Comments on Elkins Family Law Draft Recommendations
All comments are verbatim unless indicated by an asterisk (*).

ATTACHMENT C

The following comments were received from October 2 through December 4, 2009, in response to the circulation of the draft recommendations developed by the Judicial Council of California's Elkins Family Law Task Force.

In addition to this, the task force received extensive additional feedback through:

- Public comment provided at task force meetings;
- Email comments on general issues related to the task force's work;
- 21 focus groups that included judicial officers, court staff, attorneys, and litigants;
- Survey of attorneys throughout the state;
- Litigant and advocate input meeting for family law litigants and advocates to address the task force; and
- Public hearings held in San Francisco (10/22/09) and in Los Angeles (10/27/09).

As part of the task force's outreach efforts, staff designed posters that were distributed to all courts throughout the state inviting people to comment and letting them know about the work of the task force. An email list was created that people could sign up to so they might receive regular updates; over 100 people asked to be added to that list.

Comments on the draft recommendations were received from over 300 individuals and organizations and are included in the comment chart below. Given the large volume of comments received, and out of respect for privacy in some instances, some of the comments have been redacted while their meaning has been retained; however, the full text of the comments in their entirety were provided to the task force.

All references to titles refer to the Elkins Family Law Task Force Draft Recommendations Invitation to Comment October 1, 2009 – December 4, 2009

Comments on Elkins Family Law Draft Recommendations

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Commentator	Comment	Committee Response
1. Mark A. Adams JD/MBA No county information provided	Restore the right to trial by jury in family proceedings as judges have proven repeatedly that they cannot be trusted to rule impartially.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
2. Michael Alvarez Mediator/Court Investigator Jackson, CA	Live Testimony Family Law and right of parties to give input (testimony) at time of OSC. Will this create more back log and provide a venue for challenges to the court at the outset? Shouldn't relevant testimony be reserved for set hearings (if required) on a case by case basis? Children's Voices I believe that if this is made a rule of court, it is a concern that parents will 'use' their children to 'make their point' and thus, put children	Live Testimony The Task Force recommendation on the right to live testimony does not eliminate judicial discretion to make decisions based on declarations. It simply sets out reviewable factors judges must consider in exercising their discretion. The Task Force is unaware of any evidence that indicates permitting live testimony would increase requests for disqualification of judges. The right to provide live testimony was an issue brought to the Task Force by attorneys and litigants through public input and attorney surveys as a fundamental due process matter. Children's Voices The recommendations in Children's Voices (changed to "Children's

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	further in the middle of already difficult circumstances. Also, by allowing children input wouldn't this potentially place unneeded guilt on the children if their opinion was the deciding factor in a custody/visitation matter? While most parents want what's best for their children, it is my opinion (and observation) that other parents only want to 'win' or cause hurt to the other party. If this rule is put in place, I believe that the court should very specifically mandate that only children of 'accountable age' (12 yrs up) should share their opinions.	Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children.
3. Margaret Anderson Law Offices of Margaret L. Anderson, Collaborative Practice Center Santa Rosa, CA	Live Testimony I strongly support this – for both the parties, and the bench officers who need to hear from them. Expanding Legal Representation These recommendations are absolutely essential. The growing numbers of self-represented parties send the clear message that legal fees are a huge impediment. I especially support 3A, 3B and 4. The Northern California chapter of AAML is already doing 5A. Caseflow Management Sonoma County is already addressing many of these concerns; all	Live Testimony No response required Expanding Legal Representation No response required Caseflow Management Since many parties involved in

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	filings are being monitored without the requirement of a stipulation. For 7, I suggest that a written document describing the parties' process options be required to be signed by both parties near the start of the case, and that a panel of attorneys be arranged to speak with both parties at the start of each OSC calendar as to these options.	divorces default and choose not to sign or file papers with the court, a requirement to sign a document regarding options does not seem appropriate. However, providing information about options is included in recommendations regarding litigant education. Courts may want to consider using volunteer attorneys to explain options as part of their local program as long as they follow the ethical guidelines set out in the AOC's *Guidelines for the Operations of Self-Help Services*.
	Rules of Court All of these recommendations have great merit.	Rules of court No response required.
	Children's Voices This recommendation is through, sensitive, and entirely necessary in order for the children to be appropriately heard, with their ideas considered.	Children's Voices No response required.
	Domestic Violence These recommendations are legitimate additions to the work of prior and existing task forces.	Domestic Violence No response required.
	Enhancing Safety These children should be the highest priority of our court system –	Enhancing Safety No response required.

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	these recommendations will advance this. Contested Child Custody If no other recommendations are adopted those must be contested custody matters are the most critically needy cases for competent, thorough and durable judicial involvement. Minor's Counsel This is an area that has needed clarity re the attorney's role – these recommendations all seem thoughtful and necessary. Scheduling of Trials and Long-Cause Hearings This recommendation has been sorely needed for years. Litigant Education This is an area that has received far too little attention in the past. Its recognition that a cookie cutter approach doesn't work for most families is long overdue. Particularly important is education about process choices – at the beginning of each case. Expanding Settlement Services 12.2 and 12.3 both need to include specific references to collaborative practice (12.2) and collaborative professionals (12.3) Streamlining Family Law Forms and Procedures This is a gold mine of great ideas! Enhancing Mechanisms to Handle Perjury Civil sanctions would be great, but I'd like this even better if criminal penalties could be imposed.	Contested Child Custody No response required. Minor's Counsel No response required. Scheduling of Trials No response required. Litigant Education. No response required. Expanding Settlement Services Agree with proposed change, modification included. Streamlining Family Law Forms No response required. Enhancing Mechanisms to Handle Perjury Criminal penalties are currently

Commentator	Comment	Committee Response
		available for perjury.
	Standardize Default and Uncontested Process Statewide Hooray!	Standardize Default Procedures No response required.
	Interpreters This is an absolute no-brainer!	Interpreters No response required.
	Public Information and Outreach As long needed.	Public Information No response required.
	Judicial Branch Education Each of these recommendations is important and long overdue.	Judicial Branch Education No response required.
	Family Law Research Agenda Great ideas – the list in 1A should include in the number & % cases with a collaborative stipulation; the number & % of judgments reached through collaboration, through mediation, through court-supervised settlement without trial, and through trial. This data will provide valuable information for the Elkins Family Task Force II!	Family Law Research Agenda The current recommendation does propose to track the methods by which cases reach judgment; however, it may not be possible to readily identify cases with a collaborative stipulation through data fields available in case management systems.
4. David L. Aragon Rocklin, CA	Expanding Legal Representation I desire to propose a definite change in litigants who represents themselves with very low cost, if not, no costs to represent themselves. There needs to be highly qualified court managers overlooking and making sure litigants have the proper information and forms filled out completely, as well as, educated in what may lie in the near future.	Expanding Legal Representation Self-help centers are generally able to provide this assistance depending upon the type of issue being raised by the litigant.

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	Children's Voices. Children who have been physically abused with documentation from a hospital or health person who is licensed, need to be heard and freely to speak to the presiding judge, not a commissioner or a judge who is under scrutinized, or who is being investigated for misconduct by the Judicial Performance Committee. There needs to be an immediate interview by a three panel judge or Grand Jury with the child. Currently, the child is passed onto the abusive parent who alienates the child from the loving parent. Enhancing Mechanisms to Handle Perjury. Lawyers who purposely provide false accusations and/or false accusations and found out within a ninety day findings after the hearing should be fined and/or jailed. There is too much open false accusations and/or statements from the opposing attorneys and accepted by judges as the facts, of which has no grounds or basis if an investigation was issued. Therefore, I propose an investigation from an outside committee from where the hearing was held, be assigned and to conclude within a ninety day process.	Children's Voices The Task Force recommendations Enhancing Children's Safety note the need to handle cases involving allegations of child physical or sexual abuse expeditiously and the need to refer appropriate cases to child welfare services. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. The comment regarding three judge panels and grand juries for these cases is a substantive policy area in which the Task Force did not choose to make recommendations. Enhancing Mechanisms to Handle Perjury. It is the Task Force's understanding that existing statutes regarding perjury and reporting to the State Bar are sufficient to prosecute attorneys who knowingly provide false accusations.
5. Yupa Assawasuksant, RN II Kentfield, CA	Thank you for your hard work to provide recommendations to improve family court. I agree with most of your ideas.	Both sections have been updated based on input the Task Force received during the public comment period.

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	However, I strongly disagree with having a judge (or anybody else) as a case manager. That would be exactly the opposite of fairness and due process. When anyone in power does not have any oversight, they tend to abuse the power. Since parties can't afford to appeal, there is no oversight. Many court hearings are not even transcribed and parties can't afford to pay for the court reporters. I also disagree with the idea of judges deciding if children can talk to them. Children are learning that courts are not accessible and that judges make arbitrary rulings that destroy their live, and they have no voice. That is basically unfair and wrong. They will grow up to be harmed and to fear and dislike the court system. Finally, your recommendations do not emphasize the physical and sexual safety of children enough. Please improve on the domestic violence and safety parts of your recommendations so children and victims of domestic violence are protected in family court. To do that, you need to get rid of the evaluators and children's attorneys. They almost always protect the abusers.	Given the wide variety of cases in family court and the differing needs of families and children, the Task Force believes it is important to continue to maintain the ability of trial court judicial officers to appoint evaluators and children's attorneys when such appointments may be warranted. The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The task force addresses physical and sexual safety of children in Enhancing Children's Safety (renamed to reflect this emphasis) and in Domestic Violence. The role of evaluators is addressed in Contested Child Custody and minor's counsel in Children's Participation and Minor's Counsel. In some cases, properly trained and

Commentator	Comment	Committee Response
		experienced evaluators and attorneys may provide assistance in these matters, subject to statewide rules of court and statutory requirements providing for consideration of child safety issues.
6. Yupa Assawasuksant RN II Kentfield, CA Jetara Argall No county information provided Dr. Danielle J. Duperret, PhD Empowering People to Heal Themselves, Body-Mind-Soul-Spirit Allison Foster No county information provided Meera Fox, Esq. Executive Director, Child Abuse Solutions, Inc. Frances W. Greenspan Animal Artist, Animal Communicator eBay Consultant and Teacher R s Klien No county information provided.	*Commentators provided nearly identical comments separately; they are grouped together here. Guiding principles for Elkins Family Law Task Force recommendations are to provide consistent and timely access to equal justice, procedural fairness and the due process rights of parties; increase efficiency, effectiveness, consistency, and understandability; and increase the public's trust and confidence. The draft recommendations are generally very good; however, several represent the exact opposite of the Elkins principles as stated. Others need to be augmented to fulfill the intent of the guiding principles. The following suggestions are offered to ensure the recommendations meet guidelines and needs of the public, particularly citizens who enter family court seeking safety and justice. Part I. Increasing Public Confidence In Family Court Leadership, Accountability, and Resources Increasing the accountability of family court professionals is the single most important change needed and would produce far-reaching, positive changes in all aspects of family law. Current oversight of family court is inadequate and ineffective. Appeals are priced out of the ordinary litigant's range and trial court decisions are rarely overruled. The Elkins recommendations would be greatly strengthened by	Leadership, Accountability, and Resources To improve accountability in the family courts, the Task Force is recommending the creation of a complaint mechanism, improved public information, and evaluating the

Commentator	Comment	Committee Response
	including the following suggestions	possibility of creating a court ombudsman position.
Kim Plater, Co-Chair Covina Women's Club Domestic Violence Action Coalition Jonea Schillaci-Lavergne No county information provided Jean Taylor (on behalf of the Center for Judicial Excellence) President Center for Judicial Excellence San Rafael)	Equipping each and every family law courtroom with automated videotaping equipment to ensure that each and every family law proceeding is video-recorded, including in-chambers communications, would ensure access to justice and an affordable record. This is the most efficient, streamlined and effective method to ensure fairness, due process, transparency and intact (non-tampered), reasonably-priced documentation of hearings. Videotaping is already done in some California courts and in several other states such as in Hawaii which provides the videotape to the litigants at the end of the hearing for $25 within 2 weeks and can then pay a court reporter to transcribe the tape. A no-cost court ombudsman program would be effective only if it consisted of an independent state-level administrative law judge panel.	The Task Force agrees that access to the record in family law is a serious access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings. The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety.
	An ongoing volunteer citizen review panel selected at random from the jury pool is needed to review and remand for review to a new judge cases in which decisions have been made to place children with parents whom the child has disclosed are batterers or sex abusers, to ensure child safety.	Rather than creating a citizen review panel, the Task Force recommends improvements to make appeals more accessible and affordable.
	Family court judges should be rotated out of the family court entirely every 2-4 years to prevent burnout and cronyism.	Courts have a variety of practices with regard to the length of the assignment

Commentator	Comment	Committee Response
		to family law. Standard 5.30, which is recommended to be elevated to a Rule of Court, recommends that courts with a separate family law department assign judges to serve for a minimum of three years. The Task Force generally supports longer service in family law because judicial experience and expertise in family court is most beneficial to the court users. Issues of burnout should be addressed on a case-by-case basis between the family law judge and the Presiding Judge. Issues of cronyism would be appropriate for referral to the Commission on Judicial Performance.
	Supervised visitation should be only for parents who have physically or sexually abused their partners or children (page 73 E)	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This comment on supervised visitation is a substantive policy area in which the Task Force did not choose to make recommendations.
	To assure long-term functionality of an improved family court The immunity of judges and court-appointees needs to be limited,	The Task Force did not make recommendations with respect to immunity of judges or court

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	particularly when judicial or administrative proceedings are instituted within the scope of their employment and they act maliciously or without probable cause. See Government Code 821.6 regarding their current broad immunity. A Judicial Performance Evaluation process should be established as exists in at least one-third of other states.	appointees, nor did it recommend a Judicial Performance Evaluation process. The Task Force does recommend a complaint mechanism, complaints, and the evaluation of the creation of a court ombudsman position.
	CaseFlow Management The concept of an individual (court-appointee, court-employee or judicial officer) with extra powers of case manager and ability to appoint court-related professionals without the stipulation of parties would result in gross injustice, unfairness and violations of due process rights. This is because the amount of power given to that individual would very likely be abused. Such abuses of power are often already observed among case managers (Special Masters, parenting coordinators, etc.) to whom the parties have stipulated. The paragraph titled Caseflow Management (page 20 under No. 11. Case Management) should be deleted, and any other similar concept should be eliminated from the Elkins recommendations. This concept is not in line with the Elkins guiding principles.	Caseflow Management The concerns raised appear to be directed primarily to court-appointed case managers rather than to judicial officers. The Task Force recognizes the very real concerns with referring to ancillary professionals and believes that by allowing judicial officers to ensure that cases are not languishing and that those with serious allegations are handled promptly, many of the abuses described will be avoided.
	Clerical calendaring and electronic tracking of cases is entirely different and would likely benefit parties and the court. All information from hearings and caseflow should be posted electronically on the court website as exists in some counties and many other states such as Hawaii.	Clerical calendaring. Agree that this information should be provided to the parties electronically.
	Increased sanctions, particularly against litigants, would certainly not	Increased sanctions

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	increase the public's confidence nor resolve the problems in family courts.	Currently, when an attorney is acting inappropriately, any sanction levied against that attorney will be paid by the client – who may not have had any role in the bad action. Many litigants have reported that they believe that sanctions are critical to ensuring that everyone follows rules.
	Expanding Services to Assist Litigants Litigants do not come to family court for services; they need access to justice, due process and fairness. Alternative Dispute Resolution should be a service available in the community, just like Legal Document Assistant services, with information on how to access such services available at the courthouse. Family court is a court of law and should not be providing services, nor requiring parties to use them.	Expanding Services - Over 450,000 litigants use self help services each year – presumably many people want both services and access to justice, due process and fairness. Other civil proceedings provide extensive ADR services, as well as increasing self-help resources.
	Expanding Legal Representation and Providing a Continuum of Legal Services The Elkins recommendations should note that Family Code Section 2030(a) and 3121(a) already assure that both parties must be represented and provides for attorney fees. Self-represented litigants report that courts ignore their requests for equal representation. It is clear that oversight to ensure compliance with laws and rules of court and a method for continuous improvement through ongoing public feedback must be the first order of business to restore confidence in family court.	Expanding Legal Representation - Additional information for all participants regarding attorney fees, including the caselaw interpreting these statutes, should prove helpful, as will guidance for self-represented litigants on how to make requests for attorney fees.

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	Part II. Keeping Children Physically And Sexually Safe In Custody Decisions Suggestions for sections 5. Children's Voices; 6. Domestic Violence; 7. Enhancing Safety; 8. Contested Child Custody; 9. Minor's Counsel; and 19. Family Law Research Agenda are listed separately but overlap in content. All focus on keeping children safe. Children's Voices The recommendation that children's voices continue to be interpreted by adults such as mediators and evaluators would result in exactly the same endemic problems as currently exist. In fact, children would have fewer opportunities to speak with the judge directly. This is contrary to the Elkins guidelines of fairness and due process. Hearsay and distortion of children's voices would be reduced by direct testimony, just as with adult testimony. In all other court circumstances, witnesses speak directly to the court or jury. The choice of appearing at a hearing and speaking to the judge must belong to the child, not to the judicial officer. Every parent whose custodial rights are at issue must be given the opportunity to examine/cross examine on the witness stand, the child/children who are the subject of the custody litigation as a matter of fundamental due process. Children's wishes are supposed to be given due weight by the court (Family Code Section 3042); however, in practice. Family court currently treats children as property. Children in family court must be afforded the same civil and human	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Recommendations in Children's Participation and Minor's Counsel emphasize the need to consider children's wishes, consider hearing directly from a child of sufficient age and capacity, and providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate. Recommendation 2B states that

Commentator	Comment	Committee Response
	rights as children in juvenile court (W&I Code Section 349) to be given notice of hearings affecting them, a choice of attorneys if one is appointed, and the ability to speak directly to the court.	Family Code section 3151 should be amended to provide that a child's attorney be required to express the desire of a child to have his or wishes expressed to the court. Being given the same civil rights as in juvenile The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency

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		proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court.
	Court reporter To preserve due process, there should always be a court reporter present when a child testifies or speaks directly to the judge, or such communication or testimony must be captured on videotape and the record of such testimony shall be readily available to every party. Parties or their attorneys should be able to submit questions to the judge for the child to answer (to ensure the child is not traumatized by an aggressive parent or attorney). The facilities at a multi-disciplinary interview center (MDIC) could be	Court reporter. The task force recommends that children's testimony be provided on the record. Submitting questions. The task force recommendations reflect this possibility. The Task Force recommends in

Commentator	Comment	Committee Response
	used to interview younger children and the MDIT videotape could be provided to the court. See 8 herein (Contested Child Custody).	Enhancing Children's Safety the establishment and funding of pilot projects throughout the state to implement promising practices in these cases and include funding for support single-point interviews of children.
	Domestic Violence All family court judges should make written findings on the record of whether or not there is evidence of domestic violence as defined in Family Code Section 6203 or child physical or sexual abuse as defined in Penal Code Sections 11165.1, 11165.3 and 11165.4, when those crimes are alleged, to ensure that Family Code Section 3044 is usable. CPS substantiation of physical or sexual child abuse must be a sufficient basis for a finding of such by the family court, and enough to require the family court to protect the child from unsupervised contact with the abuser until the child both 1 - reaches age fourteen (14) and 2 - makes a formal request of the court that the visitation become unsupervised.	Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	If CPS does not substantiate abuse, cases involving allegations of domestic violence, including child abuse, should be investigated thoroughly by a well-trained court investigator who is not to provide recommendations on parenting and custody. See 8 herein (Contested Child Custody). The investigator should carefully follow the protocol of Family Code Section 3118, using a uniform prepared format (template) to ensure that	The Task Force recommendations in Enhancing Children's Safety seek to address the court's handling of cases involving allegations of abuse and to minimize the number interviews a child may be subjected to. Use of template The Task Force recommendations have been updated

Commentator	Comment	Committee Response
	all steps of the investigation are followed properly. The parties should review the investigator's report for accuracy prior to submission and should have the opportunity to cross examine the investigator.	to reflect the recommendation that further research be conducted into the use of templates for reporting on these and related evaluations (see Family Law Research Agenda).
	Children suffer greatly when placed with abusive parents and this outcome should be avoided whenever possible. Therefore, children who report that they are physically or sexually abused, or that one parent or household member is a domestic violence dominant aggressor, need the opportunity to design a parenting plan for themselves that would meet their needs. That plan should be endorsed by the court if it provides for the child's physical and sexual safety. Since there are usually no witnesses to child abuse or domestic violence besides the perpetrator and the victim, the child victim's disclosure should be considered prima facie evidence that such protection is required.	In Children's Participation and Minor's Counsel, the Task Force recommends including children in the family court process, where appropriate, in a variety of ways including talking with a mediator or an evaluator or providing testimony. Such participation could provide an opportunity to offer input into development of a parenting plan.
	Alternative dispute resolution and mediation should not be required for any cases in which a power imbalance exists between the parties, such as in domestic violence cases.	The Task Force recommends in Domestic Violence and in Expanding Services to Assist Litigants in Resolving Their Cases that litigants be given opportunities to reach knowing and voluntary agreements and that information be provided to victims of domestic violence and others who may face power imbalances so that they are aware of their options and do not feel forced to settle their cases. Those

Commentator	Comment	Committee Response
		parties should not be required to meet jointly, but should not be automatically denied the opportunity to mediate or settle their cases.
	Family Code Sections 1800 et seq must be brought up to date to reflect current realities of domestic violence, child physical and sexual abuse and substance abuse.	Family Code Section 1800 The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	A full investigation must be commenced by the Bureau of State Audits of the Family Law Trust Fund (Family Code Section 1852).	This suggestion is beyond the scope of the task force.
	Enhancing Safety Clear recommendations should be made that family court must always err on the side of caution to protect the child from physical or sexual abuse when a child has reported such abuse. The court should not consider concepts such as alienation when there is any evidence of violence or abuse.	Enhancing Safety The Task Force redrafted recommendations in this section (renaming it “Enhancing Children’s Safety”) to emphasize the focus of this sections on child safety. The Task Force recommends pilot projects to support development of protocols and procedures in this area.
	If CPS is involved	CPS

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	CPS must not remove children from a fit parent. CPS must remove children from a parent who is abusive and unfit according to W&I Code Section 300. If used, CASA volunteers must be independent from the court and not connected in any way with either party. The child must be able to dismiss the CASA volunteer if she or he does not represent their wishes to the court. Contested Child Custody There is far too much confusion among court-employed, court-related and court-appointed professionals in contested custody cases. Elkins is urged to provide even more clarification, which would lead to streamlining and solid decisions that would prevent ongoing litigation and reduce costs for both the court and the parties. a) When there are no allegations of domestic violence, child physical or sexual abuse, or substance abuse Mediators, including Family Courts Services mediators, are trained to conduct mediation. By definition, mediation is a confidential alternative dispute resolution method that assists parties to come to a voluntary agreement. The Elkins recommendations are very good, but need to expand on this point. Mediators should never provide recommendations to the court, nor should they mediate cases with allegations of domestic violence, child physical or sexual abuse, or substance abuse. These are issues far beyond their role, training and expertise. Child Custody Evaluators Custody evaluators are to be used rarely and only in cases with no allegations of domestic violence, child physical or sexual abuse, or substance abuse. The role of custody evaluator has been problematic for	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Contested Child Custody The Task Force recommendations seek to provide clarity for litigants and professionals in this area. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. Court-connected child custody mediation, how it is defined, and under what circumstances recommendations should be provided to the court is a substantive policy area in which the Task Force did not choose to make recommendations. Child Custody Evaluators Current statutory law and rules of court guide the appointment, role, and scope of child custody evaluators and

Commentator	Comment	Committee Response
	decades, even after Senators Deborah Ortiz and Ross Johnson passed legislation to set standards for evaluator training, education and protocol. Custody evaluators must be under contract through a proper public contracting process, as in other state agencies. The appointment of an evaluator must always comply with Code of Civil Procedure 2032.310. Existing information should be used, such as existing medical, therapist and investigation reports. Psychological testing should be discouraged due to expense, intrusiveness and invalidity (tests are not normed on this population). Unproven theories such as parental alienation theories are not to be used or considered. Evaluators are paid by the court pursuant to Family Code Section 3112. Parties must first stipulate to the evaluator's report prior to submission to the court as required by Family Code 3111(c). "The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report". The court must provide a clear, effective complaint and oversight process for parties, especially self-represented litigants, who allege that evaluators have not complied with statute and rules of court. The use Evidence Code 730 appointments must be reevaluated, since custody evaluators are usually not experts in a particular specialized area. For cases with no allegations of domestic violence, child physical or sexual abuse, or substance abuse, parenting time should mirror as closely as possible the pre-separation caregiving (feeding, bathing, clothing, putting to bed, taking to school/ doctor/activities, etc.) arrangement for the past three to five years. If previous caregiving was	evaluations. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	equal in time and quality, the child's primary parent (principal attachment figure with whom the child has a bond) can be determined by asking the child which parent he or she goes to under stressful conditions such as when injured or afraid. A secure, supportive and safe primary parent is crucial for a child's healthy development and interruption of that bond is likely to result in later developmental and psychological problems for the child. Commentators provided links with articles and other materials related to this topic. Child Support Child support should not be based on time share of the child, to prevent parents from attempting to get custody in order to avoid paying child support. Complaint procedures An independent and effective complaint process must exist and information on how to access and use it must be provided in writing to all parties, including to children over 10 years of age. There must be an effective means of protection from retaliation against the complainant by court officials who are the subject of the complaint. b) When there are allegations of domestic violence, child physical or sexual abuse or substance abuse 1. Violence is epidemic in contested custody cases. www.courtinfo.ca.gov/programs/cfcc/pdffiles/onepgDV99.pdf	Child Support The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Complaint procedures Current statewide rules of court require local complaint procedures be developed in this area.

Commentator	Comment	Committee Response
	In 76% of cases referred to mediation in California, at least one parent reported that interparental violence had occurred in the relationship. In 97% of cases that reported threats of violence had occurred, at least one parent also reported that one or more violent behaviors had occurred. In 41% of all cases, at least one parent reported that their child(ren) had witnessed violence between the parents.	
	Protocol for investigating such cases needs to be even further clarified by the Elkins recommendations. This will result in streamlining, uniformity statewide, cost effectiveness and, most importantly, increased physical and sexual safety for children.	The Task Force recommendations in Enhancing Child Safety address the importance of appropriately handling child safety matters, including recommending pilot projects to create uniform and promising practices.
	If CPS substantiates physical or sexual abuse, no further investigation is necessary by family court. The child must be protected from further abuse or retaliation through placement with the non-offending parent and no contact with or only professionally supervised visitation with the named perpetrator until the child both 1. reaches age fourteen (14) and 2. makes a formal request of the court that the visitation become unsupervised.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	If CPS has not substantiated physical or sexual abuse, a family court investigation must be ordered. The child must be protected from further abuse or retaliation through placement with the non-offending parent and no contact with the named perpetrator during the pending	The Task Force recommends that research be conducted to review the use of templates in this related areas (see “Family Law Research Agenda”).

