

# Getting It Together



For ***Breaking***



***Apart***



## **DIVORCE BASICS**

An interactive presentation for  
A.L.R.P. attorney volunteers –  
Presented 11/28/12 by Joann Babiak  
Attorney and Mediator  
[jubabiak@aol.com](mailto:jubabiak@aol.com)

# Disclaimer

- This presentation provides educational information only and is **NOT INTENDED AS legal advice.**





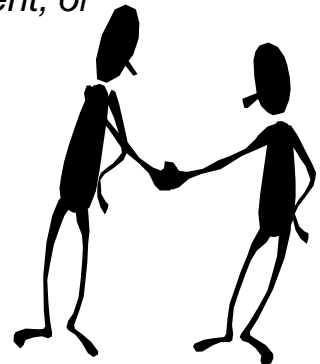
# Starting Point

## **Definition of BASIC terms**

- *Parties - Petitioner and Respondent*
- *Petition – filed to initiate the marital dissolution*
- *Response - the answer to the Petition*
- *Judgment – terms of dissolution – Orders*

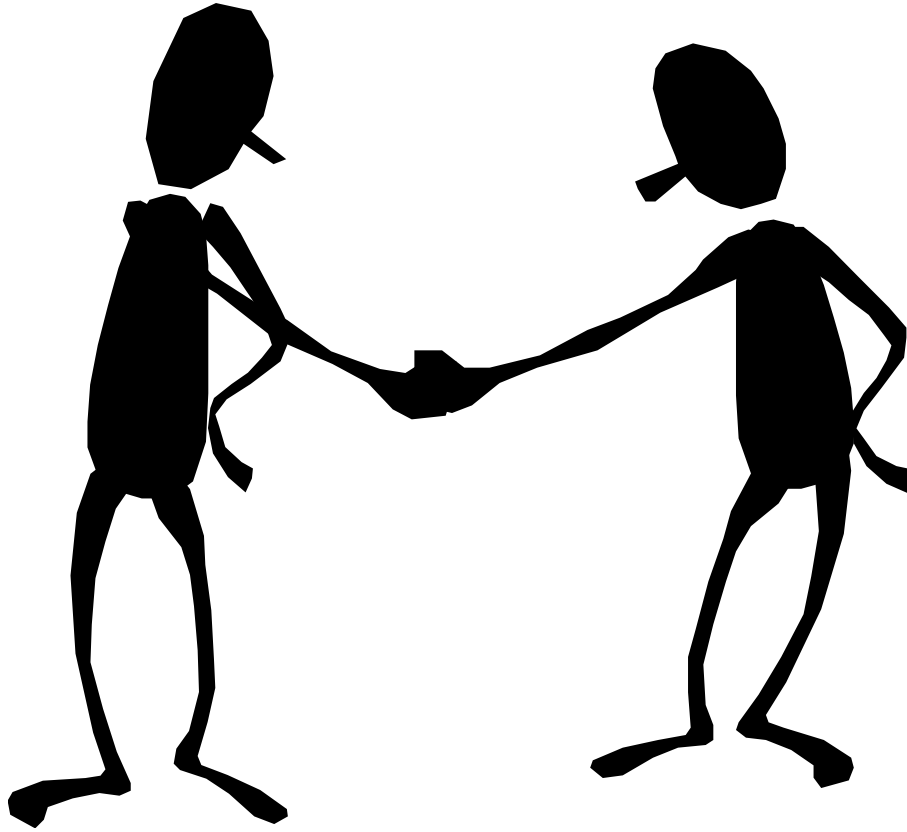
## **Procedure - BROADLY**

- *File and serve Petition (and Summons) on Respondent. – Personal service*
- *Respondent files a Response. (timely – 30 days following date of service)*
- *Either party or both parties may request a temporary court order by filing a Request for Order (formerly called an Order to Show Cause) and setting a hearing.*
- *-- [EMERGENCY ORDERS --- ex parte or ex parte request order shortening time]*
- *Discovery, formal and/ or informal exchanges of information.*
- *File Preliminary Declaration of Disclosure – disclose all known community and separate assets and debts; File or update the Income and Expense Declaration*
- *Settlement discussions and potential for a Marital Settlement Agreement, or Settlement Conference and Trial*
- *Preparation of Judgment*
- *Notice of Entry of Judgment*

