

TABLE OF CONTENTS—CHAPTER 8

8.00	Introduction: Informed Choices and Anticipating Problems	229
	A. Dissolution of Marriage	229
	B. Legal Separation	230
	C. Interaction Between Legal Separation and Dissolution	230
	D. Summary Dissolution	231
	E. Nullity	231
	F. Petition for Custody, Visitation and Child Support	232
8.01	Issue Spotting: Importance of Identifying Other Issues Early	232
	A. Requests For Order and Need for Immediate Relief	232
	B. Immigration	233
	C. Bankruptcy	233
	D. Bigamous Marriages	233
	E. Attorney’s Fees and Costs	234
8.02	HBCFL Three-Stage Dissolution Process	234
8.03	Dismissal of Cases Due to Timing Issues	236
8.04	Issues Common to All Forms	236
	A. Document Footer	236
	B. Address Confidentiality	237
	C. Change of Address	237
	D. Handwritten Forms	237
	E. Name Consistency	237
8.05	Family Law Case Cover Sheet (LA-20/FAM 020) (Sample Form 9C)	238
8.06	Summons (FL-110) (Sample Form 9D)	238
8.07	Proof of Service of Summons (FL-115) (Sample Forms 6A and 9E)	239
8.08	Petition (FL-100) (Sample Form 9F)	239
8.09	Child Custody and Visitation Application Attachment (FL-311) (Sample Form 9G-1)	260
	A. History of Violence	260
	B. Form Completion	261

8.10	Additional Provisions-Physical Custody Attachment (FL-341(D)) (Sample Form 9G-2)	265
8.11	Joint Legal Custody Application Attachment (FL-341(E)) (Sample Form 9H-1).	266
8.12	Children’s Holiday Schedule (FL-341(C)) (Sample Form 9H-2).	267
8.13	Request for Child Abduction Prevention Orders (FL-312) (Sample Form 9H-3).	269
8.14	Service of Process	271
	A. Personal Service	271
	B. Service by Certified Mail	271
	C. Posting	271
	D. Service to an Out-of-State Respondent	272
	E. Service to an Out-of-Country Respondent.	272
	F. Service to an Incarcerated Respondent	272
8.15	Active Duty Military Respondents	273
8.16	Amended Pleadings.	274
	A. First Amended Petition	274
	B. Amended Proof of Service	274
8.17	Final Review—Troubleshooting	275
	A. Review Each Set of Pleadings	275
	B. Evaluate Need for Immediate Relief	275
	C. Review Service of Process	275
	D. Advise: File Before Service of Process.	275
	E. Provide Important Reminders to the Litigant.	275
	F. Prepare the Dissolution I Checklist (See Sample Form 9Q)	276
8.18	Preview of the Disso II Appointment	276
8.19	Checklist for Dissolution I Forms	276
	A. Forms to Complete	276
	B. Copies	278

CHAPTER 8 DISSOLUTION I

8.00 Introduction: Informed Choices and Anticipating Problems

There are several ways to end a marriage: legal separation, dissolution, summary dissolution, and nullity. The Buhai Center only assists Litigants with legal separations and dissolution actions so the other options will not be discussed in detail. Parents may also file a Petition for Custody and Support to obtain custody, visitation, and child support orders without ending the marriage. Keep in mind that these different methods should be explained fully to the Litigant early on, so she can make an informed choice.

Litigants often need reassurance that they **do not** need to get the consent of their spouse and their spouse cannot stop the process. The often heard threat, “I won’t let you get a divorce,” is an empty gesture. However, the process can take a long time, at least 6 months under California law and often a year or longer. Make sure that Litigants have reasonable expectations about this time frame and that they understand that dissolution is a several-step process.

The following will be accomplished when the process is complete:

- The legal relationship will be over;
- Property will be divided;
- Custody and visitation of the children will be determined;
- Child support will be assessed, if possible;
- Spousal support will be determined, if necessary; and
- The parties will get their former names reinstated, if desired.

Important Note: It is **critical** to advise all Litigants commencing a dissolution that they **may not remarry until they receive the final court papers signed by the judge**. They must be clearly advised that they are not divorced until they receive a Notice of Entry of Judgment from the Court. This form will contain the date in which the parties are legally divorced.

A. Dissolution of Marriage

In California, divorce is referred to as dissolution of marriage.

1. Family Court vs. Civil Court

Dissolution actions are filed in family court. Unlike actions filed in civil court, the party who files first is the “Petitioner” (instead of plaintiff), the party who responds is the “Respondent” (not defendant), and the initiating document is called the “Petition,” not the complaint.