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	investigation. Only qualified investigators trained by a multi-disciplinary team in conducting criminal investigations in civil matters may conduct investigations when allegations of domestic violence or child physical/sexual abuse arise. Investigators must follow Family Code 3118 protocols and all relevant statutes and rules of court. A uniform, statewide template is required to ensure investigators comply with the complex laws and rules. If investigators are not public employees, they must be under contract through a proper contract process. All investigators are paid directly by the court pursuant to Family Code Section 3112. The qualified investigator interviews witnesses and gathers facts and information pursuant to Family Code Section 3118, including previous law enforcement and child protective services investigations, criminal background check on both parents, medical personnel interviews and records, interviews and written statements of prior or currently treating therapists, forensic examinations of the child, Victims of Crime eligibility, etc. Children under 10 years of age are to be interviewed at a Multi-Disciplinary Interview Center (MDIC) on videotape. Children ages 10 and older are to be given the option of being interviewed at the MDIC or interviewed on videotape by an investigator trained and qualified to conduct forensic interviews. The multi-disciplinary team must consist of the investigator, child	Family Code Section 3112 This code section appears to refer to situations in which court employed investigators conduct the investigation not private evaluators or investigators. It is not clear that courts are expected to cover the costs of private child custody evaluators or investigators situations other than when they are employed by or on contract with the court. To the extent this area is not covered by existing statutory law, the specific recommendations on how to conduct investigations in this area should be considered as part of implementation. Being given the same civil rights as in juvenile The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel

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	protective services, local domestic violence center staff, a substance abuse specialist, a child advocate, a clinical mental health professional with a specialty in treating child trauma and abuse, and a law enforcement professional. The domestic violence agency and law enforcement determine if domestic violence occurred in the past 5 years, and identify the dominant aggressor and primary victim(s) of that violence. Standard lethality instruments are to be used to predict the likelihood of future violence by the dominant aggressor. A certified substance abuse specialist http//www.caadac.org/pages/certification/approved-schools.php must investigates allegations of substance abuse and provide random drug and alcohol testing. Team members independently complete the portion of the investigator template relative to their specialty. The team is reminded that family court is a civil court and the preponderance of evidence standard (50.1% likelihood) is used. Recommendations are limited only to child safety and protection needs. No parenting or custody recommendations are made by the investigator or the team. All cases must have a timely evidentiary hearing on the facts/evidence gathered by investigator. The child must have all the opportunities afforded by Welfare and Institutions Code Section 349, including notice of the hearing (and determination if the notice is done properly if the child is not at the hearing) and ability to speak directly to the court. This could also be done remotely on webcam with a support person.	reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or

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		court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court.
	Cross Examination - The parents or their attorneys must be given the opportunity to cross examine the investigator and team members, along with any witnesses who submitted declarations. If there is evidence of physical or sexual abuse, the child must be protected through no contact or professionally supervised visitation with the person whom the child named as perpetrator until the child both 1. reaches age fourteen (14) and 2. makes a formal request of the court that that visitation become unsupervised.	Cross-examination. The Task Force agrees that all those who provide reports or recommendations to the court should be available for testimony and cross-examination (see recommendations in Contested Child Custody).
	If a parent or household member has habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol (Family Code Section 3011(d) and 3041.5), children are not to be alone with that person. No parenting or custody recommendations are made by the investigator or the team. The court must make written findings of fact and rulings of law on the record regarding domestic violence, dominant aggressor, child physical abuse, child sexual abuse, substance abuse, and the parent to whom the child is primarily attached and who provided the primary pre-separation care-giving (Family Code Section 3011). The court must err on the side of caution regarding child safety and protection from physical/sexual abuse.	Children not to be alone with parent (Supervised visitation) In section on Domestic Violence, the Task Force recommends that courts consider the need for supervised visitation or exchange.
	Minor's Counsel Minor's counsel must represent the child's wishes and provide a	Minor's Counsel Children's Participation and Minor's

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	standard duty of care. (Representing the child's "best interests" has led to attorney bias and minor's counsel becoming a de facto attorney for one parent or the other.) Elkins recommendations are very good, but need to go farther to rein in this very problematic appointee category. If input is provided to the family court by a minor's counsel regarding the child's custody, such counsel must be subject to examination and cross examination by the parties regarding such input, as a matter of fundamental due process Minor's counsel must be paid by the court if the court appoints the attorney. Children must have choice over an appointed attorney, as in juvenile court. They must be able to fire an attorney who is not representing them appropriately. With the previously described safeguards in place, there should be very little need for minor's counsel. Family Law Research Agenda Data are needed about cases in which children are ordered into custody	Counsel sections include recommendation that legislative changes be made so that minor's counsel is not permitted to make recommendations because they are functioning as an attorney and are not subject to cross-examination. The Task Force is aware of the resource constraints facing courts and families and recommends regular review of costs as well as implementation of California Rules of Court, rules 5.240 and 5.241 dealing with costs of minor's counsel. Choice of attorney. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Family Law Research Agenda It is not practical to add the suggested

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	or unsupervised contact with sexual or physical abusers identified by the children or with domestic violence dominant aggressors. Additionally, there needs to be data on individuals in the California Safe at Home program through the Secretary of State's office in which children are placed with the identified batterer and are not allowed to see the victim unless the confidential address is provided to the batterer. These are by far the most important statistics needed. Collecting these data would greatly increase public confidence that the courts are treating child safety with the seriousness it requires. The only coordination with juvenile court should be for cases in which CPS has substantiated child physical or sexual abuse. Family court should honor substantiated findings and protect the child from further harm by the named perpetrator (Elkins recommendations page 64). If CPS does not substantiate child physical or sexual abuse, a proper family court investigation should be conducted. See 8 herein (Contested Child Custody).	data elements, as they would require extensive manual data collection from court files and some of the information may not be available in court files. Additionally, it is not possible to easily identify an appropriate sample of cases from which to draw such data. The recommendation on coordination with the juvenile court is limited to researching possible approaches to coordination and is not intended to lay out what those approaches should be at this time.
7. Candace Atkins Director Family Court Services Superior Court of Santa Cruz County	Children's Voices I agree but with the understanding that any testimony from children a) Be considered a last resort in information gathering; and b) that if a child has to testify that an attorney for the child be mandatory.	Children's Voices The recommendations in Children's Voices (now Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial in those instance to take testimony from the

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		child rather than through a third party. The cost and availability of counsel for children in family law sometimes makes it difficult or inappropriate for the court to make such appointments and considering these matters on a case-by-case basis is critical to proper adjudication.
	Enhancing Safety Wording is needed to clarify that Family Court is not doing a CPS investigation and that FC and CPS should work together rather than dictate to one another.	Enhancing Safety Updated to reflect this comment.
	Contested Child Custody What about a recommending mediation following a failed conf. mediation when there are no safety or other concerns to warrant an investigation?	Contested Child Custody The Task Force anticipates that pilot projects would develop approaches that reflect the recommendation and promising practices.
	Resources for Child Custody Mediation. Does “courts” mean the bench? If so, this rec should be rethought. It is next to impossible to predict how long a mediation will take, even if one is the mediator.	Resources for Child Custody Mediation. The Task Force recommendations seeks to enable the court (mediators, managers, judges) to identify the needs of various services and to meet those needs with appropriate resources. Mediation processes that result in

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		custody and visitation recommendations are permitted in counties by local rule and no recommendations in this section prohibit this practice from continuing. Contested Child Custody This section has been updated to clarify that the mediator should be able to tailor the mediation session or sessions to meet the needs of the parties.
	Access to family court services This has the potential to be one more layer on an already confusing system. It seems like the sort of procedure that would be abandoned in about six months.	Access to family court services These pilot projects are proposed to be implemented in those counties interested in providing a continuum of services and are not proposed to be mandatory statewide.
	Child Custody Language I agree with the change in language, but what about parents who have supervised or therapeutic supervised time? It just is not parenting time.	Child Custody Language The recommendation regarding use of the phrase "parenting time" has been amended to focus only on replacing "visitation" with "parenting time" where appropriate.
8. Guillermo Auad, PhD President Children's Rights Council	Minor's Counsel I'd add/clarify that it is further mandatory for Minor's Counsel to inform their clients of their right to make their voices heard, i.e.,	Minor's Counsel The Task Force recommendation reflects the importance of keeping

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San Diego, CA	children should know that if they make a request to their counsel, that that counsel is obligated to inform the court about such request. We foresee a problem Minor's counsels not informing their clients of their right to be heard by the court. This is very important especially for children, say 10 years (or so) and older. We congratulate you for recommending eliminating the words "visitation" and "custody" and for considerably reducing the power of minor's counsel. Overall we feel that many sections of your recommended changes need to be tighten up TO AVOID unscrupulous lawyers to look for excuses, manipulate in order to deviate a decision which is in the best interest of the child. We believe that this document should more specific to prevent lengthy/expensive legal procedures. I copy for your reference the Children's Bill of Rights currently used by the Children's Right Council (i.e., it's 60+ chapters). Note at the bottom that this Bill is used as parental agreement form and we distribute it with room for signatures.	children informed and making legislative changes necessary to require that counsel inform the court if a child wishes to have his or her desire expressed to the court.
9. Hon. Steven K. Austin Chair, California Commission on Access to Justice Judge, Superior Court of Contra Costa County	On behalf of the California Commission on Access to Justice, I am writing to provide input on the draft recommendations of the Elkins Family Law Task Force. We commend the Elkins Task Force for its industry, productivity and insight and we believe that your recommendations will do much to animate law reform in California in the years ahead.	

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	It is obvious to us that you benefited from a diversity of task force participants and were able to be precise about specific detailed reforms. In many cases, we do not feel the need to replicate your deliberations especially as they produced detailed technical suggestions found in your draft recommendations. Secondly, your draft was published before the governor signed the Sargent Shriver Civil Counsel Act, AB 590. It is clear to us that that Act represents a turning point in the historical efforts in California to establish the right to counsel in civil cases. Because of the centrality of the representation issue to your draft recommendations, we have included several suggestions for your consideration concerning the need for counsel in various family matters. We believe that the overview section should include a portion describing the transition period that California is presently in with regard to providing counsel to the unrepresented. Because of the importance of your recommendations, we suggest the following The Sargent Shriver Civil Counsel Act is now the law of California having been signed by the Governor on October 11, 2009. It establishes the policy of California to be as follows SECTION 1, paragraph (d) - "There are significant social and governmental fiscal costs of depriving unrepresented parties of vital legal rights affecting basic human needs..." SECTION 1, paragraph (e) - "Expanding representation will not only improve access to the courts and the quality of justice obtained by these individuals, but will allow court calendars that currently include many	The report will be amended to provide information regarding the Sargent Shriver Civil Counsel Act (AB 590) in the overview.

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	self-represented litigants to be handled more effectively and efficiently." "While court self-help services are important, those services are insufficient alone to meet all needs. Experience has shown that those services are much less effective when, among other factors, unrepresented parties lack income, education, and other skills needed to navigate a complex and unfamiliar court process, and particularly when unrepresented parties are required to appear in court or face opposing counsel." Specifically, the Shriver Act authorizes pilot projects to begin in July of 2011 that should include supplying representation on a test basis in domestic violence and civil harassment restraining orders, and child custody in actions by a parent seeking sole legal or physical custody of a child -- particularly where the opposing side is represented. The need for additional funds to provide representation in certain highly sensitive cases as described in this set of recommendations is essential in California. [In addition to family law, the Shriver Act also includes other substantive areas, such as housing-related matters, conservatorships, and elder abuse. Which substantive areas are selected as part of the pilot projects will be determined by the Judicial Council following a competitive grant-making process.] Specific Comments On Proposed Recommendations Live Testimony Our Commission supports your recommendation of live testimony as	Live Testimony The purpose of the recommendation is

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	we believe that the opportunity to see and hear the witnesses is essential. We support your recommendation as it is central to the reason for the creation of your task force. It also comports with traditional due process concepts and is likely to lead to a better impression of court proceedings retained by participating parties. Because of our support of live testimony, we approach the finding of good cause not to receive live testimony with caution. In the present format of your recommendations including paragraph b, a through f and h are worded as though there must be a finding of their presence to support live testimony. We are concerned that the wording of the good cause provision will allow judges to cut off live testimony in busy courts with resulting party frustration and inadequate records being made. If the court finds applicable the good cause exception, then the court must allow the party proffering the live testimony to make an offer of proof as to the proposed testimony. If the party is not represented by counsel, the court must explain the meaning of the term "offer of proof" to the unrepresented party. Expanding Legal Representation Funding for Legal Services.	to provide a list of factors that judges must consider when deciding whether or not to take live testimony. The requirement that judges state in writing or on the record their reasons for denying the right to live testimony is intended to encourage the right to present the right to live testimony/ This concern should be fully considered in drafting a rule to implement the recommendation. . The recommendation has not required an offer of proof for the parties in the case to provide live testimony. However, the recommendation has been modified to provide for offers of proof when testimony of additional witnesses is requested. Requiring a judge to explain the concept of an offer of proof should be considered in developing implementing rules. Expanding Legal Representation Funding for Legal Services

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	We think this section should be expanded to reflect the status of the Shriver Act. We hope that your final task force report will stand for the proposition that parents cannot be denied rights concerning their children when they are not represented. Similar acute problems are present in the domestic violence area in some courts.	This section will be modified to reflect the status of the Shriver Act. While the Task Force recognizes the crucial importance of counsel, it also recognizes the fiscal challenges associated with this need.
	Pro Bono Opportunities We believe pro bono for family matters presents some unique and very difficult problems. There certainly are lawyers in California who do considerable pro bono family work. However, other counsel are attracted to what they believe are more interesting and less stressful issues. There is a long history in organized bar association pro bono programs of neglect in the family law area. Many lawyers in California believe it is the most difficult area to obtain needed amounts of pro bono representation. We think this obstruction to pro bono work should be described and addressed in paragraph c, page 16.	Pro Bono Opportunities Additional information regarding challenges will be included.
	Many lawyers willing to provide pro bono services are reluctant due to a lack of familiarity with family law issues and a lack of training in how to deal with clients in an emotionally charged situation. Training seminars and skills clinics should be expanded, in partnership with local law schools and bar associations, so that attorneys who are willing to volunteer services but fear the specialized area of family law are empowered to perform pro bono services in the family law courts. Certainly, the percentages of unrepresented family litigants in California support the dire difficulties in obtaining pro bono representation. Organized bar work to help fill the need should be a	The recommendations regarding training will be expanded for those attorneys who do not currently practice family law.

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	priority.	
	Limited Scope Representation We suggest that limited scope representation is very important right now. Aspirationally we believe it is important to move towards full representation so there will be proper due process in the family courts.	Limited Scope Representation No response required.
	The Commission believes that pro bono representation in family law cases will increase as the courts and attorneys accept limited scope representation. The support of this recommendation does not diminish the importance of the right to have counsel appointed in family law cases, especially if the other parties or the minor child are represented by counsel.	Pro Bono Representation. No response required.
	It seems that it is hard to get attorneys to agree to offer limited scope services, and one problem may be that local bar leaders are being approached, who may often be the attorneys who take the higher end cases, and wouldn't necessarily be interested in limited scope cases. One suggestion is to reach out to local, women's, specialty and minority bar associations and offer the mentoring and the training that the recommendations mention as a way to increase the pool of attorneys who might be more amenable to a limited scope arrangement. They could be encouraged to pursue "unbundling" as a way to expand their practice. This would also potentially expand the reach of services to litigants who do not speak English, which has become an increasingly serious issue in California.	Will add references to reaching out to local, women's specialty and minority bar associations.
	Caseflow Management Early Interventions We wholeheartedly support your call for early interventions. In some	Caseflow management Early Interventions

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	significant number of family matters, that early period presents an island of affirmative approaches that could resolve more cases. We support your suggestion that the identification of issues that remain in dispute is a very important procedural step.	No response required.
	Providing for Child Safety and Well Being in Court Proceedings. Perhaps there is no more important set of recommendations in your draft than the call for child safety and well being in court proceedings. The trauma associated with some public court confrontations can cause irreparable injury to the child. Specifically, your call for the judicial officer to control the examination of the child is essential. We agree with your suggestion that there are several different methods for obtaining input from the child. We also agree with your suggestion in paragraph b, that the child need not necessarily testify in a courtroom.	Providing for Child Safety and Well Being in Court Proceedings. No response required.
	Domestic Violence. We support your recommendations under domestic violence. The survival of orders is much needed. We also agree with your call for the preservation of due process and the need for a fair hearing at which a party is permitted to give testimony and call witnesses.	Domestic violence No response required.
	Enhancing Safety We support your call for the enhancement of safety in family courts. We believe that sufficient staffing with sheriffs in appropriate matters can have many beneficial effects. We believe there are times in certain specific family cases where the dangers to the participants and even the court meet or exceed those encountered in criminal courts. The judges of California should have the ability to be supported by needed sheriff protections when appropriate.	Enhancing Safety No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

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	Minor's Counsel The Access to Justice Commission is aware that the question of the appointment of minor's counsel is extremely complex and nuanced, with strong disagreement about what is in the best interest of the minor as well as what will achieve the most fair process. Because the Access Commission does not have particular expertise on this question, and we are aware that those with expertise on the issues will be providing extensive input, the Commission does not comment directly on the basic question posed here. However, we do want to add an important note of caution. There are sensitive and complex legal issues created when a minor has counsel and a parent does not. When a minor in a contested custody proceeding is appointed counsel, and the target parent qualifies, equal protection and due process require appointment of counsel for the target parent. We are hopeful that this issue will be addressed in the Shriver Act pilot programs so that progress may be made on this point.	Minor's Counsel No response required.
	Expanding Services To Assist Litigants in Resolving Their Cases. Because of the expertise represented by members of your task force we know that they are aware of the dangers presented in a settlement of family matters in cases where one litigant dominates another forcing an inappropriate settlement. We think this difficulty in settlement should be noted in your recommendations. Counsel facilitating settlements in such cases would be aware of this problem as part of their education, which you suggest.	Expanding Services To Assist Litigants in Resolving Their Cases The language has been revised to discuss power imbalances.
	General Form Review We support your recommendations for streamlining family law forms	General Form Review Will add a recommendation that the

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	and procedures, especially the principles that these forms should be easy to use, allow parties to provide critical information requested by the court, and be readily accessible. We suggest including a recommendation that these forms be available in a variety of languages. Enhancing Mechanisms to Handle Perjury We support strongly the idea that there is much apparent perjury in family court. It presents difficulties to the judge and, of course, to the participants. The question we see is whether there is an easy way to solve that problem. The emotional component runs high and accounts for some of the problem. We approach the idea of additional sanctions with caution especially because of those emotions. Additional sanctions can cause additional litigation, consumption of time, resources, and occasionally appeals. We wanted to raise the question of whether sanctions are the best way to proceed. Interpreters Our Commission has worked actively in dealing with the needs of interpreters in California. For many years, our Commission has been involved with efforts to expand language assistance in civil and family law cases, including publication in 2005 of a report entitled "Language Barriers to Justice in California." We wholeheartedly endorse the series of recommendations in your draft report. However, we urge you to add one more recommendation that indicates that while grant funding should be sought to expand the types of cases where interpreters are available, that that is a stop-gap measure. The primary source of interpreter funding should be state funding, and the courts should continue to seek adequate state funding for interpreters in important civil and family law cases. Three Commission recommendations in its	forms be available in translation for instructional purposes in the materials regarding litigant education. Enhancing Mechanisms to Handle Perjury This recommendation has been modified in response to comments. Interpreters Will make the change to remove grant funding to make it clear that general funding is essential.

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	2007 Action Plan for Justice, page 72, address this issue "Guarantee qualified interpreter services in civil proceedings." [Action Plan Recommendation 21] "Develop policies and procedures to improve language access", including training and resources for court staff and judicial officers; expanding multi-lingual self-help centers; and pursuing research to determine the actual unmet need and to develop appropriate solutions. [Action Plan Recommendation 22] "Reevaluate the system for recruitment, training, compensation and certification of court interpreters." [Action Plan Recommendation 23]	"Guarantee qualified interpreter services in civil proceedings." The AOC has a number of programs in place to develop policies and procedures to improve language access. The Task Force recognizes the critical importance of these areas, but believes that a recommendation regarding reevaluation the system for recruiting, training, compensation and certification of court interpreters is one best addressed by the Court Interpreter's Advisory Panel.
	Interpreters are also important for the family law self help centers. Because of limited resources, self-help centers often advise litigants to bring an adult translator to the Self-Help Center with them. These family/friend interpreters are not familiar with legal terms and court proceedings, and may not be able to translate important terms. There should be trained interpreters for self help centers.	The Task Force has recommended that interpreters be available for all court operations.
	One suggestion we would like to make with regard to cases involving the need for interpreters is to mark the electronic records as well as the physical files with an indication that a party requires an interpreter and the language required. With such a system, it will be clear in advance that one or both parties needs an interpreter and the interpreter can be scheduled. Advance scheduling enables court room supervisors to pool	This suggestion regarding indicating the need for an interpreter on electronic as well as physical files is crucial for an effective system will be included in implementation efforts.

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	resources and schedule interpreters accordingly. The California Court Case Management System (CCMS) that is in development by the Administrative Office of the Courts will support the tracking of the language needs in court proceedings supporting the recommendations of the Elkins Task Force. The system will provide the ability for regional and local court interpreter coordinators to schedule and track language assignments for court cases. CCMS will also contain functionality to run statewide reports on the use of court interpreters and the language services provided. It is critical that the development and deployment of this system be completed in order to meet these important objectives and so many others. Public Information and Outreach The Commission strongly supports this recommendation. We suggest adding that the Administrative Office of the Courts partner with the legal services agencies and their community partners to not only educate the public about what services are available to them, but also to educate the bench about available community resources for family law litigants, such as no and low cost counseling, parenting classes, support groups and classes for survivors of domestic violence and their children, and domestic violence shelters. Leadership, Accountability and Resources There is a lack of adequate judicial resources in the state, and the need for more judges assigned to family law is one example of a problem that plagues the entire judicial branch. The Access Commission strongly encourages the Legislature and the Governor to set a high priority on funding additional judicial officers to permit full	CCMS Being able to indicate the need for an interpreter is critical and that CCMS has incorporated this feature which should be deployed as soon as possible. Public Information and Outreach Standard of Judicial Administration 5.30 (f) (7) anticipates this broad outreach and leadership role in support of a wide variety of services for families. Leadership, Accountability and Resources. The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements

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	implementation of the many excellent recommendations in this Report.	to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law.
10. Yolanda Bachtell, Attorney at Law Law Offices of Yolanda Bachtell	Please create uniformity between all courts. Each court has different rules that make it difficult to present matters to the Court.	Increasing uniformity of courts to make it easier to present matters is the intent of recommendations regarding statewide rules of court.
11. Enid Ballantyne No county information provided	I am a long-time family law practitioner; I sometimes have trouble enforcing support orders, especially if NCP is self-employed. If my client cannot afford elaborate document searches and depositions, I have few tools to work with. I can, of course, send the party to the local Bureau of Family Support; that agency can take months to enforce an order by suspending a driver's license and a professional license. I think the private bar should be permitted to send a notice of failure to pay support with appropriate documentation such as a judgment or order after hearing to licensing agencies. The burden would then shift to the other party who would be given notice and the right to contest the license suspension. He/she could then go to court and have a hearing on the issue. This would be a powerful tool that would help tremendously in support collection.	This is a matter that would need to be considered by the legislature. These types of enforcement remedies, which are both fairly severe in nature and done without prior judicial approval, appear to have been deliberately limited to the child support agency due to concerns about potential abuse or mistakes. Concerns were also voiced by the various licensing agencies regarding the increased workload on them and increased cost. The Department of Child Support (DCSS) license suspension authority increases those other agencies' workloads, however, it is able to electronically submit their suspension list to many of the licensing agencies and those

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		agencies then only have to deal with one entity (DCSS) to resolve any issues rather than multiple individual submissions.
12. Steve Baron Former Director of Family Court Services Superior Court of Santa Clara County (Retired)	I agree with the recommendations with the following modifications Child Custody Language Comment The phrase “parenting time” should not replace in any manner or refer to matters involving “legal custody," “joint legal custody,” or either of those followed by any conditions related to them in that “parenting time” has little or nothing to do with the legal authorities and divisions of legal authorities associated with legal custody issues. Nor should “parenting time” substitute for “Sole Physical Custody” or “Joint Physical Custody” in that physical custody determinations under current law/case law are clearly related to move away considerations and change of physical custody requirements. “Parenting time,” however, should be used in all references to division of actual time sharing and also to replace the term “visitation.”	Child Custody Language The recommendation has been amended to recommend that “parenting time” be considered as a replacement for “visitation” but not for “custody.”
13. Elizabeth Barton, AM, Ph.D. Board Member Fathers & Families Los Angeles and Boston	*Attached please find Fathers & Families’ comments on the Task Force draft recommendations. We thank the Task Force for its work, and believe that many of the problems the Task Force cites have long merited reform. Fathers & Families is a national family court reform organization with offices in Los Angeles and Boston, Massachusetts. We believe that children are greatly harmed by high-conflict divorce cases and our current family law system. Too often children lose one of the two people they love the most-their fathers or sometimes their mothers-	

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	because our system fails to protect the loving bonds children share with both parents. We believe that the draft recommendations are a good start to address these issues. We are concerned, however, that many of the draft recommendations are lacking in substantive detail. Nevertheless, we will withhold judgment until we see the final report, which will contain the detailed and specific language that will become actual legislative draft proposals. Right to Present Live Testimony Agree with the recommendation Expanding Legal Representation Agree with the recommendation subject to modifications as described below Attorney Fees (8) Early needs-based awards Add clear language for sanctions against the needs-based party and or their attorney if it can be shown that the needs-based party or their attorney is using the availability of the needs-based award to drive unnecessary/frivolous litigation for the sale purpose of increasing the other party's costs. Caseflow Management Agree with the recommendation subject to modifications as described below We certainly agree with the provision to sanction attorneys themselves. We believe this is long overdue, and we welcome the Task Force's recommendation on this.	Right to Present Live Testimony No response required. Expanding Legal Representation The Task Force believes that its proposed recommendations regarding sanctions appropriately respond to this concern. Caseflow Management No response required. Attorney sanctions No response required.

Commentator	Comment	Committee Response
	Default Orders While this case title mentions default orders, it lacks language to address California's serious problems with bad/poor service process. This poor service leads to a high rate of default orders. This is a very serious issue which needs to be addressed.	Default Orders Based upon investigations of this issue, the high default rate in California for governmental child support cases compared to other states appears to have more to do with the proposed judgment process that is used in child support cases brought by the local child support agencies. The procedures in governmental child support cases involve the preparation of a proposed judgment that is served upon the respondent along with the summons and complaint. The proposed judgment includes the amount of child support and other provisions that will be entered if the respondent does not file an answer to the complaint. In essence, this creates the possibility for a "consent" default if the respondent agrees with the proposed judgment, without the need for any further action on the respondent's part.
	Provide Clear Guidance Agree with the recommendation	Provide Clear Guidance No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Children's Voices Agree with the recommendation Domestic Violence Agree with the recommendation subject to modifications as described below Comments While we agree with the recommendations in principle, the recommendations sidestep the serious problem of many litigants using the TRO and RO process as a tactical weapon in child custody cases. FLEXCOM wrote in their Vol. 27, Number 4, 2005 newsletter "The primary concern of the Family Law section of the State Bar was that these protective orders are increasingly being used in family law cases to help one side jockey for an advantage in child custody and/or property litigation and in cases involving the right to receive spousal support." "While clearly these protective orders are necessary in egregious cases of abuse, it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes rather than from the true need to be protected from a genuine abusive batterer." The Task Force's recommendations should also include clear language for serious sanctions against any person using TROs or ROs as a tactical weapon. Whether this is addressed in this recommendation or in number 14 ("Enhancing Mechanisms to Handle Perjury"), this serious problem shouldn't be ignored.	Children's Voices No response required. Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. Where such conduct would amount to perjury, the Task Force addresses the issue in the section on perjury. However, the Task Force is also aware that the remedy for someone unable to prove that they need a restraining order is the court not issuing that restraining order; imposing any other sanctions for requesting a restraining order has the potential to increase the number of hearings and resources required in this area.

