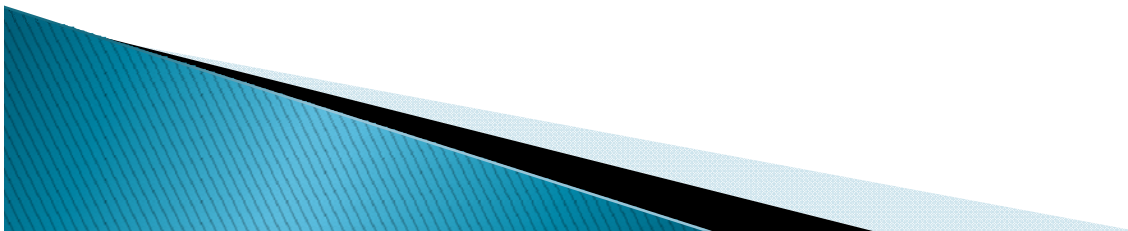


Standards and Best Practices in California Family Law

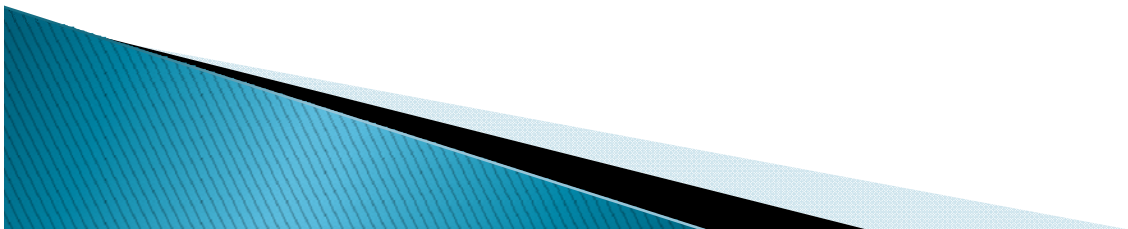
Casey Aitchison, Esq.



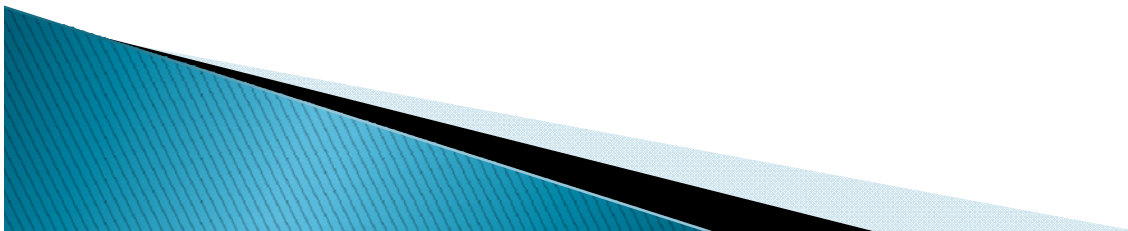
Matters Family Law Courts Decide

Family Code 2010

- ▶ Status of the marriage or domestic partnerships
- ▶ Establishing parentage
- ▶ Custody and visitation with minor children
- ▶ Settlement of property rights and debts
- ▶ Protection from actions by other party
- ▶ Child and spousal support



Obtaining a Dissolution in California



Key Terms and Forms

California Family Code (FC)

Family Law Form (FL)

Where to File a Case

- ▶ Jurisdiction
- ▶ Venue

Parties

- ▶ Petitioner
- ▶ Respondent

Types of Proceedings

- ▶ Dissolution of Marriage/Domestic Partnership
- ▶ Annulment
- ▶ Legal Separation

