

# Guide to the Legal System of the United States

San Diego, California

Family Law



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A bit of background story, Las Valientes is a non - profit organization. They help women and men, who experience domestic violence, by taking them out of that situation through the legal system. Most of the people who come to Las Valientes are hispanic or latino/a that come from latin america. That is why most of the women and men have little to no understanding of the United States' legal system.

In this document we are going to explain how the legal system works in the U.S.. We are going to focus on the system of San Diego, California. We will talk about how 'Family Law' is defined in California, what these subjects are like in California and what forms will need to be filled out depending on the situation you are in.

What is considered 'Family Law' in San Diego? Legal practices which focus on problems involving family relations like marriage, adoption, divorce, child custody and more are considered 'Family Law'.

### Adoption

There are different ways of adopting in California. One way is through child protection services. Child protective services can remove the child and take the parental rights away through juvenile court. The second way to adopt is through the child adoption agency. There are also different types of adoptions. There is spouse or domestic partner, independent and international adoption. Adoption in San Diego involves getting consent from birth parents, getting a court date and adoption hearing. You don't need parental consent if the parental rights of the birthparents/s have been taken away. Adoption hearing and sometimes investigation depending on the adoption case.

### Child Custody

If the children live with both parents separately, the parents must decide on a shared custody arrangement. If the parents do not agree on a custody arrangement, they will present their case to a family court, and then the court will decide. Child custody issues may also arise when unmarried parents have a child. There are 2 types, there is physical custody and legal custody.

### Child Support

In every state the family law judge will set the child support. Every state has a department of child support system. It is a state agency that takes care of child support. State agencies talk to each other when a child support case opens and/or a parent moves. In California, child support is based on a complex calculation that takes into consideration the parents' incomes, how much time each parent spends with the child, and any tax deductions that are available to either parent. If the parent doesn't have a social security number then they won't pay child support. If a noncustodial parent owes 30 or more calendar days of support, the license suspensions are triggered but the state of California does allow restricted driver licenses that allow the parent to drive to and from work if the suspension would cause undue hardship for the obligor.

### Marriage

'Common law marriage' **does not** exist in San Diego. 'Common law marriage' is a law where after a certain period of time of dating, you and your boyfriend/girlfriend are considered to be married, even though they never married.

### Divorce

Every state is different when it comes to certain aspects of divorce. In California, everything is community property when it comes to divorce. In some states the mom gets everything and the dad will end up paying attorneys fees. But in California the only way dad will have to pay attorney fees is if it is requested and the judge accepts it.

### Guardianship

In California, the guardian has the same responsibilities to care for the child as a parent would. The guardian has full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make.

Restraining orders are similar and different in each state. The formats and criteria vary with each state. In California there is something called CLETS. That is for law enforcement so they can know who the victim is and who the abuser is. Forms don't need to be notarized. Must read a pamphlet. Must read a lot of information documents.

### Restraining Orders

In California there is something called CLETS. That is so law enforcement can know who the victim is and who the abuser is. The forms in California do **not** need to be notarized. There are four different orders in California you can ask for: Domestic Violence Restraining Order, Elder or Dependent, Adult Abuse Restraining Order, Civil Harassment Restraining Order, Workplace Violence Restraining Order. Permanent restraining orders can last up to five years.

### Spousal Support

For marriages lasting ten years or less, spousal support may be granted for half the length of the marriage. If your spouse earns an income that is considerably higher than yours you may be granted spousal support.

### Supervised Visits

There are individual locations or non profits where supervised visits are held in California. In Texas there are sites. You need a court order in San Diego to have a supervised visit. The order could be through family court services or restraining orders. There are no centers where supervised visits could be held in California. Independent cases are where cps comes and remove your children. They do supervised visits.

There are many forms that are related to 'Family Law'. Here is a list of the different forms someone may need when either filling out, serving or taking it to the county clerk. All forms need to be submitted in english.