2. Venue: 3 Months

The proper venue to bring an action for dissolution is the county in which **either** the Petitioner or the Respondent resided for at least three months immediately preceding **commencement** of the proceeding. Cal. Code of Civ. Proc. § 395.

3. Residency Requirements: 6 Months

Petitioner or Respondent must have been a resident of California for six months before the petition for dissolution is filed. Fam. Code § 2320.

B. Legal Separation

A legal separation is a way to settle each spouse's responsibilities towards their children and each other **without** terminating the marital relationship. This action can be maintained on the same grounds as dissolution and is governed under the same Family Code sections, commencing with section 2300.

1. Reasons to Select Legal Separation Over Dissolution

- a. Residency Requirements: There is no residency requirement for legal separation, thus if a Litigant has not met the six-month residency requirement for filing a dissolution but needs orders immediately, she can file for legal separation.
- b. Religious Beliefs.

2. Venue

- a. The proper venue to bring an action for legal separation is the county in which **either** the Petitioner or the Respondent resides at the **commencement** of the proceeding. Cal. Code of Civ. Proc. § 395.

C. Interaction Between Legal Separation and Dissolution

1. Relief for legal separation or dissolution cannot be requested in the alternative.
2. Respondent may always request a dissolution in his response, even if Petitioner requested only a separation.
3. After the Litigant complies with the residency requirement for dissolution, she can **amend** her petition to request that judgment of dissolution be entered. Fam. Code § 2321.

D. Summary Dissolution

If the marriage has lasted no more than five years, there are no minor children from the relationship, and community property is less than \$25,000, a Litigant may qualify for a summary dissolution. Fam. Code §§ 2400 et seq. The Center does **not** help Litigants with summary dissolutions and they are not discussed in this manual.

E. Nullity

1. Nullity of a Void Marriage

- a. This alternative is available when the marriage was incestuous (**all** blood-relative marriages are illegal under section 2200 of the Family Code) or bigamous (where a living spouse exists and there is no basis for believing the spouse to be dead). Fam. Code § 2201. If nullity is granted, the marriage is declared never to have existed.

2. Nullity of a Voidable Marriage

- a. This alternative is available if at the time the marriage was entered into any of the following existed:
 - i. Petitioner was under the age of 18, or
 - ii. There was a prior existing marriage, but the prior spouse had been absent for at least five years and was not known to be alive, or was generally reputed or believed to be dead, or
 - iii. Either party was of unsound mind, or
 - iv. Consent of either party was obtained by fraud or force, or
 - v. Either party was physically incapable of entering into the marriage, and the incapacity continues and appears to be incurable.
- b. If nullity is granted, the marriage is declared no longer to exist. Fam. Code §§ 2210, 2212. See also §§ 2250 et seq.

3. Drawback to Nullity

- a. A court hearing is necessary even if the case goes by default and the Litigant must offer proof of the particular grounds. The Center **strongly recommends** against this alternative for self-represented Litigants because they will have to put on evidence and conduct a trial.

4. Pleading Both Nullity and Dissolution in the Alternative

A Litigant can plead nullity or dissolution in the alternative. However, because of the **extreme** difficulty in prosecuting a case for nullity, except in very rare instances, self-represented Litigants should be dissuaded from proceeding on the grounds of nullity.

F. Petition for Custody, Visitation and Child Support

Spouses may bring an action for exclusive custody of children of the marriage without filing an action for dissolution or legal separation. Fam. Code § 3120. The Court may also issue visitation and child support orders during the pendency of the action. For additional information **see Chapter 25**.

Note that unmarried parents who have signed a Voluntary Declaration of Paternity may also prosecute an action for child custody and support.

8.01 **Issue Spotting: Importance of Identifying Other Issues Early**

Attorneys need to evaluate issues early in the process to identify 1) the need for temporary orders and 2) other causes of action.

HBCFL Practice: It is important that Litigants quickly begin the process to file for immediate relief or receive referral information for issues not handled by the Center.

A. Requests For Order and Need for Immediate Relief

Parties can obtain temporary, or pendente lite, orders at any time after the Petition is filed through a Request For Order (“RFO”) for custody, visitation, child support, spousal support, and/or restraining orders. **See Chapters 18 and 20** for more information. Such orders will last until the final judgment is obtained, which could take up to a year or longer. Some reasons a Litigant might need an RFO include:

1. To prevent removal or compel return of a child who is being held by the other parent or a third party;
2. To obtain access to the child where access is being denied by the other parent;
3. To obtain support when the spouse/non-custodial parent is working and is not providing sufficient support;
4. To protect a Litigant who is under threat of violence or harm; and/or
5. To modify custody and visitation orders issued in a pre-existing Domestic Violence Prevention Act or dependency court case.

