



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 16–17, 2017

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**Title**

Family Law: Judicial Council Education  
Session

**Agenda Item Type**

Information Only

**Date of Report**

October 25, 2017

**Submitted by**

Hon. Mark A. Juhas, Cochair  
Family and Juvenile Law Advisory  
Committee

**Contact**

Kathy Tyda, 415-865-8949  
[kathy.tyda@jud.ca.gov](mailto:kathy.tyda@jud.ca.gov)

Charlene Depner, Director  
Center for Families, Children & the Courts

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### Executive Summary

At the request of the Judicial Council, this educational session reviews milestone developments in family courts; services provided by the Center for Families, Children & the Courts and other Judicial Council offices; projects in development; and work that still needs to be done.

### Previous Council Action

Judicial Council business meetings address numerous ongoing items for family courts that advance the branch strategic objectives for access to, integrity in, and fair disposition of cases. Each year, the council's Family and Juvenile Law Advisory Committee submits business items from an extensive annual agenda that includes:

- Proposals for new or revised statewide rules and forms that enable the council to fulfill legislative mandates and reflect current laws.
- Recommended funding allocations for legislatively mandated family court-related programs, including AB 1058 Child Support Commissioners and Family Law Facilitators as well as Access to Visitation Providers.

- Activities previously addressed by sunsetted advisory bodies:
  - Elkins Family Law Task Force and Implementation Task Force;
  - Domestic Violence Practice and Procedure Task Force; and
  - Mental Health Issues Implementation Task Force.
- Collaborative efforts with other judicial council advisory bodies:
  - Advisory Committee on Providing Access & Fairness;
  - Collaborative Justice Courts Advisory Committee;
  - Probate and Mental Health Advisory Committee;
  - Tribal Court-State Court Forum; and
  - Shriver Civil Counsel Act Implementation Committee.

The Judicial Council also reviews funding recommendations for programs that include, but are not restricted to family law matters:

- Formula-based Substance Abuse Focus Grants recommended by the Collaborative Justice Courts Advisory Committee;
- Recommendations from the Legal Services Trust Fund Commission of the State Bar for distribution of funding for IOLTA-Formula Grants and Partnership Grants;
- Formula-based funding for court-affiliated self-help centers; and
- Recommendations from the Shriver Civil Counsel Act Implementation Committee for legal representation and improved court services to low-income parties.

The Family and Juvenile Law Advisory Committee’s annual agenda includes collaboration with other Judicial Council offices that provide educational and legal services in the family court area:

- Coordination with the Center for Judicial Education and Research Governing Committee annual agenda on education for family law judicial officers, commissioners, and court staff;
- Review of the approval of providers of training of family court personnel under California Rules of Court, rules 5.210, 5.225, 5.230, and 5.518; and
- Analysis and legal information for the Judicial Council’s Governmental Affairs office on matters of marriage, families, children, and domestic violence.

Subgroups of the Family and Juvenile Law Advisory Committee provide further resources for family courts, often in coordination with other advisory groups:

- Protective Orders Forms Working Group (includes representatives from the Civil and Small Claims Advisory Committee and Criminal Law Advisory Committee), established at the direction of RUPRO, ensures coordination and consistency in advisory committee activities concerning protective orders that prevent domestic violence, civil harassment, elder and dependent abuse, and school place violence;

- Violence Against Women Education Program Committee (VAWEP) provides guidance and evaluation of the VAWEP grant-funded projects and makes recommendations to improve court practice and procedure in domestic violence cases;
- Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee members collaborate with members of the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to develop a workload-based funding methodology and report back to the Judicial Council; and
- Justice Partner Remote Access to Court Records Joint Ad Hoc Subcommittee will join other advisory bodies in collaborating with members of the Information Technology Advisory Committee to develop an effective set of rules for remote access to court records by parties, their attorneys, and justice partners.

Judicial Council legislative priorities for 2018—recommended by the Policy Coordination and Liaison Committee (PCLC)—also address needs of family law litigants. These include a recommendation from the Future of the Courts Commission to analyze feasibility and resource needs for (1) piloting remote appearances by parties, counsel, and witnesses for most noncriminal court proceedings; (2) voice-to-text language interpretation services at court filing and service counters, and in self-help centers; and (3) intelligent chat technology to provide information and self-help services.

As a Judicial Council advisory body, the Elkins Family Law Implementation Task Force made specific recommendations for improving access to justice in family court. Despite the downturn in the economy, many of the task force recommendations have been met, as described in the attached *Family Law: Final Report of the Elkins Family Law Implementation Task Force*. These recommendations, now assigned to the Family and Juvenile Law Advisory Committee and Advisory Committee on Providing Access and Fairness, still provide guidance in the development of innovative practices in family court.

Despite these substantial efforts, it is acknowledged that more work is needed for family courts to respond effectively to a difficult and complex caseload that has long-term consequences for families.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Three Judicial Branch Strategic Plan goals are particularly relevant to family courts and to the high proportion of self-represented litigants that they serve:

- Goal I: Access, Fairness, and Diversity;
- Goal III: Modernization of Management and Administration; and
- Goal IV: Quality of Justice and Service to the Public.

## **Attachments**

1. Attachment A: *Family Law: Final Report of the Elkins Family Law Implementation Task Force*



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 12, 2013

|   |   |
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| Title   | Agenda Item Type                                  |
| Family Law: Final Report of the Elkins Family Law Implementation Task Force | Action Required                                   |
| Rules, Forms, Standards, or Statutes Affected                               | Effective Date                                    |
| None  | December 13, 2013                                 |
| Recommended by  | Date of Report                                    |
| Elkins Family Law Implementation Task Force<br>Hon. Laurie D. Zelon, Chair  | November 21, 2013                                 |
|   | Contact   |
|   | Diane Nunn, 415-865-7689<br>diane.nunn@jud.ca.gov |

### Executive Summary

Attached is the final report of the Elkins Family Law Implementation Task Force. It presents the recommendations from the Elkins Family Law Task Force report that have been put into place, that remain to be done, and that require ongoing education, technical assistance, research, and evaluation. As directed by the Executive and Planning and Rules and Projects Committees, the Implementation Task Force has reviewed the remaining work and is recommending that the council direct the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee to be responsible for the remaining tasks of the Elkins Family Law Implementation Task Force. Both committees agree with the recommendation.

### Recommendation

The Elkins Family Law Implementation Task Force recommends that the Judicial Council receive and accept the task force's final report and, effective December 13, 2013:

1. Direct that the Family and Juvenile Law Advisory Committee take responsibility for the following remaining tasks:

- a. Develop educational opportunities, information sharing, and technical assistance regarding family law case management; calendar management and receipt of live testimony at hearings; improved trial scheduling procedures; and court processes and procedures related to domestic violence.
  - b. Continue technical assistance and education on the use of the new family law rules of court; revised and simplified forms, such as the *Request for Order* (form FL-300); and other simplification efforts, such as standardizing the processing of default and uncontested judgments.
  - c. Provide ongoing education and technical assistance to courts on practices and procedures related to child custody; children's meaningful participation in family law cases; research and revision of mediation strategies; handling of cases in which there have been allegations of sexual abuse; and the appropriate roles of minor's counsel and other use of experts such as custody evaluators, special masters, and parent coordinators.
  - d. Investigate whether the provisions of standard 5.30 of the California Standards of Judicial Administration can be implemented without the need for a rule of court, and if necessary, pursue adoption of standard 5.30 as a California rule of court.
  - e. Coordinate with the Presiding Judges Advisory Committee and the Access and Fairness Advisory Committee on educational and other efforts to promote the allocation of additional resources to, and the enhancement of the perceived importance of, family law assignments.
  - f. Continue the support of empirical research to assess the workload requirements for family law and the efficacy of family court operations.
  - g. Continue to pursue legislative funding for a Family Law Innovation Project.
2. Direct that the Access and Fairness Advisory Committee take responsibility for the following remaining tasks:
- a. Promote increasing representation in family law through collaboration with the State Bar on limited scope and pro bono resources, and provide support and expertise to the programs instituted under the Sargent Shriver Civil Counsel Act (Assem. Bill 590 [Feuer]; Stats. 2009, ch. 457).
  - b. Seek funding for the expansion of court self-help centers; provide education and technical assistance to court self-help centers in legal substance and procedure, useful technology, and efficient business practices; and perform the review of the *Guidelines for the Operation of Self-Help Centers in California Trial Courts* that is mandated to occur every three years under California Rules of Court, rule 10.960.
  - c. Seek to increase the availability of interpreters in family law both in the courtroom and in other core services, such as business office operations, self-help centers, and family court services.
  - d. Develop educational opportunities, information sharing, and technical assistance on the management of cases involving self-represented litigants, including the promotion of comprehensive settlement assistance for self-represented litigants in both motion and trial matters.