Forms to Start a Family Law Case

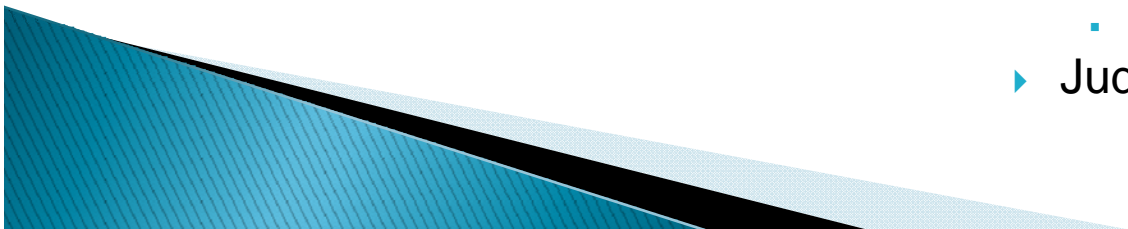
- ▶ Summons (FL-110)
 - Automatic Temporary Restraining Orders (ATROs)
- ▶ Petition (FL-100)
- ▶ Response (FL-120)
- ▶ Local Forms (DCSS)

Filing a Form

- ▶ Filing Fees
- ▶ Fee Waiver
- ▶ Service of Process
- ▶ Court Rules for Filing

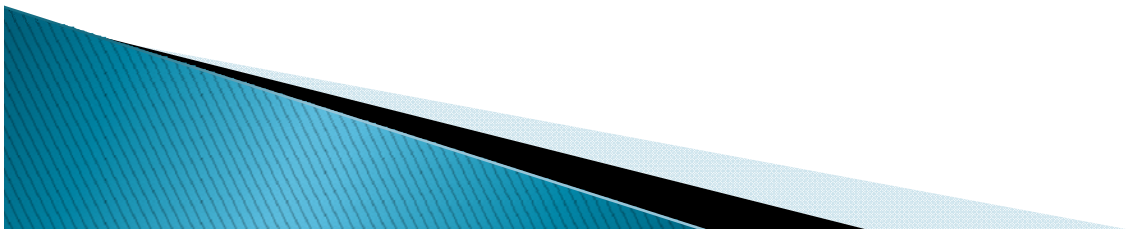
Procedure for Divorce

- ▶ Uncontested or Contested
- ▶ Default
 - When notary required
- ▶ Judgment



Dissolution Basics

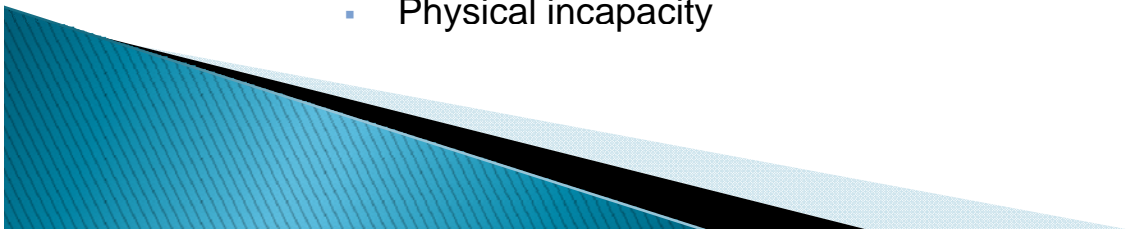
- ▶ “Divorce” officially called a Dissolution of Marriage
- ▶ Three types: Dissolution, annulment or legal separation
- ▶ A court has to have jurisdiction to hear and decide a family law case
- ▶ California's residency requirements
 - Six months in California
 - Three months in the County (Venue)
 - Otherwise file a legal separation
 - UCCJEA if child custody an issue (FC 3400-3465)