Commentator	Comment	Committee Response
	Enhancing Safety Agree with the recommendation Contested Child Custody Agree with the recommendation subject to modifications as described below Comments We agree with this recommendation. However, the current mediation orientation materials being used by most if not all courts in California are outdated and are based on ideology rather than evidence-based research and data. Mediation materials should also include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces and parental alienation have on children. It is our belief that better parent education in this regard at the beginning will reduce the number of high-conflict custody cases. We would also request that the Wisconsin Supreme Court's "A Child Bill of Rights" and "Co-Parent's Bill Of Rights and Responsibilities," written by Frank Leek, Ph.D., be included in all mediation materials as guiding principles for all parents and mediators. Commentator provided a copy of these documents. Minor's Counsel Agree with the recommendation Scheduling of Trials -	Enhancing Safety No response required. Contested Child Custody Orientation As part of litigant education, the Task Force recommends addressing concerns about orientation content during implementation. Minor's Counsel No response required. Scheduling of Trials

Commentator	Comment	Committee Response
	Agree with the recommendation Litigant Education Agree with the recommendation subject to modifications as described below Comments Parenting education should be evidence-based. As in NO.6, materials should also include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces and parental alienation have on children. Evidence-based information on the importance of the involvement of both parents in children's lives should also be provided. Also see comments for No.8 Contested Child Custody and attachments to No.8. Expanding Services to Assist Litigants Agree with the recommendation Streamlining Family Law Forms Agree with the recommendation Enhancing Mechanisms to Handle Perjury Agree with the recommendation subject to modifications as described below Comments Perjury, including perjury by declaration, runs rampant in family courts and is seldom punished. We applaud the Task Force for making this	No response required. Litigant Education Agree that parenting education should be evidence based. There is continuing research in this area and the specifics of content should continue to be developed over time. Expanding Services to Assistant Litigants No response required. Streamlining Family Law Forms No response required. Enhancing Mechanisms to Handle Perjury This recommendation is being amended based upon comments received to make it clear that civil sanctions are not the only appropriate mechanism for addressing perjury.

Commentator	Comment	Committee Response
	recommendation. However, we believe that civil sanctions do not always provide the level of justice merited by a party who has been injured by perjury. Therefore, we believe reasonable criminal sanctions should also be added. Also see comments for No.6, Domestic Violence. Standardize Default and Uncontested Cases Agree with the recommendation subject to modifications as described below Comments While we agree with the recommendation in principle, default judgments are routinely entered in out-of-wedlock child support and paternity cases, largely due to poor and unverified service process. California's default orders rate is still well over 50%, whereas other states' rates range from 10 to 20%. We recommend that a provision be added for a review hearing in these cases once they're discovered. This would amount to the defaulted party having their day in court if they had never been properly served or served at a verifiable address.	Standardize Default and Uncontested The high default rate in California compared to other states appears to be based upon the proposed judgment process that is used in child support cases brought by the local child support agencies rather than lack of notice. The procedures in governmental child support cases involve the preparation of a proposed judgment that is served upon the respondent along with the summons and complaint. The proposed judgment includes the amount of child support and other provisions that will be entered if the respondent does not file an answer to the complaint. In essence, this creates the possibility for a "consent" default if the respondent agrees with the proposed judgment, without the need for any further action on the respondent's part.

Commentator	Comment	Committee Response
	Interpreters Agree with the recommendation Public Information and Outreach Agree with the recommendation Judicial Branch Education Agree with the recommendation subject to modifications as described below Judicial education should be evidence based, as opposed to ideological, in nature. As in parenting education above (No.6, 8 and 11), materials should include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces, false allegations and parental alienation have on children. Evidence-based information on the importance of the significant involvement of both parents, fathers and mothers, in children's lives, should also be provided. Family Law Research Agenda Agree with the recommendation Court Facilities Agree with the recommendation Leadership, Accountability. and Resources Agree with the recommendation	Interpreters No response required. Public Information and Outreach No response required. Judicial Branch Education Details about the content of the recommended approach to and content of judicial education will be addressed in the implementation process. The suggestion re evidence based will be forwarded. Family Law Research Agenda No response required Court Facilities No response required. Leadership, Accountability and Resources No response required.
14. Cherami Bartow Santa Rosa, CA	Contested Child Custody Part 2 Child Custody Mediation Services	Contested Child Custody The Elkins Family Law Task Force

Commentator	Comment	Committee Response
	Family Court Services Mediators should be bound by rules concerning ethics; (i.e. treating the parties with dignity and respect). A fair amount of time to be heard for each party should be included in mediation services. New mediators should be monitored by a supervisor for a probationary period of time such as 6 weeks, 90 days, etc. Parties should have reasonable resources available to submit complaints without suffering bias the next time they must attend mediation.	focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. However, Family Court Services employees are bound by the Trial Court Employee Code of Conduct and the California Rules of Court, rule 5.210 which includes section (h) addressing ethics. Recommendations do address the need to have mediation sessions and processes that are responsive to the particular needs of a given case, allowing for more or less time as needed. New mediators throughout the state routinely receive training, supervision, and mentoring during the start of their career, and all mediators receive continuing education each year. Complaint processes. The Task Force agrees that complaints should be able to be submitted without concerns about litigants experiencing bias.

Comments on Elkins Family Law Draft Recommendations

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Commentator	Comment	Committee Response
	Handling Perjury The Court should be more inclined, upon its own motion, to address the issues of perjury in family law. Generally, it seems like a party must take steps in civil court separately by commencing action through the District Attorney. When a Family Law judge recognizes, by offered proof of a party, that perjury has been committed by the other party, a ruling should be made, at a minimum, as to bad faith, sanctions, or similar.	Handling Perjury The recommendations in this section have been significantly revised. This issue is one that should be considered in development of implementing rules.
	Judicial Branch Education Family Court Services Mediators should be bound by statewide standards of education. ALL mediators should be licensed with the California Board of Psychology. ALL mediators should have a MINIMUM of 24 college units in Early Childhood Education. Ongoing educational programs should include ongoing evaluation/testing as to individual mediator's knowledge.	Judicial Branch Education Mediator education and experience requirements are provided for in statute and by rule of court, and a statewide rule of court and required training is provided annually.
	Credentials of all prospective mediators should be verified prior to being hired by the County.	The Task Force supports the concept that courts should verify credentials as part of its hiring practices.
	It is currently unclear whether serving as an FCS mediator is considered the practice of psychology. Those holding a position which greatly effects the lives of children should be held to greater standards than is currently required. In my opinion, mediators are practicing psychology and should hold appropriate credentials, and be held accountable for their words.	The definition and scope of child custody mediation has been provided by the legislature and has not included equating mediation with the practice of psychology. This is a substantive area of law in which the Task Force chose not to make recommendations given its primary focus on procedure.

Commentator	Comment	Committee Response
	Statewide standards should be implemented as to Family Court Services Mediators, generally.	California Rules of Court, rules 5.210 and 5.215 specially address mediator and mediation requirements.
15. Naghmeh Bashar, Attorney at Law and Chair Law Offices of Beatrice L. Snider, APC San Diego Family Law Action Committee San Diego, CA	On behalf of the San Diego Family Law Action Committee Recommendation 1 Right To Present Live Testimony At Hearings Summary The Elkins Task Force discusses the case of IRMO Reifler wherein it was held that evidentiary declarations may be used by litigants in lieu of live testimony in a particular post-judgment modification hearing. The use of declarations verses live testimony was to be a case-by-case decision and not a rule with respect to all cases. The Elkins Task Force has, however, opined that many courts have simply done away with live testimony and have essentially adopted the declarations format of presenting evidence. Credibility and hearsay statements are particularly important issues being addressed in the report. The Elkins Task Force suggests a return to live testimony. The San Diego Regional Standing Committee has concerns regarding this recommendation. A few counties that are already implementing this method have a terrible back-log with sometimes entire days being wasted waiting for a courtroom to open up for the taking of oral testimony; thus delaying immediate relief in deserving cases. One example given at our meeting a hearing in Orange County on a morning calendar wherein an attorney told the judicial officer he wanted to take cross-examination based on a declaration that was written. The judge requested the counsel wait until a courtroom was	Summary The Task Force recommendation does not eliminate the discretion of judges to deny the right to live testimony, or to limit the scope of the testimony it allows. It sets out factors judges must consider in making the decisions about allowing live testimony. Responses from an attorney survey and input from the public-at-large have provided the Task Force with numerous examples of situations in which issues could have been resolved more quickly if only the parties have been allowed to present testimony, and the judge then proceeding to make a decision. The Task Force recognizes the importance of timely access to hearings and disposition of contested issues address the concerns about timely hearings that are conducted to

Commentator	Comment	Committee Response
	found. By 1130 a.m. (already two to three hours later, the courtroom was found in another distant courthouse and they had to show up at that courtroom by 100 p.m. that afternoon. A morning hearing became an all-day event; rarely can a party afford to pay counsel for an entire day. In other instances, the initial setting for live testimony was set weeks away. It was noted that IRMO Reifler did not reach the pre-judgment hearings. How do we solve the backlog issue that is occurring? This recommendation must be tied into court and litigant resources, which is difficult especially for a spouse who has no resources. The Reifler procedure permits the courts to hear more matters and decreases costs for litigants. Sufficient resources must be allocated to the family court to hear live testimony. In certain cases, custody, complex financial matters, live testimony may take 1, 2 or 3 trial days. Without sufficient resources (more judges, more judges with family law experience), this recommendation for live testimony should not be implemented. The delay to a needy parent in need of support should not be compromised. Another concern is the lack of attorney fees for the spouse in need. In some or even many cases, their counsel must be prepared for trial on a first OSC without necessary fees and costs. Provision must be made for immediate fees and costs so there is an even playing field at the first litigated live testimony OSC. Without the means, the right to present live testimony is worthless and even worse, it places the needy spouse at a severe disadvantage because the spouse with the greater ability will have the ability to present his/her case i.e. experts, costs, etc.	the greatest extent possible without interruption. The Task Force recognizes that there are a number of procedural matters that are ancillary to the fundamental issues in the case, and can be adequately decided on the basis of declarations alone. With respect to substantive matters in which there are material facts in dispute, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair, but increased attorneys' fees. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessive declarations, and resulting motions to strike. Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will

Commentator	Comment	Committee Response
	San Diego County has already implemented a system whereby if a party wants live testimony or to cross-examine a witness, they make a request for a special set and the court will grant the request whereby the parties have approximately two hours of time dedicated to them. When the parties show up at the hearing, the time is already allocated. San Diego County rules have successfully implemented the reverse of the Elkins recommendation; i.e. no live testimony (Reifler) unless you request live testimony.	consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. The Task Force became aware of that a number of calendaring practices currently used by courts that will support implementation of this recommendation.
	Rule of Court. Agree with this recommendation. Live Testimony Agree that litigants should have the right to present live testimony. However, as recommended by the Elkins Task Force, the San Diego Standing Committee does not agree with this recommendation. Generally, San Diego prefers to conduct its hearings, whether pre or post judgment, as it currently does; i.e. the hearing be conducted on declaration basis unless a finding of good cause shows otherwise, then live testimony should be taken.	Rule of Court. Agree. No response Required. Live Testimony The Task Force concluded that the decision whether or not to allow live testimony must be based on the subject matter of the Order To Show Cause or Motion, and not on where in the court process it takes place, and that the right to present testimony on certain matters is so fundamental to basic fairness, it must only be denied for

Commentator	Comment	Committee Response
	If the above is not possible, then the committee recommends that the language be as follows there should be a hybrid – for any pendent lite hearings where no judgment has yet been entered, the hearing be conducted on declaration basis unless a finding of good cause shows otherwise, then live testimony should be taken. For any post-judgment hearing, oral testimony should be taken where a judgment is being modified. Litigants in civil litigation, not related to family law, proceed in law and motion by way of declarations. In the typical case, if the parties desire to proceed by declaration this should be permissible without any finding of good cause. There is a countervailing dissenting view that live testimony would costs too much and it hurts the dependent spouse who cannot afford to litigate this early in the proceedings. In other words, live testimony would be great, but without resources for the court and spouse it is not. Also, live testimony creates logjam at the courthouse and delay getting immediate relief. One recommendation from the SD Standing Committee Modify the [OSC and Notice of Motion] Request for Order forms to add a "box" wherein parties could pre-request on the form that they request live testimony. In that case, the clerk of the court can automatically calendar the hearing for a special set or live testimony without any waste of unnecessary resources and court's time. The Request for Order form and Response should also provide space so that witnesses that will be called should be identified and with a short	good cause. The Task Force believes that allowing the litigants the right to testify at their hearings would take much less than two hours in many, if not all cases. Should additional witness testimony be requested, then courts may choose to set the matter for further hearing should the judge decide to allow the additional testimony. Courts should continue to use creative calendaring methods to manage the flow of their cases. The input that the Task Force received from the public in writing, during periods of public comment at the Task Force meetings, and at the public forums held in San Francisco and Los Angeles, uniformly supported the right to present live testimony. The Task Force shares the concerns about the availability of attorneys' fees, and has modified the recommendation on Increasing Attorney Representation to clarify the importance of early needs-base attorney fee awards.

Commentator	Comment	Committee Response
	statement concerning their areas of testimony. The revised form should provide space for identification of witnesses, addresses, phone numbers and areas of testimony. The area of testimony should disclose material information in conformance with the fiduciary duties set forth in Family Code section 2100, 2102. In all cases, potential witnesses should be identified within 10 days of the first hearing date. Such a rule prevents trial by ambush, permits an opposing party to take discovery and/or depositions as permitted (by Code or by ordering shortening time). While permitting pro per the opportunity to speak at the OSC, to have their "day in court," such a result should only be accomplished with reasonable notice to permit the opposing party the ability to rebut the proposed testimony. While a pro per has rights, so does the opposition and timely notice with witness identification and area of testimony is reasonable, appropriate and consistent with due process for the responding party. If a timely request for live testimony (with witness identification) has been filed and served, the court shall permit live testimony. Good Cause Exceptions. Disagree. One gets live testimony if he/she requests it.	The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The decision about which, if any Judicial Council forms will be initiated or modified in this regard will be considered in developing rules of court to implement this recommendation. Good Cause Exceptions - The Task Force received many comments requesting that there be no good cause factors and that judicial discretion to deny requests for live testimony should be eliminated completely, with or without any notice at all. The Task Force believes that judicial discretion should be maintained with reviewable factors that must be considered in the exercise

Commentator	Comment	Committee Response
	Summary Elkins Task Force acknowledges that legal information and advice are critical in Family Law Matters and that the emotion and financial impact of Family Law issues cannot be overestimated. They start their summary by saying that some self-help litigants will be able to effectively handle their own Family Law matters but many will not. They believe that litigants may need representation "only on selected matters." The Task Force goes on to talk about assisting litigants in a "cost-effective" manner and providing a "continuum of services" that includes not only assisting with forms and explaining the process but goes well beyond that in recommending the giving of legal advice, providing mediation services, even to "representing a litigant on a portion of a case." SD FLAC working group, while supporting certain aspects of this recommendation, rejects the spirit of the recommendation as well as the vast majority of the specific recommendations.	of that discretion.
	Attorney's Fees Statewide Rules and Forms We strongly support the recommendation creating a statewide guideline for the award of attorney's fees including requirements to allow self-help litigants seeking attorneys to provide the information needed for the court to issue an initial attorney's fees award.	Attorney's Fees Statewide Rules and Forms No response required.
	Attorney's Fees Early Needs-based Fee Award We strongly support the recommendation of the court's paying careful attention to early needs-based attorney's fees awards rather than deferring the issue to trial. The 1985 case of IRMO Hatch provides it is reversible error if the court	Attorney's Fees Early Needs-based Fee Award No response required.

Commentator	Comment	Committee Response
	refuses an award of pendente lite attorney fees and costs without considering the needs of the requesting party and the other party's ability to pay. To hold otherwise would frustrate the purpose of pendente lite fee awards – i.e. to afford a financially disadvantaged party the opportunity to obtain legal representation reasonably equal to the other party. (IRMO Hatch (1985) 169 CA3d 1213, 1219)	
	Attorney's Fees Assistance in Preparing Requests for Fees and Obtaining Counsel While we would strongly support this recommendation, there does need to be clarification that the limited scope appearance for the purpose of obtaining early needs-based attorney's fees shall be done by attorneys and not the self-help center and/or the facilitator.	Attorney's Fees Assistance in Preparing Request for Fees and Obtaining Counsel Agree that this could be clarified. Neither facilitators nor self-help attorneys make appearances in court.
	Referrals to Private Attorneys We strongly support this recommendation for the local lawyer referral service to encourage and develop the modest means/low-fee Family Panel, as well as panels for attorneys who offer unbundled legal services. San Diego County already has a similar program.	Referrals to Private Attorneys No Response required.
	Funding for Legal Services We agree with the spirit of this recommendation but by use of the phrase "for litigants unable to afford private attorneys" there is an implication that there will be a needs-based analysis for each individual litigant before services are provided. To the extent that a needs-based analysis is performed prior to providing low-cost or no-cost legal services, we agree with this recommendation. Otherwise, we strongly disapprove of this recommendation.	Funding for Legal Services The phrase "litigants unable to afford private attorneys" does indeed mean that there will be a needs-based analysis.

Comments on Elkins Family Law Draft Recommendations

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Commentator	Comment	Committee Response
	Increase Funding for Legal Aid to Assist with Family Law Matters Again, so long as there is a needs-based analysis done, we would strongly support this recommendation. Funding for Representation We would support this recommendation so long as there is a needs-based analysis done prior to providing any representation to litigants. Moreover, there is an assumption that there are funds available for the right to counsel in civil matters that concern "human needs" which, if true, should certainly include Family Law issues. However, the working group knows of no such funds or a right to tax payer funded representation in civil matters. Expanding Legal Service Programs for Appellate Cases We would support this recommendation if there is a needs-based analysis done prior to providing the self-help appellate program. Expanding Self-help Services We adamantly object to this section, so long as there is no needs-based analysis done before providing the self-help services. The Task Force states that attorneys feel that the self-help centers "are helpful." We believe that "self-help centers" are actually a hindrance to the Family Law litigation process. People who can afford attorneys who simply	Increase for Funding for Legal Aid to Assist with Family Law Matters Agree, no response required. Funding for Representation Agree that there will be needs testing. AB 590 (Feuer) chaptered in October 2009 provides funding for pilot projects to assist litigants whose income is 200% of less of the poverty line. 20% of those funds will be used to assist litigants with custody matters. Expanding Legal Services Programs for Appellate Cases The Task Force has heard repeated testimony from the public about the difficulty of the appellate process. It is critical that basic information be available about the process – including the benefits of hiring an attorney or referrals to pro bono for those with limited incomes. Expanding Self-help Services. The issue of charging for court-based self-help services was considered by the Judicial Council's Task Force on Self-Represented Litigants. That Task

Commentator	Comment	Committee Response
	wish to have the State provide these services for them, use the service and thereby drain resources away from those litigants who actually need the assistance. We strongly recommend a modification to the tax payer paid service model of the self-help/facilitator centers. These centers should be required to do a needs-based analysis and the State create a sliding scale, fee-based system so that those people who truly need the service would have access to that service for free, while moderate income litigants would pay a moderate fee; those litigants who could afford legal services and whose income crosses a threshold set by the legislature would not have tax-payer paid-for services available to them. Requiring the facilitator to perform a needs-based analysis would be simple and straightforward and would save taxpayers a great deal. It would leave more resources available to the facilitators to help those people who need it but cannot afford it; it would force a majority of those litigants who can afford the legal services to obtain attorneys, thereby speeding up the litigation process and creating a more efficient system. We strongly believe that, by expanding the self-help services, the court system will feel the opposite effect of what it is seeking. There will be more self-help litigants, there will be longer and more unstructured litigation filed and the little resources the court has will be poorly used. The Facilitator's primary goal ought to be assistance of pro per litigants in brief, quick matters, process their documents versus being their attorney. Increased Funding for Self-help Services We strongly reject this section that calls for the "self-help centers to	Force determined that a needs-based analysis is indeed costly for the court and that all taxpayers should have the right to basic self-help services. Those services may well include information about the value of hiring counsel for those persons who are able to afford counsel. Increased funding for Self-help Services.

Commentator	Comment	Committee Response
	expand their services." The reasons for our rejection of this are set forth both above and in the analysis immediately below. Self-help Services Expanded We strongly reject this section which calls for the self-help services to expand to include training materials "on evidence and the matter in which the information can be presented to court." It appears to us that the facilitator's office would become a law school, teaching litigants how to present evidence and other information to the court. Is the facilitator's office presently prepared to hire significant numbers of attorneys because, if paralegals are presenting this information, they would be practicing law without a license. This section, while small, is the crux of the Task Force's attempt to turn Family Court into a Smalls Claims court or even a "Judge Judy" environment. This section calls for "self-help centers" to have resources available to assist self-represented litigants in hearings, trials, and appeals, such as information related to rules, forms, and timelines." If Section 4 of this recommendation is not based upon a needs-based finding, it depletes the value of every Family Law attorney throughout the state of California. Availability of Attorneys Mentoring Program We support this recommendation of creating a mentoring program for new attorneys in Family Law.	See response above and below. Self-help Services Expanded. A number of self-help programs currently provide this information. One legal aid/court partnership has developed a video demonstrating concepts of introducing and objecting to evidence which is available for all persons filing or responding to a motion. Paralegals might provide this information under the supervision of an attorney. Currently over 70% of divorces in California are filed without an attorney of record and 80% are completed without an attorney of record. Without the assistance of self-help centers, the courts would be in very difficult straits. Self-help centers which utilize experienced attorneys are critical to ensuring the value of family law attorneys. Availability of Attorneys Mentoring Program No response required.

Commentator	Comment	Committee Response
	Court-based Mentoring We support the court providing workshops or internship opportunities for law students and the local Family Law facilitator or Family Law self-help center offices, so long as the service is provided on a needs-based analysis. Pro Bono Opportunities We would strongly support this recommendation should it be predicated on finding that the litigant cannot afford competent legal service. Limited Scope Representation We do not support this recommendation that would encourage litigants to obtain legal services on a limited scope basis. This is encouraging litigants to hire attorneys for certain portions of their case but not others. We believe this can lead to conflicting rulings, exposing the attorney to malpractice claims and promotes a congestion of the Family Law legal system with self-help litigants who can afford an attorney.	Court-based Mentoring See response above regarding need-based analysis. Pro Bono Opportunities No response required. Limited Scope Representation Many attorneys in California currently provide limited scope representation. They report that many of the clients that they assist do not have the resources or would not choose to hire counsel for the entire case, and, but for limited scope representation would proceed without any assistance, which would have a greater impact on the court system. Insurance carriers who provide professional liability coverage have vetted the statewide Risk Management Materials developed for limited scope representation and have approved their use.

Commentator	Comment	Committee Response
	Conclusion We are of the impression that the Elkins Task Force does not perceive a Family Law as assisting the court in the proper administration of Family Law cases. It appears that the Elkins Task Force is of the opinion that pro per litigants with the assistance of a "self-help center" or "facilitator" is a more efficient means of litigating Family Law cases than having two competent lawyers involved in the action. We strongly disagree with the underpinnings of the recommendation that would promote self-help centers and facilitator offices for parties who can afford representation. We strongly believe that a Family Law matter, whether simple, complicated, or highly complicated is best facilitated through the litigation system when there are two lawyers looking out for their client's best interests. The use of self-help centers, facilitators, or legal aid is certainly appropriate for the very low income and low income litigant. However, history tells that the more a litigant earns, generally speaking, the more complicated the case becomes. Therefore the middle/higher income litigant needs more assistance than the court can afford to provide. A qualified attorney can aid not only the litigant but the court system as a whole. Any legislation that provides a means for middle and high income litigants to use tax payer services would create the exact opposite effect that the California Supreme Court sought when they issued their opinion in the Elkins case. This would in essence socialize Family Law only. Also, if a litigant does not like the services provided by the Facilitator's office, they have no recourse because the Facilitators are immune while at the same time they are putting their service out for the public.	Conclusion The Task Force recognizes the tremendous complexity and importance of family law as is clear from all of the recommendations, including all of those encouraging expansion of full representation. It is optimal that all persons receive assistance from qualified attorneys. The Task Force is however, mindful of the reality of the changing demographics of representation in California and throughout the nation. It is aware that in 2004, prior to the institution of self-help programs courts throughout the state reported that 70% of those persons filing for divorce, and 80% of those completing their divorce did so without counsel. 98% of those in governmental child support actions did not have counsel. Over 90% of persons seeking restraining orders did not have counsel. These statistics are similar through the United States. It is critical for all taxpayers to know that they can get access to the court system. They may receive information at the self-help center about the

Commentator	Comment	Committee Response
		importance of hiring counsel to ensure that their rights are protected since self-help programs are not designed to deal with high asset cases.
	Scheduling of Long Trial and Hearings Agree subject to modification below What is the statewide definition of long cause hearing? Is that any hearing where the parties do not waive oral testimony? Does the court need to be advised prior to the hearing when no waive of oral testimony is made. If so, how long in advance is such notice required? How will San Diego implement this rule so that San Diego based practitioners can meet their prescribed standard of care at the first OSC? If we assume any trial will fall outside the scope of the direct judicial assignment (going out on the wheel) are these trials/hearings going to be assigned to qualified veteran family law judges? (North County?) (South County?) (East County)	Scheduling of Long Trial and Hearings The Task Force has not attempted to define a long-cause hearing. Different courts define this differently and employ different calendaring strategies. The goal of the Task Force recommendation it to ensure to the greatest extent possible that once a hearing or a trial has commenced, it be completed without undue interruption or delay. The Task Force has concluded that the right of the parties to testify at their hearings is fundamental to due process and basic fairness in family law. Live testimony should be the standard, and the Task Force anticipates that attorneys, self-represented litigants and the court will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are

Commentator	Comment	Committee Response
		material facts in controversy. The recommendation has been modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force has not attempted to direct any specific implementation strategy to local courts. There are numerous possible creative calendaring strategies that depend on local court operations.
	Streamlining Family Law Forms Agree subject to modification below 2. A. Because the proposal limits the ability of a party from filing a motion "except in cases of emergency" how is this within the mandate of Elkins?	Streamlining Family Law Forms This recommendation has been modified in response to comments.
16. Gary Beeler Attorney The Rancho Family Law Center Mission Viejo, CA	Live Testimony "Live Testimony" proposal should distinguish between Motions and OSC's. Motions are traditionally related to a Question of Law, not fact. Therefore, supplemental oral evidence would be inappropriate. Requiring Judges to address the factors laid out in a - h is just adding to the court's workload. They are overworked already. Maybe all that is needed is a statement that those issues have been considered, rather	Live Testimony The practice regarding Motions and OSCs varies dramatically throughout the state, thus it is difficult to draw these distinctions clearly. The type of issue would be one issue for the judicial officer to consider regarding the need for live testimony. While a judge may be required to consider the factors, the reasoning he

Commentator	Comment	Committee Response
	than addressing each individual item.	or she must state in writing or on the record need only address the factors that are relevant to the decision that was made.
	Expanding Legal Representation This inquiry should include whether one litigant has access to credit that might be used to provide legal counsel for the other party, rather than limiting the inquiry to "is there cash on hand to assist the other party".	Expanding Legal Representation This suggestion regarding review of access to credit should be considered in developing implementing rules or forms regarding attorney fees.
	Funding for Legal Services I disagree with the idea that public resources should be used for legal aid assistance. Trying to do too much is the problem our state government has with its budget to begin with.	Funding for Legal Services Public resources are often used for legal services since they provide access to justice as well as since they often provide savings in other areas of government.
	Caseflow Management These recommendations simply add to the complexity of family law matters. So they seem counter-productive. We complain about family law being too complex and then we add to the complexity of the system.	Caseflow Management It will be important to work to implement these recommendations so they help parties finalize their cases appropriately rather than add complexity.
	Streamlined procedures for defaults and uncontested cases Relegating "default" and "stipulated" judgments to administrative clerks in Orange County has proven to be a failure. Admin clerks constantly reject perfectly fine judgments because a T is not crossed or an i not dotted. The same judgments are easily walked through a family	Streamlined procedures for defaults and uncontested cases The issue of review of default and stipulated judgments is an important