- e. Continue empirical research necessary to assess demographics in the self-help centers, conduct needs assessments and workload demands, and assess the efficacy of court self-help strategies.
- f. Coordinate with the Presiding Judges Advisory Committee and the Family and Juvenile Law Advisory Committee on educational and other efforts to promote the allocation of additional resources to, and the enhancement of the perceived importance of, family law assignments.

## **Previous Council Action**

On April 23, 2010, the Judicial Council accepted the *Elkins Family Law Task Force: Final Report and Recommendations*.<sup>1</sup> The council then appointed the Elkins Family Law Implementation Task Force, effective July 1, 2010, with the charge to implement the recommendations in the final report, including proposing rules of court, forms, and Judicial Council–sponsored legislation for the council and its internal committees to consider. Members also coordinated with advisory committees and justice system partners on implementation efforts, where appropriate. The task force provided to Judicial Council members an interim report, dated November 8, 2010, with information on its progress and supplemented that report with a presentation when the Judicial Council met on December 10, 2010.

## **Implementation Efforts**

A final report from the Elkins Family Law Implementation Task Force is attached, setting out detailed information about the implementation of the over 200 Elkins Family Law Task Force recommendations, their current status, and remaining work to be done. (Attachment A, *Elkins Family Law Implementation Task Force: Final Report*.) Most of the recommendations of the Elkins Family Law Task Force have been put into place; however, some remain to be addressed. For those that have been initiated, ongoing education, technical assistance, and research and evaluation are necessary. The final recommendation of the Implementation Task Force addresses the ongoing efforts that are needed to achieve the goals of the Elkins Family Law Task Force, and to recognize the need to recognize family law as a fundamental component of civil justice.

## **Rationale for Recommendation**

### **Background and Methodology—The Elkins Family Law Task Force**

In May 2008, the Elkins Family Law Task Force was appointed, and Associate Justice Laurie D. Zelon of the Court of Appeal, Second Appellate District (Los Angeles), was named as chair. The task force was created in response to the California Supreme Court opinion in *Elkins v. Superior Court*, 41 Cal.4th 1337, filed August 6, 2007, in which the court found that a restrictive local trial setting order conflicted with existing statutory law and held that marital dissolution trials should “proceed under the same general rules of procedure that govern other civil trials.”<sup>2</sup> The

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<sup>1</sup> Judicial Council of Cal, *Elkins Family Law Task Force: Final Report and Recommendations* (April 2010), [www.courts.ca.gov/documents/elkins-finalreport.pdf](http://www.courts.ca.gov/documents/elkins-finalreport.pdf).

<sup>2</sup> *Elkins v. Superior Court* (2007) 41 Cal.4th at p. 1345.

court recommended that the Judicial Council of California establish a task force to “study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented.”<sup>3</sup>

The 38-member Elkins Family Law Task Force included appellate court justices, judges, court commissioners, private attorneys, legal aid attorneys, family law facilitators, self-help-center attorneys, court executives, family court managers, family court child custody mediators, court administrators, and legislative staff. It worked for more than two years to gather input from a wide range of interested professionals and members of the public and to develop and refine recommendations.

The task force held 21 focus groups, 10 of which were with family law litigants, including 2 in Spanish. Other focus groups included judicial officers, family court service counselors, family law attorneys, and family court administrators. The task force also conducted an attorney survey to which nearly 600 attorneys responded, held a full-day public input meeting to get feedback from litigants and advocates, held two days of public hearings on the recommendations, and conducted research on family justice systems outside California, both nationally and internationally.

### **Concerns of stakeholders**

***Family law litigants.*** Mirroring the findings of the 2005 survey of the public’s trust and confidence in the California Courts,<sup>4</sup> the Elkins Task Force held focus groups and public hearings that included family law litigants, in which both represented and unrepresented individuals expressed frustration with their court experience and lack of opportunity to fully present their cases to the court. Following are examples of the concerns they expressed:

- Family court calendars are inefficient, and courts do not respect the litigants’ time. They have to miss too much work because of long waits in court to get a 20-minute hearing. When they do get to hearing, they feel that insufficient time was allocated to allow them to fully present the case to the judge.
- Continuances are repeatedly granted because too many cases are on the calendar or because the other party or his or her attorney is not ready to proceed.
- The amount of time it takes to get a case through the court process is too long and unreasonably increases the cost of attorneys.

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<sup>3</sup> *Ibid.*

<sup>4</sup> National Center for State Courts, *Trust and Confidence in the California Courts* (Judicial Council of California, September 2005), [www.courts.ca.gov/documents/4\\_37pubtrust1.pdf](http://www.courts.ca.gov/documents/4_37pubtrust1.pdf). This survey, conducted by the National Center for State Courts, reported that California family law litigants and attorneys practicing family law rated procedural fairness in the courts lower than did litigants and attorneys involved in other case types (p. 4–5). The study concluded that there was an urgent need to improve procedural fairness in family law by a reallocation of court resources to improve the way family law cases are handled (p.4- 5).



- Many self-represented litigants do not know what the required steps are to complete their cases.
- They feel that courts refer too many cases to special masters, evaluators, parent coordinators, and mediators who gather information from the parties and their children, make recommendations to the court, and are sometimes even allowed to make certain decisions in child custody matters. The parties are required to pay huge costs for these services, and they believe the courts simply rubber-stamp these recommendations without much accountability required of the service providers.
- When the court appoints counsel for children in contested child custody cases, parents are expected to pay the counsel's fees, even when they do not have enough money to pay for attorneys for themselves. Minor's counsel is allowed to make recommendations to the court without any opportunity for questioning by the parties and more often than not sides with one parent against the other. They believe that the court automatically adopts the recommendations from minor's counsel.
- Some litigants believe that the law is not fairly and uniformly applied by the courts, leading to arbitrary and often destructive outcomes. A number of litigants described how custody and visitation orders that were made in their cases had long-term negative effects on their children and on their relationships with their children.
- Some suggested that if more time in mediation were allowed, they might be able to reach an agreement about custody and visitation.
- Although the court self-help centers are significantly helpful, legal procedures and rules of evidence are difficult for self-represented litigants to use.

***Judicial officers and court personnel.*** Judges and other court personnel expressed frustration about overwhelming caseloads. They reported that excessively high caseloads for judicial officers, family court mediators, self-help center staff, and court clerk staff create significant delays in setting hearing dates and completing other basic family court operations. The following is a summary of the concerns expressed by judicial officers and court staff:

- The family court does not get its fair share of existing court resources.
- Most litigation in family law occurs through the use of motions. Family law workload cannot be assessed based solely on initial case filings. These filings need to be appropriately weighted to account for the significant number of pre- and postjudgment hearings family cases generate.
- The overwhelming numbers of cases, the complexity of the issues involved, and the fact that in most cases the litigants are self-represented make family law a uniquely challenging assignment.

- The family court needs to be able to manage cases more effectively. Cases can languish in the system for years and create serious complications as they continue to rotate through the law and motion process with no final disposition.
- Self-represented litigants do not know how to manage the progress of their cases, so the need for the court to organize and manage these cases becomes a fundamental access-to-justice issue.
- Family law judicial officers find it difficult to give each case the attention it deserves and keep up with their calendars.
- When judicial officers attempt to address backlogs by increasing the amount of time that they spend on the bench, they find that they are left with inadequate time to review files before cases are heard or to research legal issues presented after hearings.
- Courts need to have the flexibility to create local procedures to address the high-volume litigation load and the backlogs that result. Local rules and procedures can provide innovative solutions for these problems. A total ban on local rules would negatively affect the development of innovative solutions to problems that the family courts face.