Grounds for Dissolution/Nullity in California

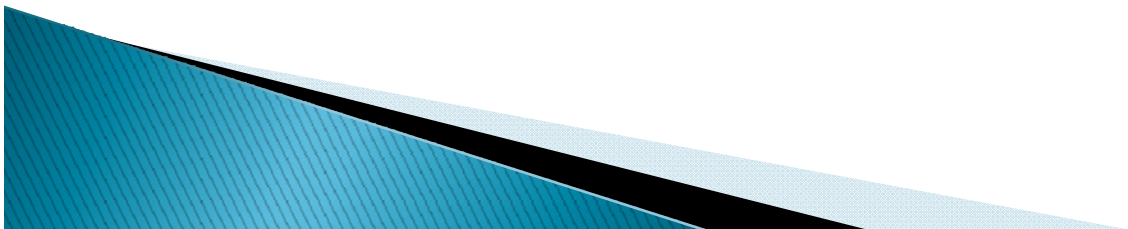
Family Code 2200-2210, 2310-2312

- ▶ Grounds for Dissolution in California
 - Irreconcilable Differences
 - Permanent legal incapacity to make decisions
- ▶ California is a “no-fault” state
 - Spouse does not have to give permission
- ▶ Grounds for Nullity
 - Void marriage:
 - Incest or bigamy
 - Voidable marriage:
 - Petitioners age at marriage/registration
 - Prior existing marriage
 - Unsound mind
 - Fraud
 - Force
 - Physical incapacity



Procedure for Dissolution

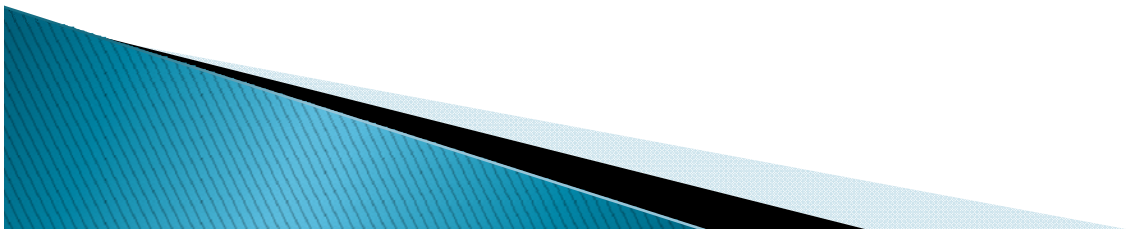
- ▶ Petition filed
- ▶ Possible responses to the petition by the respondent
- ▶ Request for Order
 - Ex parte orders
 - Hearing
- ▶ Disclose financial information
 - Child support
 - Spousal support
 - Attorney fees



Procedure for Dissolution

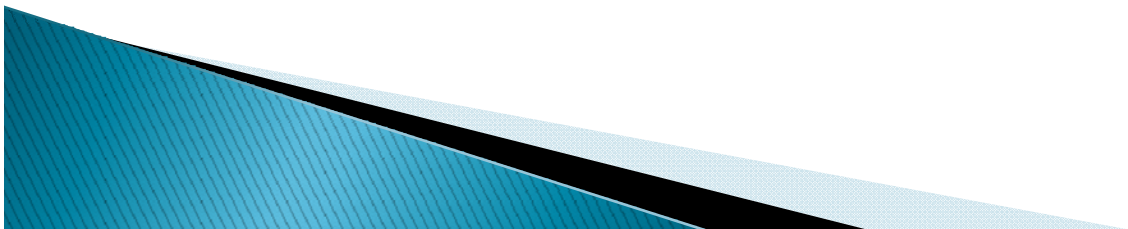
Completing the Dissolution

- ▶ Declaration of Disclosure (FC 2100, *et seq.*)
 - Public policy to preserve assets, ensure fair support, and achieve equal division
- ▶ Termination of Marital Status
 - “6 months plus 1 day” rule
 - Bifurcating issues from Termination of Marital Status
- ▶ File marked Judgment and Notice of Entry of Judgment

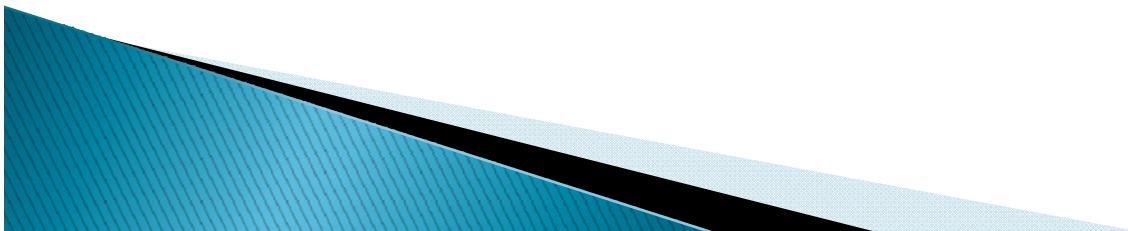


Spousal Support Basics

- ▶ Mutual duty of support
- ▶ Temporary “guideline” support
- ▶ “Permanent” Support
 - Factors – FC 4320



