in 2006, but was amended out on 8/14/2006 on request of Senate Judiciary

Committee staff, who considered the proposal too complex and substantive to be considered as part of an omnibus proposal.

AB 1469 (Speier), Chapter 1101, Statutes of 1993

AB 806 (Ducheny), Chapter 233, Statutes of 1995

SB 1033 (Senate Judiciary Committee), Chapter 1061, Statutes of 1996

AB 2801 (Assembly Judiciary Committee, Chapter 581, Statutes of 1998

AB 583 (Jackson), Chapter 703, Statutes of 2001

AB 3028 (Assembly Judiciary Committee), Chapter 1008, Statutes of 2002

IMPACT ON PENDING LITIGATION: None.

FISCAL IMPACT: None.

TEXT OF PROPOSAL

SECTION 1. Section 2103 of the Family Code is amended to read:

2103. In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party ~~to~~ *who has appeared in* a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105, unless service of the final declaration of disclosure is waived pursuant to Section 2105 or 2110, and shall file proof of service of each with the court.

SEC. 2. Section 2104 of the Family Code is amended to read:

2104. (a) ~~After~~ *Except by court order for good cause as provided in Section 2107, after* or concurrently with service of the petition for dissolution or nullity of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order ~~;~~ ~~however~~. *However*, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

SEC. 3. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (d) of Section 2105 ~~or in~~, Section 2110, *or absent good cause as provided in Section 2107*, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party, or his or her attorney, shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110.

SEC. 4. Section 2107 of the Family Code is amended to read:

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do ~~either one~~ or ~~both more~~ of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) *File a motion showing good cause for the court to grant the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure under Section 2104 or final declaration of disclosure under Section 2105. The voluntary waiver does not affect the right of either party to request the court to set aside the judgment as provided in subdivision (d).*

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) ~~If~~ *Except as otherwise provided in this subdivision, if a court enters a judgment when the parties have failed to comply with all disclosure requirements of this chapter, the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error. If the court granted the complying party's voluntary waiver of receipt of the noncomplying party's preliminary declaration of disclosure pursuant to paragraph (3) of subdivision (b), the court shall set aside the judgment only at the request of the complying party.*

(e) Upon the motion to set aside judgment, the court may order the parties to provide the preliminary and final declarations of disclosure that were exchanged between them. Absent a court order to the contrary, the disclosure declarations shall not be filed with the court and shall be returned to the parties.