*Attorneys.* Family law attorneys expressed frustration with the lack of resources in family court. The following is a summary of the concerns expressed by family law attorneys:

- Reallocation of existing resources could go a long way in solving the family courts' resource problems. Family courts have inadequate resources because many presiding judges and court administrators treat family law as less deserving of resources than other case types.
- Lack of appropriate allocation of resources to family law cases contributes to the overwhelming caseload demands on individual family law judicial officers.
- There can be long delays in getting contested matters heard and resolved.
- Evidentiary hearings and trials can spread out over several weeks or months as hearing times are squeezed in between other matters. This timeline is extremely inefficient because the attorneys and judicial officers constantly have to refresh their recollections of previous testimony.
- Spreading trials out in fragmented sessions separated by weeks or months can lead to litigating the same issue more than once in a single trial.
- The long delays can exacerbate unresolved problems between the parties, making the issues more complicated to resolve by the time they actually get to the hearing or trial.
- These delays waste time for the court, the attorneys, and the litigants. Clients get billed for this unproductive time, which unnecessarily drives up the costs for representation.

- Too many judicial officers lack experience in family law. Many new judges assigned to family court do not have a background in family law.
- Family law judicial officers rotate frequently, which contributes to the lack of family law experience on the bench and often affects the quality of decisionmaking in family law cases.
- A judge without family law experience can take at least two years to master all of the law needed to hear family law cases. Family law assignments often rotate at or before two years.
- Enormous caseloads compared with other judicial assignments, unfair resource allocation, the complexity of the cases, and the perceived lack of respect within the court attributed to the family law assignment cause judges to avoid this assignment.
- Excessive and inconsistent local rules and procedures drive up the costs of litigation, interfere with attorneys' ability to represent their clients, and make it difficult for attorneys to practice in multiple counties.
- Inconsistent rules within a single court also occur when judges are permitted to create their own procedures unique to their particular courtrooms. This practice is especially frustrating for attorneys who do not regularly appear in a particular courtroom. Courtroom-specific rules are not easily discovered before arriving in court.

### **The Elkins recommendations**

The Elkins Family Law Task Force responded to these concerns in recommendations presented in a report to the Judicial Council, *Elkins Family Law Task Force: Final Report and Recommendations*, which was received by the council on April 23, 2010, and is available at [www.courtinfo.ca.gov/jc/documents/reports/20100423itemj.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/20100423itemj.pdf).

The Elkins Family Law Task Force report presents more than 200 recommendations that fall into five general categories:

1. Create efficient and effective procedures to help ensure justice, fairness, due process, and safety.
2. Provide more effective child custody procedures for a better court experience for families and children.
3. Ensure meaningful access to justice for all litigants.
4. Improve the status of, and respect for, family law litigants and the family law process through judicial leadership.
5. Encourage future innovation.

Upon receipt of this report, the Judicial Council directed that a smaller task force be created to assist the Judicial Council with implementing these recommendations.

### **The Elkins Family Law Implementation Task Force**

The Elkins Family Law Implementation Task Force, with 19 continuing members from the original task force, was appointed effective July 1, 2010, with Justice Laurie D. Zelon as chair. The Implementation Task Force has had the distinct benefit of the members' extensive professional experience at both local and state levels, including service on the original task force.

During the past three years, the Implementation Task Force has worked with the Judicial Council, other advisory groups, and the bar to implement the recommendations set out in the Elkins Family Law Task Force report. In the 2010–2011 legislative session, two significant pieces of family law legislation were signed into law; those bills initially guided much of the Implementation Task Force's work.<sup>5</sup> Members of the Implementation Task Force and the Family and Juvenile Law Advisory Committee have worked together to propose, for Judicial Council adoption, changes needed in the California Rules of Court and Judicial Council forms as a result of this legislation.

As the majority of litigants in family law cases are self-represented, the work of the Implementation Task Force has worked closely with the Task Force on Self-Represented Litigants on the issues of assistance to the public and to the court in the management of cases involving self-represented litigants. The Task Force on Self-Represented Litigants is currently merging with the Access and Fairness Advisory Committee and that committee will continue this important work.

The Implementation Task Force has also worked with the CJER Family Law Curriculum Committee to provide numerous trainings and materials for judges on the changes occurring in family law. The State Bar has been organizing trainings for family law attorneys on changes and addressing the issue of access to legal representation. Researchers at the Administrative Office of the Courts worked to develop fundamental family law management data that courts can use in making resource and other programmatic business decisions. These collaborative efforts to accomplish the recommendations of the Elkins Family Law Task Force are expected to continue with the assignment of the ongoing work to the Family and Juvenile Law Advisory Committee and the Access and Fairness Advisory Committee.

### **Comments, Alternatives Considered, and Policy Implications**

The Judicial Council's Executive and Planning and Rules and Projects Committees considered various alternatives as part of a comprehensive review of the governance, structure, and organization of the council's advisory groups, and the committees' recommendations were approved by the council. The Implementation Task Force recommendations are consistent with the council's directives and recognize the need for consideration after further research and analysis.

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<sup>5</sup> Assem. Bill 939 (Stats. 2010, ch. 352) and Assem. Bill 1050 (Stats. 2010, ch. 187).

## **Implementation Requirements, Costs, and Operational Impacts**

No new costs to the judicial branch will be incurred by adoption of these recommendations. The Family and Juvenile Law Advisory Committee has already undertaken work on the issues of education and technical assistance; and the Access and Fairness Advisory Committee and the Task Force on Self-Represented Litigants have begun a process to merge. Both committees are focused on assistance to the courts with implementation of strategies that either will be cost neutral or can create efficiencies that will allow for more effective allocation of existing resources.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

Increasing the availability of counsel for litigants in family law and supporting and expanding court-based assistance to self-represented litigants are consistent with strategic Goal I (Access, Fairness, and Diversity). In particular, these recommendations are consistent with objective 2 (Identify and eliminate barriers to court access at all levels of service; ensure interactions with the court are understandable, convenient, and perceived as fair) and objective 4 (Expand the availability of legal assistance, advice, and representation for litigants with limited financial resources) of the related operational plan.

The recommendations related to empirical research and evaluation are consistent with strategic Goal II (Independence and Accountability), in particular with objective 4 of the related operational plan (Measure and regularly report branch performance—including branch progress toward infrastructure improvements to achieve benefits for the public). The research recommendations are also consistent with strategic Goal III (Modernization of Management and Administration), in particular objective 2 of the related operational plan (Evaluate and improve management techniques, allocation of funds, internal operations, and services; support the sharing of effective management practices branchwide).

The recommendations related to ongoing education and technical assistance with family law processes and procedures are also consistent with strategic Goal III, in particular objective 5 of the related operational plan (Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases). The recommendations are also consistent with strategic Goal IV (Quality of Justice and Service to the Public), in particular objective 1b (Practices, procedures, and service programs to improve timeliness, quality of service, customer satisfaction, and procedural fairness in all courts—particularly high-volume courts); 1d (Improved safety, permanency, and fairness outcomes for children and families); and 1e (Improved practices and procedures to ensure fair, expeditious, and accessible administration of justice for litigants in domestic violence cases) of the related operational plan.

## **Attachments**

1. Attachment A: *Elkins Family Law Implementation Task Force: Final Report*



# Elkins Family Law Implementation Task Force

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FINAL REPORT

DECEMBER, 2013

**Elkins Family Law Implementation Task Force:**

**Final Report**

**December 2013**

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## Introduction

Access to justice in family law cases is fundamental to the civil justice system. Persons with disputes—whether contractual, tortious, domestic, or otherwise—are entitled to a lawful decisionmaking process that applies the rule of law uniformly and predictably. The right to seek justice through law must encompass full access to the institutions that interpret and apply it: the courts.