Commentator	Comment	Committee Response
	law courtroom and approved.	area to develop statewide consistency and appropriate training to clerks.
	Courtroom Management Tools I do not believe this is necessary. A reiteration that the CCP applies to family law should be sufficient. Courts need to be reminded of cases like "Seagondollar".	Courtroom Management Tools The Task Force continues to believe that this is an area requiring clarification.
	Sanctions Against Attorneys I completely disagree with leveling sanctions against attorneys. How is the court to determine, or divide, culpability between attorneys and clients. Doesn't that possibility create a conflict between attorney and client.	Sanctions Against Attorneys Courts will need to be very mindful of attorney-client relationship issues in assessing sanctions.
	Enhancing Safety This recommendation would create conflicts between family law panels and Juvenile law panels. I would suggest leaving the current system in place.	Enhancing Safety Conflicts between family and juvenile panels The Task Force recommendations address the particular needs of litigants, children, and court-connected or appointed professionals in family court which are often different than those in juvenile court.
	Contested Child Custody Mediation procedures should be uniform in all counties throughout the state. Right now, mediation in Orange County does not result in a recommendation to the court. However, mediation in Riverside does result in a recommendation to the court.	Contested Child Custody Section includes recommendation for pilot projects to support greater uniformity throughout the state.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Litigant Education I suggest that people filing a family law matter "in pro per" should pay additional fees for pamphlets and information, or services, that will help them get their case accomplished. This information, and fees, could be tailored to each specific case (e.g. custody involved?, child support involved?, spousal support involved?, property issues involved?, etc.) Expanding Services These recommendations acknowledge the problem of an imbalance in negotiating powers, but do nothing to address that problem. Expanded mediation to other issues should not be allowed until a system is devised to deal with unequal bargaining power.	Litigant Education The information suggested is available at the California courts' statewide self help website, www.courtinfo.ca.gov/selfhelp. Courts self-help centers also provide basic information to litigants which includes the benefits of hiring attorneys. Expanding Services The Task Force has made a number of recommendations designed to address imbalance of power issues including training and review of orders.
17. Scott Benker Attorney/Mediator Benker Law Firm Visalia, CA FV	Right To Present Live Testimony As long as prior notice is given per rule 3.1306, the recommendation is acceptable. Otherwise, we create a conflict between civil law and motion and family law and motion. Without the notice requirement, we create an incentive for some practitioners to hold back information for the hearing instead of presenting the information on the paper pleadings.	Right To Present Live Testimony The task force agrees in part with this comment and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The task force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in

Commentator	Comment	Committee Response
		controversy.
18. Hon. Josanna Berkow Commissioner Superior Court of Contra Costa County	Leadership, Accountability, and Resources I have spent 17 years as a commissioner on the family law bench of Contra Costa County. Most of that time I had a general family law assignment and for the past several years have presided over the IV-D calendar. First, I wish to thank the Task Force for all of their hard work. The degree of their commitment to the daunting yet critical task of family law reform is reflected in the depth and breadth of their recommendations. I strongly support the recommendations for greater resources for family law departments, expanding pro per services, enhanced educational requirements for judicial officers in the assignment and performance measures. I write however, to point out some semantic concerns with recommendations 14 and 15 in the topic titled "Leadership, Accountability and Resources". Recommendation 14 endorses the policy that judges rather than subordinate judicial officers hear family law cases. This policy is to be achieved by conversion of SJO positions upon retirement or appointment. Standardize Default and Uncontested Process Recommendation 15 calls for the expansion of SJO's assigned the IV-D calendar where federal funding is available to hear not only child support but also "all aspects of a family's case". I agree that this makes good sense for a number of reasons the court benefits financially, the	Leadership, Accountability, and Resources Greater resources for family law departments, expanding pro per services, enhanced educational requirements and performance measures – no response required. Standardize Default and Uncontested Process Agree, the recommendations have been clarified to indicate that the Task

Commentator	Comment	Committee Response
	efficiencies saved from a less fragmented system in terms of staff, bench and litigant time is undeniable. If recommendation 15 is to be followed, and I hope that it will, the wording in recommendation 14 should be changed to reflect an exception to a judge preference over an SJO for this particular workload. And, FC 4051 should be amended to minimize judge shopping by considering whether every time the Title IV-D SJO hears a related matter, litigants be offered opportunities at each proceeding on a matter to opt out of a stipulation and obtain a de novo hearing before a judge. Absent such amendment, the economies intended by recommendation 15 may be lost.	Force generally supports the existing Judicial Council policy that states that family and juvenile matters should be heard by judges rather than SJOs. And, as an exception to this general rule, where possible, IV-D commissioners should be permitted to hear all aspects of a family's case, not just the support issues. The Task Force did not address the specific issue of requiring a separate stipulation for each hearing before a IV-D SJO. This suggestion will be noted and referred to the implementation process.
19. Jeri Blatt LDA 11 San Mateo County, CA	*Commentator provided information on Legal Document Assistants.	No response required.
20. R. Paul Bonnar Attorney at Law Pleasant Hill, CA	Thank you for your hard and thoughtful work in compiling your recommendations. Almost without exception, your recommendations address serious and long neglected problems within the family law process. My thanks to the members of the committee for your hard work and dedication in taking the time to work on this positive and thoughtful group of recommendations. Caseflow Management	Caseflow Management

Commentator	Comment	Committee Response
	Needs to be sensitive to not underlying increase attorney fees for represented parties – avoid too many procedural hearings. Providing Clear Guidance through Rules of Courts Local rules – eliminate if at all possible Children's Voices Be careful to not empower children to manipulate the process Minor's Counsel Need to assure minor's counsel get paid.	The draft has attempted to address the concern regarding too many procedural hearings. Providing Guidance Rules of Court No response required. Children's Voices The Task Force recommendations attempt to strike a balance to appropriately include children in the process and allow for parental decision-making and judicial discretion so as to protect them from unnecessary harm. Minor's Counsel The Task Force addresses payment of Minor's Counsel and recommends full implementation of California Rules of Court, rules 5.240 and 5.241 with respect to payment.
21. Donovan Boswell West Covina, CA	Allow party (primary custodial parent) that is working and paying for child's well being to pay on sliding scale or add court fees to owed child support when not being paid by noncustodial parent who receives county aid as to avoid child support of any nature.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
22. Clive Boustred No county information provided	Provided details of particular case.	No response required.
23. Randy Carl Boyce Senior Vice President and General Counsel Foster Farms Pleasanton, CA	Local Rules I strongly support the recommendations on pages 23-24 that local and "local local" rules be eliminated except as required by statute or rule of court. Children's Participation I also support the discussion on page 27 of the appropriate circumstances to elicit the perspectives of children involved in and impacted by a dissolution.	Local Rules No response required. Children's Participation No response required.
24. Daniel Earle Boyer Self Represented Litigant Azusa, CA	*Organized use of REIFLER prompts assault, theft and barratry. The Court's exclusive power to deny Brady- type evidence for exculpating and impeachment is too important an issue to leave to exclusive power of the court for determination of admissibility where significant rights are at stake. Commentator provided information related to a specific case. The right to present live testimony and to examine witnesses is imperative.	"Brady-type evidence" relates to matters of discovery sanctions in criminal cases, and does not affect the rights of defendants to testify or present evidence in their defense. Deciding the admissibility of evidence and evidentiary sanctions is a fundamental judicial role. The Task Force has chosen not to consider policies as fundamental as changing the relationship between the branches of government to shift such evidentiary decisions out of the court. The Task Force has noted that the right to present live testimony and to

Commentator	Comment	Committee Response
		examine witnesses is imperative.
	Learned yesterday the courts recommend and use wide variation of REIFLER. The California Courts and their actors do not offer the identity or statute authority for REIFLER rulings.	The citation is Reifler v. Superior Court (1974) 39 Cal.App.3d 479 [114 Cal.Rptr.356]
25. Meredith Braden, Psy.D. Family Mediator Superior Court of Marin County	Overall, the majority of the recommendations are reasonable if perhaps a bit wishful. Especially in light in of the current budget situation, I don't see many of these programs and goals receiving funding. Therefore, I'm not sure I understand the usefulness of creating a list of "in a perfect world" recommendations without any plan or idea about how to fund them. It seems awfully easy to come up with a list like this without the commensurate responsibility of having to create a realistic plan to pay for it. I am worried that the only result of the task force will be the creation of a plethora of new unfunded mandates which the courts will have no choice but to ignore in defiance of the law.	Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	Right to Present Live Testimony at Hearings Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	Right to Present Live Testimony As part of the implementation of all recommendations, funding issues will have to be addressed.
	Expanding Legal Representation and Providing a Continuum of Legal Services Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Increasing legal self-help centers and	Expanding Legal Representation and Providing a Continuum of services No response required.

Commentator	Comment	Committee Response
	staffing seems like a perfect example of something every Court would like to implement, but the resources simply aren't available. As for increasing access to attorneys and increasing the number of attorneys, I think we should be cautious in assuming that the presence of attorneys on a case is synonymous with greater access to justice. Occasionally, relatively simple cases are dragged out for years by attorneys who are creating and maintaining an adversarial climate and bankrupting their clients in process. Instead, focusing on limited scope representation might be the ideal solution as it allows clients to receive assistance in navigating the complexities of the system, but helps create a climate in which everyone involved (both parties, both attorneys, the Judge) is interested in fairly resolving the case in the most efficient manner possible without creating undue conflict. Caseflow Management Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Having written orders given out at the hearing would be especially helpful. Providing Clear Guidance through Rules of Court I'm not familiar enough with the kinds of issues covered by local rules to understand the full implications of eliminating them, otherwise I agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Children's Voices I agree with the general statements about balancing the need to let children's voices be heard while also protecting them from becoming further embroiled in conflict. However, in Marin County, and I suspect	Caseflow Management Agree. As part of the implementation of all recommendations, funding issues will have to be addressed. Providing Clear Guidance Through Rules of Court As part of the implementation of all recommendations, funding issues will have to be addressed. Children's Voices/Participation The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel)

Commentator	Comment	Committee Response
	in most counties, this job is given to court-appointed mediators and/or evaluators who are trained mental health experts with education in child development and experience conducting these kinds of interviews with children. Therefore, I don't understand the rationale for having children come to court to be questioned by a Judge, versus by a trained mental health professional in a less formal office or child-oriented play room? It seems that situations in which this interview was not sufficient would be rare, and if and when they do arise, there are alternative options such as having the mediator/evaluator either re-interview the child or testify about the interview directly.	reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The recommendations also support providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate.
	Domestic Violence Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	Domestic violence As part of the implementation of all recommendations, funding issues will have to be addressed.
	Enhancing Safety I wholeheartedly agree with these recommendations, with the same reservations about children's testimony presented above. Recommendation 3 about CPS would be especially helpful, but again, there is a significant funding issue. CPS routinely does not investigate cases that are in involved with the family court, but I can only assume this is a form of triage for them as they are even more overburdened than the courts.	Enhancing Safety No response required.
	Contested Child Custody	Contested Child Custody

Commentator	Comment	Committee Response
	Child custody mediation services I strongly disagree that confidential mediation is a superior model and your recommendations fail to explain why it would be preferable other than for purposes of standardization. In Marin County we moved from a confidential program to a three-tiered program (temporary recommendations, confidential mediation, evaluation) and finally to recommending model. With each step, we drastically increased efficiency for all parties and the hearing officers have universally had positive feedback about the new program. The few dissenting voices are largely from litigants who have not had the outcomes they wanted and have made a convenient scapegoat of Family Court Services and recommending mediation. If there was no recommending mediation, however, the majority of these litigants would still be unhappy and would instead be focusing on another aspect of the system they believe to be corrupt. Under the earlier models used here in Marin County, it was taking the average family years to finalize their cases when they were unable to reach an agreement. It does not appear that the task force recommendations address this problem, as they state that if the parents don't reach an agreement there should be "additional processes." The additional processes mentioned, such as evidentiary hearings and evaluations, are all time-consuming, expensive and adversarial. Evaluations take six months to a year to complete and cost multiple thousands of dollars. Furthermore, in my experience, the eventual recommendations of the evaluator rarely differ substantially from those issued by the original mediator. Additionally, there already are several confidential counties in both large metropolitan areas and smaller rural settings. The AOC has been	The pilot projects are proposed to be implemented in those counties interested in providing a continuum of services and are not proposed to be mandatory statewide. The Task Force recommendations in this area seek to support the idea that

Commentator	Comment	Committee Response
	collecting data for years and there is no difference in client satisfaction between recommending and confidential counties. Rather than trying to dictate the model of mediation, the focus of the family courts should be ensuring that all mediators, evaluators and hearing officers are ethical, well-trained, and educated on relevant topics. However, I completely agree that parents and their attorneys should have access to all the information considered by the mediator as well as an opportunity to cross examine him or her. Appropriate number of mediators. Yes, please increase funding to Family Court Services statewide. Our caseload is directly related to the quality of our work. I think the majority of issues raised concerning Family Court Services would be easily solved if every county had the resources to provide enough mediators. Access to family court services. This would be a great service but could only be provided if staffing levels were raised. I have no comments on the other items and generally agree, subject to the adoption of a specific plan to fund their implementation. Minor's Counsel – Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Scheduling of Trials and Long-Cause Hearings I guess I agree although I'm wondering why giving precedence to cases	in those instances in which a child would like to speak to the court directly and the court finds that child to be of sufficient age and capacity, the court should hear directly from that child. The recommendations do not preclude children talking with mediators or evaluators in appropriate cases. Minor's Counsel - As part of the implementation of all recommendations, funding issues will have to be addressed. Scheduling of Trials and Long-Cause Hearings

Commentator	Comment	Committee Response
	with long-cause hearing over "all other family and civil matters" doesn't simply shift the burdens described in the overview to a different set of litigants and attorneys who find their cases continued on short notice? Haven't they also spent money preparing and taken time off work, etc.?	The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these scheduling issues. The recommendation requires courts to make a shift in calendaring strategy, but is not expected to create any quantitative increase in caseload, in the time it takes to access hearing and trial dates, to extend the length of these proceedings or increase the overall litigation load of the court.
	Litigant Education Again, these are generally good recommendations, but seem fairly naive. Items such as "Courts should provide information about local resources for low-cost limited and full custody evaluations conducted by experienced and well-trained professionals who place a high commitment on neutrality and accuracy in reporting" seem somewhat useless because it is highly unlikely that such resources exist. If high-quality, low-cost private evaluations were available, I'm quite confident the court would already utilize this resource as well as make the information available. As for 4, and making FCS personnel available after orientation, this fails to take factors into account. First, in Marin County, the orientation process is online. Secondly, parents who only need to finalize an agreement will have an opportunity to do so in their mediation session.	Litigant Education These resources will vary depending upon the county and the processes for mediation orientation will vary.

Commentator	Comment	Committee Response
	Expanding Services to Assist Litigants in Resolving Their Cases Excellent ideas, please fund them, don't just mandate them.	Expanding Services to Assist Litigants in Resolving Their Cases As part of the implementation of all recommendations, funding issues will have to be addressed.
	Streamlining Family Law Forms and Procedures Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	Streamlining Forms and Procedures Agree. As part of the implementation of all recommendations, funding issues will have to be addressed.
	Enhancing Mechanisms to Handle Perjury Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	Enhancing Mechanisms to Handle Perjury As part of the implementation of all recommendations, funding issues will have to be addressed.
	Standardize Default and Uncontested Process Statewide Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	Standardize Default Process As part of the implementation of all recommendations, funding issues will have to be addressed.
	Interpreters Absolutely interpreters should be available for all who need them but saying "funding should be sought" isn't exactly helpful. I'm sure every Court would already provide this service is they had the resources to pay for it.	Interpreters As part of the implementation of all recommendations, funding issues will have to be addressed.
	Public Information and Outreach	Public Information and Outreach

Commentator	Comment	Committee Response
	If the Courts suddenly get a flood of money then this is a good idea. Otherwise, it should be the lowest priority for funding compared with the other issues identified (i.e., 6, 7, and 12) Judicial Branch Education Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Family Law Research Agenda Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation. Court Facilities Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation, which in this case would seem to total in the tens of millions of dollars. Does anyone actually disagree that it would be ideal for all courts to have such superior facilities? Leadership, Accountability, and Resources Agree with the recommendations, subject to the adoption of a specific plan to fund their implementation.	As part of the implementation of all recommendations, funding issues will have to be addressed. Judicial Branch Education As part of implementation of all recommendations, funding issues will have to be addressed. Family Law Research Agenda As part of the implementation of all recommendations, funding issues will have to be addressed. Court Facilities As part of the implementation of all recommendations, funding issues will have to be addressed. Leadership, Accountability and Resources As part of the implementation of all recommendations, funding issues will have to be addressed.
26. Steven Bradley El Cajon, CA	I strongly believe in transparency. Transparency prevents corruption, demonstrates accountability, and creates a two-way communication between government and the people. The courts act like it is true that they are not part of the government, when in fact they are--and they	The Task Force has made many recommendations that are intended to promote transparency. The Task Force recommends the creation of a

Commentator	Comment	Committee Response
	should be part of a more stringent accountability process than any other part of government, because they are supposed to be impartial arbiters. They can only fulfill this function properly if citizens can believe in them, and the citizens will only believe in them if they truly act without partiality. Transparency doesn't insure this, but it subjects the courts to outside review, which they desperately need.	complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position.
27. Ann Bradley Palo Alto, CA	Commentator submitted comments regarding specific case.	No response required.
28. Hon. Howard Broadman (Ret.) Judge Superior Court of Tulare County	Expanding Legal Representation People need to have the option of getting out the court (strict due process) system. An alternative world where they sit around a table a talk to a "chief". The chief works with them & tries to get them to agree if he/she can't then the chief tells them what is going to happen. This is door 2. Door 1 is fine but we owe the people door 2. Standardize Default and Uncontested Process No case should be dismissed because the parties have decided to put their divorce on hold. The fee of $350 should not have to be incurred again. (to rule a new case) Rules of Court Local local rules i.e. "I use private party blue book" gives people certainty. So if you pass this rule then there will still be a local, local rule but nobody will know about it.	Expanding Legal Representation The Task Force has suggested a number of options for consensual dispute resolution. Standardize Default and Uncontested Process Agree that parties should not have to refile their dissolution because they decided to put it on hold. Rules of Court While the blue book provides certainty, and may be mentioned in a published local rule as a source of evidence, it is critical that the parties be able to provide additional evidence

Commentator	Comment	Committee Response
		to rebut the blue book figures.
29. Maureen Bryan Attorney Scramstad & Bryan Martinez, CA	Minor's Counsel. Agree with the recommendation. Implement method of private pay by parents via "wage assignment". Or periodic check by the court so the attorney is NOT the bill collector and can't take the cases because the parents won't pay and the attorney can't run their office/review dates for parents. Scheduling of Trials. Agree with the recommendation. Great to have trial heard on consecutive days – A MUST for cost and due process & fairness. Criminal and civil trials are held this way! Judicial Branch Education. Agree subject to modification. DV is missing. Right to Live Testimony at Hearing. Agree subject to modification. (B) Good case exception – case-by-case basis is too subjective and violates due process. Why should a family court receive any less due process than any other civil court? A "true" exception would be rare and should be stipulated by the parties.	Minor's Counsel Recommendation to have routine reviews of costs has been incorporated into section on Minor's Counsel. Scheduling of Trials. No response required. Judicial Branch of Education Domestic violence education is addressed in the Domestic Violence Practice and Procedure Task Force report, endorsed by the Elkins Family Law Task Force (see appendix). Right to Live Testimony at Hearing The Task Force agrees that the right to present live testimony in certain matters is a fundamental due process matter. There are, however, matters in which there are no material facts in controversy, or that involve procedural matters that are ancillary to the fundamental issues in n the case. Many

Commentator	Comment	Committee Response
	Providing Clear Guidance through Rules of Court. Agree with the recommendation. Very important to have consistency in every county and court no matter where the case is filed! Domestic Violence. Agree subject to modification. There should be links between criminal and civil and J.V. filings. All meeting not matter of what nature including mediations, evaluations, therapy need to be separate power and control is a huge issue still. Contested Child Custody. Agree subject to modification. Only agreed upon agreements of parenting time share should be reported to court so there is no bias by the court to adopt the mediations recommendations. All mediations are confidential should be able to select mediation/challenge like judge will??	of these matters can be fairly decided on the basis of the declarations. The judge must be the one to make the decision about whether or not to take live testimony; but there should also be certain reviewable factors that judges must address when exercising their discretion. Providing Clear Guidance through Rules of Court. No response required. Domestic Violence Existing California Rules of Court, rule 5.450 requires coordination between these case types. Child custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
30. Shelley Bullen Mediator Superior Court of Butte County	While I agree with most of the recommendations, I do not agree with recommendations in several categories.	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Contested Child Custody I do not believe our state needs to set up a pilot program that is exactly like the Non-recommending model of child custody. We already have the pilots and the information related to this program within the non-recommending counties that exist now. This would be a complete waste of our already tight budget.	Contested child custody The recommendation in this document is designed to highlight the interest some counties have in providing a range of services, starting with a confidential process similar to that in civil designed to assist parties in settling their child custody matter.
	Court Facilities Recommendation 6. Children waiting rooms while the parent's are in court? This is bordering on emotional abuse. Most of the clients that come through mediation should not have their children present until they have had some time to regain composure after a court hearing. The child does not need to be a witness, and supported by the court, to observe their parents coming out of court. Most children do not know what is going on and that needs to continue. Self help services should be at a different location than where the court is held to protect these children. Also, parents are trying to focus and understand the paperwork, they do not need to have their children with them, they should find a babysitter. Also, who would pay and train the staff, pay the liability insurance, get approved by community care licensing. This is not a waiting area, but a daycare center in the making.	Court Facilities – The Task Force received significant comment from individuals who had been children in family court raising concerns that they were not adequately informed and did not have access to the courts during family law proceedings. Additionally, many families coming to family court do not have child care and have benefitted from the accessibility provided by the court when there is a safe and appropriate area where children may wait with adult supervision.
	Live testimony I am under the impression that witnesses are used in trial. In our county, the judges listen briefly to the client. I would support this recommendation if it was edited to take out the word "any" testimony, to the testimony of the parties. There is not enough time or money to	Live testimony The recommendation has been modified to require advance notice and offers of proof when witnesses other than the parties are requested to be

Commentator	Comment	Committee Response
	have a live trial at each hearing, but they are entitled to a trial for their live witnesses. Thanks for all the work.	heard. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars.
31. Daniel V. Burke Certified Family Law Specialist Fellow, AAML Carlsbad, CA	I submit the following with thanks and the greatest respect for the Members of the Task Force for their generous expenditure of time, expertise and experience devoted to the search for facilitating access to justice and fair proceedings in the Family Law arena. My observation and comment concern many women who should have the right to engage counsel of their choosing yet are deprived due to the lack of access to their own community property and their own community income. To eliminate a now long standing institutionalized gender bias in favor of business operators (usually male) to the disadvantage of out-spouse homemakers (usually female), the Committee is encouraged to consider recommendations addressing the following circumstances. The Committee should recognize that in today's legal community many family law practitioners only represent business operators (i.e., men)* due to the non-operator's (i.e., women's) difficulty in accessing funds to pay her attorney on a current basis going forward. The institutionalized lack of equal access to community income and community property too frequently results in a litigant's lack of access to a substantial cadre of family law attorneys and an inability to maintain continuity of representation when the initially retained	The Task Force agrees that when the management and control of all, or most, of the community income and property is in the possession of one spouse leaving the other financially dependent, the inability to retain counsel for the dependant spouse can become a problem for that individual and the court. The impact of the management and control of the community property of the parties is a consideration that must be included in the decision-making process about the attorneys' fee award. In some cases it may well be that division of some liquid assets, or liquidation assets to access cash available for distribution, may avoid the need for an attorneys

Commentator	Comment	Committee Response
	attorney is no longer able to financially underwrite the unpaid account receivable despite sufficient, albeit inaccessible, community income and community property. Relying upon the discretion of the Court to attempt to balance the litigation resources at a contested hearing many months in the future is not an effective tool in minimizing conflict nor in utilizing Court time to resolve conflict. Attorney Fees Objective Provide prompt and equal access to and control over a party's one-half undivided interest in the community money, liquid accounts, investment accounts, and community business income and/or other community income. To allow one member of the community temporary exclusive control over the business, all its accounts, assets and income by definition deprives the other party of any access or control. This de facto control which may have worked while the marriage was intact suddenly subjects the out-spouse to the whim and caprice of the controlling spouse. The out-spouse's necessary reliance upon the controlling spouse is ineffective and deprives the out-spouse of ability to access her own community property and community income to fund litigation and achieve expeditious fair resolution. [A woman needs her husband's concurrence or the Court's permission (obtained many weeks or months later after substantial expense) to access and expend community income or community assets under her husband's control for her professional assistance; yet, while exercising control over the community business income, a husband may spend whatever community income or community assets he unilaterally deems appropriate without seeking any permission of his spouse or the Court.]	fee award, or even spousal support; however, it may also cause the dependent spouse to deplete his or her share of the community property paying for the attorney. In other cases, it may be that interrupting the management and control of a business would seriously impact the community property in a negative manner, and another source for attorneys' fees must be ascertained. The Task Force recognizes that judges must be willing to consider these and other factors affecting the ability of the parties to access representation, and order needs-based attorneys fees early in the case. The recommendation on Increasing Attorney Representation has been modified to clarify the importance of early needs-based attorney fee awards. The Task Force anticipates that case management will also be of assistance to more quickly identify and resolve these types of issues in a case.

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	Early division of community liquidity and early orders allocating [equally dividing] all community income from stocks, bonds, investments, business interest or otherwise, from the date of separation going forward, should be made to minimize necessity of either party seeking a "contribution" from the other for attorney fees and/or a contribution to spousal support. An early, effective, equal division of community income and community liquid assets enables access to and control by each party as to one-half of their equally owned undivided estate creating more parity ab initio, consistent with the Family Law Act, and eliminates disputes over attorney fee contributions by empowering each spouse to self determine representation and payment thereof. In some cases the early division of community income may also eliminate the need for temporary spousal support contested hearings, saving the Court time and resources. Early division of community income and community liquid assets avoids later time consuming conflict necessitating expensive accountings, adjudication of claims arising from financial events pendente lite and adjudication of credits which in turn impact judicial resources by requiring additional court hearings and additional time for adjudication. Absent early access and prospective division of the community income and liquidity, one spouse may be deprived of chosen counsel due to the inability to fund the professional fees. When only the operator spouse has had access to sufficient moneys to engage competent litigation counsel, implement successful litigation strategies and present persuasive forensic or other proofs, then access to justice has been deprived and no procedural safeguards can remedy the ultimate potential lack of fairness in the result because the Judge must apply the law to the facts actually presented and proven.	