Custody, Child Support and Paternity



Key Terms and Forms

Custody

- ▶ Legal Custody – sole, joint
- ▶ Physical Custody – sole, joint, shared, primary

Family Law Facilitator

Child Custody Recommending Counseling (CCRC)

Visitation

Paternity/Parentage

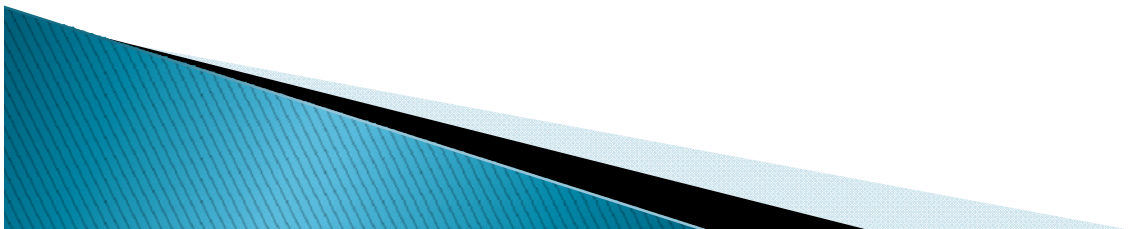
- ▶ “Other Parent”
- ▶ Department of Child Support Services (DCSS)
- ▶ Uniform Parentage Act (UPA) – FC 7600, *et seq.*

Procedure

- ▶ Court Orders – Stipulation or Hearing
- ▶ Order After Hearing – California Rules of Court Rule 5.125
- ▶ Mediation (CCRC)
- ▶ Wishes of the Child (FC 3042)

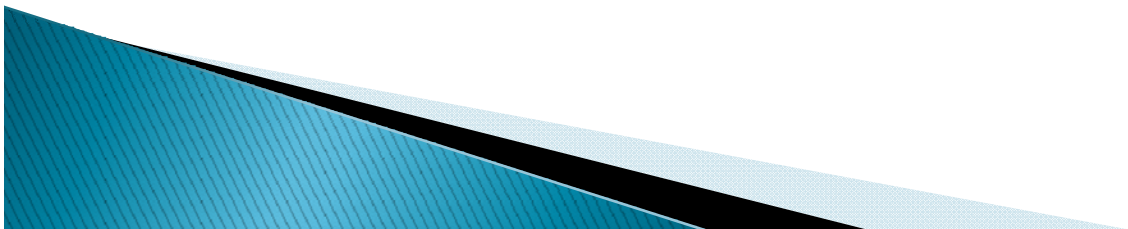
Forms

- ▶ Request for Order w/ Declaration
- ▶ Income & Expense Declaration
- ▶ Declaration under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
- ▶ Voluntary Declaration of Paternity
 - Paternity Opportunity Program (POP)



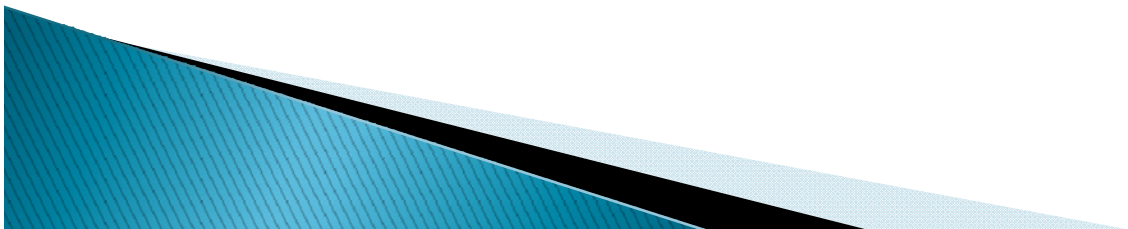
When Are Custody Decisions Made?