The law governing domestic relations disputes and the decisions that flow from it have significant and lasting impact on the lives of individuals, parents, children, extended family members, employers, friends, neighbors, and ultimately the strength of the community as a whole. Yet, historically, meaningful access to justice in family law cases has proved challenging.

## Background

### *Elkins v. Superior Court*<sup>1</sup>

In 2005, Jeffrey Elkins represented himself during a marital dissolution trial. A local court rule and a trial scheduling order in the family court provided that parties must present their cases and establish the admissibility of all the exhibits they sought to introduce at trial by declaration. Elkins’s pretrial declaration failed to establish the evidentiary foundation for all but 2 of his 36 exhibits, and the court excluded them. Subsequently, the court divided the marital property substantially in the manner requested by Elkins’s former spouse. The court’s rule had effectively barred Elkins from presenting his case in court.

On a writ filed by Elkins with the California Supreme Court, the court found that the local rule conflicted with existing statutory law and held that marital dissolution trials should “proceed under the same general rules of procedure that govern other civil trials”<sup>2</sup> It further noted that concerns about court efficiency should not subject family law litigants to “second-class status or [deprive them] of access to justice” and recommended

*Elkins v. Superior Court* (2007)  
41 Cal.4th 1337, 1338

*“In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. Litigants with other civil claims are entitled to resolve their disputes in the usual adversary trial proceeding governed by the rules of evidence established by statute. It is at least as important that courts employ fair proceedings when the stakes involve a judgment providing for custody in the best interest of a child and governing a parent’s future involvement in his or her child’s life, dividing all of a family’s assets, or determining levels of spousal and child support. The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings.”*

<sup>1</sup> *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 [163 P.3d 160].

<sup>2</sup> *Elkins, supra*, 41 Cal.4th at p. 1345.

that the Judicial Council of California establish a task force to “study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented.”<sup>3</sup>

### **The Elkins Family Law Task Force**

In response, in May 2008, Chief Justice Ronald M. George appointed the Elkins Family Law Task Force to be chaired by Associate Justice Laurie D. Zelon of the Court of Appeal, Second Appellate District (Los Angeles). The 38-member Elkins Family Law Task Force included appellate court justices, judges, court commissioners, private attorneys, legal aid attorneys, family law facilitators, self-help center attorneys, court executives, family court managers, family court child custody mediators, court administrators, and legislative staff. Several members of the task force served on the Family and Juvenile Law Advisory Committee as well, which made coordination and collaboration easier and kept members well informed about family law policy matters.

During the next two years, the task force held 21 focus groups, 10 of which were with family law litigants, including 2 in Spanish. The other 11 focus groups included judicial officers, family court service counselors, family law attorneys, and family court administrators. The task force also conducted an attorney survey to which nearly 600 attorneys responded, held a full-day public input meeting to get additional feedback from litigants and advocates, and held two days of public hearings on the recommendations during the public comment period. In addition to the input the task force received on the draft recommendations during the comment period, more than 300 persons submitted written comments. The task force also conducted research on family justice systems outside California, both nationally and internationally.

### **The Recommendations**

The Elkins Family Law Task Force presented its recommendations to the Judicial Council in the *Elkins Family Law Task Force: Final Report and Recommendations*, which was received by the council on April 23, 2010.<sup>4</sup>

The Elkins Family Law Task Force report presents more than 200 recommendations that fall into five general categories:

1. Create efficient and effective procedures to help ensure justice, fairness, due process, and safety;
2. Provide more-effective child custody procedures for a better court experience for families and children;

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<sup>3</sup> *Ibid.*

<sup>4</sup> See [www.courtinfo.ca.gov/jc/documents/reports/20100423itemj.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/20100423itemj.pdf).

3. Ensure meaningful access to justice for all litigants;
4. Improve the status of, and respect for, family law litigants and the family law process through judicial leadership; and
5. Encourage future innovation.

## **Elkins Family Law Implementation Task Force**

On receipt of this report, the Judicial Council directed that a smaller task force be created to assist the council with implementing these recommendations. The Elkins Family Law Implementation Task Force was appointed, effective July 1, 2010, with Justice Laurie D. Zelon as chair. Over the past three years, the Implementation Task Force has worked with the Judicial Council, other advisory groups, and the bar to implement the recommendations in the Elkins Family Law Task Force report. In the 2010–2011 legislative session, two significant pieces of family law legislation were signed into law, and they initially guided much of the Implementation Task Force’s work.<sup>5</sup>

## **Implementation Efforts**

### **Recommendation I. Creating efficient and effective procedures to help ensure justice, fairness, due process, and safety**

#### ***A. Helping people navigate the family court through caseload management***

##### *Concerns of Stakeholders*

In making this recommendation, the Elkins Family Law Task Force built on the work of trial courts around the state that were creating caseload management processes and procedures for family law. Before the establishment of the Elkins Family Law Task Force, many courts had already recognized the critical need to find a systematic way by which the flow of family law cases could be organized and reasonably managed. The situation faced by the courts was characterized by a remarkably high volume of family law cases, significant complexity of cases and issues, and lengthy times from filing to disposition, resulting in large numbers of pretrial hearings and increasingly high inventories for judges. The majority of litigants in these cases do not have attorneys, and many have two or more cases within the same court. In response, small, medium, and large courts around the state began developing caseload management processes in a variety of innovative ways. They were limited in their ability to help parties reach resolution of their cases by the restriction placed on family law case management by Family Code section 2450, which required a stipulation by the parties.

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<sup>5</sup> Assem. Bill 939 (Stats. 2010, ch. 352) and Assem. Bill 1050 (Stats. 2010, ch. 187).

### *Implementation*

- In August 2010, shortly after the appointment of the Implementation Task Force, the Legislature passed Assembly Bill 939 (Committee on Judiciary; Stats. 2010, ch. 352), which modified Family Code sections 2450–2451 to eliminate the requirement of a stipulation by the parties, stating that:

By eliminating the current ability of one party to drag out a case for years, the Legislature intends that all parties participate in, and benefit from, family centered case resolution.

(Assem. Bill 939, § (1)(c).)

- As a result of this legislation, family law judges now have the same authority as other civil judges to organize the progress of family law cases as they proceed through the court process and help the families reach a timely resolution.
- The legislation also required the Judicial Council to adopt a rule of court implementing family law caseflow management, now called family centered case resolution, by January 1, 2012. In response, the Judicial Council adopted rule 5.83 of the California Rules of Court, which provides the framework within which courts can design their own procedures to actively manage their family law caseloads. For many courts, the work has already been done, and the resulting benefits are being realized. For others, new practices and procedures are needed, and ongoing education and technical assistance is required.
- In 2012, the Judicial Council also adopted the following rules of court to enhance the effective caseflow management of family law cases and the efficient use of court and litigant time:
  - Rule 5.9 authorizes appearances by telephone in family law matters.
  - Rule 5.15 authorizes sanctions for rules violations similar to those authorized in other civil cases.
  - Rule 5.125 sets out the procedures for producing orders after hearing.
- Online resources have been developed for courts to provide information about family law caseflow management and give examples of local rules and programs. Also, a family law caseflow management listserv has been established that is intended to help facilitate the sharing of experience and ideas among the courts. These tools need to be maintained and updated as new information is available and programmatic changes occur.

- Several technical assistance visits have been provided to courts that requested them to discuss options for caseflow processes that can streamline family court operations.
- In 2011, a Family Law Summit was held in Los Angeles. The Family Law Summit provided an opportunity for court professionals to talk with each other, across disciplines, and with different courts about family law caseflow management. Thirty-two courts participated by sending teams that included presiding judges, supervising family law judges, family law judicial officers, family law facilitators, court self-help attorneys, court executive officers, court administrators or managers, and family court services directors.
- The Center for Judiciary Education and Research (CJER) has been integrating recommendations on caseflow management into its planning and implementation for training of judicial officers.

