



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

ELIMINATING DISCLOSURES IN DEFAULT CASES WHEN SERVICE IS BY PUBLICATION OR POSTING

LEGISLATIVE PROPOSAL (FL-2015-05)

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 2110 (Eliminating disclosures in default cases when service is by publication or posting)

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: Fariba Soroosh (408) 882-2922 fsoroosh@scscourt.org
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SUMMARY OF PROPOSAL

This proposal would create an exception to the mandatory financial disclosure rules in dissolution and legal separation matters where service of Summons and Petition was by publication or posting pursuant to court order and the respondent defaults.

ISSUES AND PURPOSE

Under existing law, service of financial disclosure by each party to a dissolution or legal separation matter is required at least once. This requirement applies in default proceedings, where respondent fails to appear, even if service of Summons and Petition was by publication or posting. This proposal would change the law to allow a very narrow exception to the financial disclosure rules in

cases where service of Summons and Petition was by publication or posting and the respondent defaults.

Existing law does not provide any exceptions to the mandatory financial disclosure rules. The court can approve service by publication or posting in cases where respondent cannot be served with reasonable diligence in another manner authorized by statute (Code of Civil Procedure Section 415.50). In these cases, if the respondent defaults, it can reasonably be assumed that respondent will not get actual notice of the disclosures, making petitioner's efforts in completing, filing and serving the required forms an unnecessary expenditure of time and resources. Additionally, an Income and Expense Declaration and Property Declaration are required attachments to the Request to Enter Default form in applicable cases.

This proposal would amend Family Code Section 2110 by creating an exception to the mandatory financial disclosure rules in cases where service of Summons and Petition was by publication or posting and the respondent defaults.

HISTORY

Family Code Section 2110 was enacted in 1993. It was amended in 1998.

IMPACT ON PENDING LITIGATION

None that is currently pending, although the proposed statutory amendment may have an impact on cases that are pending at the time of the effective date of any such amendment.

LIKELY SUPPORT AND OPPOSITION

As cases where service is effected by publication or posting usually involve self-represented and/or indigent litigants, we anticipate support from legal aid and legal services organizations and self-help centers. Those who believe there should be financial disclosures in all dissolution and legal separation matters may oppose any exception.

FISCAL IMPACT

There does not appear to be any direct fiscal impact.

GERMANENESS

The subject matter of this proposed legislation falls within the unique and special knowledge, training, experience and technical expertise of the members of 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.

TEXT OF PROPOSAL

SECTION 1. Section 2110 of the Family Code is amended to read:

In the case of a default judgment, the petitioner may waive the final declaration of disclosure requirements provided in this chapter, and shall not be required to serve a final declaration of disclosure on the respondent nor receive a final declaration of disclosure from the respondent. However, a preliminary declaration of disclosure by the petitioner is required, unless service of the Summons and Petition was accomplished by publication or posting pursuant to Court order.