- ▶ Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
 - One Forum
 - Emergency jurisdiction
- ▶ Marital and domestic partnership litigation
- ▶ Uniform Parentage Act (UPA)
- ▶ Domestic Violence Prevention Act (DVPA)
- ▶ Grandparent visitation



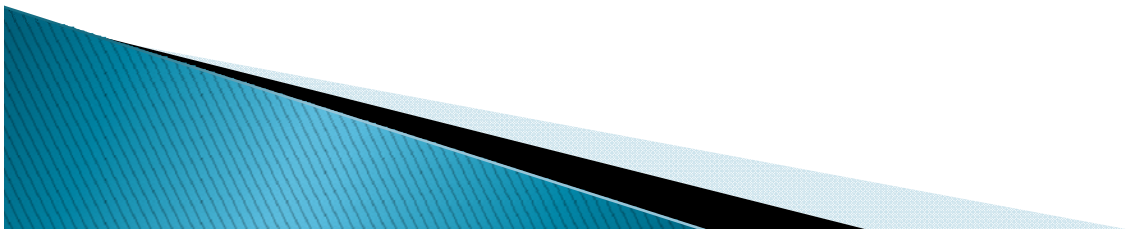
General Custody Guidelines

- ▶ Frequent and continuing contact with both parents (FC 3020)
- ▶ Factors considered in determining child's best interest (FC 3011)
 - Habitual or continual illegal use of controlled substance
 - History of abuse



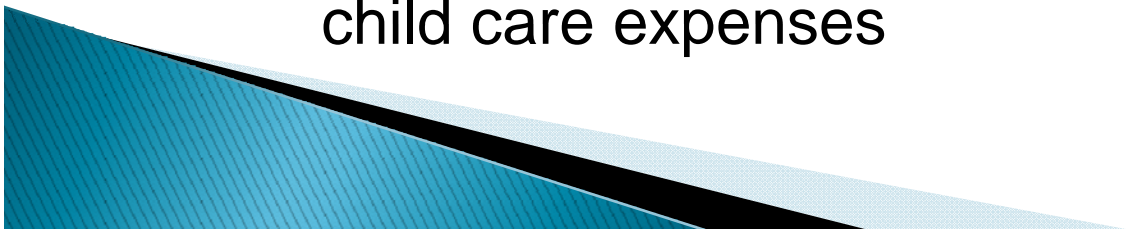
Court Hearing on Custody/Visitation

- ▶ Request for Order
- ▶ Mediation - Required (FC 3170)
 - Child Custody Recommending Counseling (CCRC)
 - Agreement in mediation
 - No agreement in mediation
- ▶ Child Custody Evaluation (Evidence Code 730, FC 3111, FC 3118)
- ▶ Minor's counsel (CRC 5.340; FC 3150)
- ▶ Wishes of the child (CRC 5.240; FC 3042)



Child Support Basics

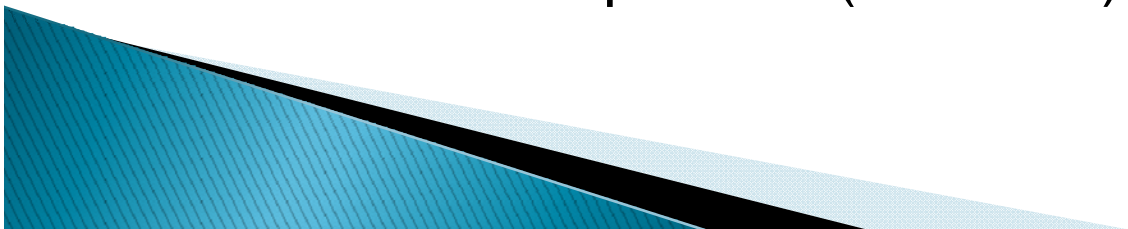
- ▶ Both parents have a duty to support their minor children
- ▶ Statewide uniform child support guidelines
 - Equation based on both parents' income and time share
 - Debunking the “50%” myth
 - Mandatory computer program to calculate support
www.childsup.ca.gov/resources/calculatchildsupport.aspx
 - Add-ons for uncovered medical, education and child care expenses