#### *Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation.

### ***B. Preserving the right to present live testimony at hearings***

#### *Concerns of Stakeholders*

Although at the time of this recommendation many courts routinely allowed litigants to present testimony at the time of their hearings, others required that all family law hearings be conducted by declaration only. The ability of family law litigants, many of whom are self-represented, to adequately present their cases to the court was central to the work of the Elkins Family Law Task Force. Family law is procedurally unique in that many orders—including custody and support of children, support of one or the other spouse, and use and control of community property—are decided at hearings for temporary pretrial orders. The decisions made at these hearings usually address fundamental matters at issue in the case, are often incorporated or repeated in judgments, and have long-lasting effects on the litigants and their children. The right to present live testimony at family law hearings mirrors the right to present testimony at trials.

#### *Implementation*

- In recognition of this situation, Assembly Bill 939 amended Family Code section 217 so that courts must receive from the parties and other witnesses live testimony that is competent, relevant, admissible, and within the scope of the hearing. Revised Family Code section 217 further requires that the Judicial Council adopt a statewide rule of court setting out factors a court must consider in making a finding of good cause to refuse to receive live testimony.

- In response, the Judicial Council amended California Rules of Court, rule 5.118(f), eliminating the blanket authorization to conduct family law hearings by declaration, and adopted rule 5.113, which sets out the good-cause reasons to exclude live testimony. Courts that had previously required family law hearings to be conducted by declaration have needed to make a variety of calendar management changes.
- Numerous CJER presentations and educational programs have been provided for judicial officers to familiarize them with Family Code section 217 and provide them with technical assistance on matters of calendar management. Currently a new video on live testimony is nearing completion.

*Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation.

***C. Providing clear guidance through rules of court***

*Concerns of Stakeholders*

This recommendation addresses the diversity of local family law rules among the courts, as well as the confusing mixture of civil and family rules in the California Rules of Court. This array of applicable rules has been confusing to attorneys, and even more so to self-represented litigants. The Elkins Family Law Task Force referred to rule 10.20(c) of the California Rules of Court, stating that the Judicial Council should establish uniform statewide practices and procedures where appropriate to achieve justice. The Implementation Task Force collected and reviewed local family law rules from around the state; reviewed related codes—such as the Code of Civil Procedure, Evidence Code, Welfare and Institutions Code, Business and Professions Code, Probate Code, Government Code, and Family Code—along with rules of court for civil and family cases; and prepared a new and more comprehensive set of rules of court for family law.

*Implementation*

- In February 2012, the Judicial Council adopted the proposal New, Restructured, and Amended Family Law Rules of Court, effective January 1, 2013, which provide greater statewide uniformity in family law procedures. Significant ongoing training and education are required as courts become familiar with these new rules.

*Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation.

***D. Streamlining family law forms and procedures***

*Concerns of Stakeholders*

The standardization of family law forms statewide has provided a framework for some basic uniform procedures in case processing; however, the number, variety, and

complexity of forms have increased dramatically over time. Furthermore, courts have created their own local forms and procedures to address matters not covered at the state level. This recommendation of the Elkins Family Law Task Force seeks to simplify forms and procedures wherever reasonably possible.

### *Implementation*

- In summary dissolution cases, AB 939 amended Family Code section 2400 so that the five-year duration of marriage limitation is now measured from the date of marriage to the date of separation, rather than from the date of marriage to the date of the filing of the petition. Further, absent a revocation from either party, the judgment of dissolution will become automatic at six months from the date of filing. All relevant Judicial Council forms have been appropriately modified to reflect this change.
- The Implementation Task Force, in collaboration with the Family and Juvenile Law Advisory Committee, developed the new *Request for Order* (form FL-300). This form combines the former *Order to Show Cause* (form FL-300) and *Notice of Motion* (form FL-301) used in family law proceedings. The intent of this new form is to eliminate confusion of litigants, promote increased standardization of related practices throughout the state, and further reduce the amount of paper to be managed by the litigants and the court.
- AB 939 also modified Family Code section 215 to clarify that postjudgment motions in family law may be served by mail.
- Effective July 1, 2012, the Judicial Council adopted rule 5.92, which authorizes service by posting in appropriate circumstances.
- Effective July 1, 2013, the Judicial Council approved simplification of the declaration of disclosure forms and revised rule 5.77 to implement the new legislative requirement (Assem. Bill 1406, amending Fam. Code, § 2104), which was recommended by the Elkins Family Law Task Force to establish clear deadlines for exchange of disclosure forms and tax returns. It revised the *Property Declaration* (form FL-160) to enable it to be used to comply with disclosure requirements as well as to describe and propose a division of property.
- Work is currently being done on the issue of discovery in family law cases and potential ways to simplify the discovery process while protecting legal safeguards for the public. Much of the work is being carried out at the local level.
- Also at the local level, work is being done on developing a possible simplified process for litigants who are in agreement at the time of the filing of the petition for dissolution. These local projects provide information and suggestions for possible statewide application.



- Progress is being made on developing declaration templates, parenting plan templates, and other agreement templates that are intended to be available on the state Online Self-Help Center. All Judicial Council forms commonly used in family law and domestic violence proceedings have been translated into Spanish to assist litigants in understanding what written information to provide to the court and what the court has ordered.

#### *Current Status*

This recommendation has been partially implemented, and work is ongoing.

### ***E. Standardizing default and uncontested process statewide***

#### *Concerns of Stakeholders*

This recommendation addresses the issue of default and uncontested judgment processing procedures that differ significantly from county to county and from one court location to another, even within the same county. Local rules provide differing methods by which default and uncontested judgments are to be processed and served. This variation creates confusion for attorneys, litigants, and court staff, as well as systemwide inconsistency. Significant percentages of default and uncontested paperwork are rejected as inaccurate or incomplete and returned repeatedly before ever being finalized because attorneys and self-represented litigants face an array of differing requirements in completing these processes. The situation poses a significant burden on the public and on court staff and serves as a major source of frustration and delay in disposition.

#### *Implementation*

- Effective July 1, 2012, the Judicial Council addressed this issue, rules 5.405–5.409, and *Judgment Checklist—Dissolution/Legal Separation* (form FL-182). These rules limit the forms and information that courts may require for entry of default and uncontested judgments to those listed on form FL-182. The rules do not require courts to demand the items on the *Judgment Checklist*, although much of the checklist content is mandated by statute or other rules of court, but instead limit the amount of additional information and paperwork courts can require locally.

#### *Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation.

### ***F. Scheduling trials and long-cause hearings***

#### *Concerns of Stakeholders*

Based on significant input from the public—including attorneys, litigants, and judges—the Elkins Family Law Task Force recognized that the scheduling of family law trials and long-cause hearings has become unmanageable and detrimental to litigants. Many major trials and hearings are not heard completely in one or more consecutive court sessions but

instead are broken up into multiple shorter sessions, sometimes separated by many weeks or months. This schedule significantly increases the aggregate time that trials and long-cause hearings take because judicial officers need time to make detailed notes and review them to facilitate their recollection of previous sessions. It increases attorney preparation time and expert witness preparation, adds to litigants' financial costs and anxiety, and can result in unprofessional treatment of the issues at hand.

#### *Implementation*

- To address this issue, effective January 1, 2013 the Judicial Council adopted rule 5.393, which states that “[c]onsistent with the goal of affording family law litigants continuous trials and long-cause hearings without interruption, when trials or long-cause hearings are set, they must be scheduled on as close to sequential days as the calendar of the trial judge permits.” Further, “[w]hen trials or long-cause hearings are not completed in the number of days originally scheduled, the court must schedule the remaining trial days as soon as possible on the earliest available days with the goal of minimizing intervals between days for trials or long-cause hearings.”

#### *Current Status*

This recommendation is partially implemented and requires ongoing effort as well as education. Scheduling of trials and long-cause hearings in family law is a continuing challenge in part because of the insufficient resources allocated to family law.

### ***G. Improving domestic violence procedures***

#### *Concerns of Stakeholders*

The Elkins Family Law Task Force supports the work currently being undertaken to implement the recommendations of the Judicial Council's Domestic Violence Practice and Procedure Task Force and the ongoing work of the Family and Juvenile Law Advisory Committee on domestic violence issues in family and juvenile proceedings. In recognition of the need to address other areas, the Elkins report developed some additional recommendations for family law.

