

1 (CCP) § 1060

2 California declaratory judgment and relief statute encourages judicial proceedings to
3 declare the rights, duties and responsibilities of citizens before its courts.

4 **1060.** Any person interested under a written instrument, ... who desires a
5 declaration of his or her rights or duties with respect to another, ..., may, in cases
6 of actual controversy relating to the legal rights and duties of the respective
7 parties, bring an original action or cross-complaint *in the superior court* for a
8 declaration of his or her rights and duties in the premises, including a
determination of any question of construction or validity arising under the
instrument or contract. [Emphasis added]

9 CCP § 410.10

10 "CCP 410.10. A court of this state may exercise jurisdiction on any basis not
11 inconsistent with the Constitution of this state or of the United States."

12 Art. VI Sec 10 CA. Constitution

13 Article 6 Judicial Sec. 10. The Supreme Court, courts of appeal, superior courts,
14 and their judges have original jurisdiction in habeas corpus proceedings.

15 Those courts also have original jurisdiction in proceedings for extraordinary relief
16 in the nature of mandamus, certiorari, and prohibition. The appellate division of
the superior court has original jurisdiction in proceedings for extraordinary relief
17 in the nature of mandamus, certiorari, and prohibition directed to the superior
18 court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other causes.

19 The court may make any comment on the evidence and the testimony and
20 credibility of any witness as in its opinion is necessary for the proper
21 determination of the cause. [Emphasis added]

1 This Family Court is a department of the Superior Court and as such has jurisdiction and
2 authority to hear and rule on this request for declaratory judgment and relief.

3 *American Tel. & Tel. Co. v. California Bank (1943) 59 CA2d 46*

4 “On the question of the jurisdiction of the superior court as to actions brought
5 pursuant to section 1060 of the Code of Civil Procedure, it was held in *Cook v.*
6 *Winklepleck*, 16 Cal.App.2d Supp. 759, 765 [59 P.2d 463]: ‘An action for
7 declaratory relief is essentially an equitable proceeding. (*McCaughna v. Bilhorn*,
8 10 Cal.App.2d 674 [52 P.2d 1025]; 1 C.J.S. 1046.) *When a court of equity once*
9 *obtains jurisdiction of a case it will decide the whole case as between the parties*
10 *and not leave any part of it for future litigation.* (*Becker v. Superior Court*, 151
11 Cal. 313 [90 P. 689], at p. 316; *Robinett v. Brown*, 167 Cal. 735 [141 P. 368];
12 *Bettencourt v. Bank of Italy*, 216 Cal. 174, 179 [13 P.2d 659].) The superior court
therefore retained jurisdiction over the case stated in the first count of the
complaint herein and should have determined the issues as to the money award
sought by plaintiff, even though, as in *Becker v. Superior Court*, supra, the
amount thereof was below the limit of its jurisdiction in actions at law.’ (See,
also, *Zimmer v. Gorelnik*, 42 Cal.App.2d 440, 447 [109 P.2d 34].) [Emphasis
added]

13 *Dale v. Dale, 78 Cal. Rptr. 2d 513, (1998)*

14 This court has jurisdiction and authority to hear this request for declaratory judgment and
15 to grant declaratory relief. For any other department of this superior court to hear this pleading
16 would not be compatible with *Dale v. Dale*, 78 Cal. Rptr. 2d 513, (1998), nor a prudent
17 utilization of judicial resources. Further it would add unnecessary expenses for the parties.

18 *Dale*, 78 Cal. Repr, Reference Note 2,

19 “As the California Supreme Court explained in *In re Chantel S.* (1996) 13 Cal.4th
20 196, 201: “... ‘family court’ refers to the activities of one or more superior court
21 judicial officers who handle litigation arising under the Family Code. *It is not a*
22 *separate court with special jurisdiction, but is instead the superior court*
performing one of its general duties.” [Emphasis added]

23 Further,

24 “In *Williams v. Superior Court*, supra, 14 Cal.2d 656, the California Supreme
25 Court held ‘that where a proceeding has been duly assigned for hearing and
determination to one department of the superior court by the presiding judge of
said court in conformity with the rules thereof, and the proceeding so assigned
has *not been finally disposed* of therein or legally removed therefrom, *it is*

1 beyond the jurisdictional authority of another department of the same court to
2 interfere with the exercise of the power of the department to which the
3 proceeding has been so assigned. [Citation.] In other words, while one
4 department is exercising the jurisdiction vested by the Constitution in the
5 superior court of that county, the other departments thereof are as distinct
6 therefrom as other superior courts. [Citation.] *If such were not the law,*
conflicting adjudications of the same subject-matter by different departments of
the one court would bring about an anomalous situation and doubtless lead to
much confusion.’ (Id. at p. 662.)” [Emphasis added]

7 **Leach v Leach, 172 Cal.App.2d 330, (1959)**

8 With a divorce proceeding having culminated in a final order on property distribution
9 incorporating a property settlement agreement, a spouse filed a separate action in the civil
10 department of the superior court requesting declaratory judgment on the validity of the property
11 agreement. The second Appellate court found a separate proceeding improper and the issue
12 should be resolved in the ongoing proceeding in family court,

13 “Appeal No. 18447 [3a] By cross-complaint appellant sought a determination in
14 the declaratory relief action to determine her rights under another provision of the
15 property settlement agreement requiring the husband to make certain monthly
16 payments for her support, in view of her subsequent remarriage. The court
17 sustained a demurrer to this cross-complaint without leave to amend and from the
18 judgment following this order cross-complainant appeals.