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	Thank you for the opportunity to comment about this important issue in the quest to achieve gender parity in facilitating access to justice and fair proceedings.	
32. Robert Burns Thousand Palms, CA	Information Provision, *These are very good recommendations. Commentator raised specific concerns about child custody evaluations that do not adhere to rule 5.220, the high cost of such evaluations, and the evaluator not being required to appear to testify in the case. Commentator raised concerns about high cost of child custody evaluation, lack of funds for payment, and inability to cross-examine the evaluator and noted I agree that evaluators should be required to appear in court to defend their analyses. I am impressed with much of the draft final recommendations. My experience represents a case study in what is wrong with the family law court - I would be more than willing to testify before the Legislature regarding my experience to help secure adoption of these recommendations.	Information Provision No response required.
33. Hon. Thomas H. Cahraman Presiding Judge Superior Court of Riverside County	Thank you for your dedication to improving results in family law, and for your hard work in developing recommendations. Our court, like many others, continues to experience increased filings in this area. I am grateful for the extraordinary commitment demonstrated daily by our family law bench officers, and for the long hours they work. Moreover, I have recently increased the number of family law bench officers in our court to accommodate these increasing needs.	

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	I have solicited comments from my colleagues and staff, and although we share many of the concerns expressed by the Task Force, we don't agree that those concerns should be addressed by new statewide mandates. Right to Present Live Testimony We support the goal of insuring that judicial officers get the information they need in order to make informed decisions. At the same time, mandating the court to receive live testimony on every OSC or motion will increase the already unmanageable time burden on the bench officers and further increase costs to the court. It is far more effective and cost efficient to allow the bench officer to retain the discretion to request live testimony after review of the declaratory evidence. The family law bench officer is the person most knowledgeable with regard to the proof required in any given circumstances. As such, the judge should retain the discretion to make this determination without it being forced or directed by additional rules or legislation.	Right to Present Live Testimony Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. The task force received many comments requesting that there be no good cause factors and that judicial discretion to deny requests for live testimony should be eliminated completely. The task force recommendation maintains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion.

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	Expanding Legal Services and Providing a Continuum of Legal Services The services provided by our self-help programs and family law facilitators parallel those offered in other counties. Similarly, the feedback from court consumers is consistent with expanding these services. There is a stated line between offering information and giving legal advice, but that line is blurred at best and is often the subject of heated debate within the self-help community. In practice, it is very difficult to make such a distinction, since questions from court consumers can be very specific to their particular needs. If self-help services are expanded as proposed by the task force (to provide assistance on evidence, hearings, court rules, trials, appeals, *etc*.), we will run the risk of becoming advocates rather than a neutral branch of government dedicated to resolving disputes according to the evidence. At the very least, if we are to expand services to that extent, the legislature should consider measures to grant immunity to the attorney-facilitators providing such services. Caseflow Management The allocation of specific and quantifiable resources to improve caseflow management is not discussed in the recommendations of the Task Force.1 However, it is clear that the recommendations will require substantial changes in the court's operational infrastructure. Early case evaluation, subsequent case monitoring and ADR will require additional resources that are not now available to the courts. Implementation of these recommendations, including those relating to "fast tracking" trials and judicial staffing are premature in light of the	Expanding Legal Services and Providing a Continuum of Legal Services It will be important to provide models of how other self-help centers provide information on evidence, hearings and court trials as part of any implementation of these recommendations. Some self-help centers use videos explaining how to introduce and object to evidence, others provide templates for trial briefs. It will be important to follow the statewide guidelines for self-help centers in implementing these recommendations. Caseflow Management The Task Force understands that some of these recommendations will require additional resources. While a number of courts currently provide the services described, others do not and will need additional funding in order to implement any recommendations. This will be an important part of the

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	unknown future of the state budget and allocation of sums to the trial courts until These recommendations cannot be effected without adequate resources.	implementation strategy.
	By way of example, the courts continue to experience difficulty with the implementation of the Omnibus Guardianship and Conservatorship Act. Though the Riverside Courts are presently complying with the legislative mandates, many courts are not due to lack of resources. Some are not providing all of the investigations required by the act. Some are not providing the required investigator training. Further, the AOC has not yet developed the training for non-professional conservators required to be provided by January 1, 2008 per Probate Code § 1457.	The experience of the Omnibus Guardianship and Conservatorship Act is one that the Task Force hopes to avoid. The AOC has developed the required training for non-professional conservators. These resources can be found at http//www.courtinfo.ca.gov/programs/equalaccess/conserv.htm, and staff will be encouraged to publicize the availability of resources.
	Leadership, Accountability and Resources. The Task Force makes clear in Item 21, *Leadership, Accountability and Resources,* the need to increase judicial, ancillary and supporting resources to the family law courts as is necessary to implement its recommendations. However, the recommendations do not go far enough in assessing how the needs will be met and what processes should be followed to determine the costs attendant to implementing each recommendation. It seems that implementation of many items will require a "phasing in" approach as resources become available. Therefore, the recommendations of the Task Force would seem to require specific prioritization along with further recommendations as to suggested processes for assessing costs and determining the long range	Leadership, Accountability and Resources. Agree that many recommendations will require phasing in as part of implementation. The AOC is currently assessing workload implications of many of the recommendations. The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the

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	fiscal impact each recommendation will have on the court's anticipated budget.	re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law will be addressed in the implementation process.
	In light of the court's recent experience with unfunded legislative mandates, I must recommend that full and deliberate consideration of the costs attendant to each proposal be reviewed prior to implementation. As in all cases, such a review must analyze the costs and benefits of the recommendations to allow courts to provide greater and more specific input into the proposed rules and processes.	Assessment of costs attendant to implementation. The Task Force anticipates that careful consideration of the costs will be part of implementation process.
	Scheduling of Trials and Long-Cause Hearings We agree that continuous trials are best. We have concern, however, with respect to the practical implementation of the recommendations in this regard. Certainly each court's presiding judge and court executive officer are best equipped to determine how judicial resources should be allocated. To require the trial court to make a good cause finding as to why a trial cannot be heard on consecutive days ignores the present reality of the excessive volume of cases set on the daily calendar for each bench officer. While every attempt should be made to facilitate the trial process, until the legislature allocates more funds for necessary judicial appointments, the task of insuring efficiency in the operation of the court's family law department will vary from court to court. Accordingly, decisions regarding precedence and trials should remain in the hands of the individual court and its presiding judge and court	Scheduling of Trials The costs associated with all recommendations should be considered prior to implementation. The recommendation has been modified to clarify that when long-cause hearings and trials cannot be completed in one session, they need not be continued to the next day of the week, but to the next day or time the court regularly schedules for the type of long-cause hearing or trial involved. The Task Force has not attempted to define a long-cause hearing. Different

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	executive officer.	courts define this differently and employ different calendaring strategies. The goal of the Task Force recommendation it to ensure to the greatest extent possible that once a hearing or a trial has commenced, it be completed without undue interruption or delay.
	Litigant Education Paragraph 5 recommends the court make parties aware of issues that may arise in connection with the enforcement of orders. As an adjunct to awareness, the Task Force may wish to consider expanding the remedies available to litigants for failure to comply. The use of contempt and repeated OSCs re enforcement as remedies often results in long delays or, conversely, truncated hearings that are often set with a retinue of other motions and OSCs. If a parent is not complying with a parenting plan, it makes sense that a consequence should happen sooner rather than later, even if the consequence is a monetary sanction.	Litigant Education The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Task Force is mindful of these challenges.
	Expanding Services to Assist Litigants in Resolving Their Cases As discussed, *supra*, the recommendations to expand services for settlement and ADR must be accompanied by the resources required to effect the recommendations. Though not clearly stated, the recommendations of the Task Force under item 19, *Family Law Research Agenda*, would appear to require cost analyses in connection with workload studies and performance measures to insure that adequate resources are available to implement the recommendations. The Task Force recommends the imposition of monetary sanctions in connection with fraud and perjury (Item 14, *Enhancing Mechanisms to*	Expanding Services to Assist Litigants in Resolving Their Cases The Task Force recognizes that additional resources will generally need to be available to implement these recommendations and that should be considered as part of the implementation plan.

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	Handle Perjury). However, as is the case in general civil litigation, monetary sanctions for failure of a party to comply with the orders of the court would give the injured party and the court an additional remedy in those many circumstances where contempt cannot be established.	
	Leadership, Accountability, and Resources *Elevating Status of Bench Officers* Changing the title from "family law supervising judge" to "presiding judge of family law" would seem unnecessary, and create ambiguity as to whether that individual has more authority than, for instance, the supervising judges of civil or criminal. In any event, as elected officials, judges are accountable to the public regardless of the nature of their assignment.	Leadership, Accountability, and Resources The recommendation is focused on the crucial role of the family law presiding or supervising judge in providing leadership in obtaining and coordinating delivery of all resources and services necessary to the family law court, including family law self help/facilitator services, family dispute resolution services, and services in the community outside the court. Whether to change the title/role to presiding will be addressed in the implementation process.
	Assignment of Judicial Officers to Family Law I previously sat in family law, and found it very fulfilling. In my time as Presiding Judge I have increased the resources devoted to this division of the court, and emphasized that family law is a crucial judicial function, not simply a tour of duty to be tolerated before moving to a more desirable assignment. Yet the recommendation to use	Assignment of Judicial Officers to Family Law The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on

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	a 20 percent benchmark in allocating judicial officers to family law is premature in light of the present economic situation. Access to justice has many faces. In Riverside County we have 12.5 bench officers out of 76 devoted to family law (16.4%). We're getting the work done, and meanwhile we have not dismissed a criminal case for lack of a courtroom since June 9, 2009. Earlier this year we reallocated certain courtrooms from criminal law to civil, because we had a large backlog of civil cases, and now we are getting civil cases out very effectively. The point is that we are extraordinarily busy in all divisions of the court—we have only 76 bench officers, while NCSC thinks we should have 142. (We have 3.6 judicial positions for each 100,000 in population, while the statewide average is 5.2.) The only way to handle this situation is to give the PJ and court exec the freedom to make the hard choices as the caseload needs develop. Imposing a round number percentage (20%) on a statewide level will impair that process. Please keep in mind the grave consequences of dismissing a criminal case, or in civil, telling medical malpractice litigants to wait five years for a trial.	the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics, and the Task Force acknowledges and recommends coordination with the ongoing development of improved workload standards pursuant to the SB 56 Working Group. The Task Force believes that the Presiding Judge can appropriately exercise his or her authority consistent with this recommendation.
	Assignment of judicial officers is best left to the discretion of each court's presiding judge. It has not proven to be true that what is good for one county is necessarily good for another. At the very least, any benchmark or experience requirements proposed by the Task Force are practical only when the playing field for all courts is leveled. Likewise, requiring the courts to create steering committees and ombudsman positions further taxes fiscal and judicial resources in a time when there are too few resources to meet the basic needs of many courts. Moreover, I have observed a disconnect between the stated needs and goals of counties with sufficient judicial resources and those, such as Riverside County, that have been under-resourced for many years.	The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics. The Task Force believes that the Presiding Judge can appropriately exercise his or her

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		authority consistent with this recommendation.
	Conclusion I applaud the Task Force's hard work in arriving at a plan to improve access and deliver more services to family law litigants. I am aware the Task Force was constituted prior to the present fiscal crisis. Unfortunately, our court's concern is more basic as resources are reduced, rather than increased, and further furloughs and possible layoffs loom large on the horizon. Still, our court continues to improve access and service despite our having disproportionately fewer judges than the other counties. We are able to do this through effective long range planning and management. At the same time, many of the recommendations made by the Task Force require new resources. I would ask the Task Force to consider the costs attendant to implementing the recommendations and consider delaying measures that require ongoing funding. Moreover, I would ask that the emphasis change from a proposal of new rules, to a format involving recommendations for consideration of the Presiding Judge in each county. Thank you for your review of the foregoing.	Conclusion The Task Force is very mindful of the extraordinary budget constraints faced by the courts at this time. Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded.
34. Paula Call California Coalition for Families and Children ("CCFC") San Diego, Orange, Los Angeles	*Comment is submitted on behalf of the members of the California Coalition for Families and Children ("CCFC"). CCFC is a nonprofit organization comprised primarily of parents who have experienced a marital dissolution proceeding. CCFC is a recently-formed Southern California chapter of the American Coalition of	

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	Fathers and Children ("ACFC"), based in Washington, D.C. Comments noted general concerns about large caseloads, understaffing, and the need to improve efficiency and fairness in the family courts to create more consistent outcomes. Commentator noted concerns about prevalence of perjury in family court and use of emergency OSC to create advantages for some litigants. Commentator noted concerns with respect to public trust and confidence. Commentator noted a concern that in attempting to protect the child, courts are issuing orders that do not protect litigant rights. Improving Judicial Guidelines Commentator suggests the following The solution will be in (1) Improving Judicial Guidelines. Judges should have very clear and simple rules to follow in deciding disputes. Like any intelligent, responsible employee or public servant, Judges benefit from clear guidance about how to do their job. In civil court, judges use the Judicial Council of California the California's *Book of Approved Jury Instructions* (BAJI) to instruct jurors about the law they are to apply to the facts. Family law would benefit greatly by adopting similar clear guidelines made available to the public. Regarding custody In virtually every parent/child relationship, parents have tremendous love for and care deeply about the success of their children. Only in very rare cases are parents found to be abusive or harmfully neglectful. Yet, in family court, by use of unsubstantiated	Improving Judicial Guidelines Judges are bound to follow the applicable law and to apply it to the facts of each case. Regarding custody The Task Force recommendations on child custody, enhancing children's safety, and children's participation and

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	allegations, uncorroborated allegations, litigation misconduct or perjury, and inattentiveness by judges, litigants encourage courts to make "temporary" orders, which become the "status quo" and costly hurdles that must be overcome.	minor's counsel are designed to address concerns about the handling of these cases.
	Courts should be doing a much better job of streamlining the expansive maze created by the courts and attorneys practicing within them. Family court litigants are often unable to afford the legal assistance to navigate that maze, and those who are often taken advantage of by attorneys who prey on emotion to complicate, rather than facilitate, resolution. The solution is simplification, clearer guidelines, more predictability and uniformity, and a more pro-active, attentive bench to assist litigants in reaching fair solutions—not to line the pockets of attorneys seeking to inflict vindication or, in some cases outright harm—on ex-spouses. In many cases this lack of attention invites manipulation, litigation misconduct, and resulting erosion of confidence in the judiciary.	The Task Force has attempted to craft solutions to streamline the family law process.
	The increase in caseloads is due largely to a lack of predictability, inattentive judges, and a "knee-jerk" mentality to (in the words of one judge) "put a patch on the tire and move on." If judges don't care enough to do a good job in making accurate decisions based on real facts (and not merely allegations), they should consider other careers.	The Task Force has attempted to make recommendations to address the resource issues that affect the family courts.
	Comments on specific draft recommendations follow. Expanding Legal Representation and Providing a Early needs-based fee awards**.** Needs-based fee awards should be determined early, but only where one or the other party can demonstrate a genuine inability to obtain	Expanding Legal Representation Early Needs-Based Fee Awards. The Elkins Family Law Task Force focused primarily on procedural

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	adequate assistance of counsel. Merely proving an inequity in income is insufficient—the purpose of attorneys' fees award is to provide fair access—not necessarily equal access. Litigants should be required to prove a lack of access or severe litigation misconduct by clear and convincing evidence to obtain an attorneys fees award. In today's nuclear family, it is often the case that both parties have access to an income to pay counsel. If Income and Expense Declarations show a *dramatic* disparity in income, or show that one party has no income, such awards are appropriate. However, such awards should not be made where both parties have reasonable access to income or other assets. This Task Force has acknowledged that courts face daunting caseloads. A major disincentive to litigation is its cost. In our experience in family court, litigation was far, far more motion practice and discovery for a relatively simple case than in most of far more complex civil matters. The possibility of shifting attorneys fees incentivizes a party who could receive an attorneys fees award to take inefficient actions. This is especially true in dissolution proceedings where parties are often motive by irrational urges—such as to "hurt" the other party by shifting fees, or to drive up costs to thwart the other party from taking meritorious legal positions. By requiring the parties to bear their own costs, each party must face the decision to pay for court action or seek other venues of resolution—such as informal settlement of discovery disputes—as is the case in general civil litigation. Leaving the disincentive of cost on the party seeking to take action which would potentially increase the court's	changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	caseload would likely lessen the caseload. Leaving this issue uncertain provides "hope" to one or the other party that the court will shift costs later in their favor. Recall that most litigants have little experience in the family courts and rely heavily on the advice of their counsel to predict outcomes. Given the drastic difference between the knowledge of counsel and client, and the extreme unpredictability of outcomes in family courts, unscrupulous counsel may (and in my experience often do) encourage litigious activity by holding out the promise that the court will shift costs at some later point. We would suggest that the Task Force adopt clear guidelines similar to the "Dissomaster" such that the court has little discretion in shifting costs. In most cases the parties will have already received temporary support orders intended to level the relative income and access to resources of both parties. If effective, the temporary support payments should have "leveled the playing field" such that each party has relatively similar incentives and disincentives. By permitting one party to shift costs of bringing a motion when the temporary support payments have provided that party with relatively similar assets, courts only encourage the party likely to receive a fee subsidy to undertake additional and unnecessary motion practice, further absorbing court resources, increasing overall attorneys fees, and depleting the marital estate. Any "tipping of the scales" by shifting attorney fees after a temporary support order is in place should be minimal to avoid unnecessarily incentivizing excessive motion practice. For example, where one or the other party has significantly more access to separate property not included in the temporary support order, brings a motion and prevails,	Based upon the 2009 case of Alan S. v. Superior Court of Orange (172 Cal. App. 4th 238) which calls for a nuanced approach to determining attorney fees, the recommendation to develop guidelines similar to the child support guidelines would be a significant policy as well as legislative change. The Task Force did not choose to make a recommendation on this issue. Courts currently have broad discretion to consider these issues and determine whether the conduct of either party affected the need for attorney fees.

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	the court should be permitted to award only a small percentage not to exceed 10-20% of the fees necessary to bring the motion. Leaving the lion's share of the cost for bringing a motion on the party bringing the motion assures that both parties face the same or similar cost burden disincentives of absorbing courtroom resources. This is exactly the case in civil court where sanctions are rarely imposed in cases of bad faith or other misconduct. By leaving these disincentives in place, the parties will have more incentive to resolve the matter outside of court, thereby freeing judicial resources. The court should also impose "meet and confer" requirements similar to civil courts, such that parties are required to undertake realistic, face-to-face or, at least telephonic efforts to informally resolve disputes, and provide declarations to the court regarding those negotiations. By reviewing the "meet and confer" declarations a court can better understand whether both parties were acting reasonably in attempting to resolve the dispute informally. This is and has been the standard in civil courts for decades. Notably, most civil disputes are resolved informally. Courts should also utilize ADR techniques such as early neutral evaluations or sponsored mediation to facilitate cooperative resolution of disputes. Many state and federal civil courthouses have adopted such programs with great success. Judges trained in mediation techniques can provide important insight into likely outcomes, permit the parties to air disputes and hear one another in a neutral setting, and influence disputes toward creative resolutions. We have participated in dozens of mediations, many if not all of which resulted in a successful resolution. While it is often said that in a successful mediation, "nobody's happy," it is often overlooked that mediation provides a way to craft creative	Many courts currently have meet and confer requirements and these may be considered for statewide implementation. The Task Force has made many recommendations regarding the use of ADR to assist in the resolution of family law cases.

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	solutions that don't make anyone extremely unhappy at an unfair result. Facilitating informal resolution through meet and confer requirements and mediation alternatives by consistent and proactive judicial case management—whether by sitting judges, volunteer and/or paid lawyers, or professional mediators, could significantly lessen the court caseload. Assistance in preparing request for fees to obtain counsel. By simplifying the "formula" for obtaining a fee award to a Dissomaster-type process, it would be possible for litigants to help themselves by, for example, navigating to an online resource and inputting relevant data from an Income and Expense Declaration, and computing the likely fee shifting in the event of a prevail/no prevail scenarios. Such a simplified process would entirely eliminate the need to devote additional court resources, staff, real estate, and attorney appearances to calculate. If there is concern that use of a simple formula could be unfair, courts may adopt a uniform standard by which a party can seek a different result. However, because of the need for consistency and the benefits there from, deviation from the standard should occur only in cases of extreme hardship. Referrals to private attorneys. Courts should also consider directing litigants to other forms of self-help, such as the many informal mediation/cooperative dissolution services available. By expanding the public's awareness of cooperative solutions, there is less likelihood that attorneys—who in the present system are highly incentivized to operate confrontationally—will influence a client to expend public and private resources by litigating a	Assistance in preparing request for fees to obtain counsel While the Task Force recognizes the challenges associated with current law on attorney fees, given the variety and complexity of family law cases, it does not seem that a guideline formula could be reasonably developed. Suggestions regarding streamlining should be considered as part of implementation. Referrals to private attorneys The Task Force has recommended that litigants be provided with information about cooperative dispute resolution procedures at the beginning of a case as well as to self-help and private attorneys.

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	matter rather than attempting to resolve matters informally.	
	Funding for legal services. Given the state's budget limitations and the likelihood that adding additional attorneys would not increase the efficiency of the system, we would urge the Task Force to focus on remedies discussed herein which would increase efficiencies and save costs before requesting additional (scarce) resources from an overburdened state.	Funding for legal services AB 590 (Feuer) was chaptered while these recommendations were circulating for comment and is anticipated to provide significant funding for pilot projects to provide legal services. However, the Task Force certainly agrees that implementation of the recommendations cannot be made assuming full funding for legal services.
	Funding for representation. As above, if funds are sought to improve the existing family law system, the family law system itself must be able to represent that it has undertaken the many other cost-saving measures available and in practice in other state courts, including encouraging mediation, informal resolution, improvement of technology, encouraging counseling to facilitate cooperative resolution, and simplification of the legal process.	Funding for representation. Agree that it is critical to implement a broad variety of strategies to cut costs and expand access to the courts including the suggestions made in the comment.
	Expanding legal services programs for appellate cases. Fair decisions based on clear guidelines will greatly decrease the necessity of review by appellate courts which are also severely overburdened.	Expanding legal services programs for appellate cases. No response required.

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	Expanding self-help services. These services should be promoted more aggressively and affirmatively. One solution would be to require delivery of an informational "packet" to each litigant at or before the outset of litigation. A packet explaining the processes, the resources available, and making such resources available online. Such education and promotion of are far more beneficial funding priorities than increasing funding for more lawyers, and will likely pay off in decreasing conflict and caseload. WE do not anticipate the family law bar to be supportive of such measures, and would suggest that the Task Force must take a proactive lead in spearheading this initiative to promote the public interest and judicial efficiency. Increased funding for self-help services. Again, rather than seeking additional funding from an overburdened state and/or county budget, solutions promoting predictability, simplification and fairness cost far, far less, improve the likelihood of informal case resolution, and could greatly increase public confidence in the courts—which is severely waning. Availability of attorneys. The proposition that infusing the family law system with more attorneys will have a long-term effect of providing greater services to more citizens and thereby reduce the problem of swelling Court dockets is akin to suggesting that you can reduce gun violence by giving more people more guns. That absurd proposition has been disproven throughout history. Infesting an already overburdened court system with more lawyers may	Expanding self-help services. Based upon the high rates of usage of self-help centers, it appears that they do not need to be promoted. The Task Force has recommended that information about a variety of options available for parties to resolve their cases should be presented. Increased funding for self-help services. Agree that a variety of responses need to be available to provide ways for litigants to resolve their cases as appropriately and promptly as possible. Availability of attorneys. The Task Force recognizes that a wide variety of approaches are necessary to address the problems facing family courts. Streamlining procedures is indeed critical to ensuring access.

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	well give more people access to attorneys in need of work, and it could tip the supply/demand balance more in favor of the general public, perhaps lowering the average hourly rate of attorneys. However, principles of macroeconomics 101 and a common-sense analysis of the incentives of attorneys operating within that system demonstrate that any such effects would likely be temporary. An infusion of new family law attorneys would, at first, provide additional resources for representation, perhaps even temporarily lowering the costs of such representation. However, history reveals that an oversupply of attorneys has little or no long-term effect on billable rates of existing attorneys. A June, 2004 edition of the California Bar Journal indicated that despite the fact that during the 1980's and 1990's the number of attorneys exploded, creating an oversupply of lawyers, billable rates continued to escalate. This was largely due to the fact that attorneys who cannot find work at prevailing market rates do not lower rates, but instead simply leave the market. Hourly rates remained remarkably steady—the predominant hallmark of change was the exodus of lawyers unable to find work at prevailing rates during periods when supply exceeded demand. One might speculate that hourly rates are set by a relatively few at the elite of the profession—managing partners—and that these few control access to the legal profession by their ability to control rates. These elite are, of course, incentivized to raise rates—not lower them. As such, there has been, and will be tremendous resistance to lowering hourly rates. Better, it may be said, to keep a small staff fully occupied than to grow larger, but lower your rates. These same economic principles may be seen in virtually every area of law, medicine, business, and accounting. Costs are cut by cutting the need for micromanaging the plethora of	

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	debatable issues, not salaries of those in power. If anything, increasing the number of lawyers will increase litigation. Lawyers who are not sufficiently busy with existing work will more likely be more incentivized to increase the revenues from existing cases, or seek out additional work—at existing rates. Yet the single problem with "sticky" hourly rates is the main cause of the lack of representation. Thus, because more lawyers won't decrease rates, but more lawyers will likely result in more litigation, more lawyers is not a solution. It has not, will not, and cannot decrease litigation to add more litigators. Encouraging more lawyers into the system incentivizes family law practitioners to will increase the volume of litigation, increase cost, increase the burden on the will likely worsen the burden imposed by family courts on dissolving families. In California today we have The solution is not more lawyers, but to streamline and simplify the family court dissolution process by the means discussed herein, thereby decreasing the need for costly legal expertise, staff, security, and facilities, and decreasing the burden of dissolution proceedings on litigants, the Courts, and the citizens of the State. Availability of Attorneys Mentoring programs. Elevating the practice of family law to adopt the principles of the general legal profession could greatly increase the efficiency of family law practice. In 15 years of practice in state and federal civil courts WE have never encountered a more wasteful, unprofessional, confrontational, and inefficient practice. In state and federal civil	Availability of Attorneys Mentoring programs. No response required.

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	courts, practitioners are incentivized to collaborate to resolve disputes. For example, Federal Courts devote significant resources to Early Neutral Evaluations by an experienced Magistrate Judge. Pretrial Settlement Conferences are mandatory in every case. State civil courts often adopt similar programs, devoting public resources to cooperative dispute resolution rather than confrontational trial practice. Parties must "meet and confer" before any discovery motion may be filed. Family Courts have a far more archaic mode of practice. Because the OSC/OST process is so prevalent, and because Courts do not actively incentivize the parties to cooperatively resolve issues, there is little pressure on attorneys to work together. This lack of incentive, combined with the ease of filing emergency motions and high-level of rhetoric, consistent with the history of practice of most experienced family law attorneys (who are accustomed to this style of practice, well compensated for their skills at it), are therefore incentivized to maintain it. It is no surprise that most family law practitioners are resistant to evolve with other modern courts. Pro Bono opportunities. Encouraging pro bono opportunities are not likely to contribute significantly to the problems existing in family courts. Access to free legal services is an excellent way to address those with extremely low incomes. It will not, however, address the lack of representation for most litigants in need of representation who have sufficient funds to pay for some legal representation, but cannot afford to pay a lawyer his or her full hourly rate to litigate a case for years. Limited scope representation.	Pro Bono opportunities Pro bono opportunities are just one of the potential solutions being recommended by the Task Force. Limited scope representation

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	Limited scope representation could be a viable solution provided the Courts (1) establish a clear pathway for litigants who could benefit from limited representation, such as cooperative litigants, litigants with simple to moderately complex issues, or contested litigants that have the desire, but haven't the resources to devote to a highly-contested proceeding; and (2) litigants are advised of and encouraged to such procedures early on, and (3) all put in an easily-accessible location, such as online.	No response required.
	Caseflow Management Early interventions. Providing the parties with early opportunities to resolve matters informally with judicial support and assistance (as other courts have used very successfully throughout the state) should be a priority.	Caseflow Management Early interventions. No response required.
	Sanctions against attorneys The use of sanctions can have a chilling effect on a party's ability to assert his or her rights or seek judicial resolution of a fair dispute. Due to the lack of predictability in family courts, the high incidence of unrepresented parties, and the wide discretion family law judges have in making equitable (and often entirely unpredictable "shoot from the hip") rulings, we would discourage the Task Force from recommending expanded use of sanctions. The time, trouble, and cost of litigating a dissolution provide significant disincentive enough for a party to avoid taking unreasonable or otherwise sanctionable positions. Though judicial officers may believe a party's position to be unreasonable and therefore sanctionable, there are many reasons such a judgment may be inaccurate. Further, we would strongly urge the Task	Sanctions Against Attorneys These concerns will have to be carefully considered in any implementing rules. The recommendation has been modified to clarify that sanctions against self-represented litigants be focused on reimbursing the other side for specific costs, rather than paid to the court.