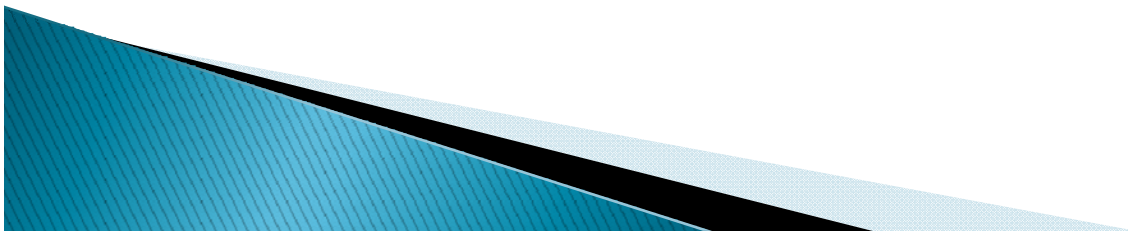
Parentage/Paternity

Uniform Parentage Act (UPA) – FC 7600, *et seq.*

- ▶ What it means to establish paternity
 - Presumed parent (FC 7611)
 - Biological parent
- ▶ Why establish paternity
- ▶ Ways to establish paternity
 - Voluntary Declaration of Paternity
 - Petition
 - DCSS
- ▶ Disputing paternity
- ▶ More than 2 parents (FC 7612)

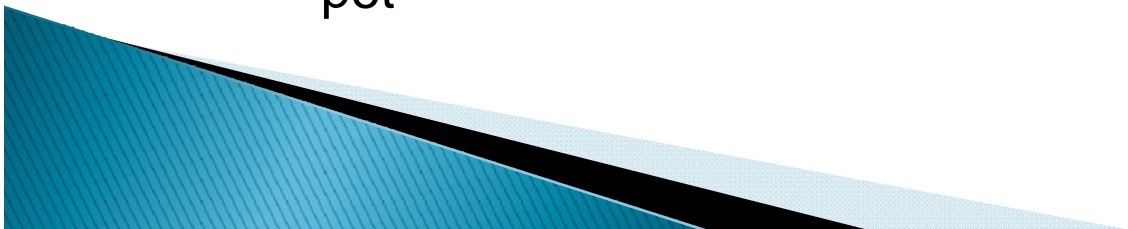


Property Basics

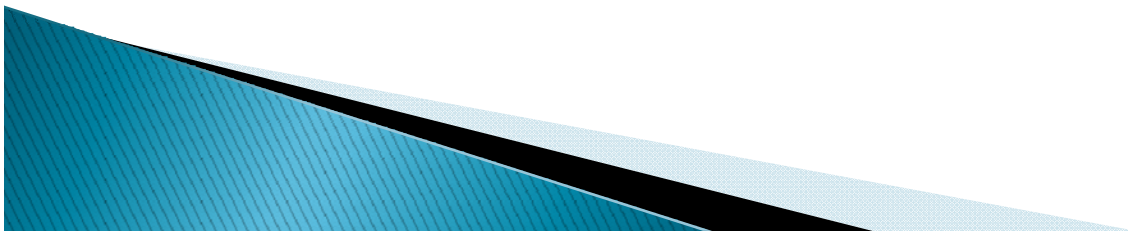


Characterization and Division

- ▶ Separate property
 - Inheritance
 - Gift
 - Acquired with separate property funds
- ▶ Community property
 - Rebuttable presumption of community property if acquired during marriage
- ▶ Declaration of Disclosure
 - Mandatory
- ▶ New Law – Possession of the Family Pet (FC 2605)
 - Assign ownership taking into consideration “the care of the pet”