19 *The trial court’s order was based on the conclusion of the trial judge ‘that the*
divorce court is the proper court’ to determine this question.”

20 Where another action is pending in which a party may secure all the relief sought in a
21 declaratory relief action the court may properly refuse to entertain the action for
22 declaratory relief. (Schessler v. Keck, 125 Cal.App.2d 827, 837 [271 P.2d 588];
23 Marden v. Bailard, 124 Cal.App.2d 458, 466 [268 P.2d 809]; Wieber v. Worton,
24 105 Cal.App.2d 626 [234 P.2d 114]; Pacific Electric Ry. Co. v. Dewey,

25 95 Cal.App.2d 69, 71-72 [212 P.2d 255]; Sunset Scavenger Corp. v. Oddou, 11
Cal.App.2d 92, 95-96 [53 P.2d 188]; Stenzel v. Kronick, 102 Cal.App. 507, 510
[283 P. 93].)

[3b] *Here the appellant can seek execution in the divorce action and her rights*
can be fully determined therein. We cannot find any abuse of discretion in the
order sustaining demurrer to the cross-complaint. [Emphasis added]

1 **Active Controversy**

2 The parties are trying to alter their associational interests by exercising their fundamental
3 right of their personal decision relating to their marriage to dissolve it. Though this court has
4 entered a final order to dissolve their marriage the parties are still encumbered with the undue
5 burden of being subjected to the onerous permanent alimony and property distribution statutes.
6 There has not yet been a trial or final order entered on these issues which are grounded in the
7 statutes constitutionally challenge here, Ca. Family Code 4300-4360, 2500-2660.
8

9 **No Trial or Final Order Entered**

10 Declaratory judgment is appropriate when there had not yet been a trial on the issues nor
11 an order entered on the issues. *Leach v Leach*, 172 Cal.App.2d 330, (1959).

12 It is timely and proper for this court to entertain this request for declaratory judgment.

13 **Necessary & Proper now and Under All Existing Circumstances**

14 It is necessary for this court to rule now on the constitutionality of the alimony statutes
15 before the parties incur expenses to litigate the factors in the alimony statute and the court be
16 forced to make conclusions of facts based on adversarial argument. The parties and the court can
17 be spared the burden of litigation if this court promptly rules and finds the permanent alimony
18 statute unconstitutional and void. Likewise with the property distribution statute. If that is found
19 unconstitutional the parties are spared litigation expense and better conserve their financial
20 resources as they change their associational interest to be again single.
21

22 There simply are no reasons or circumstances now not to entertain and set for a prompt
23 adjudication hearing on the constitutional challenge.
24
25

1 Attorney fees

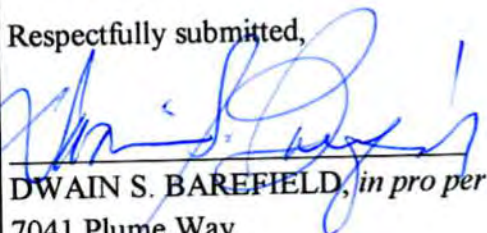
2 *Filarsky v. Superior Court (City of Manhattan Beach)*, 82 Cal.App.4th 1057 (2002)

3 “In addition, although ordinary actions for **declaratory relief** generally must be
4 set for *trial* at the earliest possible date (Code Civ. Proc., § 1062.3), the court is
5 not expressly obligated to schedule responsive pleadings and hearings in order to
6 facilitate a prompt decision. Furthermore, in an ordinary **declaratory relief**
7 action, the prevailing party *is* entitled to court costs (*id.*, § 1032; see *Spiva v.*
8 *Phoenix Indemnity Co.* (1959) 167 Cal.App.2d 496, 498), but the prevailing party
9 is not entitled to attorney fees in the absence of a contractual provision so
10 providing (*Spiva v. Phoenix Indemnity Co.*, *supra*, ‘167 Cal.App.2d at pp. 498-
11 499). Moreover, a judgment ordinarily constitutes the final resolution of an action
12 for **declaratory relief** pursuant to Code of Civil Procedure section 1060 (see
13 *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719 , 729-731), and such a
14 judgment is appealable pursuant to Code of Civil Procedure section 904.1,
15 subdivision (a)(1).’ ” [Emphasis of italics in original. Emphasis of underline
16 added]

11 Prayer for Relief

12 Wherefore Dwain S. Barefield, *in pro per*, prays this court assume its delegated
13 jurisdiction to hear and rule on his request for declaratory judgment as well as declaratory and
14 other relief. He further prays no award of attorney fees be entered in relation to this request for
15 declaratory judgment and relief. Finally, that this court declare Ca. Family Code 4300-4360,
16 2500-2660 violative of California Constitution Right of Privacy (Article I Section I) and
17 California Constitution Article III Section 3 Separation of Powers and as such are void ab initio
18 and unenforceable.
19

21 Respectfully submitted,

22 
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Dated January 30, 2006

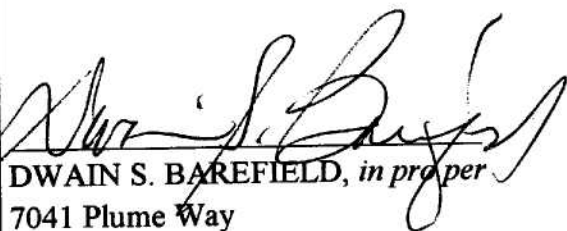
CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2006, I caused a true and accurate copy of the foregoing to be served in via U.S. Mail Return Receipt Requested to:

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