

INSTRUCTIONS FOR PREPARING DECLARATION

Rough Draft Due Date _____

Appointment to Review and Revise Declaration

Date _____ **Time** _____

Your declaration is your written testimony, submitted to the Court under penalty of perjury. It has the same legal effect as your testimony on the witness stand. Under certain circumstances, the Court may decide a case partially or entirely upon the written declarations, without hearing any live testimony. Family Law Courts are very crowded, and some judicial officers rely heavily on written declarations. If your case is one of the rare ones that goes up on appeal, the record must contain sufficient evidence to support your contentions and requests.

Even when there will be oral testimony, your declaration is an opportunity to present evidence on your behalf which may serve as an introduction to the case for the judge, a Conciliation Court mediator, and/or expert witnesses, such as a court-appointed expert who will perform a child custody evaluation.

Your declaration will also be read and remembered by the other party to the case and his or her lawyer. When filed with the Court, it will become part of the public record, available to any person who chooses to pull your file. Under certain unusual circumstances, it is possible to obtain an order sealing your file.

After these guidelines, I have provided an outline to follow for a declaration regarding parenting plan issues (custody/visitation). I may modify or augment this outline to obtain facts concerning particular issues in your individual case.

From time to time, you may have to update your declaration or submit a supplemental declaration. It is essential to keep a journal of events which accurately relates what occurs from day to day as it relates to the issues set forth below, or anything else important.

Just like oral testimony, declarations are subject to the rules of evidence. In order to make sure that your testimony is not excluded, please follow these guidelines.

1. Write truthfully. Whether written or oral, your testimony is given under oath. Perjury is a crime. If your litigation is contested, the other side is going to review your declaration carefully, hoping to discredit all of it by finding some part that is not true.

If you are not certain about something, use phrases like "approximately," "about," "to the effect of," etc. to make it clear that you are reconstructing from memory. Do not color events in your favor, speculate or exaggerate. Indicate whether events are unusual or part of the regular pattern.

2. Include only information which is based upon your *personal knowledge*. This means events which you have observed, not those which other people have told you about. Testimony is generally limited to firsthand observations.

Exceptions:

a. You may include statements made to you by parties to the case, or by others speaking on their behalf.

b. You may include things told to you by your child if they are being used to show the child's state of mind, or the basis for your concern. The Court will not be able to consider such statements for the truth of their contents, but can consider them as indicating the impact of the problem situation on your child.

c. You may include things told to you by others to show your state of mind, the information you considered, or the reason you took a certain action. Similarly, you may include things said to the other party to your case for the same, limited purpose. How you make decisions about your children is an important component of your parenthood. Use your declaration as an opportunity to show your approach to parenthood, and how child-centered and attuned your decisionmaking is.

3. Write as *objectively and specifically* as possible about events. Like a reporter, you should state clearly *who* did or said *what*, *when*, and *where*. Testimony is not argument, but you may include an explanation of *why* you took a particular action or are asking the court to make a certain order.

Give the underlying facts, not a conclusion or characterization. For example, instead of saying that Petitioner was drunk, say, "I observed Petitioner drink a six-pack of beer over a one-hour period. Her speech was slurred, her face was red, and she was unsteady on her feet. She then announced that she planned to leave, and drive the children to the mall."

When you do set forth a conclusion, give some specific examples of events which illustrate your point.

You can write more subjectively about your own state of mind and your relationship with your children. Similarly, you can write about the children for the purpose of demonstrating to the Court how well you know and understand them.

4. Provide copies of letters, or other documents as exhibits if they help back up some of the points in your declaration.

5. Include material that is for my background information only, but clearly indicate what may be included in your declaration, and what is intended as background information. I will be using your work as a starting point, which I will edit and augment based upon the facts you tell me. You will, of course, review the final product before signing it.

6. Don't worry about perfection. I will carefully edit your rough draft. Err on the side of including more, rather than less, information. I read quickly, and I use your draft for background information, even if I decide to provide a shorter version for the Court.