HBCFL Practice: Use the “RFO Checklist” (**Sample Form 9R**) to identify the need for an RFO.

B. Immigration

1. Violence Against Women Act of 1994 (“VAWA”) Eligibility to File a Petition for Legal Status

The VAWA self-petitioning procedure enables abused immigrant spouses to gain legal status without the assistance of their batterers.

- a. Requirements: 1) Non-citizen Litigant with no legal status, 2) married to a U.S. citizen or a legal permanent resident, and 3) domestic violence occurred during the marital relationship.
- b. Timing: If this issue is not identified and the Litigant is divorced for more than two years, she may have lost her chance to apply for legal status under VAWA.

C. Bankruptcy

The family law court will not be able to **make any** orders regarding a division of community or separate property until the bankruptcy case is finished.

Note: A Notice of Related Case needs to be filed. **See Chapter 4.**

HBCFL Practice: Litigants should be asked if they or their spouse ever filed for bankruptcy. If a bankruptcy case is pending or was filed recently:

1. **Obtain File Copies:** Instruct the Litigant to go to the bankruptcy court, assuming it is in Los Angeles, and make copies of the pleadings. If the case is not in Los Angeles, the Litigant will need to obtain copies by mail.
2. **List all Property in the Petition:** Take particular care to distinguish between separate property and community property, and to list all debts.
3. **No Property Orders:** Advise the Litigant that with the exception of pensions and other exempted property, the family law court will not be able to make any orders regarding a division of community or separate property until the bankruptcy case is finished.
4. **Disso II Stage:** Indicate in the Property Declaration that the court has no jurisdiction to enter property orders and file a Notice of Related Case.
5. **Disso III Stage:** Describe the Litigant’s bankruptcy case, with case number, in the Declaration or Trial Brief.

D. Bigamous Marriages

Litigants should be asked about any and all other marriages they may have entered. It is not unheard of for Litigants to be unaware that they are in bigamous marriages.

E. Attorney's Fees and Costs

In a dissolution, nullity, legal separation, action for exclusive custody, or enforcement of a child support order the court may, when appropriate, order one party to pay the attorney's fees and costs of the other party. Cal. Fam. Code §§ 2030, et seq.; 3121; 3557. California Family Code section 2030 was recently amended to require the court to ensure **early** access in the proceedings to attorney's fees based on the income and needs assessments of both parties. Litigants can request early in the proceedings that a determination be made about attorney's fees before the proceedings go forward. Cal. Fam. Code § 2030.

To determine the appropriateness of a request for attorney's fees and costs, the court will review 1) whether there is a disparity in access to funds to retain counsel, and 2) whether one party is able to pay for legal representation of both parties. Cal. Fam. Code § 2030(a)(2). If the court's findings demonstrate "disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs." The Judicial Council has adopted California Rule of Court 5.427 and an optional form to implement these new requirements. Based on these recent amendments, the financial situation of both parties should be assessed early in the case to determine if a request for attorney's fees and costs is appropriate.

8.02 HBCFL Three-Stage Dissolution Process

HBCFL Practice: This entire section pertains to the Center's practices, but provides useful guidance on how to manage a dissolution case.

The Center breaks down the dissolution process into three stages as described below. Within the stages there are different tracks depending on how the case is proceeding (i.e. default or contested). To help volunteers and Litigants understand these stages, the Center has created a flow chart of the stages. **See Sample Form 9A.**

- **Dissolution I (Initiate Case)**

1. **Form Completion:** The Litigant prepares the Summons, Petition and other papers to begin the action.
2. **File and Serve:** The Litigant is given copies for herself and the Respondent, and is instructed to file at the court and then have someone personally serve the Respondent and complete a Proof of Service to that effect.
3. **Check File:** The Respondent has a minimum of 30 days from the date of service of the original petition and summons to file a Response and serve a copy on the Petitioner. Fam. Code § 2020. Instruct the Litigant to check the court file 30 days after service to see if a Response has been filed.