### Adoption

- Stepparent/domestic partner adoption
  - *Adoption Request* form
  - *Adoption Agreement* form
  - *Adoption Order* form
  - *Declaration Confirming Parentage in Stepparent Adoption or Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy* form
  
- Independent, agency or international adoption
  - *Adoption Request* form
  - *Adoption Agreement* form
  - *Adoption Order* form
  - *Adoption Expenses* form
  
- When adopting a native american child
  - *Indian Child Inquiry Attachment* form
  - *Parental Notification of Indian Status* form
  - *Notice of Child Custody Proceeding for Indian Child* form
  - *Attachment to Notice of Child Custody Proceeding for Indian Child* form
  - *Notice of Designation of Tribal Representative and Notice of Intervention in a Court Proceeding Involving an Indian Child* form
  - *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* form
  - *Order on Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* form

### Child Custody and Visitation Orders

- To ask for a custody and visitation order once you (or the other parent) have opened a case
  - *Request for Order* form
  - *Child Custody and Visitation Application Attachment* form
  - *Temporary Emergency (Ex Parte) Orders* form

- *Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders* form
- *Proof of Personal Service* form
- *Responsive Declaration to Request for Order* form.
- To set up custody and visitation with a petition for custody and support of minor children
  - *Petition for Custody and Support of Minor Children* form
  - *Summons (Uniform Parentage -- Petition for Custody and Support)* form
  - *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Attachment to Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Child Custody and Visitation Application Attachment* form
  - *Proof of Service of Summons (Family Law --- Uniform Parentage --- Custody and Support)* form
  - *Response to Petition for Custody and Support of Minor Children* form
  - *Request to Enter Default (Family Law --- Uniform Parentage) or Appearance*
  - *Stipulations, and Waivers (Family Law --- Uniform Parentage --- Custody and Support)* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
  - *Declaration for Default or Uncontested Judgment (Uniform Parentage --- Custody and Support)* form
  - *Judgment (Uniform Parentage --- Custody and Support)* form
  - *Child Custody and Visitation (Parenting Time) Order Attachment* form
  - *Supervised Visitation Order* form
  - *Children's Holiday Schedule Attachment* form
  - *Additional Provisions --- Physical Custody Attachment* form
  - *Joint Legal Custody Attachment* form
  - *Child Support Information and Order Attachment* form
  - *Stipulation to Establish or Modify Child Support and Order* form
  - *Notice of Entry of Judgment (Family Law --- Uniform Parentage --- Custody and Support)* form
  - *Child Support Case Registry Form*
  - *Order/Notice to Withhold Income for Child Support* form
  - *Non-Guideline Child Support Findings Attachment* form
  - *Proof of Personal Service* form
  - *Proof of Service by Mail* form

- *Stipulation and Order for Custody and/or Visitation of Children* form
- To prepare a custody and visitation order (including child support)
  - *Findings and Order After Hearing (Family Law --- Custody and Support --- Uniform Parentage)* form
  - *Child Custody and Visitation (Parenting Time) Order Attachment* form
  - *Supervised Visitation Order* form
  - *Children's Holiday Schedule Attachment* form
  - *Additional Provisions --- Physical Custody Attachment* form, *Joint Legal Custody Attachment* form
  - *Child Support Information and Order Attachment* form
  - *Notice of Rights and Responsibilities --- HealthCare Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* form
  - *Stipulation and Order for Custody and/or Visitation of Children* form, *Child Support Case Registry Form*
  - *Income Withholding for Support* form
- To answer papers you were served with asking to set up or change a custody and visitation order
  - *Responsive Declaration to Request for Order* form
  - *Child Custody and Visitation (Parenting Time) Application Attachment* form
  - *Proof of Personal Service* form
  - *Proof of Service by Mail* form
- To answer papers you were served with asking for custody and visitation orders as part of a domestic violence restraining order
  - *Response to Request for Domestic Violence Restraining Order* form
  - *Request for Child Custody and Visitation Orders* form
  - *Proof of Service by Mail (Clets)*
- To respond to a petition for custody and support of minor children
  - *Response to Petition for Custody and Support of Minor Children* form
  - *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Child Custody and Visitation (Parenting Time) Application Attachment* form
  - *Proof of Personal Service* form
  - *Proof of Service by Mail* form