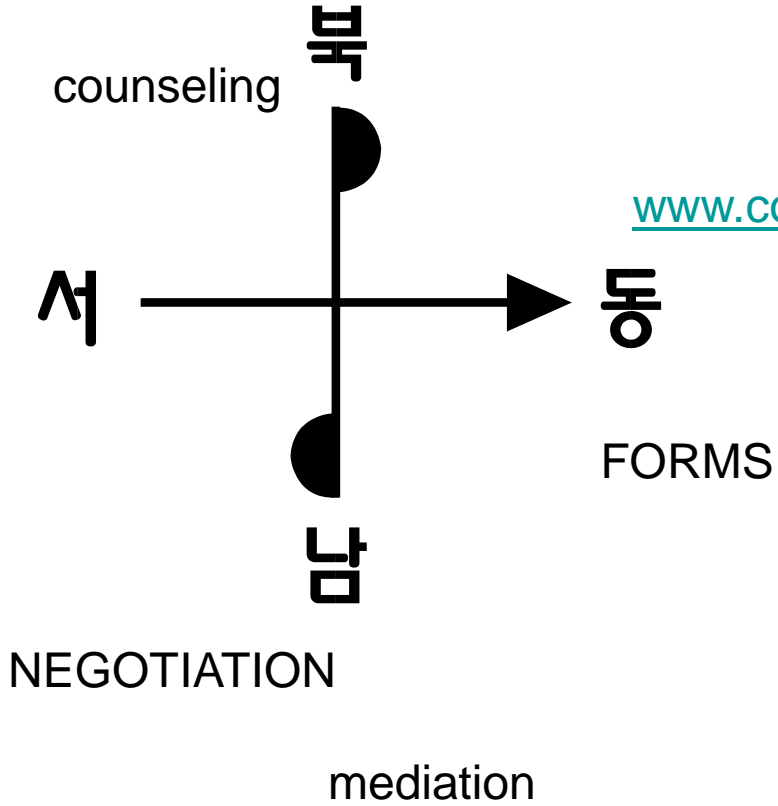


# FINAL JUDGMENT

More than a hand shake deal.



# HOW TO GET THERE



[www.courts.ca.gov](http://www.courts.ca.gov)

# Counseling

## Initial Interview

- **Explore client's "wants"**
  - Divorce – Separation – Annulment
  - Termination of Domestic Partnership
  - Considerations – Summary Proceeding?
- **Explore client's situation**
  - Domestic Violence?
  - Family Situation
  - Property / Debt - Obligations

# FORMS

## Getting IN to the Court --- Initial Filing

- Petition & Summons
- Income & Expense Declaration FL 150
- UCCJEA FL 105 / GC 120 (If there are children)
- Property Declaration(s) FL 160
  - Separate property
  - Community / quasi-community property

Don't forget- Service

BLANK documents for opposing party

# Subsequent Filings – Motions

REQUEST FOR ORDER Form FL 300

And

SUPPORTING DECLARATION (Pleading)

A Party May Request -

- Temporary Orders
- Order Shortening Time
- Emergency Orders – Ex Parte filing
  - Check Local Rules regarding Ex-Parte/Emergency Orders

PREPARE FINDINGS AND ORDER AFTER HEARING



# DISCLOSURES

- Purpose – provide detailed, accurate information about income, expenses, assets and debts - ultimately to assist parties with division of property and obligations
  - None of the disclosure forms are filed with the Court OTHER THAN the Declaration of Service of Declaration of Disclosure
  - Income and Expense Declaration *can be filed if parties seek to establish child and/or spousal support*
- Preliminary Disclosures – v- Final Disclosures
  - Parties MUST disclose (Preliminary)
  - Final can be waived
- Generally
  - Be As Specific As Possible
  - FORMS
  - 1. Declaration of Disclosure
  - 2. Income and Expense Declaration
  - 3. Statement of Assets and Debts
  - 4. Declaration of Service of Declaration of Disclosure