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	Force not to permit Courts to require payment of sanctions directly to the Court as such a sanction is vulnerable to abuse if judges are incentivized to "collect" from the public. Such a principle is antithetical to a public court system, antithetical to democratic principles, highly vulnerable to abuse, and fraught with potential constitutional violations. Written orders after hearing. There is far too little court involvement and oversight in issuing findings and orders after hearing. In state and federal civil courts parties submit proposed orders which are adopted, annotated, or tossed out in favor of a specific Minute Order or statement on the record by the judge. In many cases Judges will request that the parties "waive notice" of the order for simple matters, and most parties do, for simple matters. My observance of the practice (in San Diego Central Division) has been that every judge observes his or her own procedure. The Court often makes no findings of fact on the record, makes no order at the hearing, but simply awaits for one or the other party to submit a proposed order after the hearing. Frequently this laissez-faire approach of "leaving it up to the attorneys" results in excessive and unnecessary "Monday Morning Quarterback" clamoring between attorneys about the accuracy of the order, additional need for court involvement, and resulting inefficiency. Children's Voices Children's input should not necessarily need to be equated with testifying in a courtroom. For example, a Court of Appeal has found that it is well within a family court's discretion to decline to personally interview a five-year-old	Written Orders After Hearing Statewide rules of court regarding orders after hearing should be helpful in terms of addressing the concerns raised. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for

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	child under Family Code section 3042 because it is doubtful that such a young child could realistically determine his or her own best interest. See *Marriage of Slayton & Biggums-Slayton* (2001) 86 Cal.App.4th 653, 659, 103 Cal.Rptr.2d 545. See, *e.g.*, *Marriage of Okum* (1987) 195 Cal.App.3d 176, 180 [240 Cal.Rptr. 258] (court used Evidence Code section 765 to justify questioning outside parent's presence in acrimonious proceedings; court reporter was instructed not to transcribe notes of chambers proceedings). Exercising discretion and finding the least traumatic method for child involvement. Involving the child. (It must be remembered that unsworn statements of children are not evidence and cannot be used as the basis for the court's determination on an ultimate issue or fact. See *In re Heather H.* (1988) 200 Cal.App.3d 91, 95–96 [246 Cal.Rptr. 38]. Contested Child Custody Information Provision Investigators and evaluators. Use of custody mediators and evaluators presents serious ethical questions as to the effectiveness and value of such services. The appointment and usage of private child custody evaluators in family law disputes has been a longstanding concern for hundreds of thousands of Southern Californians, courts, political representatives, and the family law community for many years. Most high-conflict cases center on disputes over child custody. Unfortunately, the experience of thousands	judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children. Contested Child Custody Information Provision The Task Force recommendations support greater clarification as to the role of investigators and of evaluators as well as full implementation of existing rules of court and statutes setting forth qualifications for these professionals and the responsibility of the court to identify the scope of their

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	of Southern Californians suggests that many child custody evaluators misrepresent their qualifications or otherwise demonstrate unethical behaviors that confound the resolution of such cases, increase conflict, expense, and harm to the involved families—particularly the children. It also appears from experience that a lack of effective judicial oversight, accountability, and concern is largely responsible for creating an environment in which such malfeasance exists. Unlike judicial officials, evaluators never passed the rigors of appointment by a Governor or other political body, are not subject to oversight or election by a concerned public, are not monitored by any internal Judicial Staff or officer (in fact, he and hundreds like him are rarely, if ever, monitored at all), is rarely if ever required to stand by his record, insists on working under strict privacy and confidentiality, may (and often does) refuse to disclose his records, and his work is never subject to review on appeal. Judges (and most other professions) are. Further, unlike ordinary psychologists, appointed evaluators are not subject to review by the client or clients paying them—any person hiring a normal clinical psychologist (or lawyer, physician, builder, plumber, or any other conceivable independent contracting professional) has at least some—if not all—control over the performance of the profession's services and thus can correct, guide, and—most importantly—fire that professional if unhappy with their work. Not so with evaluators/mediators, none of whom can be directed, disciplined, and fired by the clients they work for. Similarly, professional evaluators/mediators are often appointed in the same role as J.A.M.S.- Endispute. However, unlike retired Judges or	work.

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	other professional mediators who must perform for their clients (i.e., *settle* disputes quickly and efficiently) and uphold rules of ethics and professionalism, or fail to earn repeat business, clients cannot fire appointed evaluators, have little or no control over the scope of their investigation, the information provided to him, the amount of time spent attempting to resolve the dispute, and if they are unsuccessful (i.e., prolongs rather than settles) have little recourse because they are likely single-stop shoppers. Commentator indicated concerns about the lack of oversight of private custody evaluators and special masters and asserts that there is risk and danger for potential abuse. Commentator attached a number of references describing these concerns. Opportunity to respond. Rules exist to this effect, but they are often ignored by the evaluators. Hence the need for true accountability, oversight, and reform of the use—we would suggest over use—of such evaluators and mediators, described above. If California Courts cannot reform themselves to provide the state's citizens with efficient methods for resolving disputes, delegations to paid professionals at the expense of embattled litigants is not an appropriate "first alternative" to the Court's dysfunction. Child custody mediation services. "Mediation" in custody disputes is a severe misnomer. In fact, ordinarily judges, claiming to be—as this Task Force has described—"under resourced" improperly simply delegate judicial decision making	Opportunity to respond The Task Force recommendations support greater clarification as to the role of investigators and of evaluators as well as full implementation of existing rules of court and statutes setting forth qualifications for these professionals and the responsibility of the court to identify the scope of their work. Child custody mediation services The task force recommends establishing pilot projects to provide mediation and identifying promising

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	functions to public-sponsored employees such as "Family Court Services" in San Diego, or to paid "professional evaluators." Given the tremendous deference Courts regularly accord to such third parties, the delegation of authority is not in fact for "mediation" (i.e. cooperative resolution), but instead is a complete abrogation of the Court's decision making responsibility—almost certainly in violation of the Due Process rights of litigants. Courts should not compromise litigants' Due Process rights with complaints of lack of resources caused—we submit almost entirely—by the Courts' own many inefficiencies and dysfunctions. This was, in fact, the prime concern of Chief Justice George in taking the extraordinary step of suggesting the formation of this Task Force. Reform of a judicial system—indeed of any system—should begin by examining the internal workings of that system to improve efficiencies, better accomplish goals, and achieve satisfaction and success given the demands on that system. Every major corporation and successful business will attest to this process. Yet our court system currently seeks to "outsource" inefficiencies to litigants, consultants, and other civil servants, further burdening users of the courts and perpetrating the injury caused by the Courts themselves. Such a solution is unacceptable in any modern organization, and should be unacceptable to this very important one. To the extent that Courts feel the need to "outsource" judicial functions to paid professionals, those professionals should be given clear guidelines about deference to parental authority, decision making, and maximizing contact with both parents as such is always in the child's	practices in this area.

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	best interest. It is often observed that minor's counsel have far less understanding of the needs of the child, have nothing close to the same incentives to promote the child's welfare and proper upbringing, and further have strong financial incentives to prolong their involvement—at the expense of the parents, children, or taxpayers. Further, in the rare cases where one or the other parent could improve parenting skills by education or forms of therapy, that alternative should be strongly encouraged over solutions which interfere with the parent/child bond or are "punitive" solutions such as supervised visitation, "stay away" orders, or other unproductive, costly, and animosity-inducing solutions. Courts, counsel, and paid consultants should be strongly directed to utilize the many tools at their disposal rather than immediately resorting to the more extreme, interfering, harmful, and costly solutions, which are appropriate in only in the most clear cases of serious abuse or neglect. This is especially true since Courts effectively countenance perjury by litigants by refusing to enforce such laws and by reacting to uncorroborated allegations (many of which are perjuries) with extreme measures, often without any review of the case file, any opportunity to evaluate the veracity of the litigants' claims, or any clear understanding of the family dynamics. Minor's Counsel We would simply reiterate the points raised above that parents, given the deference and respect they deserve in a fair and competent court system, are far, far better qualified to decide what is best for their children than a stranger who happens to have a law degree. Moreover, the inconsistency of guidelines and judicial preferences regarding what is truly in the "best interests of the child" gives counsel far too little	Minor's Counsel The recommendations in Children's Participation and Minor's Counsel reflect existing law allowing for judicial discretion in hearing from a child and appointing minor's counsel and reflect support for full

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	guidance in which to wield such unfettered discretion.	implementation of existing statewide rules of court providing guidance to minor's counsel.
	Litigant Education Orientation and Ongoing Information Information about challenges of self-representation. I know of no litigant who does not appreciate the value of an attorney in the maze of family court. This is especially true given that judges often rely on representations (or misrepresentations) of counsel with whom they are familiar before relying on a pro per litigant with which they have no past or future relationship. The family court bar is notoriously "cozy"—in fact many have suggested it is highly incestuous. The natural incentives in such an environment are highly prejudiced against pro per litigants—even those who are educated about the relevant laws. The primary reason litigants do not hire attorneys is not lack of education—it's lack of resources. Divorce is unnecessarily expensive, inefficient, and time consuming—all maladies that drain a litigant's ability to hire appropriate assistance. Note that many litigants begin a case with counsel, only to be drained of resources, patience, and respect for the counsel and the system they view to be ineffective, unfair, inefficient, and even corrupt. This perception is exacerbated the Court's many dysfunctions identified herein, by the emotions and often vindictiveness of one or more of the spouses, and by the attorneys themselves, who are highly incentivized to churn litigation to increase fees. This is particularly true in the case of high-conflict cases among wealthy litigants, where costs frequently run into the hundreds of thousands of dollars.	Litigant Education Orientation and Ongoing Information No response required.

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	By adopting the suggestions herein, we suggest that these hurdles to effective representation will be decreased, increasing access to effective representation and increasing the very low level of public confidence in the family Courts.	
	Streamlining Forms and Procedures Simplified Procedures for Service of Process Service by posting. Extensive reliance on forms is actually a deterrent to effective representation. While family law attorneys have easy access to these forms, litigants do not. Moreover, judges, who prefer to work with the forms, are often hostile to litigants who do not use the standard forms, but instead provide the relevant information in other ways. More forms will not assist litigants—it will only further complicate what is already a bewildering maze of paperwork and process, inconsistent procedures, extraordinarily complicated law, and inattentive judiciary. Simplifying the dissolution process, incentivizing voluntary resolution, and dis-incentivizing litigation churning by the processes described herein, will.	Streamlining Forms and Procedures – Service by posting Forms are easily available on line to litigants and are generally easier than finding relevant case and statutory law. Most states are now adopting forms as a way to enable self-represented litigants to more effectively set out the required elements of an action and structure their case.
	Enhancing Mechanisms to Handle Perjury New civil sanctions. This is perhaps the single most important issue to be addressed in Court. Given the complete lack of strong guidelines for sharing custody, wide judicial discretion and lack of resources to provide adequate attention, irregular motion procedures (i.e., “emergency” OSCs based on mere allegations), and lack of strong ethical character among members of the family bar, complete lack of punishment or sanctions, the incentive to commit perjury is obvious. It has been said by many family lawyers and citizens alike that family court is “liars	Enhancing Mechanisms to Handle Perjury This recommendation has been modified based on comments received.

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	court." We would suggest to the Task Force that the recommendations herein would go a long way to preventing perjury—raising the evidentiary bar to higher levels, refusing "knee jerk" OSCs, simplifying the process, increasing consistency and clear guidelines to increase predictability, and educating members of the family bar about their ethical obligations as officers of the court—would go much farther in preventing the rampant perjury so many complain of, and which has so severely undermined public confidence in the Courts.	
35. Enid Camps San Francisco, CA	*I have reviewed the draft recommendations. I am gratified that the report recognizes the important and lasting effects of family court decisions (see Overview) and believe it offers a good, if rudimentary, beginning, at how to address the many problems facing family court litigants. Particularly noteworthy is its recognition of better handling of perjury in family cases (Section 14), a problem that essentially undermines the public confidence in the judicial system. I believe the Report falls far short of its intended goal of a "long-term blue-print" for positive change, and I would hope that the Committee can reconvene and consider additional input on how to achieve meaningful change that will restore integrity to the judicial process and fairness for all litigants who find themselves in family court. The limited procedural changes the report recommends regarding live testimony, though well intended, will not, standing alone, solve entrenched problems, and may actually have a negative impact by potentially increasing costs of litigation and the necessity for an attorney. It is critically important that family law be updated from the	Long-Term Blue-Print While the Task Force hopes that a committee will be established to implement recommendations of the Task Force, it recognizes that some issues may need to be addressed directly by the legislature or other bodies.

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	1970's recommendations that now form the core of family law several decades later, particularly with respect to (1) Financial calculations underlying support payments. The specter of a financial windfall based upon idiosyncrasies of California family law-- which counts income not assets, and which fails to address the financial resources contributed by new spouses -- among other things, needs rethinking and change. The present system creates a huge incentive for shenanigans, is out of step with any present economic reality, and further creates an unlevel playing field when one party is asset rich. Alternate models for calculating aid are more current and exist --such as the School and Student Service ("SSS") for Financial Aid model which looks at a family's whole financial picture objectively and fairly determines what family net worth, considering all factors. The present system is under inclusive, with lasting effects. For example, a family court, counting income not assets can conclude Spouse A owes Spouse B child support payments, under California's formula. Thereafter, when payee Spouse A applies for a student loan for a child with special needs, she is told she qualifies for substantial financial aid, but this cannot be awarded because B has such great financial assets. Because California is so out-of-step with generally accepted and broader views of financial worth, it has serious repercussions, such as in the example above....where Spouse A cannot obtain aid for the child, and Spouse B refuses to pay. (Trying to get Spouse B to pay would, of course, entail more expense.) There is a lot more that can be said about California support formulas, but the bottom	Financial calculations underlying support payments. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	line is the present system more than sets the stage to financially devastate older working moms, disadvantages their children, creates further inequities between households financially, and undermines the ability of spouses to get back on their financial feet. Family law should neither encourage nor contribute to a system of lasting financial harm to one spouse. The fact that the present system for evaluating financial worth is short-sighted and has contributed to so many unfair judgments, it is no wonder that the public has lost confidence in the family courts. (2) The evaluation of cases for emotional abuse and working in procedural safeguards similar to those for physical domestic abuse. By not recognizing and addressing emotional abuse as a factor in family law decisions, the courts inadvertently help to perpetuate and intensify abusive situations between former spouses. Only when a former spouse is physically abusive does the law presently make accommodation. This view needs to be expanded for emotionally abused spouses to be protected by the courts. Commentator provided references to articles addressing these concerns. A court that discounts this type of evidence, essentially because it is not recognized in California family law, only intensifies the problem, and leaves spouses and minor children in a decidedly worse position than ever. Further the Court, by failing to address this type of evidence (likely because there is no place for it in the law), ends up not only legitimizing a former spouse's continuing abusive and manipulative behaviors, it also further encourages such behaviors in the future. Hence the family court becomes a hand maiden for emotionally abusive spouses. The fact that the Draft Recommendations value increased input from children	The evaluation of cases for emotional abuse. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	(Section 5 Children's Voices) in custody disputes, may further encourage the manipulative spouse to manipulate children, unless determinations of emotional abuse are dealt with first. The public loses confidence in its institutions that refuse to take account of pervasive problems such as emotional abuse of families by a spouse. (3) Encouraging alternative resolutions The family court forum seems particularly ill-suited to make custody and other determinations of profound lasting impact on families. A 15-minute court hearing where the Court makes a snap judgment on the credibility of parties etc. is not a system that the public has confidence in, nor should it. Instead, there should be procedural encouragements and incentives to require in-depth mediation between families to be accomplished with highly skilled financial and custody mediators. As in divorce itself, it only requires one party to insist upon taking the case to court, rather than mediation. The other party may hope for mediation, but that requires agreement. Abusive former spouses seem almost always to choose the court to put the pressure on an emotionally distraught former spouse. The present system of a one-time, one-stop 30 minute interview with a perhaps burned-out mediator, to make a recommendation on child custody to the court, is not a system worth relying upon or retaining. It is a broken system. In-depth mediation may help, however. If the law encouraged mediation by providing consequences to the party who refuses in-depth multisession mediation entirely, e.g. to pay for a Grand Master or other arbiter while the case goes forward with the court, or to pay for attorney fees for the other party should the refusing party not prevail with the exact relief requested, or to require the filing party to	Encouraging alternative resolutions The Task Force's recommendations include support for alternative dispute resolution processes in addition to making the court more accessible. Child custody mediation The Task Force recommendations regarding resource needs in family courts and establishing and funding pilot projects in this area are designed to address concerns about limited opportunities to resolve these complex matters.

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	make a showing why the case cannot proceed through mediation etc., this could help immensely in restoring confidence in our family court procedures. Fault Moreover, although "fault" is not now a factor in divorce proceedings, "fault" perhaps does have a place in setting in place fair procedures that allow some breathing room when the- not- at- fault spouse is served with a divorce petition, and the at-fault spouse demands the court, not mediators, resolve custody issues etc. Otherwise the at-fault spouse essentially is able to take advantage of a perhaps very emotionally distraught spouse, who is at the receiving end of a divorce petition, and is literally unable herself to immediately respond to all the now-imminent court deadlines, much less figure out how and whether she can afford an expensive attorney. It is a further failing of our family law justice system, that when outside custody evaluations are agreed upon, that the Court can simply ignore the findings and replace with a "gut" instinct ruling based upon a 15-minute in-chambers meeting separately with the parties. A psychopath can look very good if only scrutinized for 15 minutes. Likewise, if the parties agree to a custody or other evaluation, and one party challenges the recommendations, there needs to be some method of protecting the party who in good faith agreed to the evaluation, from having to choose between a resolution that is not in the best interest of her children (caving in to the challenging party's demands that were rejected by the evaluator), or being forced to pay for a trial that she cannot afford. Similarly, restoring tort and other remedies such as intentional	Fault The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. Given the important policy in child custody law that judicial officers are required to make decisions that are in the best interest of children, this issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Elkins Family Law Task Force

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	infliction of emotional distress claims, and allowing broad perjury causes of actions to former spouses would perhaps cut down on the harms that are caused in family court actions. Abused former spouses should not be left remediless and in a worse position than other citizens, simply because they are by necessity in family court, under family court jurisdiction. Criminal law also offers helpful analogies for family law situations involving procedures and remedies. Conclusion There is a significant need for more inquiry and in-depth findings by this Commission to address the issues now facing family court litigants. There is also a great need for additional opportunity for public input. I only just found out about the published draft recommendations of the Elkins report. I certainly would submit more in-depth comments if given an opportunity, and I believe many others would like to have thoughtful input into helping this Commission fix a very broken California family law. Thank you for considering my comments.	focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
36. Bart J. Carey, Esq. Family Law Attorney Anaheim and Irvine, CA	*Commentator is a family law attorney who participates professional in the collaborative divorce process, litigator, and mediator. Encouraging Mediation I am pleased to see Elkins address, in particularly substantive ways, empowering those families who would do so to be responsible to reach their own agreements during the process of dissolving their marriage by educating them on processes and resources available to assist them. I am particularly encouraged to read the sections recognizing the impacts of the divorce on children and the need/benefits of incorporating their voices.	Encouraging Mediation No response required.

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	It is this latter dynamic which initiated my journey to incorporate ADR and limited scope options into my practice which is presently almost exclusively non-litigation. That said, I have also reviewed the comments coming from the CPCAL [Collaborative Practice of California] group and would adopt those as my own comments on this draft. Caseflow Management It is proposed in this Caseflow Management section of the Elkins Family Law Task Force Draft Recommendations in Paragraph 3, ("Checkpoints Established"), that the family law court have an automated system to contact petitioners who have opened cases, at regular intervals, such as at two months after filing the petition if a proof of service has not been filed, at four months afterwards, and at least once a year after that. COMMENT The concern in the collaborative process, or any other out-of-court alternatives, is that petitioners do not want to go to court or have the court intervene at all. Thus, it is proposed that a statewide form be drafted by the judicial council which would permit any petitioner in an out-of-court process such as collaborative practice or mediation to opt out of the court intervention or checkpoint program. COMMENT It is further proposed that the Elkins Recommendations include a suggestion that a statewide information sheet be drafted which is given to all petitioners at the time of filing the petition. This form would not only describe courtroom processes, but also alternatives such as private mediation, and collaborative practice.	Caseflow Management The Task Force has suggested time frames to provide some idea of what check points might be developed. Parties who are participating in the collaborative process or other out-of-court alternatives could submit an update to the court regarding the status of the case so that they would not have to appear. An information sheet regarding the family law process including alternatives to courtroom processes is anticipated as part of litigant education.

Commentator	Comment	Committee Response
	Streamlined Procedures for Defaults and Uncontested Cases The following is stated in contradiction to the intervention suggested in Paragraph 3 above "In a high percentage of cases, the parties can obtain a judgment without appearing before a judicial officer. Unnecessary court appearances increase the cost and inconvenience to the parties and are not a wise use of limited judicial resources. When the parties do not wish to appear before a judicial officer, when there is no legal requirement in their case for a court appearance, and when there are no other circumstances causing the court to believe that an appearance is necessary to advance the matter, the court should avoid implementing procedures that would create a requirement for a court appearance in the case. Pleadings may be reviewed by the judicial officer and appearances requested if necessary to determine whether the proposed judgment complies with the law. A goal of caseflow management should be to minimize or eliminate the need for court appearances in those cases that can be resolved by default or agreement of the parties." Comment This is why the opt out form would be helpful. It would eliminate the need for court intervention or appearances in certain cases like those in private mediation or collaborative practice. Efficient Use of Time The following is stated "We should not require that every family take the time to appear before a judicial officer or other officer of the court if that is not needed for the prompt and just resolution of their case. Caseflow management procedures need not necessarily require a court hearing or mandatory appearance if it appears that the matter can be	Streamlined Procedures for Defaults and Uncontested Cases This recommendation is directed at cases where a default or uncontested judgment is submitted to the court. If the case is resolved, there would be no need for a case management conference, and the Task Force is suggesting that in many of these cases, there would be no need for an appearance. Efficient Use of Time The Task Force suggests that those "Those who want a slower pace can simply explain their reasons to the court and the court should generously allow longer continuances based on

Commentator	Comment	Committee Response
	resolved and/or adequately monitored by the court without direct judicial involvement. Furthermore, in all cases, the court should encourage innovative alternatives to personal attendance at case management conferences, such as by telephone appearances or e-mail statements regarding the status of the case when appropriate." COMMENT It is suggested that judicial officers have the ability to change the status or track of one of their cases to a "no intervention/opt out" if the parties decide that they wish to resolve the case by ADR, mediation or collaborative practice some time after the case has begun. Part 5 Children's Voices COMMENT Children are arguably the most important product of the divorcing parents. It is striking how the recommendations of this paragraph already exist in collaborative practice which enables the children of the divorcing parents to have a voice in the process in a safe and protected manner without fear of recrimination. COMMENT The Elkins Recommendations in Part 5 focus on when and how children should testify in court, providing judicial guidelines for such testimony, while protecting them from psychological damage. The Elkins Recommendations mention that "Studies have recognized the importance of hearing from children in matters that affect their lives and have shown that children do better when they are aware of the process and how decisions will be made." In other words, children should not be ignored, or used in the process of their parents' divorce. They should have the right to have a voice, and understand why their parents are getting a divorce. Otherwise the children could be psychologically damaged, especially if they think	the specific needs of the parties. Allowing leniency in these cases would still allow the court to actively manage cases where one litigant is stalling and preventing the case from moving forward. The more formal processes can be invoked as needed as long as the case remains active in the case management system. Children's Voices No response required.

Commentator	Comment	Committee Response
	they are to blame. This need is satisfied in out-of- court processes such as collaborative practice by having a child specialist as part of the collaborative team, and in the litigation process by court mediators, evaluators, and sometimes, minor's attorneys. In out-of-court processes, however, the intervention of mental health professionals is not for the purpose of preparing the children/or custody issues for litigation. Without the fear of litigation or having to go t court, children can speak more freely and have a voice in their parents' divorce without the fear of recrimination. Domestic Violence. In regards to Paragraph 5, ("Children's Participation") in domestic violence cases, the Elkins Recommendations share the same concern for children who experience domestic violence as in cases involving child abuse and neglect. In other words, "the court must give appropriate consideration of the question of whether the child's point of view and the information the child has regarding the violence would be probative in determining the risk posed to the child and the ultimate decision regarding his or her best interest." COMMENT With the child specialist on the collaborative divorce team as well as the use of additional mental health professionals for each parent (coaches), domestic violence concerns, and protections for the child can generally be competently handled through collaborative practice. In fact, with full acknowledgment of the domestic violence power imbalance and other psychological needs of each spouse, having several mental health professionals on the team might be a better way to protect the children of divorcing parents where domestic violence is prevalent.	Domestic violence No response required.

Commentator	Comment	Committee Response
	Contested Child Custody. Superior Courts in California have provided mandatory custody mediation services to family law parents since the early '80s, but each county has been permitted to develop its own method of providing these services which are generally divided into "confidential" and "nonconfidential/ recommendation" counties. The Elkins Recommendations recognizes that these mandatory mediation services are good for parents in helping them to create their own parenting plans for their children, that such services should be expanded, and is money well spent. Those legal and mental health professionals who engage privately in out-of-court resolution through mediation and collaborative practice support these recommendations as they know from experience that confidential, court mediation and counseling is a highly successful system that not only assists and teaches parents to make their own parenting plans, but helps to keep them from returning to court by teaching them to resolve their parenting differences peacefully.	Contested Child Custody No response required.
	Litigant Education COMMENT As previously suggested above, regarding Part 3, a statewide information sheet should be provided to each petitioner at the time of filing which describes out-of-court options such as mediation and collaborative practice.	Litigant Education Agree that information regarding out-of-court options should be provided to litigants.
	Litigant Education In Paragraph 2, ("Orientation to Child Custody Mediation") and Paragraph 3, ("Enhanced Parent Education Prior to Mediation"),	Litigant Education Information on resources for litigants. No response required.