Domestic Violence



Key Terms

Restraining Order

- ▶ Temporary Restraining Order (TRO) – DV-110
- ▶ Restraining Order After Hearing – DV-130

Domestic Violence Prevention Act (DVPA) – FC 6200, *et seq.*

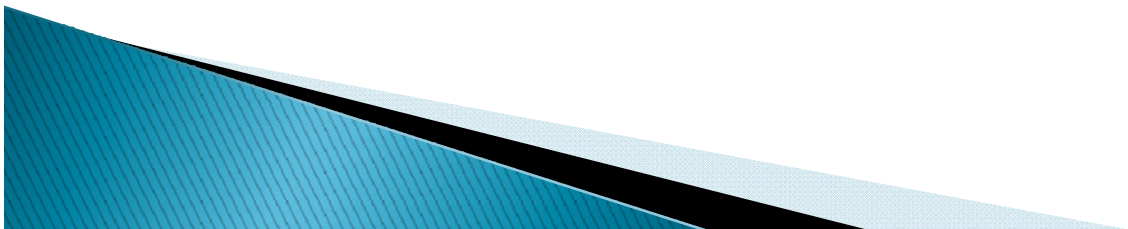
DVPA Orders

California Law Enforcement Telecommunication System (CLETS)

California Evidence Code

Types of Evidence

- ▶ Acts of the parties
- ▶ Witness testimony
- ▶ Records, documents, exhibits, objects, recordings, etc.



Domestic Violence

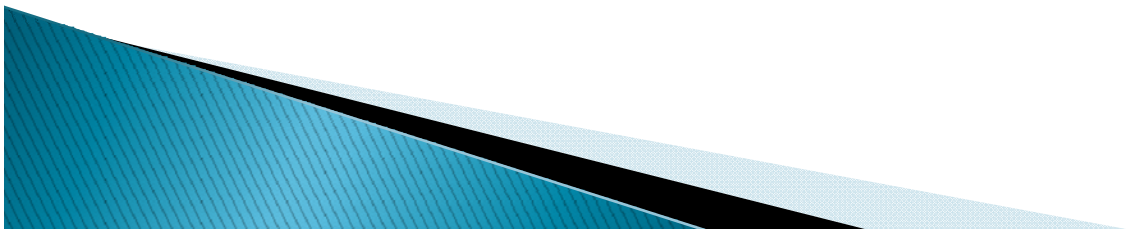
Domestic Violence Prevention Act (DVPA)

- ▶ Allows an abuse survivor to apply for:
 - Protection from further abuse
 - Custody and support of children
 - Control of property (including pets), kick out orders, and payment of debts
- ▶ Allows attorney fees and costs to prevailing party
- ▶ Requires a specific relationship
 - Married/registered domestic partner, live/lived together, related by blood marriage or adoption, dating or used to date, or parents of child together
 - Minors over 12 do not need a Guardian ad Litem



Domestic Violence Restraining Orders

- ▶ Request for DVPA restraining order (DV-100)
- ▶ Evidence to prove domestic violence
- ▶ Temporary Restraining Order (TRO) (DV-110)
- ▶ Domestic Violence Restraining Order After Hearing (DV-130)
 - 3 year
 - 5 year
- ▶ Request to Renew Restraining Order (DV-700)



Debunking California's Family Law Myths

- ▶ “Domestic Violence requires physical violence”
- ▶ “If you are married for 10 years or more, you must pay lifetime spousal support, but if you are married less than 10 years, you pay spousal support for half the length of the marriage”
- ▶ “You are ‘legally separated’ when one party files for divorce or for legal separation”
- ▶ “If you acquire an asset during marriage in your own name, it is not community property”
- ▶ “You can provide for child support and child custody in premarital agreements”
- ▶ “You can’t waive or limit spousal support in premarital agreements”
- ▶ “If you live together for 10 years in California, you have a ‘Common Law’ marriage”
- ▶ “If you cohabit but do not marry, you cannot be sued for financial support or property division”