- To change a custody and visitation order
  - *Request for Order* form
  - *Child Custody and Visitation (Parenting Time) Application Attachment* form
  - *Temporary Emergency (Ex Parte) Orders* form
  - *Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders* form
  - *Proof of Personal Service* form, *Responsive Declaration to Request for Order* form
  - *Responsive Declaration to Request for Order* form

### Child Support

- To ask for for a child support order once you have a court case open
  - *Request for Order* form
  - *Income and Expense Declaration* form or *Financial Statement (Simplifies)* form
  - *Proof of Personal Service* form
  - *Proof of Service by Mail* form
  - *Responsive Declaration to Request for Order* form
  
- To ask for child support with a petition for custody and support of minor children
  - *Petition for Custody and Support of Minor Children* form
  - *Summons (Uniform Parentage--Petition for Custody and Support)* form
  - *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Attachment to Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Income and Expense Declaration* or *Financial Statement (Simplified)* form
  - *Proof of Service of Summons (Family Law -- Uniform Parentage -- Custody and Support)* form
  - *Response to Petition for Custody and Support of Minor Children* form
  
- To answer papers you were served by your child's other parent (with a request for order) asking to set up or change a child support order
  - *Responsive Declaration to Request for Order* form
  - *Income and Expense Declaration* or *Financial Statement (Simplified)* form
  - *Proof of Personal Service* or *Proof of Service by Mail* form

- To answer papers you were served by the local child support agency, asking to set up or change a child support order
  - *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* form
  - *Response to Governmental Notice of Motion or Order to Show Cause (Governmental)* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
  - *Proof of Personal Service or Proof Service by Mail* form
  
- To answer a simplified motion for child support
  - *Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support* form
  - *Income and Expense Declaration or Financial Statement (Simplified)*
  
- To answer papers you were served asking to set up a child support order in a restraining order case
  - *Response to Request for Domestic Violence Restraining Order* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
  - *Proof of Service by Mail (CLETS)* form
  
- To respond to a petition for custody and support of minor children
  - *Response to Petition for Custody and Support of Minor Children* form
  - *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act* form
  - *Child Custody and Visitation (Parenting Time) Application Attachment* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
  - *Proof of Personal Service by Mail* form
  
- To set up or change a support order by agreement
  - *Stipulation to Establish or Modify Child Support and Order* form
  - *Notice of Rights and Responsibilities -- Health Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* form
  - *Child Support Case Registry Form*
  - *Income Withholding for Support*
  
- To change a child support order with a request for order (including response forms)
  - *Request for Order* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form

- *Proof of Personal Service or Proof of Service by Mail* form
- *Responsive Declaration to Request for Order* form
- Forms to change a child support order using a simplified motion (including response forms)
  - *Notice of Motion and Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
  - *Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support* form
- To change your child support when support is based on presumed income
  - *Notice and Motion to Cancel (Set aside) Support Order Based on Presumed Income (Governmental)* form
  - *Declaration of Obligor's Income During Judgment Period--Presumed Income Set-Aside Request (Governmental)* form
  - *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* form
  - *Income and Expense Declaration or Financial Statement (Simplified)* form
- To answer papers you were served asking for an earnings assignment (wage garnishment)
  - *Request for Hearing Regarding Earnings Assignment (Family Law Governmental UIFSA)* form
  - *Proof of Personal Service or Proof of Service by Mail* form
  - *Findings and Order After Hearing (Family Law -- Custody and Support -- Uniform Parentage)* form
- Form to delay (stay) or end an earnings assignment (wage garnishment)
  - *Stay of Service of Earnings Assignment and Order* form
- Forms to get a wage assignment
  - *Income Withholding for Support* form
  - *Notice to Local Child Support Agency of Intent to Take Independent Action to Enforce Support Order (Governmental)* form
  - *Earnings Assignment Order for Spousal Support or Partner Support (Family Law)* form