The issues of the duration of custody, visitation, and support orders in Domestic Violence Prevention Act (DVPA) cases were unclear and handled differently among the California Courts. Additionally, parentage was also a frequent issue in DVPA cases for unmarried parents. Although litigants might agree on the issue of parentage, a separate paternity action would be required to be filed to enter that stipulation as a judgment. This requirement created confusion for litigants and additional paperwork for the court.

#### *Implementation*

- AB 939 amended Family Code section 6340 to clarify that orders for child custody and visitation in domestic violence cases survive the expiration of the restraining order.
- AB 939 modified Family Code section 6323 to allow the court to enter a judgment for

parentage on stipulation of the parties in domestic violence cases.

- Effective January 1, 2013 the Judicial Council adopted rule 5.420, which states the protocol for court-connected settlement service providers handling cases involving domestic violence and not involving child custody or visitation (parenting time).
- Historically, regional trainings have been held throughout the state for child custody mediators and family law judicial officers. Currently, the trainings focus on promising practices for handling domestic violence matters and on encouraging the development of domestic violence procedures that conform practices to statewide rules of court and statutory requirements.

#### *Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation.

### ***H. Assessing mechanisms to handle perjury***

#### *Concerns of Stakeholders*

One common problem that family law litigants face is the frustration that comes from the belief that information being presented to the court is false.

#### *Implementation*

- Statutory protection already exists in marital and registered domestic partnership cases under Family Code section 721 for a breach of confidential relationship; Civil Code sections 1573 and 1575 for constructive fraud and exertion of undue influence, respectively; and Corporations Code sections 1603, 1604, and 16503, and Family Code section 1100 et. seq., for breach of fiduciary duty. Specific remedies are set out in the Family Code.
- Mechanisms exist to address perjury as a criminal matter.

#### *Current Status*

Further works needs to be done to determine if existing statutory and case law is insufficient, and why litigants perceive it is not enforced.

## **Recommendation II. More effective child custody procedures for a better court experience for families and children**

### ***A. Improving contested child custody procedures***

#### *Concerns of Stakeholders*

Contested child custody matters often involve complicated issues with long-term implications for families and children and, in some instances, require significant court resources. California mandates that contested child custody matters be sent to mediation. The Elkins Family Law Task Force heard concerns that some litigants experience

confusion when mediators provide recommendations to the court. Some people reported that mediators' recommendations often provide judicial officers with much-needed information that they might not otherwise receive; however, others reported that allowing mediators to provide recommendations deprives litigants of the opportunity to mediate in a confidential setting. Many litigants also perceived the court as simply rubber-stamping these recommendations. Litigants expressed concerns that the court appoints too many special masters, evaluators, parent coordinators, and mediators who gather information from the parties and their children, make recommendations to the court, and are sometimes even allowed to make decisions in child custody matters. Attorneys expressed concerns about the use of minor's counsel by the court as de facto child custody evaluators, particularly problematic because minor's counsel cannot be called to testify.

### *Implementation*

- AB 939 amended Family Code section 3183 so that recommendations may be provided out of child custody mediation only if they are first provided in writing to the parties; additionally, those providing recommendations need to be referred to in all official information as “child custody recommending counselors” (CCRCs) and the process as “child custody recommending counseling.”
- Family Code section 217 now requires judicial officers to receive live testimony from litigants at hearings on substantive matters in family law, and rule 5.113 specifically identifies the right of the parties to question anyone submitting reports or other information to the court, including the reports from CCRCs. The ability of litigants to testify and to present and question witnesses provides a wider opportunity for litigants to submit their positions to the judicial officer and contribute much needed information directly.
- To help orient the public to the work of child custody mediation, the Judicial Council adopted two information forms setting out the practices and procedures involved in mediation (*Child Custody Information Sheet—Recommending Counseling* (form FL-313-INFO) and *Child Custody Information Sheet—Child Custody Mediation* (form FL-314-INFO)). An updated video for the family court service orientation has been created and posted on the California Courts Online Self-Help Center. It can be used to fulfill the orientation requirement for mediation. Use of the video will help reduce the number of delays in getting through the mediation process.

- As statutorily required, training programs for child custody mediators, recommending counselors, evaluators, investigators, and family law judicial officers have been conducted over the past two years. Regional trainings throughout the state have been provided. Training specifically for family court services directors has also been provided focusing on reconsidering how mediation is provided, how to use limited resources as effectively as possible, and how to educate parents.

#### *Current Status*

Much of this recommendation has been put into place; however, given the concerns raised by members of the public and the complex nature of many of the proceedings, more resources and efforts are needed in this area. Access to family court services mediators or child custody recommending counselors (CCRC) has been significantly negatively affected by the current budget crisis, and lack of easy access to mediators or CCRCs early in the process tends to create increased continuances and backlog in the family law courtrooms.

#### ***B. Providing guidance for children’s participation and the appointment of minor’s counsel***

##### *Concerns of Stakeholders*

The Elkins Family Law Task Force recognized that it is important for the court to hear from children in matters that affect them. Some children want to participate and others do not. Decisions about children’s participation need to be made on a case-by-case basis.

The Elkins report also identified issues about the use of minor’s counsel and the role minor’s counsel should play. To be responsive to the complexities inherent in the types of cases that may involve minor’s counsel and the challenges attorneys, parties, and children may face when such appointments are made, the role of minor’s counsel needs to be more clearly delineated and responsibilities of such counsel more clearly defined.

##### *Implementation*

- While the Elkins work was under way, the legislature was addressing the issue through Assembly Bill 1050, which, effective January 1, 2012 in part requires courts to state reasons on the record if they decline to hear from children 14 years of age and older who wish to address the court and to find ways of receiving information or input from children of all ages if they are precluded from testifying.
- The legislation also requires the Judicial Council to adopt a rule of court that sets out specific parameters for the receipt of information and input from minors. In response, the council adopted rule 5.250, effective January 1, 2012.
- In 2011, the Family Law Summit in Los Angeles included changes in the law related to children’s participation in family law cases.

- The Administrative Office of the Courts (AOC) developed [www.changeville.ca.gov](http://www.changeville.ca.gov) and [www.familieschange.ca.gov](http://www.familieschange.ca.gov) based on websites in use in British Columbia to provide information to parents, children, teens, and professionals about separation and divorce. Work is underway to add a parent education course to the site to relieve local courts of the need to deliver similar programs.
- AB 939 amended Family Code section 3151 to eliminate the requirement that minor's counsel submit a statement of issues and contentions, making it clear that the role of minor's counsel is not to investigate or evaluate but to serve as an attorney in the case. The Judicial Council then amended rule 5.242(j)(4) to set out the duties of minor's counsel when a child is called to testify.
- The Judicial Council also amended rule 5.240 to require that courts review and update their lists of qualified minor's counsel annually.
- Regional trainings throughout the state for family law judicial officers, child custody mediators, recommending counselors, and evaluators included two-hour sessions on children's participation in family court, including implementation of task force recommendations and AB 1050.
- Implementation Task Force members coordinated with the Executive Committee of the Family Law Section of the State Bar and State Bar staff to develop training for minor's counsel statewide and locally.
- CJER training programs integrated education for judicial officers on appropriate use of minor's counsel and existing rules of court addressing minor's counsel appointment requirements.

#### *Current Status*

This recommendation is ongoing, and continuing education is required with respect to both children's participation and use of minor's counsel.

### ***C. Enhancing children's safety***

#### *Concerns of Stakeholders*

Family law courts are often confronted with issues involving allegations of child abuse, neglect, and violence in the home. The Elkins Family Law Task Force heard many concerns about the safety and well-being of children whose parents are involved in family court proceedings.

#### *Implementation*

- Legislative changes, including authorization for child welfare to share information with family court, have been promulgated. These changes provided additional support for family law judges to request that Child Welfare Services consider cases in which

there are allegations of abuse, including sexual abuse, and not decide *not* to investigate just because the case is in family court.

- Training on these topics has been provided statewide over the past several years, and efforts to improve the handling of these complex cases are ongoing through technical assistance, training, and, where needed, identification of policies and procedures that may need rule or legislative fixes.

