

RESOLUTION 07-05-2013

DIGEST

Family Law: Shorten Waiting Period for Dissolution of Marriage.

Amends Family Code sections 2339 and 2403 to shorten the waiting period for a marital dissolution from six months to six weeks.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code sections 2339 and 2403 to shorten the waiting period for a marital dissolution from six months to six weeks. This resolution should be approved in principle because it relies on outdated research and serves the important public policy of encouraging expeditious resolution of issues.

In 1969, the current six month waiting period for the entry of dissolution of marriage was established, after being reduced from one year, to reflect the research at that time that reconciliation, if any, took place during that six month period. While such reasoning may have made sense then, it is outdated in today's world.

Moreover, the current waiting period means that for those parties who have completed divorce proceedings in less than six months must remain legally married for the remainder of the six month period, despite having finalized all issues. As with any legal proceeding, once the issues in the divorce proceeding are fully resolved, both sides are entitled to a speedy conclusion of their case, which would include a prompt termination of the marital status. In reducing the waiting period from six months to six weeks, this resolution accomplishes that goal.

Finally, to the extent there is a concern that the shortening of this waiting time will result in a rash or emotional decision to divorce, if parties come to regret their decision, current law provides that the parties have up to one year to stipulate to set aside a judgment of divorce. (Family Code section 2121 *et seq.*). Thus, while the time for entry of a dissolution will be shortened by this resolution, it will have no effect on the one year limit to stipulate to set aside a judgment of divorce should the parties come to regret their decision.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code sections 2339 and 2403 as follows:

- 1 § 2339
- 2 (a) Subject to subdivision (b) and to Sections 2340 to 2344, inclusive, no judgment of
- 3 dissolution is final for the purpose of terminating the marriage relationship of the parties until six

4 ~~months~~ weeks have expired from the date of service of a copy of summons and petition or the
5 date of appearance of the respondent, whichever occurs first.

6 (b) The court may extend the six-month period described in subdivision (a) for good
7 cause shown.

1 § 2403

2 When six weeks ~~months~~ have expired from the date of the filing of the joint petition for
3 summary dissolution, the court shall, unless a revocation has been filed pursuant to Section 2402,
4 enter the judgment dissolving the marriage. The judgment restores to the parties the status of
5 single persons, and either party may marry after the entry of the judgment. The clerk shall send a
6 notice of entry of judgment to each of the parties at the party's last known address.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The Bar Association of San Francisco

STATEMENT OF REASONS:

The Problem: Presently parties seeking to divorce in California are required to wait six months
for the termination of marital status.

The Solution: This resolution would shorten the waiting period for dissolution to six weeks.
Parties who wish to divorce in California are forced to wait a half of a year to terminate their
marital status. The primary reason for the waiting period is the hope that reconciliation between
the parties may occur. (*In re Marriage of Stuart* (1972) 27 Cal.App.3d 834, 844, citing The
Report of 1963 Divorce Reform Legislation of the Assembly Committee on Judiciary (4 Journal
of the Assembly, Regular Session 1969, p. 8054 et seq).)

This law is arguably patronizing and outdated. It also conflicts with public policy that entitles
family law litigants to speedy disentanglement. The California Supreme Court enunciated this
general principle in *Hull v. Superior Court* (1960) 54 Cal.2d 139, when it held that parties are
entitled to “[s]everance of a personal relationship which the law has found to be unworkable and,
as a result, injurious to the public welfare . . . [society] will be much concerned if two people are
forced to remain legally bound to one another when this status can do nothing but engender
additional bitterness and unhappiness.” (See also *In re Marriage of Fink* (1976) 54 Cal.App.3d
357, 364 [“legislative policy of permitting the prompt severance of a marriage relationship which
had proved unworkable”].)

In 1969, the waiting period for divorce in California was reduced from one year to six months. In
2013, it is time to further reduce this waiting period.

IMPACT STATEMENT

This resolution would impact Family Code section 2403 (governing summary dissolutions) to
also shorten the waiting period for termination of status in those cases to six weeks.

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COUNTER-ARGUMENT(S) TO RESOLUTION 07-05-2013

SAN DIEGO COUNTY BAR ASSOCIATION

Proponent argues 6-month waiting period based on 1963 notion that waiting period is used in hope of reconciliation and conflicts with other public policy calling for speedy disentanglement for family law litigants. This Resolution should be Disapproved because the 6-month period also provides each spouse time to plan for consequences of decree of dissolution, such as obtaining health care coverage where spouse is insured under employer policy of other spouse that would end upon decree of dissolution.