- *Request for Hearing Regarding Earnings Assignment (Family Law -- Governmental -- UIFSA) form*

### Divorce

- To start a divorce or separation
  - *Petition -- Marriage/Domestic Partnership form*
  - *Summons (Family Law) form*
  - If you and your partner have children under 18, you need to fill out the *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act form*
  - *Proof of Service Summons (Family Law --- Uniform Parentage --- Custody and Support) form*
  - *Response --- Marriage /Domestic Partnership form*
  - Some optional forms are *Property Declaration* and *Child Custody and Visitation (Parenting Time) Application Attachment form*
  
- To share financial information (disclosures)
  - *Declaration of Disclosure form*
  - *Income and Expense Declaration form*
  - *Schedule of Assets and Debts or a Property Declaration form*
  - *Declaration Regarding Service of Declaration of Disclosure form*
  
- To respond to divorce or separation
  - *Response --- Marriage /Domestic Partnership form*
  - An optional form is the *Property Declaration form*
  - *Proof of Service by Mail or Proof of Personal Service form*
  - If you and spouse have children, who are under 18, together you need to fill out the *Declaration under Uniform Child Custody Jurisdiction and Enforcement Act form*
  - An optional form is the *Child Custody and Visitation (Parenting Time) Application Attachment form*

### Guardianship

- To ask for guardianship of a child

- *Petition for Appointment of Guardian of Minor (Probate --- Guardianships and Conservatorships) form*
- *Petition for Appointment of Guardian of the Person (Probate --- Guardianships and Conservatorships) form*
- *Guardianship Petition - Child Information Attachment (Probate --- Guardianships and Conservatorships) form*
- *Petition to Extend Guardianship of the Person form*
- *Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice form*
- *Confidential Guardian Screening Form (Probate --- Guardianships and Conservatorships) form*
- *Declaration Under Uniform Child Custody Jurisdiction Enforcement Act form*
- *Attachment to Declaration Under Uniform Child Custody Jurisdiction Enforcement Act form*
- *Notice of Hearing - Guardianship or Conservatorship (Probate --- Guardianships and Conservatorships) form*
- *Order Appointing Guardian or Extending Guardianship of the Person form*
- *Duties of Guardian form*
- *Letters of Guardianship (Probate --- Guardianships and Conservatorships) form*
- *Attachment to Judicial Council Form*
- *Proof of Personal Service of Notice of Hearing --- Guardianship or Conservatorship (Probate --- Guardianships and Conservatorships) form*
- *Attachment to Notice of Hearing Proof of Service by Mail (Probate --- Guardianships and Conservatorships) form*
- *If you want guardianship of a Native American child you need to fill out the Indian Child Inquiry Attachment form*
- *Parental Notification of Indian Status form*
- *Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act) form*
- *Attachment to Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act) form*
- *To ask for temporary guardianship of a child*
  - *Petition for Appointment of Temporary Guardian (Probate --- Guardianships and Conservatorships) form*
  - *Petition for Appointment of Temporary Guardian of the Person (Probate --- Guardianships and Conservatorships) form*