# Division of Property

- Determine the Character of Property
- Separate Property
- Community Property/ Quasi-community Property
  - the laws governing the characterization of property apply to the property of registered domestic partners. [See Fam. C §299(d); *Koebke v Bernardo Heights Country Club* (2005) 36 C4th 824, 837-839.] Statutory terms referring to spouses include domestic partners. [FC §297.5(j).]
- TRACING
  - Rationale -
  - Courts recognize either **direct** or **family expense** tracing methods to ascertain whether a party's contribution was derived from a separate property source. (See *In re Marriage of Walrath*, 17 Cal.4th at pp. 920-921, fn. 5; *In re Marriage of Mix*, , 14 Cal.3d at p. 612.)
    - Under the “direct tracing” method, the disputed asset is traced to the withdrawal of separate property funds from the commingled account. (*In re Marriage of Braud, supra*, 45 Cal.App.4th at p. 823.) “This method requires *specific records* reconstructing each separate and community property deposit, and each separate and community property payment as it occurs.” (*Ibid.*) Separate property status cannot be established by “mere oral testimony of intent” or by “records that simply total up all separate property funds available during the relevant period and all separate expenditures during the period[.]” (*Ibid.*)
    - Using the “family expense” method, the records must show the community income was exhausted by family expenses, leaving only separate property funds available to make the payments. (*In re Marriage of Cochran, supra*, 87 Cal.App.4th at pp. 1058, 1059.) Estimates are not sufficient to meet this burden.
  - Courts require specific evidence, pursuant to specific methodologies, to prevail on a reimbursement argument. That specific evidence is usually presented by an accountant with special expertise in divorce work.

# WHY

- Valuation
- Fraud issues
- Concealment
- Development of Marital Settlement Agrmt.
- Client to consult with attorney before, during and after the drafting process.
- Negotiate NOW – OR – Litigate later
  - ~*AND*~ •

# TRADE OFFS

Right to reimbursement – “EPSTEIN” Credits

- IF after the date of separation, a divorcing party pays separate property money to maintain a community property asset such as a home or address a community debt

AND

- The separate property money spent is not a payment in lieu of support/living expenses of the other party

THEN

- The party expending the separate property funds may ask for reimbursement

# MORE

Watts – calculates the value of what should be charged for one party's exclusive enjoyment of community property (for example, the parties' home); Marriage of Watts (1985) 171 Cal.App.3d 366, 373-374

Jeffries – combines the value of the exclusive use with reimbursements (applying the Epstein analysis) ; Marriage of Jeffries (1991) 228 Cal.App. 3d 548, 552-553.

# ONE MORE: Education

## **Reimbursement for EDUCATION or SPECIAL CAREER-SKILLS TRAINING**

- Community funds expended (even before marriage)
- One party worked and the other party went to school
- The student now has a new career /enhanced earning capacity by virtue of education/ training

NOTE - The community does not acquire a community property interest in a spouse's education or training.

BURDEN OF PROOF - The spouse claiming reimbursement may show by tracing the community funds, showing community money pay for the other spouse's education or training.

LOANS - For education or training belong to the t spouse during a property division and cannot be considered in determining an equal division of community property and debt.

EXPERT Testimony to establish values  
ACCOUNTING

# BEFORE YOU SIGN

## READ THE AGREEMENT



# Settlement Agreement

- Keeps the parties in control of decision-making around the dissolution of the marital community and marital estate
- Provides opportunity for full and final settlement of all marital responsibilities, property division, spousal support and decision-making involving children (court retains jurisdiction over child related issues)



# NEGOTIATE

## PREPARE

- Due diligence
  - Are the parties seeing the full spectrum of issues?
  - Do the parties require additional assistance from a third party neutral?



# NEGOTIATE

## PROCEED

- Collaborate
  - Attitude = finding solutions
  - Candid discussion of “sticking points”
- Maintain interpersonal relationships



# NEGOTIATE

- Be creative in crafting agreements
  - The Three “R”s
    - Repeat
    - Restate
    - Reframe
- Review
- Write

# THANK YOU

