

Paperwork Pileup Obscures Lost Art of Family-Law Work

By Fred Silberberg

The art of drafting pleadings in family-law cases is dead. It has been usurped by a behemoth known as Judicial Council, which promulgates form after form for use in court pleadings. Unfortunately, what was intended as a means of increasing efficiency and simplicity in the family-law courts has been carried too far, resulting in more expense and wasted resources.

Virtually no one benefits from the use of these forms but the software makers. Rather than making these forms a requirement, the court should make them optional. This is one instance where we all can benefit by returning to the good old days.

Coming from Chicago, where lawyers actually draft their own divorce petitions, responses and other documents, I found it hard to believe that, in California, lawyers were relegated to checking off boxes on a document. The "art of lawyering" seems to be coming to an end.

The forms are intended to make things easier and more efficient. In actual practice, they have the opposite effect. The forms have taken on a life of their own and have only made court bureaucracy worse.

Forms are too numerous, too restrictive, they end up requiring more paper than a traditional pleading, they are difficult to complete and are inefficient to use. In the end, they cost our clients more money than if we didn't use them.

Consider the number of forms out there. My form software program shows 157 forms available for use in family-law proceedings, excluding Juvenile Court forms. There are forms for the beginning, middle and end of a case, as well as forms for afterward. There are forms for disclosing assets and liabilities and forms that are used to prepare written orders that have been pronounced by the court. Forms can be used to identify findings, obtain stipulated orders and judgments. There are even forms to teach lawyers and pro per litigants how to use the forms themselves!

The next thing we'll hear about is a mandated continuing education requirement in using forms properly.

It used to be that a single lawyer-drafted document would state the relief requested and the facts in support of that relief. Today, even a simple motion requires no fewer than three separate documents, and in some cases four or five.

Another problem with the forms is that they are too restrictive, as though the Judicial Council is trying to limit what relief one can ask for. For example, one of the most commonly used forms in family law is the two-page "Application for Order and Supporting Declaration." This form generally follows the "Order to Show Cause" face page and is succeeded by declarations, points and authorities, and the like. On the left margin of the "Application for Order" is a series of boxes that can be checked off for different types of relief, such as spousal sup-

port, child support, child custody and the like. This list takes up two pages. There also is a space for "Other Relief," where you type in any other requested relief. The amount of space for this, however, is limited.

One therefore must either type this other relief in very small letters that few can read or add additional pages. Where in the olden days one could file a simple notice of motion and motion for relief, now one must use three pages just to identify the relief being sought.

Even the "Order to Show Cause" form is too restrictive. The "other relief" space is less than two inches. If you can't succinctly state what that relief is, then you have to refer to an attachment, thereby increasing the amount of paper used.

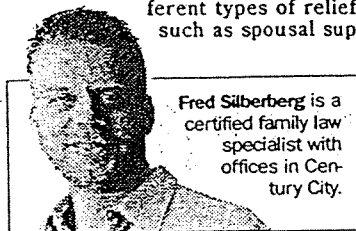
Then there is that old favorite, the "Income and Expense Declaration," which categorizes living expenses. Apparently, members of the Judicial Council do not pay health insurance, as there is no listing for it, requiring yet another attachment.

Apparently, no one on the Judicial Council uses these forms, or they would realize that it takes longer to fill in the form on the computer than it does to prepare a simple pleading. Because most family-law attorneys charge by the hour, the client ends up paying for this inefficiency. And pity those that try to modify the form by changing font sizes or attempting to add in more or larger boxes. It's next to impossible.

There is only one beneficiary of the forms revolution. It is not lawyers or their staff, who who try to use these forms to help their clients. It is not judges or law clerks, who must thumb through sets of pages to get the pertinent information on the combination of forms, attachments and declarations. It certainly is not litigants in pro per who are trying to complete the forms by hand. It is software companies, who must revel in their hefty software subscription fees. And, since the Judicial Council constantly adds new forms and modifies old ones, lawyers and paralegals must maintain subscriptions in order to keep current. And while you can get copies of the forms for free on the Web courtesy of West Group, this is no more than a teaser since you can't complete the forms online, you can only look at them.

Requiring that lawyers use these forms does not benefit anyone. It actually creates more problems than it solves, increases expense for all concerned and uses more paper than would otherwise be necessary. And although some of the simple forms may be helpful to a pro per litigant, lawyers are supposed to be well versed in what needs to be pleaded and what does not.

Let us go back to the traditional method of preparing our own pleadings that say what we intend them to say, not what the Judicial Council wants us to say.



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