#### *Current Status*

This recommendation has been largely implemented; however, the establishment and funding for a pilot program to implement promising practices in handling allegations of child sexual abuse have been delayed as a result of budget constraints.

### **Recommendation III. Ensuring meaningful access to justice for all litigants**

#### ***A. Increasing the availability of legal representation and providing a continuum of legal services***

##### *Concerns of Stakeholders*

Many people find themselves in family court without the assistance they need to present their cases. For those who are able to represent themselves, more services are needed to help them navigate the court system and get their day in court. For those who cannot represent themselves meaningfully, additional ways to increase representation are needed. The Elkins Family Law Task Force recognized that legal information and advice are critical in family law matters. To meet the needs of litigants in as cost-effective a manner as possible, it is critical that a continuum of services—from providing neutral legal information and education to providing full representation in trial and appellate matters—be available. In between are midlevel services, such as assisting with forms and explaining court procedures, as well as providing settlement opportunities or mediation, legal consultation and advice, or limited-scope representation.

##### *Implementation*

- The Legislature has recognized the difficulties with self-representation in some cases. The Sargent Shriver Civil Counsel Act (Assem. Bill 590 [Feuer]; Stats. 2009, ch. 457) offered funding starting in July 2011 for pilot projects that provide representation to low-income parties on critical legal issues affecting basic human needs. The legislation allows legal services organizations to expand representation in the family law arena in domestic violence and contested child custody cases (among other non-family law case types). Three pilot programs have been established with this funding to provide services for low-income litigants in cases where the other side is represented and sole custody is being sought. An evaluation of the program is underway and will be completed in 2016.

- In response to the Elkins report, AB 939 amended various sections of the Family Code to provide that the court must consider attorney fee awards when requested. The Judicial Council then adopted rule 5.427, effective January 1, 2012, setting out the process for obtaining an attorney's fee order. Judicial Council forms *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) and *Attorney's Fees and Costs Order Attachment* (form FL- 346) were adopted for use in requesting attorney's fees and drafting the court order for attorney's fees.
- The Judicial Council revised rule 5.425, effective January 1, 2013, clarifying procedures for limited-scope representation.
- In 2012, the State Bar amended its rules regarding its Pro Bono Practice Program to allow attorneys who do not work for compensation, but who volunteer at court-based self-help centers, to receive the benefits of the program, including waiver of bar dues.
- Coordination is under way with State Bar staff to identify ways to improve mentoring opportunities for family law attorneys.

#### *Current Status*

This recommendation has been partially accomplished. More work with the State Bar is needed to encourage limited-scope and pro bono representation. Work has been significantly impeded by the budget crisis faced by the courts. More work is required to support the court self-help centers as they handle the high volume of cases needing attention.

### ***B. Improving litigant education***

#### *Concerns of Stakeholders*

The family law process can be confusing and intimidating. Education for litigants about the court process and basic legal principles can help minimize stress, encourage appropriate agreements, and assist the parties in resolving their cases in a timely manner. When litigants understand their legal rights and procedural requirements, court processes can be more effective and efficient, less frustrating, and more responsive to litigants' needs. Additionally, information about settlement options and assistance in preparing written agreements can help parties arrive at solutions tailored to their family situations. This process can avoid the expense and difficulties of a high-conflict case that may divert parents' time, energy, and money from otherwise being used for their children's benefit.

#### *Implementation*

- Courts are receiving information about [www.familieschange.ca.gov](http://www.familieschange.ca.gov) and [www.changeville.ca.gov](http://www.changeville.ca.gov), two sites that were adapted from British Columbia to provide information on separation and divorce for parents, teens, kids, and professionals. Posters and brochures are also being provided regarding the California Courts Online Self-Help Center, available in English and Spanish at



[www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp) and [www.sucorte.ca.gov](http://www.sucorte.ca.gov), to help inform the public of resources available to them.

- The Judicial Council adopted a number of information forms for the public. For example, *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO) sets out a chart of the dissolution process for the public. *Information Sheet for Request for Order* (form FL-300-INFO) sets out instructions on how to make a request for an order. As previously mentioned, forms FL-313-INFO and FL-314-INFO provide information about child custody mediation and recommending counseling. Further, *Attorney for Child in a Family Law Case—Information Sheet* (form FL-321-INFO) provides information to the parties about minor’s counsel.
- In 2012 the Judicial Council adopted rule 5.83(g), which requires that courts provide information about the court process, as well as other orientation information, to litigants at the time of the initiation of their case. An orientation video has been created that educates litigants about the child custody mediation and court process. This video has been posted online and distributed to the courts and is expected to increase the number of parents who can access this information in a timely manner and be prepared for their mediation meeting at family court services.
- Work is currently in process to collaborate with 2-1-1 California to provide easy access to community referrals online and available at the California Courts Self-Help Centers.
- The redesign of the California Courts Self-Help Center has incorporated additional content regarding family law proceedings. More than 4,000 pages of information are available in English and Spanish on the website. Educational videos on how to: complete family law forms, how to present and object to the presentation of evidence, appellate procedures and how to proceed with family law cases have been uploaded to the California Courts YouTube channel and are included on the updated Online Self-Help Center.
- Workshops on providing information about settlement opportunities, as well as reviews of existing resources, will continue to be included in family law training for self-help and legal services providers.

#### *Current Status*

This recommendation has been partially implemented. Work still needs to be done to develop efficient settlement opportunities for self-represented litigants, and assessment of the educational needs of litigants must be ongoing and updated.

### ***C. Expanding services to assist litigants in resolving their cases***

#### *Concerns of Stakeholders*

Often parties are unaware of settlement options. Without lawyers, people who are trying to resolve complex family issues often find it difficult to do so without the assistance of a skilled third party to help them focus their discussions, reflect back potential solutions suggested by the parties, and draft a written agreement.

#### *Implementation*

- Rule 5.83 contemplates that the organization and management of cases flowing through the family court process will serve to enhance settlement. Although rule 5.83(c)(6)(D) provides for settlement services as part of a family-centered case resolution process, courts are not required to provide them.
- When a court does elect to provide settlement services, however, rule 5.420, adopted by the Judicial Council effective January 1, 2013, requires local courts to develop a protocol for handling domestic violence in non-child custody cases. The task force worked to create a sample protocol, which is available to courts.
- Work is in progress to develop an application for parents to create their own custody agreement online.

#### *Current Status*

This recommendation has been implemented only in part as a result of the severe budget constraints faced by the courts. Many courts have incorporated settlement services into family-centered case resolution, but to date there is no systemic procedure to offer settlement services to family law litigants in any area other than child custody.

### ***D. Providing interpreters when needed***

#### *Concerns of Stakeholders*

Even though the Judicial Council specifically allocates \$1.73 million in funding for interpreters in cases involving domestic violence, family law, and elder abuse, requests for funding are much greater than the amount available. Many courts have been very thoughtful about organizing workload and making interpreters available in family law cases whenever possible. However, interpreters are not always available in family law matters unless domestic violence is an issue or the case involves governmental child support. Litigants often have to provide their own interpreters. Some use relatives or other interested parties. Having interpreters available on the day of the hearing would greatly reduce the need to continue a matter and thus provide greater access to justice for litigants.

#### *Implementation*

- A request for full funding of interpreters in family law and domestic violence matters was made to the California Department of Finance but was unsuccessful.

- Coordination is under way with staff in the AOC Court Language Access Support Program to implement recommendations on methods to enable courts to provide interpreters in family law matters.
- A curriculum has been developed and is being piloted with JusticeCorps volunteers to assist bilingual court staff and volunteers in self-help centers to provide appropriate services outside the courtroom in languages other than English.
- The Judicial Council has established a committee to develop a Language Access Plan for the state to identify next steps to providing full language access. It is reviewing best practices from throughout the state in providing language assistance.

*Current Status*

This recommendation is under way and needs more work. It has been severely affected by the budget crisis.