- **Dissolution II (Financial Disclosures)**
 1. **Dissolution II—Default Case (No Response Filed By Respondent):** Litigant prepares and files her Request to Enter Default, Preliminary Declaration of Disclosure, Property Declarations, Income and Expense Declaration or Financial Statement (Simplified), and completed Proof of Service. Advance to *Dissolution III—Default Case*.
 2. **Dissolution II—Contested Case (Response Filed):** Litigant prepares the Preliminary and Final Declarations of Disclosure, Income and Expense Declaration or Financial Statement (Simplified) at this time. Depending on the complexity of the case, the Preliminary and Final Declarations of Disclosure can either be prepared at the same time, or at different times. Litigant then completes a Trial Prep appointment to prepare for Trial. Advance to *Trial Prep*.
- **Trial Preparation (Contested Cases Only)**: Litigant completes a Request for Trial Setting and prepares a Trial Brief, as well as an Exhibit List and Witness List as needed. Unless the case settles, the Litigant will have to go to a Trial.
- **Dissolution III (Judgment Preparation)**
 1. **Dissolution III—Default Case (No Response Filed By Respondent):**
 - a. Litigant prepares and files documents to obtain a Judgment of Dissolution, including a Declaration for Default, proposed Judgment, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.
 - b. *No New Issues*: At this stage, the Litigant will be granted the relief requested in the Petition, but will not be able to raise new issues without amending the Petition and starting the process again.
 - c. **Note**: Some Litigants will need to attend a default hearing.
 2. **Dissolution III—Default Case with Agreement (No Response Filed By Respondent but the Parties Have a Written Agreement)**
 - a. Litigant prepares a Judgment that both she and the Respondent sign. The Respondent's signature **must** be notarized. Additionally, the Litigant will complete and file a Declaration for Default, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

3. Dissolution III—Contested Case (Response Filed):

- a. Litigant prepares and files a Judgment of Dissolution based on the orders the judge made at Trial. The Litigant also prepares and files a Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

4. Dissolution III—Uncontested Case (Respondent Filed a Response and the Parties Have a Written Agreement)

- a. Litigant prepares a Judgment for both parties to sign. Respondent's signature does **not** need to be notarized because he has appeared in the case. Litigant will also prepare and file a Declaration for Default or Uncontested Judgment, Notice of Entry of Judgment, and possibly an Income Withholding Order for Child Support or an Earnings Assignment Order for Spousal Support.

8.03 Dismissal of Cases Due to Timing Issues

The Court will dismiss cases that are not served within three years of filing and cases that are not brought to trial within five years of filing. Cal. Code of Civ. Proc. §§ 583.210, 583.250, 583.310. If this happens, the Litigant will have to start over. However, there is an exception for cases with existing child and/or spousal support orders, and these cases will not be dismissed for failure to serve or bring the case to trial within the above timeframes. Cal. Code of Civ. Proc. § 583.161.

8.04 Issues Common to All Forms

The rest of this chapter will describe each form used in Dissolution I, the issues raised in connection with these forms, and how to complete them. **Always emphasize to Litigants the importance of completing these papers fully and accurately because they are signing under penalty of perjury.**

A. Document Footer

Each paper filed with the Court must bear a footer with the title of the paper (i.e., "Petition") in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. Cal. Rules of Court, rule 2.110. The pre-printed Judicial Council forms already contain the title and necessary line.

HBCFL Practice: The Center also stamps all forms with "HBCFL" on the front to alert court personnel that the Center assisted the Litigant with form completion.

B. Address Confidentiality

1. Advise Litigants that Addresses Are Not Confidential

The Litigant's address and telephone number will appear on all court papers and the opposing side will receive copies of these papers. In the Center's experience, some Litigants do not want the other party to know their current address.

2. Use of a Third Party Address

If the Litigant is frightened of the other party who is unaware of her location, she may use a third party's address.

- a. **Reliability:** This must be a reliable address where the Litigant can continue to receive mail throughout the pendency of the action.
- b. **Confidential Address Program for Victims of Domestic Violence:** If the Litigant has no reliable safe address to receive mail, she may be eligible to apply to this program to receive a post office box. For information on applying, see www.sos.ca.gov/safeathome/.

C. Change of Address

1. Litigants are encouraged to use a consistent address throughout the proceeding and changes are **not** recommended if the Litigant can continue to receive mail at the original address.
2. If necessary, the Litigant may change her mailing address by filing and serving a Notice of Change of Address form (MC-040), **see Sample Form 4B**.
3. The Notice of Change of Address must be served by mail on all interested parties.

D. Handwritten Forms

Use **only black ink** for all pleadings prepared in family law cases.