- *Order Appointing Temporary Guardian (Probate --- Guardianships and Conservatorships)* form
- *Letters of Temporary Guardianship (Probate --- Guardianships and Conservatorships)* form
- *Attachment to Judicial Council Form*
- Forms to end a guardianship
  - *Petition for Termination of Guardianship (Probate --- Guardianships and Conservatorships)* form
  - *Notice of Hearing - Guardianship or Conservatorship (Probate --- Guardianships and Conservatorships)* form
  - *Order Terminating Guardianship (Probate --- Guardianships and Conservatorships)* form
  - *Attachment to Notice of Hearing Proof of Service by Mail (Probate --- Guardianships and Conservatorships)* form
- Other guardianship forms (including forms for guardianship of the estate)
  - *Order Dispensing With Notice-Guardianship or Conservatorship* form
  - *Petition for for Appointment of Guardian ad Litem (Probate --- Decedents' Estate and Guardianships and Conservatorships)* form
  - *Confidential Guardianship Status Report* form
  - *Order prescribing Notice (Probate)* form
  - *Order Appointing Guardian or Extending Guardianship of the Person* form
  - *Post-Move Notice of Change of the Residence of Conservatee or Ward (Probate --- Decedents' Estate and Guardianships and Conservatorships)* form
  - *Petition to Fix Residence Outside the State of California* form
  - *Order Fixing Residence Outside the State of California* form, *Request for Special Notice (Probate)* form
  - *Inventory and Appraisal* form
  - *Inventory and Appraisal Attachment* form
  - *Notice of Taking Possession or Control of an Asset of Minor or Conservatee (Probate --- Guardianships and Conservatorships)* form
  - *Report of Sale and Petition for Order Confirming Sale of Real Property (Probate --- Decedents' Estates Guardianships and Conservatorships)* form
  - *Order Confirming Sale of Real Property (Probate --- Guardianships and Conservatorships)* form
  - *Ex Parte Petition for Authority to Sell Securities and Order* form
  - *Ex Parte Petition for Approval of Sale of Personal Property and Order* form

- *Proof of Personal Service of Notice of Hearing Guardianship or Conservatorship (Probate --- Guardianships and Conservatorships) form*
- *Attachment to Notice of Hearing Proof of Service by Mail (Probate --- Decedents' Estates Guardianships and Conservatorships) form*
- *Clerk's Certificate of Posting Notice of Hearing --- Guardianship or Conservatorship (Probate --- Guardianships and Conservatorships) form*
- *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box (Probate --- Guardianships and Conservatorships) form*
- *Ex Parte Application for Order Authorizing Completion of Capacity Declaration --- HIPAA (Probate --- Guardianships and Conservatorships) form*
- *Ex Parte Order Re Completion of Capacity Declaration -HIPAA (Probate --- Guardianships and Conservatorships) form*
- *Notice of Petition and Petition to Transfer Case Involving and Indian Child to Tribal Jurisdiction form*

### Restraining Order

- Temporary Restraining Order
  - *Request for Domestic Violence Restraining Order form*
  - *(Confidential CLETS Information form*
  - *Notice of Court Hearing form*
  - *Temporary Restraining Order form*
  - *If you have children you want protection from you have to fill out the Request for Child Custody and Visitation Orders form and the Child Custody and Visitation Order form*
  - *Response to Request for Domestic Violence form*
  - *Restraining Order After Hearing (Order of Protection) form*
  - *Proof of Personal Service form*
  - *Notice of Court Hearing form*
  - *Description of Abuse or Additional Page*

### Spousal Support

- To ask for or change temporary spousal support
  - *Request for Order form*
  - *Income and Expense Declaration form*
  - *Proof of Service by Mail or Proof of Personal Service form*
  - *Responsive Declaration to Request for Order form*

- To ask to change long-term spousal support
  - *Request for Order* form
  - *Income and Expense Declaration* form
  - An optional form is the *Spousal or Partner Support Declaration Attachment* form
  - *Proof of Personal Service* form
  - *Responsive Declaration to Request for Order* form
  
- To prepare the order after your court date
  - *Findings and Order After Hearing (Family Law --- Custody and Support --- Uniform Parentage)* form
  - *Spousal, Partner, or Family Support Order Attachment (Family Law)* form
  - *Earnings Assignment Order for Spousal or Partner Support (Family Law)* form
  - *Income Withholding for Support* form

#### Filing Fees

- When you can't afford to pay the courts filing fees
  - *Application for Waiver of Court Fees and Costs* form
  - *Order on Application for Waiver of Court Fees and Costs* form