Commentator	Comment	Committee Response
	various suggestions are described to help parents prepare for court mediation, to receive additional information concerning parenting education programs, custody evaluations, visitation programs, parenting classes, family counseling, children's development needs, etc. In Paragraph 4, ("Settlement Opportunities"), the Elkins Recommendations propose that additionally, it is recommended that "Education regarding settlement opportunities should make clear the importance of making settlements or agreements voluntarily and through an informed process. The courts should balance support for settlement with recognition that many litigants come to family court seeking protection and have concerns regarding adult or child safety that may present or interfere with the development of voluntary and informed agreements. Given the wide range of issues and case types arising in family court, educational materials and information should avoid a bias that supports settlement over litigation; those litigants who are unable to settle and may require court assistance in resolving their matters for any number of reasons should be provided with information about proceeding through the court process. Judicial involvement and supervision in mediation of disputes is encouraged." COMMENT This section is arguably the most important in the Elkins Recommendations. Without providing the means to inform and educate each and every couple who files a family law petition about options available to them in out-of-court as well as in-court resolution, and services to help them complete their case with the focus on the needs of their children, the family law courts do not live up to their ability and expectation to help California families in the transition of divorce and separation. A wide range of services and options exists for transitioning	

Commentator	Comment	Committee Response
	families. Since couples must use the court system to end marriages, domestic partnerships, and other relationships, the court system must serve as the central directory furnishing information about the resources that are available to families in transition.	
	Expanding Services to Assist Litigants in Resolving Their Cases COMMENT Part 12 of the Elkins Recommendations gives full recognition to the merits and preferences of many couples in the family law court system to utilize settlement, and ADR options. Although the emphasis in Part 12 is on the expansion and improvement of court mediation and settlement services to include support and property issues, the Elkins Recommendations describe the use of ADR, "both court-based and non-court based options", at any time during the activity of the case, Not only would these options lead to "happier litigants" as mentioned above, but more court time would become available for those that need to adjudicate issues in front of a judicial officer.	Expanding Services to Assist Litigants in Resolving Their Cases No response required.
	Streamlining Family Law Forms and Procedures This section includes suggestions from the Elkins Recommendations that forms should be easier to use, provide critical information, and provide more streamlined options for those who can settle their cases without court hearing. There is an additional option suggested which would allow couples who have reached an agreement and exchanged declarations of disclosure prior to filing their Petition, to submit a joint petition. The proposed judgment would be submitted at the same time as the Petition is filed. This new procedure would not have the restrictions of the Summary Dissolution process which already exists.	Streamlining Family Law Forms and Procedures No response required.

Commentator	Comment	Committee Response
	Additionally suggested, is the replacement of the current Order to Show Cause and Motion forms with one standardized "Request for Order" form, the simplification of the service of process form, the streamlining of the declarations of disclosure forms, and the production of templates to assist with writing declarations, agreements, and judgments. The alternative of service by publication for hard to find respondents, could also be replaced by a court website which would post notices and summons of newly filed cases. COMMENT Particularly in less complex family law cases, the option to submit all paperwork at one time to the court, including a joint Petition, Declarations Regarding Service of the Declarations of Disclosure, and the Stipulated Judgment, would be attractive to those couples who have reached agreement prior to filing their family law case, and who wish to complete their case simply and expeditiously. Standardize Default and Uncontested Process Statewide COMMENT No matter how many uncontested judgments a legal professional has previously submitted to the court for filing, it always is unpredictable as to whether or not the next judgment will be rejected, and how many times it might bounce back. How wonderful if the first review of the uncontested judgment was thorough enough to reveal all flaws in the submitted paperwork so that the second attempt would guarantee success. It is inequitable for those who use no courtroom time to have such difficulty getting the court's help the one time when it is needed to file their judgment. Public Information and Outreach In this section, the Elkins Recommendations was concerned that the	Standardize Default and Uncontested Process Statewide No response required. Public Information and Outreach No response required.

Commentator	Comment	Committee Response
	public is not generally familiar with the courts, and the public is unaware of court services which are available to them. Thus it is recommended in Paragraph 1, ("Public Information Program"), that "The AOC should develop a public information program for educating the public about the availability and benefits of court services, particularly prefiling services." in addition to improving public outreach, and the availability of information materials. COMMENT Public information about family law court services and out-of-court options would be invaluable to transitioning families. Judicial Branch Education Highlights that the Elkins Recommendations propose in this section include the following The training of new family law judges in "courses that enhance the understanding of the importance of the family law court, not just by telling judicial officers in these courses how important it is, but by presenting empirical evidence of the effect of the court on the lives of children and families." "Education for all judicial officers should include information on limited scope representation." "Family law arbitrators and ADR providers should receive training that addresses substantive family law issues as well as domestic violence, the possibility of power imbalances in family law, and working with self-represented litigants, limited English proficiency populations, and interpreters." COMMENT New judges who never worked in the family law field might be unfamiliar with the daunting task of making orders to	Judicial Branch Education The recommendations on judicial

Commentator	Comment	Committee Response
	transition families and the impact that the judge's orders could have on the children and parents whose lives are affected. Additionally, judges might not be familiar with the alternatives to court-based resolution, limited scope options, and the unbundling of services in family law. Arbitrators and ADR providers should understand issues of confidentiality, neutrality, and power imbalances, where applicable, as vital to their work. Such education is essential to judges, and other legal professionals working in and out of the court system. Family Law Research Agenda The Elkins Recommendations propose that staff from the AOC and local courts include various types of data and statistical reporting in information that will be compiled for the family law courts. The statistics gathered will include the different kinds of cases handled, methods by which judgments were reached, numbers and percentages of cases reaching judgment, number of hearings, trials, cases that return to court with frequency, and numbers and reasons for continuances, etc. Additionally, in paragraph 2, ("Monitoring Evolving Issues In Family Law"), "The AOC should track caseload statistics and other relevant indicators to identify emerging case types or issues to ensure that court procedures and services are continuing to meet the needs of litigants." This will include in paragraph 5, ("Review of Research and Best Practices From Other Jurisdictions") "The AOC and local courts" exploring best practices by reviewing research and reports from other jurisdictions, both nationally and internationally that have implemented new programs or services related to the family court." COMMENT The gathering of statistical data will enable the family law	branch education are intended to address a broad range of issues and to promote consistency throughout the state, share knowledge of and experiences with promising practices, and disseminate important information to judicial officers and court employees. Family Law Research Agenda No response required.

Commentator	Comment	Committee Response
	court system to evaluate what works and what doesn't, as well as the evaluation and monitoring of new types of cases statewide. Court Facilities In the introductory paragraphs to this section, the following is stated "Court facilities for family law matters should be designed to protect families from harm, foster settlement, and resolve expeditiously those matters requiring judicial decision. Judicial officers and court staff need technologically modern, flexible, well-planned courtrooms and facilities for all of the collaborative services offered for resolution of cases. Many of California's family law courtrooms are in converted commercial space or retrofitted, 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." Some of the suggestions of the Elkins Recommendations include the following In paragraph 3, ("Private Space For Consultation and Settlement"), "Courts should allow space for litigants and attorneys to have reasonably private discussions. Family law involves sensitive and private issues, and yet settlement negotiations often take place in crowded hallways. An atmosphere conducive to settlement and demonstrating respect for the intimate issues discussed would be beneficial to the parties and attorneys." In paragraph 8, ("Safety"), "Compared to other departments, family courts have a relatively high incidence of violence, whether directed at litigants, attorneys, judicial officers, or court staff. Courthouse facilities must be appropriately equipped and staffed to ensure safety."	Court Facilities While the Task Force acknowledges that there are aspects courthouse environment that may not be the most conducive to privacy or settlement, the focus has been on improving conditions within the courthouse due to concerns about litigant safety in offsite locations that may not have adequate security screening.

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	COMMENT Often, family law courthouses are not the best places to settle cases. The anxiety begins with the line-up to get into the courthouse, being greeted by a plethora of deputy sheriffs, and going through security just like at the airport. Add to that crowded courtrooms and hallways, screaming children, angry parents, and few places to have a quiet discussion with clients. These conditions often make settlement discussion difficult or even impossible. The best place to settle cases is usually a location away from the courthouse where some quiet and tranquility prevails. In this time of economic crisis, a critical question raised by the Elkins Recommendations is how can traditional courthouses be retrofitted to provide a safe and conducive environment for families in transition to respectfully resolve their cases? This is a serious topic that begs further discussion and action to encourage settlement outside the courthouse. Leadership, Accountability, and Resources This final section in the Elkins Recommendations makes suggestions which would strengthen and improve the delivery of family law services. In the introductory paragraphs, the following is stated "The resources provided have not been proportionate to the volume of cases and proceedings related to family law. 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. Currently in family courts statewide, fewer than half the numbers of judicial officers are assigned to hear family law cases compared to the number of judges assigned to other areas based on workload."	

Commentator	Comment	Committee Response
	One of the greatest problems facing family law departments is described in paragraph 6, ("Assignment of Judicial Officers to Family Law") which states the following "On an ongoing basis, consistent with available workload data, each superior court should determine the number of judicial officers to be assigned to family law based on the percentage of the court's workload that is family law. Meaningful access to justice requires adequate judicial resources. Statewide, at the current time, approximately 20 percent of the courts' workload is family law. To the extent that an individual court's family law workload appears to vary from statewide standards commensurate adjustment to the 20 percent benchmark should be made." Additionally as described in paragraph 7, ("Court Resources") "Consistent with the increase in judicial officers assigned to family law, ancillary and supporting resources for self-help centers, courtroom staff, clerical staff, family court services staff, and research attorneys must also be increased." Another highlight of this section is paragraph 12, ("Transparency and accountability"). Included in the subsections of this paragraph are a complaint mechanism for litigants and the public to submit complaints about access and procedural fairness, public information "to educate the public on services available, court's limitations, and options for resolving their complaints", and a court ombudsman "to receive and investigate complaints and make recommendations to court leadership for improvement."	

Commentator	Comment	Committee Response
	Resources COMMENT Most of the proposals of the Elkins Recommendations may be doomed to failure unless resources are available to implement them. The education of the public about available family law services, both court-based, and non-court-based is vital. Private services and resolution of cases out of court, will free up more space at the courthouse for those who need it. The encouragement of feedback and the resolution of public complaints should help to better the delivery of family law services. Strong judicial leadership is necessary to call attention to the plight of the family law courts, which appear to be the most under-staffed courts in the state, and to have the courage to make beneficial changes in the family law courts.	Resources The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law will be addressed in the implementation process. The Task Force recognizes that strong judicial leadership is critical to effecting positive change in family law.
37. Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	Right to Testimony at Hearings. Due process concerns Our existing procedures in family law, as with other areas of civil law, provide for a significant distinction between trials and hearings by motion or OSC. Unlike trials, motion and OSC hearings occur on relatively short notice with little opportunity for discovery or investigation of the factual basis for the requested orders. Therefore due process, by necessity, requires motions and OSC's to include declarations setting forth the factual evidence to allow the other party a	Right to Testimony at Hearings. The Task Force does not anticipate the elimination of declarations. (See section on Simplifying Forms and Procedures.) The Task Force does not believe that the right to live testimony rests solely on whether or not the event is a hearing or a trial. The Code of Civil Procedure allows judges to take

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	reasonable opportunity to present a meaningful response and avoid a "hearing by ambush". The proposed rule fails to address this concern. Although the rule doesn't directly eliminate the requirement of necessary declarations, by not mentioning this issue the reader of the proposed rule ("the judge must receive any live competent testimony that is relevant . . . ") may be led to conclude that such declarations are not required. Therefore any rule that may be adopted that would require or encourage oral testimony, should be limited to cross-examination or appropriate corroboration of properly served declarations. Inappropriate wording concerns The wording of the proposed rule encouraging oral testimony is misleading in the use of the phrase "the judge must receive" because of the necessity of having the good cause exception. Under the current circumstances in most cases the court is likely to simply say that the request for oral testimony is denied as the court has insufficient time due to other cases (the B(h) factor). That is, all of the listed factors a-g may be found to be outweighed by the necessity for the court to decide the issue in controversy in a timely manner. Therefore any expectation the rule would create of a significant change in the conduct of family law motions and OSC's would be misleading. It would seem to be less misleading to have the rule state that the court has discretion to allow oral testimony in certain types of motions and OSC's considering the listed factors a-g. It would seem to be more helpful to have rules instructing counsel and litigants on what they need to do rather that a rule that purports to tell	testimony at hearings when it is appropriate to do so. This Task Force recommendation maintains this judicial discretion, but sets out reviewable factors that must be considered when exercising it. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The recommendation has been modified to require appropriate notice and offers of proof when the testimony of other witnesses is requested. The role of role of declarations should be addressed more fully during the development of implementing rules. The task force recognizes that there may be other factors not yet ascertained that would create good

Commentator	Comment	Committee Response
	the court to do something that may not be possible that would likely lead to more frustration and disrespect toward the legal system in family law. Duplication of efforts concerns Many hearings on motions and OSC's in family law are for temporary orders pending the trial. Court's are often reluctant to have lengthy evidentiary hearings for temporary orders that may have be tried de novo a few weeks or months thereafter at the trial for the more permanent orders, thus duplicating the efforts of the litigants and attorneys as well as court resources. Any proposed rule regarding oral testimony should clearly give the court discretion to limit such hearings where the same issues remain pending for trial. Rules of Court Concerns re undue restrictions on local rules Many statewide rules started out as local rules. Court's should continue to have discretion to develop local rules to improve the practice of family law that do not directly conflict with statewide rules or penalize litigants who only follow statewide rules. Innovative and practical ideas can be more easily developed on a local level than statewide. Local rules that give options to litigants, such as the LASC local rule on evidentiary objections, can be more easily adopted, tested and changed on a local	cause to deny the right to live testimony, and has included subparagraph (h) to allow for that. Very few family law cases go to trial. Many orders made at temporary hearings are ultimately incorporated into judgments, or last for many years in cases where judgment has not been entered. Therefore, the right to present live testimony is particularly important at hearings on temporary orders. The Task Force encourages judges to use their discretion to limit the scope of the testimony, and to refuse testimony that is cumulative or otherwise inadmissible under California law. Rules of Court The Task Force recognizes that many valuable innovations have been developed through local rules. The Task Force has modified its recommendation to make it clear that local rules are appropriate in the absence of statewide rules.

Commentator	Comment	Committee Response
	level and eventually may lead to a statewide rule or legislation. Therefore there should not be a blanket prohibition on the development of local rules within some broad parameters. Forms and Procedures A greater emphasis should be placed on the elimination as well as simplification of existing forms. Many forms have been developed with extensive lists of possible orders that could be made by the court. Many of these, however, are orders that are rarely made or made only in extraordinary circumstances. Litigants and even some attorneys often submit many pages of request forms with boxes checked for orders for which there are insufficient factual allegations or that are inappropriate for the circumstances. A litigant seeking family law orders, or domestic violence restraining orders, with child custody issues often submits over 20 pages of Judicial Council forms with dozens of boxes checked with very little space for factual allegations. This seemingly overwhelming process likely distracts the applicant from the issue that motivated the trip to the courthouse and results in the applicant not presenting the facts of his or her story as well as distracting the responding party and the court and misusing the valuable time of all involved. Application forms should not be shopping lists for litigants but should be requests for factual information. FL-260 The often misunderstood or misused procedure and forms for an action for exclusive custody (FC §3120) should be eliminated and/or combined with the Uniform Parentage Act (FC §7600) proceedings so that all non-dissolution custody actions would be using the same pleading forms thus avoiding the existing confusion for litigants and	Forms and Procedures Elimination of forms as appropriate should also be considered as part of simplification. FL-260 Since this form allows parties who have already established parentage through the Voluntary Declaration of Paternity to establish custody and support without having to obtain

Commentator	Comment	Committee Response
	attorneys.	another judgment of paternity, this suggestion does not appear to lead to simplification.
38. Renee Chernus Attorney Law Offices of Renee R. Chernus San Rafael, CA	I disagree with the proposal that EVERY OSC/Motion for temporary support, custody and fees should be set for an evidentiary hearing. I believe that it will make these matters much more expensive, with much more extensive pre-hearing discovery, such as depositions and document demands, etc. It will result in unnecessary delays in a party obtaining necessary financial relief (support) and will allow a party who is not providing access to a child a longer period of time to deny that access. I believe that it would be more appropriate for the Court to hear these matters as law and motion hearings on declarations and then, if the Court determines that it would be helpful to have live testimony, the Court can grant initial interim relief and set the matter for an evidentiary hearing within 45 days.	The Task Force recommendation on the right to live testimony does not eliminate judicial discretion to made decisions based on declarations. It simply sets out reviewable factors judges must consider in exercising their discretion. The right to provide live testimony was an issue brought to the Task Force by attorneys and litigants through public input and attorney surveys as a fundamental due process matter. The Task Force received input from attorneys and the public that basic decisions on declarations alone were not only unfair, but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. Many courts

Commentator	Comment	Committee Response
		reported that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their law and motion calendars.
	Assessment of Income for Attorney Fees I believe that in the assessment of income for attorney's fees, it should be written into the rule that it should, absent good cause, be based on the income each party is going to receive AFTER the support order is made, as after temporary support incomes should be relatively equal.	Assessment of Income for Attorney Fees While a potential order of support should be considered, the Task Force recognizes that litigants often need attorneys to obtain an appropriate order of support.
	Funding of Legal Services The report recommends increased funding for Legal Aid services for low income representation. Having been on our Legal Aid Board for over 10 years, while this is a worthy and lofty goal, I do not believe that any decisions about this report should be made in anticipation of this increased funding being actually received. Legal Aid funding has been drastically cut in the past and unless the legislature is willing to actively commit to additional funding to achieve this goal, it is not a realistic alternative upon which decisions should be based.	Funding of Legal Services AB 590 (Feuer) was chaptered while these recommendations were circulating for comment and is anticipated to provide significant funding for pilot projects to provide legal services. However, the Task Force certainly agrees that implementation of the recommendations cannot be made assuming full funding for legal services.
39. Donna Clay-Conti Senior Attorney and Staff Access and Fairness Committee	The Access and Fairness Advisory Committee submits these comments on those parts of the Elkins Family Law Task Force Report which fall within the advisory committee's purview.	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Administrative Office of the Courts Judicial Council of California	The advisory committee's charge is to "make recommendations to the [Judicial] council for improving the access to the judicial system and fairness in the state courts." Also, the committee "must recommend to the Center for Judicial Education and Research proposals for education and training of judicial officers and court staff." (Rule 10.55 of the Judicial Administration Rules.) Accordingly, the advisory committee focused its review on the following sections of the Elkins report Right to Present Live Testimony at Hearings Expanding Legal Representation and Providing a Continuum of Legal Services Providing Clear Guidance Through Rules of Court Scheduling of Trials and Long-Cause Hearings Litigant Education Expanding Services to Assist Litigants in Resolving Their Cases Streamlining Family Law Forms and Procedures Interpreters Judicial Branch Education As an initial matter, the advisory committee commends the Elkins Family Law Task for the excellence of its report. It has done an extraordinary job of recognizing the difficulties encountered by self-represented litigants and of proposing reforms that address those concerns while many of the matters covered by the report and its recommendations touch on issues this advisory committee has addressed, on an ad hoc basis over the years. The committee is pleased that these issues received such careful, thorough, and comprehensive treatment. We endorse the recommendations made in the sections listed above with the following additional comments and suggestions.	Initial matter No response required.

Commentator	Comment	Committee Response
	Expanding Legal Representation and Providing a Continuum of Legal Services Agree with the recommendation subject to the following modification This section might note that Assembly Bill 590, the Sargent Shriver Civil Counsel Act, will be a step towards providing funding for the representation suggested in these recommendations. Interpreters Agree with the recommendation subject to the following modification This section should be broadened to include an explicit reference to sign language interpreters for individuals who are deaf or hearing impaired as defined in Evidence Code §754(a). Unless there is a reference in the recommendations to the provision of sign language interpreters, courts might not address the need in a timely manner (see particularly subsections 1.A through G). Sign language interpreters should also be referenced in section 18.C. Judicial Branch Education. Agree with the recommendation subject to the following modification The Judicial Council's strategic and operational plans recognize that cultural competency training and education for the entire judicial branch workforce and culturally responsive programs for court users are important to branch-wide efforts to ensure that the courts are free from bias and the appearance of bias (see Operational Plan 2008-2011, Goal V, Objective 2). The advisory committee believes this is especially important in family law cases. Therefore, the advisory committee recommends that subsections 1.K and 2.A-G of this section include a requirement that judicial officers and court personnel, including, but not limited to, arbitrators, mediators, and case evaluators,	Expanding Legal Representation and Providing a Continuum of Legal Services Will add a reference to the Sargent Shriver Civil Counsel Act. Interpreters Will make changes as suggested regarding sign language interpreters. Judicial Branch Education. This suggestion re requiring judicial officers and court personnel to receive cultural competency training will be referred to the implementation process.

Commentator	Comment	Committee Response
	receive cultural competency training in the handling of custody matters involving same-gender relationships; and that the judicial workforce involved in family law matters also receive education and training concerning the unique challenges presented in two additional areas child custody proceedings involving LGBTQ youth, and child custody proceedings in relationships where one partner or spouse is transgender. The advisory committee also wishes to underscore the importance of other concerns addressed in the task force recommendations. Leadership, Accountability, and Resources. Agree. The references to improving and promoting transparency and accountability are critical to the Court's efforts to insure that litigants believe that justice is served in their cases. The advisory committee strongly endorses the recommendation that each court must assess critically the resources it assigns to its family law division. Many of the issues involving access to justice and due process in family law cases are created – unnecessarily – because too few bench officers are assigned to the family law division. Accordingly, the advisory committee strongly encourages the task force to include in its recommendations a statement advocating that the California legislature, without further delay, grant and fund the new judge positions currently earmarked; and that courts consider establishing family law divisions and allocating those new judge positions, when received, to those divisions. The current situation requires thoughtful, diligent bench officers to find ways to handle too many cases on a calendar – resulting in short cuts and curtailed hearings – which limit the litigants' access to justice. The single greatest reform that could be made is to assign	Leadership, Accountability, and Resources. The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law will be addressed in the implementation process. The Task Force agrees that effective leadership and advocacy within the judicial branch, as well as with the legislative and executive branches, is

Commentator	Comment	Committee Response
	adequate judicial resources to this important court division.	critical to effecting positive change in family law.
40. Hon. Christine Copeland Commissioner Superior Court of San Benito County	Rules of Court Eliminating local rules if only one thing can be achieved by Elkins task force, this would be it. Goal should be to make CRC more comprehensive (including procedures on how to make an ex parte request) and local rules should be prohibited, especially those adding extra requirements/forms/processes to getting a divorce judgment. Caseflow Management Clarification/legislation is needed re whether mandatory dismissed rules in CCP & CRC requiring service of action within 3 years and bringing action to judgment within 5 years apply to family court cases. Some courts do apply these rules. I believe they don't fit within a family court context, particularly the 5 year judgment rule, and application of rules creates needless multiple cases, work & function. Standardize Default and Uncontested Process Clarity is needed re who needs to file & serve disclosure in marital/DP cases, as some courts & this shouldn't be required. The rule should be True default (no MSA) – disclosure from petitioner only Default w/ MSA – disclosure – both parties, but no filing fees for resp's disclosure Contested w/ stipulated judgment of MSA – both Contested, resolved through trial – both. Streamlining Family Law Forms and Procedures	Rules of Court Eliminating local rules – ex parte procedures will be considered as those which might be made into statewide rules of court. Caseflow Management Mandatory dismissal – CCP 583.161 provides an exception for dismissal under CCP 581 in dissolution actions where there is a child or spousal support order, or when there has been a trial on the status of the marriage in a bifurcation action. Caseflow management should help to address this problem. Standardize Default and Uncontested Process Disclosure - This appears to be covered in legislation, but if there is lack of clarity, that can be addressed in statewide rules of court.

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	In particular clarity is needed that service by posting, or publication, applies only to service of a summons in a family court context. Many incorrectly believe that service of motions are allowed via publication or posting. Request for order form Please keep some sort of re-issuance form available. Please include on a request for order form an item in which to request &for judicial officers to grant, an order shortening time and an area(s) in which to request, and for judicial officer to grant, ex parte/temporary orders. \ Domestic Violence Allowing establishment of paternity (where applicable) in DVPA requests – thank you! this has presented problems for a long time and needs fixing. No litigant facing a DVPA court hearing should have to be made to fix a DVPA case just to get paternity (and consequently custody/visitation) orders established.	Streamlining Family Law Forms and Procedures Service by posting. This appears to be a training issue. Request for Order form There is no suggestion to eliminate the reissuance form. Orders shortening time and temporary orders should certainly be available. Domestic Violence Establishment of paternity in DV case – No response required.
41. John Crawford Norwalk, CA	Chambers conferences Between judges/commissioners and both parties attorneys, should not be permitted at all. The litigants are not allowed to participate in chambers conferences making it a secret meeting. After such a secret conference, judges/commissioners do not explain what was discussed, they, if any tell that their attorney will explain, later, attorneys do not explain or forget or ignore everything to their	The Task Force recognizes that family law litigants want and need to have a meaningful voice in their cases. The Task Force has recommended that the parties have the right to present live testimony at the time of their hearings, and anticipates implementation of this recommendation may address some of the concerns about chamber's conferences set out by the

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	convenience to keep the case going for their money gain or make the litigant lose their case. Litigants are kept in the dark with those secret chambers conferences and their cases controlled only by attorneys and judges/commissioners.	commentator. It is the responsibility of attorneys to keep their clients informed of the events occurring in their cases, including the content of communications in chamber's conferences. Chambers conferences are frequently informative to attorneys about how a case may move forward should a hearing or trial occur, and this can be highly beneficial to the interest of their clients; therefore, the Task Force concludes it is not appropriate to make a rule barring them entirely. However, this concern should be considered in drafting implementing rules.
42. Connie Crockett Legislative Committee Member California Association of Legal Document Assistants Nevada City, CA Elizabeth Fleisher A Legal Bridge Self-Help Center Auburn-Sacramento/Chico-Redding, CA	*****On behalf of the California Association of Legal Document Assistants (CALDA) Commentator references public trust and confidence survey and raises concerns that Legal Document Assistants were not included in the survey. Additionally, the commentator suggests that had the LDA profession been included, particularly as a non-demographic influence, the results of this survey would have revealed how often LDAs are utilized by the consumer (and some courts) and the following CALDA's overall opinion of the Task Force recommendations are that these ideas will far better serve the public, especially the simplification	

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	of various family law procedures and the creation of writing aids such as declaration templates. Many of these proposals will also create an environment where the parties will feel valued and heard and create more continuity within the courts. CALDA's Comments specific to the Task Force draft report and comments from Dale Bolger Amerimutual Services and "A Self Help Legal Center" (non-profit in the forming stages) Victorville, CA Expanding Legal Representation and Providing a Continuum of Legal Services Referrals to private attorneys. The Task Force recommends that local lawyer referral services develop modest-means/low-fee family law panels as well as panels of attorneys to offer unbundled legal services. Many Legal Document Assistants (LDAs) currently assist self represented litigants and attorneys with these services. CALDA proposes that panels of LDAs are also included as a resource and referral to assist the self represented. Funding for legal services. The task force recommends there should be increased resources for litigants unable to afford private attorneys. Currently there are LDAs/Paralegals that work under separate contract with the Courts to assist with preparation of documents for litigants unable to afford attorneys. Given the current budget crisis, CALDA	Expanding Legal Representation and Providing a Continuum of Legal Services Referrals to private attorneys. While the Task Force is mindful of the benefits that many Legal Document Assistants provide to unrepresented litigants, it does not believe that a recommendation that the court refer to those services is appropriate. Courts cannot refer to individual attorneys but only to certified Lawyer Referral Service programs with consumer protections. Based upon testimony provided, the Task Force is concerned that there does not appear to be sufficient consumer protection oversight of LDAs at this time.