E. Name Consistency

Whatever name is selected must be used throughout the case.

- If the wife never used her husband's name, she does not have to use it now to get a divorce.
- In some cultures, the maiden name of the Litigant's or other party's mother is thought necessary to be added to all legal documents, but that is not the case in California.

**** Before Starting, See Chapter 3 on Fee Waivers ******8.05 Family Law Case Cover Sheet (LA-20/FAM 020) (Sample Form 9C)**

The Los Angeles Superior Court (L.A.S.C.) requires a Family Law Case Cover Sheet in all cases. For instructions on how to complete the form, **see Chapter 4**. For areas outside of Los Angeles County, check your local practice to see if a similar form is required.

HBCFL Practice: The Center recommends that all its Litigants file their cases at the Central courthouse because of our familiarity with their procedures and practices. Litigants residing in Los Angeles County may file in either the Central Courthouse or at the branch court nearest their home.

8.06 Summons (FL-110) (Sample Form 9D)

- **Caption**

Make sure the names of the Petitioner and Respondent are exactly the same on all documents. **If there are any variations between the names on the Summons and the Petition and/or between the Summons and other pleadings, one or more of the documents will have to be amended and a new set will have to be served on the other spouse.** Include any aliases that the parties may have.

1. *Name:* The names used on the Summons must be used for all other pleadings.

- **Items 1-2**

Complete with the appropriate information. If Petitioner's address is confidential for safety reasons, use her designated third-party address.

- **Notice to the Person Served**

1. *Item a:* Check "as an individual," as Respondent is being served in an individual capacity.

- **Standard Restraining Orders**

1. *Location:* Advise Litigants that they appear on the reverse side of the Family Law Summons.
2. *Effective Date:* They are effective against the Petitioner at the time of filing and against the Respondent at the time of service. They expire at the time of Judgment.

3. *Effect*: They prohibit: 1) removal of the minor children from the state, 2) taking various actions with respect to insurance policies, and 3) taking various actions with respect to property.
 - a. *Property Restraint*: Once they have attached upon the filing of the case, the Petitioner and Respondent, if served, can take **no** further action to convey, transfer, change or assign any property interest.
 - b. *Death of a Party Prior to Property Division*: Point out the “**WARNING**” regarding which laws are controlling.
 - i. *Review Legal Documents*: Advise Litigants to review their wills, deeds, and other documents. To the extent they wish to and can reduce or terminate the interest of the other spouse, Litigants must take appropriate actions **before filing the case**. Emphasize that if the Litigant does not alter the title to property or change her will **and** either party dies before final judgment of dissolution, each will assume all of the rights of inheritance as if they were happily married and living together.

8.07 Proof of Service of Summons (FL-115) (Sample Forms 6A and 9E)

HBCFL Practice: Complete the Proof of Service form as much as possible before the Litigant leaves the appointment and place colored dots on the form so that the Litigant understands that the server must complete each of these items. **See Chapter 5** for instructions on completing this form.

8.08 Petition (FL-100) (Sample Form 9F)

Note: This is the critical Dissolution I document. Complete it with great care!

The relief granted in a default judgment cannot exceed that requested in the Petition. Cal. Code of Civ. Proc. § 580. Explain that incomplete, unclear or contradictory information will delay the entire process.

- **Caption**

Names must be identical to those listed in the Summons. Select “Dissolution of Marriage” with an “X.”

HBCFL Practice: The Center’s Litigants generally do not fill in the optional e-mail address.

- **Item 1 – Residence**

If the Petitioner qualifies under the jurisdiction rules below, check the first box only. If only the Respondent qualifies, check the second box.

1. *Jurisdiction*: At least one of the parties must have been living in **California** for **at least six months** and in the **county** where the action is to be filed for **at least three months immediately preceding filing**.
 - a. If neither party qualifies as a “resident” for dissolution purposes, a proceeding for legal separation can be commenced because there are no statutory residence requirements for nullity or legal separation proceedings.

Note:

- i. When one party complies with the residence requirements, amend the Petition to change to a dissolution action and give notice to the other party.
- ii. The amended pleadings and new Summons must be served on the other party in order to obtain jurisdiction.
- iii. The six-month waiting period for a final judgment of dissolution may relate back to the date of the service of the original Petition for Legal Separation. This request should be made by motion.