***E. Making court facilities more responsive to the needs of family court users***

*Concerns of Stakeholders*

Many of California's family law courtrooms are in converted commercial space or inadequate courthouse locations, in part because they do not need to accommodate juries and thus do not have the same space requirements as other courtrooms. Family law litigants frequently cite the inconvenience and confusion they experience from needing to make multiple trips to court or travel to different court locations to handle different aspects of their court business. This issue may be particularly salient for litigants involved in both Department of Child Support Services (DCSS) and other family law cases.

*Implementation*

Family court facilities are specifically noted in the guidelines used by the AOC Judicial Branch Capital Program Office (JBCPO) when building new courthouses. Coordination is under way with JBCPO staff to implement recommendations on providing safe, accessible, and efficient court facilities for family law litigants.

*Current Status*

This recommendation is under way and needs more work. It has been severely affected by the budget crisis and diminution of resources available for court construction and remodeling.

## **Recommendation IV. Enhancing the status of, and respect for, family law litigants and the family law process through judicial leadership**

### ***A. Promoting leadership, accountability, and better use of resources***

#### *Concerns of Stakeholders*

Currently in family courts statewide, fewer than two-thirds' the number of judicial officers needed to handle the workload are assigned to hear family law cases. Related services, including child custody mediation and self-help centers, have experienced significant cuts. Many suggested changes can increase efficiency in the delivery of services in family law without adding resources; however, without significant additions of judicial officers and staff resources, courts will be unable to meet the crushing workload in family courts.

#### *Implementation*

- The Judicial Needs Assessment and Resource Assessment Study (which measures staff workload) has been updated and expanded in scope and level of detail. The workload data gathered through this study will help courts to compare actual resource allocation to that which is suggested by the models.
- A set of “dashboard measures” of fundamental family law statistics has been defined to help courts establish baseline measurements that can then be used to identify caseflow areas meriting further attention. Once implemented, these measurements will inform and guide the courts in monitoring, evaluating, and improving their performance in the specific measured areas/outcomes, as well as assessing the effects of various caseflow adjustments.
- An online video to assist presiding judges in making appropriate assignments to the family law bench was prepared by CJER and is available for judicial officers.

#### *Current Status*

Implementation of this recommendation has not been accomplished. It has been severely affected by the budget crisis faced by the courts. Work needs to continue in order to implement standard 5.30 of the California Standards of Judicial Administration, which sets out minimum standards for family courts, including judicial appointments of a minimum of three years, selection of judges with prior experience in family law litigation and mediation, direct calendaring of family law matters to the greatest extent possible, and calls for court leadership in a number of areas specific to family law. Recognition of the importance of the family law assignment will need to be a continuing focus of court leadership.

## ***B. Improving judicial branch education***

### *Concerns of Stakeholders*

The ongoing need to offer education and training in the judicial branch provides opportunities to promote consistency throughout the state, share knowledge of and experiences with promising practices, and disseminate important information to judicial officers and court employees. Even though a wide range of educational programs has been developed for family law judicial officers and court staff, it is important that educational content be kept current and responsive to the types of cases and issues being heard in family court.

### *Implementation*

- The CJER Family Law Education Committee reviewed all recommendations from the task force and has committed to integrating content from the recommendations into all programs and educational efforts being developed for judicial officers.
- The Family Law Institute and Family Law Summit have included content on live testimony, case management, minor's counsel, and children's participation.
- Family Law Overview courses include content on children's participation and appropriate use of minor's counsel.
- Regional trainings and distance learning opportunities for child custody mediators, recommending counselors, and family law judicial officers provided workshops on children's participation and domestic violence over the past few years and will continue as needed or required.
- Online courses have been developed for judicial officers on attorney's fees, fairness and elimination of bias, self-represented litigants, courtroom management, and a wide variety of other family law topics to assist judicial officers to gain the information they need without having to travel to courses.
- Online training was also developed for court clerks on the changes in family law forms and procedures in response to the Elkins recommendations.
- The Task Force on Self-Represented Litigants has created an online catalog of effective practices that court self-help centers can use to assist self-represented litigants.

### *Current Status*

This recommendation has been put in place but requires ongoing education and technical assistance as courts move forward with implementation. Ongoing assessment of the educational needs of the branch is necessary.

### ***C. Increasing public information and outreach***

#### *Concerns of Stakeholder*

The public should have access to more information on their legal rights and options as well as the services that are available through the courts. Litigants or potential litigants may be unaware of services available to them, particularly in the early stages of their cases, which may result in lost opportunities to settle cases early or resolve issues underlying the case. Enhancing public information and outreach will help to ensure that court users make the most productive use of their time in court.

#### *Implementation*

Coordination is under way with staff in the *Court Operations Special Services Office* of the AOC to implement recommendations on providing information to the public.

- Training is being provided for public librarians on the self-help website, and other resources—which they can share with their patrons—are available at no charge.
- Information on the California Courts Online Self-Help Center was substantially increased, and there are now over 4,000 pages of information, much of which relates to family law. And the site has been translated into Spanish.

#### *Current Status*

This recommendation has not been fully implemented and needs more work.

### **Recommendation V. Laying the foundation for future innovation**

#### ***A. Promoting family court improvement through empirical research***

##### *Concerns of Stakeholders*

Family law judicial officers and court administrators historically have not had access to the basic data required to make informed decisions about resource allocation, evaluate the need for or effectiveness of new programs or services, or make requests for additional funding. Statewide statistical reporting has been largely limited to filings and dispositions, which, given the high incidence of filing of orders to show cause and motions and extensive postjudgment activity, do not represent the true workload of the family court. Furthermore, in the broader scope of court research, family law has received relatively little attention. Local statistical reporting varies greatly depending on the sophistication of case management systems. A more coordinated and comprehensive approach to research will promote better service to the public and wiser use of resources.

##### *Implementation*

- The Judicial Needs Assessment and Resource Assessment Study (which measures staff workload) has been updated, with an eye to more accurately measuring the full range of tasks involved in processing family law cases. Task force members and AOC staff to the task force have been actively involved in this study.

- A set of “dashboard measures” of fundamental family law statistics has been defined to help courts establish baseline measurements that can then be used to identify caseflow areas meriting further attention. Once implemented, these measurements inform and guide the courts in monitoring, evaluating, and improving their performance in the specific measured areas/outcomes, as well as in assessing the effects of various caseflow adjustments. The measures are currently being pilot-tested using case management system data from several courts throughout the state.
- AOC staff are conducting a workload study of best practices to examine in greater detail the resources required to implement effective family law practices in a variety of areas.
- AOC staff and task force members are taking inventory of existing statistical reports used in California counties and other jurisdictions.
- AOC staff have presented and disseminated results of the Statewide Uniform Statistical Reporting System, also known as the Snapshot Study, focusing on aspects of court-based child custody mediation related to the task force recommendations.

#### *Current Status*

This recommendation has been partially accomplished but needs more work. Research is not a one-time effort but needs to be ongoing to monitor changes in caseloads and case characteristics and to assess the effectiveness of court interventions.

### ***B. Creating the California Family Law Innovation Project***

#### *Concerns of Stakeholders*

Although the family courts can make significant improvements by better use of existing resources, additional resources will be needed to make the long-term improvements that are necessary to restore the public’s trust and confidence in the family courts. Much of the improvement that will be achieved in the future will be achieved through ideas for innovative new practices and approaches to providing services as families’ needs change. By necessity, many of the improvements to the family courts will have to be phased in after being tested through pilot projects. It is critical that the courts, the legal community, and court users all continue to have the benefit of innovative projects and approaches to service delivery in family law.

#### *Implementation*

- No implementation activity has occurred because the intended legislative funding has yet to become available.

### *Current Status*

Implementation of this recommendation has been deferred pending the availability of funding.

### **Conclusion**

Because of the combined efforts of the Elkins Family Law Implementation Task Force and groups such as the Family and Juvenile Law Advisory Committee, Task Force on Self-Represented Litigants, Domestic Violence Policies and Procedures Task Force, CJER Family Law Curriculum Committee, State Bar of California, and California Assembly—plus the consistently remarkable work of the California trial courts—the majority of the recommendations of the Elkins Family Law Task Force have been put in place. Future work on the remaining tasks—as well as consistent updating of information, forms, rules, and procedures—will be necessary.