I ask for a written draft of your declaration because it allows you time to think things over, and takes less of my time (and thus your funds) to work with. However, many people are more comfortable talking than writing. If this is so, you may wish to dictate your declaration on tape and have a secretarial service transcribe it. Alternately, we can schedule two or three hours for a more detailed interview and drafting of your declaration.

7. Sometimes a picture is worth a thousand words. For example, if one parent alleges that a child is upset or afraid of the other parent, a recent photo of a relaxed and loving moment may be effective. Restrained use of photographs can help those working with your family to see your children as individuals, rather than as generic children.

8. If you have access to a computer, please provide me with your declaration on disk. I have WordPerfect on both IBM and Macintosh computers, and can convert from most other commonly used word processing formats. Be sure to give me a print-out as well. Please virus-check. You can also attach a document to an E-Mail message.

9. Allow yourself enough quiet time to work through this. Many people find this a particularly painful task. If so, and time permits, do it in small pieces rather than all at once. Feel free to call if you have questions.

10. Special Instructions:

DECLARATION OUTLINE

1. **Introductory facts:** Identify yourself, the children's other parent, and the children. Describe the situation in a nutshell.

Example:

Respondent, Jan Doe (Jan) and I are the parents of Dan, born Jan. 1, 1983, age 12; Stan, born Jan. 2, 1985, age 10; and Fanny, born Nov. 3, 1994, age two months. Jan has another son, Manny, age 15, from an earlier marriage.

We separated two weeks ago, and the children have spent approximately equal amounts of time with each of us since then, but we have no organized parenting plan and negotiating a schedule on a day to day basis is proving stressful.

Jan is a traveling salesperson for a large corporation. I have a home based business as a freelance writer. Jan has moved in with Lee, and announced plans for future marriage. Lee has no children, and works in retail sales.

I remained in the family residence, at least temporarily. Jan has moved to Lee's condominium, about two miles from our home.

2. **Special Issues or Urgent Issues**

Examples:

- a. High level of conflict, precipitating incident or crisis
- b. Move-away request or opposition
- c. Abuse, violence
- d. Mental health, substance abuse or other problems
- e. Child's needs not being met
- f. Exclusion from child's life/alienation
- g. Child at immediate risk because:
- h. Parents unable to select school, make health care decisions or other impasse...

3. **Parenting during the marriage/relationship:**

[If you are not yet separated, or only recently separated, provide lots of detail for these sections. If this is a modification proceeding, and you have been separated a long time, you may treat these issues more briefly.]

How have each of you participated in the children's daily care from their birth until separation? What was the daily routine?

a. **Infancy/Toddlerhood:** Was the baby planned? Eagerly anticipated? Describe each parent's involvement in prenatal care, preparations for the baby and childbirth. During infancy what role did each parent play in each aspect of the baby's care: cuddling, playing, socializing, feeding, dressing and changing diapers, bathing, waking up in the night, buying clothing and baby items, scheduling and attending pediatric appointments, special care during illnesses, selecting nannies or babysitters, making decisions about weaning, potty

training, etc.? During the average day or week, how was responsibility for child care allocated?

b. Preschoolers: What changed at this age? How were decisions made about child care, preschool, schedule, discipline and routine, etc. Who provided opportunities for the child to interact with other children, have new experiences, read stories, etc.?

c. School age children: How was responsibility allocated for daily care and supervision? Who established and maintained daily routine, made child care arrangements, supervised homework, selected and participated in school and enrichment activities, assisted with the child's social life, provided transportation to events, shopped for child's needs, participated in the child's activities, etc.?

d. Sensitivity to child's special needs: Who noted learning disabilities, special gifts or talents, psychological needs, educational needs, etc., and what steps were taken to meet the children's needs?

e. Concerns about parenting during marriage.

