

RESOLUTION 09-09-2015

DIGEST

Family Law: Service of Motion After Entry of Bifurcation

Amends Family Code section 215 to clarify that motions filed after entry of a bifurcated judgment of dissolution should be served on counsel of record and not the party directly.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Family Code section 215 to read as follows:

§215

- 1 (a) Except as provided in subdivisions (b) and (c), after entry of a judgment of dissolution
2 of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent
3 order in any other proceeding in which there was at issue the visitation, custody, or support of a
4 child, no modification of the judgment or order, and no subsequent order in the proceedings, is
5 valid unless any prior notice otherwise required to be given to a party to the proceeding is served,
6 in the same manner as the notice is otherwise permitted by law to be served, upon the party. For
7 the purposes of this section, service upon the attorney of record is not sufficient.
- 8 (b) A postjudgment motion to modify a custody, visitation, or child support order may be
9 served on the other party or parties by first-class mail or airmail, postage prepaid, to the persons
10 to be served. For any party served by mail, the proof of service must include an address
11 verification.
- 12 (c) This section does not apply to a bifurcated judgment of dissolution under Family
13 Code section 2337.

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

PROPONENT: The Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Family courts have interpreted section 215 to require service to a party and not his or her attorney when a case has been bifurcated and an early judgment of dissolution entered, reserving jurisdiction over the other issues presented in the case. This is because the technical reading of section 215 requires that. However, a bifurcated judgment of dissolution resolves just one aspect of the case, and the matter still must proceed to a final judgment on all issues (property, support, custody, etc.).

A technical reading of Family Code section 215 leads to unintended results which create complications for litigants.

The Solution: This resolution clarifies that the provisions of Family Code section 215 do not apply to bifurcated judgments.

IMPACT STATEMENT

This resolution does not affect any other statute, rule or law.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Michelene Insalaco

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 215 to clarify that motions filed after entry of a bifurcated judgment of dissolution should be served on the counsel of record and not the party directly. This resolution should be approved in principle because a bifurcated entry of judgment in a dissolution matter often resolves just the marital status of the parties but no other issues, restoring the parties to the status of “single,” while preserving jurisdiction to the court to resolve all remaining issues.

A bifurcated judgment of dissolution is often entered earlier in a case than any other orders dissolving property or determining support or custody issues. Parties most often request a bifurcated judgment of dissolution in order to remarry or for tax considerations, but a bifurcated judgment of dissolution does not resolve all issues in the case. Under the current wording of this section, any motions entered after a bifurcated judgment for dissolution would have to be served personally on the non-moving party even though that party remains represented. Service on the non-moving party would therefore only increase costs and may cause some motions to “fall through the cracks” in that the parties may not notify counsel of receipt of these time sensitive documents in a timely manner, if counsel is notified at all.

It is not uncommon to also have a partial judgment resolving some issues, but reserving jurisdiction to the court of other issues. Additional clarification that any motion filed after a partial judgment also should be served on counsel would also be helpful.

SECTION COMMENTS TO RESOLUTION 09-09-2015

FAMILY LAW SECTION OF THE STATE BAR OF CALIFORNIA

Approve

Rationale:

The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) approves this Resolution as being a reasonable and practical way to deal with the underlying issue.

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.