• **Item 2—Statistical Facts**

1. *Item 2a*: Date of Marriage

- a. Provide a complete date, including **day, month** and **year**.
- b. The date of marriage, as with all other information required in Item 2, is **essential** and must be completed.
- c. If the Litigant does not remember, she should be encouraged to make phone calls to get this information or obtain a copy of her marriage certificate.

2. *Item 2b*: Separation Date

- a. Provide a complete date, including **day, month** and **year**.
- b. Use the date on which one or both of the parties decided that the marriage was over **and** that one or both parties acted according to that decision.
 - i. It is not enough that one of the parties decided that the couple would never get back together, nor that one person left the family home. In fact, if one or both of the parties have decided that the marriage is over and communicated that to the other, they might be considered separated even if they are still living together. However, if they are still living together and continuing to act as a married couple, the court might find that they have not actually separated even if their intent to separate has been communicated.

- c. If the relationship was rocky and punctuated by a series of separations, select the **date of the last separation**.
 - d. **Carefully Consider this Date:** Classification of property acquired during the marriage as community or separate as well as spousal support rights can depend on the date of separation.
 - 3. *Item 2c: Time from Date of Marriage to Date of Separation*
 - a. Clarify for the Litigant that the time asked for is **between marriage date and separation date and not time since separation**. This is frequently an area of confusion and hence, error.
 - **Item 3—Declaration Regarding Minor Children**
 - 1. *Item 3a—No Minor Children:* If there are no minor children of the marriage then check Box 3a and skip to Item 4.
 - 2. *Item 3b—Minor Children*
 - a. *List All Minor Children of the Relationship (Born Before or During the Marriage, or After the Separation Date):* Include their age, sex and date of birth.
 - i. **Review the Date(s) Carefully:** Use of the wrong date of birth may necessitate the filing of an Amended Petition and re-serving the Respondent!
 - ii. Children’s names and birth dates must be the same in all pleadings.
 - b. *Uncertain Biological Parentage:* Unless the husband contests, listing the child as “of the relationship” will legally establish the husband as the child’s father. Litigants should be candidly asked about the possible biological father’s knowledge of the child. Advise the Litigant that the husband may request blood tests if the child is less than 2 years old. Also consider the best interests of all the children.
 - c. *Husband Is Not the Father:* If the Litigant is certain that her husband is not the biological father, the Litigant must obtain a notarized stipulation from him consenting to listing the child as a child of the marriage. It is unclear whether the notarized consent is adequate in a default case, or if husband must file a Response listing the child also.
- Note:** If the Litigant does not want the husband to be determined to be the father of the child, the child should **not** be listed as a child of the marriage. Instead, under section 7j “Other,” the Litigant should request that the court make a finding that the child is not a child of the marriage.

- d. *Litigant Is Pregnant*: Identify the baby as an “unborn child” of the marriage with expected birth date and sex, if known.

Note: Sometimes a Litigant is embarrassed to disclose that she is pregnant. If there is any question as to this, the Litigant should be *discreetly* questioned.

- e. *Jurisdiction of Children*: If at the time of commencement of the action, children who are the subject of the action reside outside California, subject matter jurisdiction may not exist. While all children of the marriage and/or relationship should be listed, depending on the facts and circumstances of the particular case, the court may not be able to issue orders of custody and visitation until they return to California. **(See also Chapter 7 for a discussion of subject matter jurisdiction in child custody matters).**

3. *Item 3c*: A completed **Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** is required for all Petitions for Dissolution with minor children. **See Chapter 7** for instructions on completing the form.
4. *Item 3d—Voluntary Declaration of Paternity*: If a child was born before marriage, and the husband signed a Voluntary Declaration of Paternity (“VDP”) at the hospital at the time of birth of the minor child, check the box and attach a copy of the form if the Litigant has it.
- a. Advise the Litigant to obtain a copy if she does not have one. She can file it later in the case.
- b. Also advise her to obtain a copy of the child’s birth certificate if the husband’s name is on it.
- **Items 4 and 5—Property in General**
1. *Distinguish Between Separate and Community Property*: In general, all property acquired from the date of marriage to the date of separation is community property, unless acquired by gift or inheritance. All property acquired before the date of marriage and after the date of separation is separate. There are some exceptions to this general rule discussed below. Understanding the difference is necessary before completing Items 4 and 5. To help in this discussion, the Center has created a diagram to be used as a visual aid. **See Sample Form 9W.**
- a. Explain that property in this context includes real estate, furniture, household items, cars, bank accounts, pension/retirement benefits, and any debts/obligations.
- b. For divorce purposes, all property is classified as either separate or community.