4. Parenting Since Separation

a. How did the actual separation take place? What was explained to the children? How did they cope with separation? What steps did parents take to make it easier for the children? What happened that made it more difficult for the children?

b. How have you protected your children from conflict between their parents? Have the children directly or indirectly witnessed parental conflict? Have there been any physical conflict or concerns about violence and physical safety? Describe.

c. How have you shared responsibility for the children's daily care since separation? What schedule or routine, if any, have you followed? Who provides transportation? How are transitions managed?

d. How have you handled holidays, vacations and special days?

e. Who has been responsible for education, health care, mental health care, enrichment activities, peer activities, recreation, daily care and supervision, and other important aspects of the children's life? To what extent has information been exchanged about these things? What things have you agreed about? What things have been sources of conflict? To what extent has each parent acted unilaterally? What efforts have been made at cooperation?

f. How did this plan come about? What has worked about this plan? What has been problematical about this plan? Give examples.

g. Describe the children's weekday, weekend and vacation routines in each household (to the extent you know about the other household).

h. Provide all important logistical information: school schedules and hours, day care, nap times, work hours, standing appointments, transportation, children's extracurricular activity schedules, vacation schedules or anything else that it will be important to know in order to construct a practical parenting plan. Are any changes expected which will impact the schedule?

5. How are the children doing? Describe each child's personality, character, temperament, stage of development, interests and activities, ability to handle changes, recent achievements, and recent challenges. Help the decisionmakers see your children as individuals. Help the decisionmakers see how well you know your children.

- a. Physical health
- b. Mental/emotional health
- c. Adaptable? Flexible?
- d. Educational achievement
- e. Social skills and peer relationships
- f. Relationships with parents and family/household members
- g. Other important people in this child's life
- h. Special interests and achievements
- i. Pets
- j. Behavior, and values,
- k. Areas of concern

6. **Yourself (and your partner** if you have formed a new relationship and that person is a member of your household) as a parent

- a. Priority of parenting in your life. % of your time devoted to parenting
- b. Strongest skills as a parent
- c. Steps you have taken to enhance parenting skills
- d. Areas of parenting you are working on improving, concerns about self as parent; difficulties and challenges you have overcome and those you face now.
- e. Relationship with each child. Describe the things you do together, what you enjoy most about each child, what you are trying to achieve with each child.
- f. Attitude and actions with respect to child's relationship with other parent and members of that household.
- g. Availability to care for child.

7. **Other parent (and his/her partner** if he/she has formed a new relationship and that person is a member of your household) as a parent.

- a. Priority of parenting in his/her life. % of time devoted to parenting
- b. Strongest skills and strengths as a parent; what benefits do the children get from the involvement of this parent.
- c. Steps taken to enhance parenting skills
- d. Concerns about the parent. Give specific examples, and show connection between parental behavior and child's well-being. Adult behavior which does not impact the children may not be considered.

e. Relationship with each child. Describe the things parent does together, what parent enjoys most about each child, what parent appears to be trying to achieve with each child.

f. Attitude and actions with respect to child's relationship with other parent and members of that household.

g. Availability to care for child.

8. What else do you think it is important for decisionmakers to know about your family in order to make wise decisions for your children?

9. If the other parent has filed a declaration describing facts, made claims or accused you of contempt of Court:

a. Review his/her declaration, statement or contention carefully. Respond factually and unemotionally to each allegation, describing what actually occurred. Give detailed, specific descriptions of each incident, including whatever is necessary so that the context is understood.

b. Provide the name, address, and telephone number of any persons who witnessed the event. If possible, provide that person with these instructions, and ask the person to write a draft of his or her declaration. Alternately, I can interview the witness by phone and draft a declaration for him or her to review and sign.

10. These general guidelines can also be used for declarations of other witnesses. If a witness is drafting his or her own declaration, it can only be used if, **before the signature**, it has the following language:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on [insert date] at [insert city and state].

Declarations should begin, I [name of witness] declare:

The witness should explain who he or she is, their relationship to the family, and any special knowledge or expertise that makes his or her opinion valuable. If the person is not an expert witness, opinions should be kept to a minimum, and detailed factual observations should be used.