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	proposes the courts consider outsourcing to LDAs as well. Increased funding for self-help services. The Task Force addresses the "tremendously high demand" for assistance for litigants in preparing paperwork, and calls for additional funding for this service. CALDA proposes that funding under this recommendation can be directed toward utilizing LDAs as well. Self-help services expanded. The Task Force suggested self-help centers have resources available to assist with hearings, trials, information related to rules, forms and timelines. CALDA proposes that reference to LDAs be included with this information or the use of LDAs in any manner the self-help center deems necessary or beneficial to the consumer. Court-based mentoring. This recommendation encourages use of work-study or internship opportunities for law students with family law facilitators or self-help centers. CALDA proposes that this mentoring program include LDAs as well. There are currently LDAs working in these offices on a voluntary basis as encouraged by CALDA.	Increased funding for self-help Services. The Guidelines for the Operation of Court-Based Self Help Centers call for all self-help centers to be attorney supervised. Many use paralegals and other staff to provide service under the direction of the attorney. Self-help services expanded. Given the concerns that the Task Force has regarding appropriate referrals, it declines to modify the recommendation at this time. Court-based mentoring The Task Force appreciates the CALDA members who volunteer at self-help centers and suggests that local courts should consider LDAs as potential volunteers.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

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	Litigant Education Orientation and ongoing information and education on the family law court process. CALDA requests that orientation procedures and introductory information include reference to LDAs (or LDA panels as suggested above) as one of the options available to the self-represented. Streamlining Family Law Forms and Procedures General form review A. and B. Judicial Council and Local forms The task force recommends that family law forms should be reviewed with the goal of making them clear and easy to complete. Based on the increase of self-represented litigants, it is assumed that the majority of users of Judicial Council forms are comprised of LDAs and consumers. CALDA suggests that those selected to preview and comment on proposed changes to Judicial Council forms include consumers and LDAs. Public Information and Outreach. Public information program. CALDA proposes that LDAs are allowed/encouraged to attend Public Information training programs developed by the AOC for self-help centers. CALDA would also suggest these attendees are then "certified" or otherwise approved to hold small local self-help clinics, at no cost to the consumer. Community Outreach. This section refers to "Community Partners" who should give community presentations on available court services, etc.	Litigant Education Information about the types of services that can be offered by LDAs may well be one of the informational pieces developed. Streamlining Family Law Forms and Procedures LDAs should be encouraged to make comments on proposed forms changes. The Judicial Council has used focus groups in the past to obtain feedback from consumers about proposed forms changes and these are very helpful as resources permit. Public Information and Outreach The concept of certifying LDAs who have gone through training to provide no cost seminars is one that should be considered as part of implementation. Community Outreach The recommendation does not list specific types of community partners

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	CALDA requests that LDAs be included in the definition of Community Partners.	because they may vary from county to county. Appropriate community partners are best determined at the local level in the implementation phase.
	Additional proposals 1) CALDA would like to be considered and participatory, if possible, in pilot projects created as a result of these recommendations;	Additional proposals CALDA, just as other organizations can certainly be considered as part of pilot projects as appropriate.
	2) Grant the court permission to refer to CALDA and allow CALDA brochures in the courthouse.	The Task Force declines to make recommendations regarding referrals to CALDA and providing CALDA brochures in courthouses.
	3) If a family law LDA panel is created (see Chapter 2 above) it can also be utilized to aid case management by referring to this panel for preparation of disclosure papers, etc.	The Task Force declines to make recommendations regarding referrals to LDA panels.
	4) Allow LDAs to be present in court (during their customer's hearing) only for purposes of preparing Orders After Hearing to expedite submission and approval of these orders, or for any other purpose as requested by the court.	LDAs may currently sit in the audience of the courtroom and, after the hearing is over, help a litigant prepare an order to submit to the court.
	5) Use LDAs in all aspects of helping people through the settlement process, providing they meet all requirements to aid in this area.	If LDAs meet requirements developed for neutrals in the settlement process, their help should certainly be considered.

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	6) The 2005 report entitled, Trust and Confidence in the California Courts, prepared by David B. Rottman, Ph.D. stated in part, "Exit surveys tell us what is working and whether it continues to work over time." Should this Task Force adopt the recommendation to perform exit surveys, CALDA believes feedback as to LDA assistance should also be included.	Given limited resources to conduct surveys, the Task Force does not place a high priority on evaluation of outside services that are not court-based or over which the court has no authority. CALDA may consider engaging in its own evaluation of its services.
43. Harry Crouch President National Coalition for Men San Diego, CA Jeffrey Perwin President San Diego Children's Coalition James Shaw President Coalition of Parent Support	Submitted on behalf of the National Coalition For Men, Coalition of Parent Support, and San Diego Children's Coalition First and foremost, we would like to express our appreciation and recognition of the leadership of the California Supreme Court in establishing the Elkins Task Force, and the efforts of the Elkins Task Force itself in making the over 100 recommendations, many of which are very significant and which we believe, if acted upon will improve family law practice in California. In response to the "Elkins Family Law Task Force Draft Recommendations" our comments follow Expanding Legal Representation and Providing a Continuum of Legal Services Early needs-based fee awards We concur except; the default payee for needs based attorneys fees should be the needs based spouse. Courts should be clear when issuing fee awards that the default payee is the spouse and not the attorney. This fact is established in case law (Borson, Meadows, Sharff) and not incorporated into the Family Code. Pro Per litigants are not versed in applicable case law. Until the family code is amended the court should	Expanding Legal Representation and Providing a Continuum of Legal Services Early needs-based fee awards This is an issue that should be addressed in judicial education on attorney fees.

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	apply this practice to ensure fairness to unrepresented parties. Otherwise, if the court does not specify the payee, and the spouse is not the default payee, attorneys and pro per litigants have a high potential to enter into further litigation driving up costs and wasting precious court resources. This potential conflict is further exacerbated if the attorney is subsequently discharged from representation. Providing Clear Guidance Through Rules of Court Statewide Family Law Rules Concur, but the Rules should also provide clear definitions and objective standards/guidelines for Courts, Attorneys, and Litigants. In particular, the Rules are currently deficient in giving a uniform, non-subjective meaning of the following widely used terms • "Domestic violence" • "Best interests" • "Joint physical custody" • "Frequent and continuous" • "Safety, health, and welfare" The establishment of the above definitions will inspire honest debate, focus litigants in court, increase predictability and thus decrease the need to litigate matters, and aid Legislators in drafting legislation. Children's Voices Input from Children Concur, but early in the court process encourage parents and children to participate in third party programs (such as Kids' Turn) and provide children a vehicle to convey their feelings to their parents, and later to the court, as appropriate. In addition, this recommendation should include a vehicle for parents to provide the court with what they respectively believe to be their child's views. This	Providing Clear Guidance Through Rules of Court California Rules of Court do not generally define legal terms which have not been defined by the legislature. Children's Voices The Task Force agrees that participation in appropriate classes or programs can be beneficial and that children's participation in court processes may be beneficial. Recommendations in Children's

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	should be a Rule providing for each parent to make declarations to the court of their child's wishes "based on information and belief."	Participation and Minor's Counsel reflect the importance of providing a range of options for the court and for families.
	Domestic Violence Statewide consistency Disagree. There should be no local standards. The incorporation of clear definitions and objective standards within statewide rules of court and current statutory requirements suffice (see e.g., Recommendation 4.1 above). A uniform, objective judicial interpretation should be discerned and clearly publicized to the public and Legislature.	Domestic Violence Statewide Consistency. The Task Force agrees and recommends that local procedures conform to statewide rules of courts and statutory requirements so as to increase consistency and predictability for litigants in terms of procedures.
	Enhancing Safety Child welfare services. Disagree. CPS is fraught with inconsistencies across the state, does not follow standards that are compliant with the evidentiary and Constitutional protections of the court, and for most practical purposed operate in the dark (i.e., immune from scrutiny and accountability). Accordingly, CPS should not be used in family law cases at all until they have established objective operating standards, transparency, and accountability comparable to that required of court officers.	Enhancing Safety The Task Force recommends child welfare services involvement in cases involving allegations of child abuse so that children whose parents happen to be seeking relief in family court are not denied access to the resources providing by the child protection system.
	Contested Child Custody Evaluators and investigators should be paid for by the Court thereby establishing an incentive for the Court to judiciously implement such services, currently there is a perception that the involvement of specialists has as much if not more to do with the litigant's finances as	Contested Child Custody The Task Force recognizes the financial challenges associated with appointment of investigators and evaluators for some litigants and the

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	with the litigant's actual needs.	fact that in some courts, these professional services are provided by court employees or contractors and parties are not expected to pay. The task force recommends that as resources permit, a range of services should be available to litigants and judicial officers to best address the complexities associated with many of these cases.
	Resources for child custody mediation services It is not possible for Courts or anyone else to effectively identify the amount of time a particular case needs in mediation. Logistically, Family Court Mediation (FCS) should be limited to an objective list of considerations that serve as a guide in predicting the length of mediations. No FCS mediation should be longer than two hours. If more time is required follow-up sessions should be scheduled as soon as possible and within five business days whichever comes first. NOTE FCS mediators may be mental health professionals by training but they are hired as mediators. Their efforts should primarily cause a meeting of the minds between parties rather than cause what is tantamount to a custody evaluation, particularly since many of the mediation reports in reporting counties are less than factual, open to personal bias of the mediators, and cannot be effectively accomplished in the typical time allowed. Nor should they refer to themselves as "counselors". They may very well be "counselors" by education and training, but they are hired as mediators to which relevant law speaks. FCS mediators should mediate, which by statute is their job.	Resources for child custody mediation services Given the variety of cases in family court and the differing needs of families, the task force recommends providing resources to meet the needs of families and the courts, including providing a range of services and flexibility so as to offer more time to those who may benefit and the opportunity to move cases along without having to adhere to a rigid time frame unnecessarily.

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	Child custody language Concur, however, where there is joint physical custody each parent shall be referred to as "custodial parent" regardless of parenting time.	Child custody language. The Task Force recommends consideration of use of the term "parenting time" instead of "visitation" where appropriate.
	Culturally competent mediation services Culturally specific groups should be encouraged to exhaust respective culturally specific solutions within their cultural community thereby discouraging rather than encouraging access to court services. Regardless, this is a significant issue that requires considerable and continuing discussion including all sides with special emphasis on values (whose values, who determines, and especially with variations of values within the United States).	Culturally competent mediation services The Task Force recommends that training for mediators and evaluators address how to provide culturally competent services so that all litigants will have the greatest opportunity to access court services and resolve their disputes effectively. Appropriate referrals may also be made to ensure that all litigants are well informed of their options and local services.
	Enhancing Mechanisms to Handle Perjury New civil sanctions This has more to do with a lack of will to enforce existing law, however we would include (1) where there is clear and convincing evidence the Court shall ensure prosecution (2) where the perjury includes serious matters such as false accusations of abuse or violence the Court shall rebuttably presume that the perjurer is an unfit parent and (3) where the Court can impose sanctions short of prosecution the Court shall do so.	Enhancing Mechanisms to Handle Perjury New civil sanctions The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. Issues such as the court taking on a prosecutorial role or whether there should be a rebuttable

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	CONSIDER Recently in [one county] a woman maliciously filed one false accusation after another regarding her male partner. The man contracted with a GPS monitoring service. His attorney later questioned the woman in court where under oath she firmly restated all her false claims, she even involved a female lover and family members who testified or submitted declarations on her behalf. The man was then questioned during which the GPS monitoring devise he was wearing was revealed. The judge was able to use his computer to access a website and discern that the woman's claims could not possibly be true since the man was nowhere near the woman at any time during any of the incidents she falsely claimed. The judge was incensed and cautioned the woman; however, no sanctions were levied nor did the judge refer the matter for prosecution. On the other hand the man had been arrested, jailed, paid exorbitant bail, lost his job, had his life virtually destroyed, and suffered from depression. In this example, a completely innocent man paid an inhuman price for a woman's deceitful and deliberate crimes, yet the woman left the Court unscathed. False accusers must be fully sanctioned and prosecuted, as applicable, particularly in light of overwhelming and incontrovertible evidence. Unbelievably, she was awarded primary physical custody of the children. Judicial Branch Education Children's needs Judicial educational courses must emphasize long term effects on children are paramount and need to be given priority over short term or transient concerns. Procedural justice Concur, but we would also include substantive justice which would	presumption that a parent who has perjured him or herself is an unfit parent are ones of substantive policy as to which the Task Force did not choose to make recommendations. However, it did recommend that the Judicial Council further consider these issues. Judicial Branch Education Specific suggestions about educational programs and content will be referred to the implementation process.

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	include constitutional protections of parents fundamental rights to raise their children and children's fundamental rights to have uninhibited access to both parents. Fairness, awareness of bias, and elimination of bias We strongly concur and add that all related training be based on reliable and accurate information, particularly with respect to gender. Furthermore, curriculums and trainers should be grounded in objective, scientific and evidence based methods rather than immersed in non-scientific ideologies. The work product of educators, evaluators, and jurists must be tracked and evaluated to ensure parents are treated fairly, regardless gender – Courts must be gender blind. Family law training for those in general assignments We concur, with the proviso that the training should be extensive, provided prior to judicial officers taking the bench, and continuing annually. Customer service training for court staff We concur, with the proviso that the training be extensive, provided prior to staff and bailiffs/sheriffs working, and continuing annually. Additionally, career advancement and continued employment shall include consideration of customer service performance. Family Law Research Agenda Research agenda for family law We agree though in partnership with diverse advocacy groups. We also strongly recommend the formation of a statewide citizen advocacy group similar to the one effectively employed for several years by the Department of Child Support Services. This can be managed by an Ombudsperson.	Family Law Research Agenda The recommendation has been modified to include key stakeholders as partners in the development of the research agenda.

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	Basic statewide statistical reporting We agree and add "m." track and report custody and time share awards and restraining orders, identifying the gender of each party; meaning, for example, which parent was awarded the most physical custody, which parent was awarded "sole" physical custody, was parent was restrained. Performance measures We agree but would add the inclusion of diverse advocacy groups and stakeholders to participate fully in the development the performance measures. Litigant surveys We agree however we would add questions related to substantive fairness in addition and where applicable performance evaluations should include customer performance surveys with all information being transparent and readily available to the public.	Basic statewide statistical reporting This reporting is intended to be limited to caseload and workload indicators that are readily available through case management systems. The suggested additional data elements would likely require extensive manual data collection from court files. Performance measures The recommendation has been modified to include key stakeholders as partners in the development of the research agenda. Litigant surveys The recommendation was not intended to exclude questions related to substantive fairness, but to place emphasis on procedural fairness because research has shown that procedural fairness is a much more important determinant of confidence in the courts. The Task Force believes that research and statistical projects should be conducted separately from any quality control processes or performance monitoring. Methods of

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		ensuring accountability are addressed in other sections of the recommendations.
	Crossover between family law and other case types We agree however the AOC should also track the correlation between family law cases and (1) bankruptcy cases and (2) allegations of domestic violence, sexual assault, and child abuse.	Crossover between family law and other case types Tracking the crossover between family law and bankruptcy cases is infeasible because family law cases are filed in state court and bankruptcy cases are filed in federal court. The correlation between family law cases and allegations of domestic violence, sexual assault, and child abuse cases does not fit within the scope of this recommendation, which focuses on the crossover between distinct case types, not the issues raised within family law cases.
	Review of research and best practices from other jurisdictions We agree however reliance on such research must be scientifically grounded and evidence based. Such exploration should be in partnership with diverse advocacy group and stakeholders. We also strongly recommend the formation of a statewide citizen advocacy group similar to the one effectively employed for several years by the Department of Child Support Services. This can be managed by an Ombudsperson.	The recommendation has been modified to place emphasis on projects that have been evaluated using rigorous research methods, as well as to include key stakeholders as partners in the development of the research agenda.

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	Leadership, Accountability, and Resources Court Ombudsman We strongly concur, however jurisdiction should be broader and not be limited to court rules, local or otherwise.	Leadership, Accountability, and Resources Court Ombudsman The recommendation to create a court ombudsman is broadly stated, and is not limited to court rules.
44. Garrett C. Dailey Attorney at Law Oakland, Ca	First, let me thank you and your task force for the innumerable hours that have been devoted to this project. As I have said publicly many times, this will be our best chance in a generation to impact positively how family law is handled in California. I have read the Draft Recommendations with great interest and could not be more excited by them. This is a wonderful roadmap to improve this important area of law which I hope will be taken seriously and acted upon. I wholeheartedly endorse the report. Please add my name to those advocating its implementation. I would like to share some thoughts on a few of the recommendations. Right to Present Live Testimony at Hearings I totally agree with these recommendations. Although many judges think that Reiflerizing hearings speeds up the process -- it does not. Having sat pro tem many times, I have found that reading the diametrically opposed declarations, usually comprised of unsupported allegations, conclusions and hearsay, to be time-consuming and of little help. Frankly, I do not know how judicial officers are able to read all that is submitted prior to the hearings. (Frankly, I often wonder if they have.) As an attorney, I spend a great deal of time preparing declarations for my client and then drafting motions to strike inappropriate matter from the opposing party's declarations, knowing that it is unlikely that the objections will	Right to Present Live Testimony The Task Force agrees that clearly defining the role of declarations is important. This issue will be considered in developing implementing rules. The Task Force also agrees that any notice requirement must not re-create the situation in which Jeffrey Elkins found himself at his trial. The Task Force agrees that the notice issue is

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	be ruled upon. At the end of the day, it is far more efficient for all simply to present the evidence orally and have objections ruled on immediately. Assuming that this recommendation is adopted, it would be important to clearly define the purpose of supporting declarations. Note the recommendations on page 51, section 13, and dealing with declarations. There should still be a requirement to put the other party on notice of the factual basis for the relief being requested so as to avoid every hearing being an ambush, but, at the same time, not to put litigants in danger of ending up like Jeffrey Elkins and not being able to submit oral testimony because of a failure to comply with a technical rule. Caseflow Management Early Intervention My comments here pertain to several sections of the report. Although I understand the decision to avoid the term or concept of "diversion" of self-represented litigants, I also think that a significant portion of these cases could be resolved early, often at the filing stage, if they had the opportunity to meet with an experienced volunteer family law attorney who could see what issues are present, explain the law, and perhaps assist in a settlement. The volunteers should be designated as judge pro tem so as to enable them to accept stipulations and to give them judicial immunity. I believe that Marin County has successfully run a program like this for years. I would suggest encouraging courts to implement volunteer panels to provide this service to self-represented litigants. Pilot projects One concern I had about the Task Force was that in recommending	important and has modified the recommendation to allow for notice and offers of proof in addition to the declaration when testimony from witnesses other than the parties is requested. Caseflow Management Agree that this type of volunteer program should be considered as part of the implementation of caseflow management. Pilot projects No response required.

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	uniform statewide procedures, a goal I support, it would hamper the ability of individual courts to experiment with innovative programs to expedite and improve services. I am gratified to see in paragraph 9 in Section 3 that the Recommendations encourage this. Providing Clear Guidance Through Rules of Court As an attorney who routinely is involved in cases in different counties, I enthusiastically support these recommendations. Many local rules are incredibly complex and difficult for even experienced attorneys to follow. Having said that, I also support the goals of many of these counties, which is, in part, to force attorneys to prepare their cases early enough to be prepared to talk settlement prior to trial. In my experience, some cases are tried simply because the attorneys are never prepared to discuss settlement -- it is easier to dump it all into a judge's lap. Whatever rules are proposed should balance this concern against the possibility of defaulting a litigant, as happened to Jeffrey Elkins, for a technical failure to comply with them. The answer may simply be monetary sanctions. Domestic Violence I have a number of concerns which frankly may be beyond the scope of this Report. All agree that domestic violence is a serious problem which must be dealt with firmly. This involves balancing the need to protect the victim and children against the possibility that one parent will make unfounded or greatly exaggerated claims to gain leverage in a custody or property/support disputes. I have experienced judicial officers with widely varying attitudes toward this issue. Some have stated that given the severe consequences	Providing Clear Guidance Through Rules of Court The recommendation on local rules has been modified to support appropriate development of innovative practices. Rules regarding defaults and sanctions may be best addressed on a consistent, statewide level. Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	of a DV finding, they will not make one absent "blood on the carpet." In other words, absent "substantial independent corroboration," which is often unavailable, making it impossible to meet this test. The parent or spouse seeking the finding is then viewed as not being "likely to allow the child frequent and continuing contact with the noncustodial parent" and penalized. On the other hand, some judges will issue an ex parte TRO on the slightest showing, without regard for the effect that it will have on the affected party. I am aware that all judicial officers are required to have substantial training in dealing with domestic violence, so I am not certain what recommendation I can make. I do believe that this is a problem which should be addressed. Contested Child Custody and Minor's Counsel Paragraph 1recommends that parties be given the opportunity to respond to any information given to "investigators and evaluators." Currently, a minor's counsel may not be cross-examined. (Fam. Code §3ISI.5.) This should be changed to permit cross-examination as to all non privileged information provided by minor's counsel. Minor's counsel often make best interest recommendations based upon hearsay information and cannot be cross-examined about it. Many believe there are serious due process issues here. In cases where the children's legal rights cannot be adequately protected by their parents, it is certainly appropriate for minor's counsel to be appointed. But, as this report recognizes, they are often used in place of or as an additional evaluator. I agree that this is improper. I have been involved in numerous cases where minor's counsel make recommendations as to what orders are in the best interests of the children based upon information they have	Contested Child Custody and Minor's Counsel Because the Task Force recommendations reflect the role of minor's counsel as an attorney for the child, the Task Force recommends statutory changes to eliminate the requirement for a written statement of issues and contentions. The Task Force recommends that anyone who provides recommendations to court be available for cross-examination; attorneys should not be providing recommendations, and therefore, should not be called to testify.

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	received from third parties as well as their clients, but are then immune from cross-examination. This should be changed. Scheduling of Trials and Long-Cause Hearings I can hear attorneys and judges around the state applauding these recommendations. I don't know if I hold the record, but one dissolution trial of mine started in 2000 and finally completed in 2005! By the end, no one could remember the evidence presented at the beginning. The cost to the clients of preparing again and again added many tens of thousands of dollars to their fees. These recommendations would have prevented that. There are foreseeable problems with this system. Many cases settle the day before trial or on the courthouse steps. If a court room has been reserved for a multiple day trial which settles the day before or the morning of trial, the courtroom could be vacant. Thus, a standby system would need to be in place, which in and of itself could be wasteful if the attorneys need to be prepared and are not called. Another possibility is to implement a rule similar to those in place in appellate courts requiring attorneys to keep the court informed of the status of settlement negotiations or cases moving close to trial. (See, e.g. Cal. Rules of Court, rule 8.244.) That way, another case could be on deck if the "first out" settles. Streamlining Family Law Forms and Procedures A number of these comments also apply to Section 15. Standardize Default and Uncontested Process Statewide. a. A filing should never be rejected for failure to include a local form.	Scheduling of Trials and Long-Cause Hearings The Task Force agrees that the issues of time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed during implementation. The Task Force anticipates that implementation of effective caseflow management will address many of these issues. Streamlining Family Law Forms and Procedures. a. 1 b recommends that if local forms are adopted, they should be made optional.

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	b. Many, and perhaps all county clerks have checklists for information and forms they look for when processing judgments by declaration or default. Many of these checklists are complex and challenging for attorneys to comply with. I can only imagine how daunting it must be for self-represented litigants, even if the checklists were readily available, which many are not. It is probably asking too much to simplify the forms and procedures so that the checklists are simpler, but it is not asking too much that they be readily available along with plainly written instructions. c. A related problem occurred once when I submitted a judgment by declaration more than 60 days before the end of the year only to have it returned around January 15th because the filing fee had increased on January 1st! There should be a rule that any judgment submitted by December 15th will be entered effective December 31st. That not only protects the expectations of the parties, attorneys from malpractice claims and courts 11from needless noticed motions to ensure that judgments are entered by December 31st. d. I find the explanation of the proposed Request/or Order form confusing. Is the recommendation simply to replace the Notice of Motion and Application for Order forms with this new form, or is it to have three forms with which to request orders') The Recommendations state "The Request for Order would be used in those matters where it is not jurisdictionally necessary to use an order to show cause." In other words, OSCs would still be used sometimes. Wouldn't it be simpler to modify Cal. Rules Ct., rule 3.1150 (a) to do away with OSCs and simply require a judge's signature 011 the Request for Order if TROs	b. As part of the standard procedure recommended in the recommendations to Standardize Default and Uncontested Processes, a common checklist should be developed and made easily accessible. c. The suggested rule should be considered as part of developing implementing rules and procedures. d. The suggestion is to replace the Notice of Motion and Application for Order form with this form. The OSC would be used for contempt actions and domestic violence proceedings (all of which already have specific forms). The suggestion of requiring a judge's signature on the Request for Order if other than domestic violence restraining orders are sought is one

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	are required or a party hasn't appeared? OSCs re contempt already have their own form. e. Discovery procedures This is a nightmare in family law. Discovery motions are anathema to practitioners and judges alike. Motions are routinely denied for failure to complete a full Separate Statement (Cal. Rules of Ct., rule 3.1020 (c)), yet doing so is onerous and expensive. It may well cost a party $5,000 to prepare one only to have the court order the documents produced and $500 of fees/sanctions. There should be a simplified method to obtain discovery compliance in family law cases. Enhancing Mechanisms to Handle Perjury Wonderful! Standardize Default and Uncontested Process Statewide See comments in Section 13 above. What is enormously frustrating is to get a judgment returned for one point, then to resubmit it only to have it returned again for a different point. What is even more frustrating is to have a judgment returned incorrectly after waiting for several months. Clerks should be educated to understand not only the blocks they are checking, but the effect that returning a judgment can have on the parties. Judicial Branch Education It is odd that Domestic Violence is not listed as a separate topic "perhaps because of existing education requirements. As discussed in my comments to Section 6 above, I would like to see judges educated	that should be considered as part of development of the proposed form. e. Discovery procedures The Task Force has recommended that a form for a motion to compel discovery should be considered. Other solutions may be developed as this recommendation is implemented. Perjury No response required Standardize Default and Uncontested Process No response required. Judicial Branch Education. Domestic violence as a topic is addressed in the recommendation on ongoing family law judicial officer training as follows "Following the

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	not only on the effects of domestic violence on victims and children, but also on reasons why victims may not report violence and hence not have "substantial independent corroboration.	family law overview course for judges newly assigned to family law, additional courses should be made available in a variety of formats on both substantive legal topics and procedural issues, including domestic violence, property division, financial and accounting statements, child development, contested custody, use of experts and minor's counsel, calendar management, demeanor, and working effectively with self-represented litigants."
	Leadership, Accountability & Resources Paragraph 5.C., recommends that judicial officers have two years of judicial experience prior to sitting in a Family Law assignment. I can see pros and cons of this, but it also means that a CFLS appointed to the bench must do a two-year apprenticeship elsewhere before sitting in the area she or he knows best. I have seen this done in numerous appointments over the last few years and have never understood the logic of it. I have always assumed that it had to do with seniority within the court. Again, my thanks to you and your Task Force for your wonderful work. I sincerely hope that these recommendations are implemented in full as quickly as possible.	Leadership, Accountability & Resources Paragraph 5.C. Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including the expertise of the judge.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
45. Hon. D. Scott Daniels Supervising Judge Family Law Division Hon. Wendy G. Getty Judge Hon. David Haet Commissioner and Certified Family Law Specialist Hon. Garry T. Ichikawa Presiding Judge Juvenile Division Hon. Alesia Jones Judge Hon. Michael Mattice Judge and Certified Family Law Specialist Criminal Division Hon. Cynda Unger Judge and Certified Family Law Specialist Brian K. Taylor Court Executive Officer Sara Jones	On behalf of the Superior Court of Solano County In the spring of 2009, the Association of Certified Family Law Specialists Elkins Committee provided a report to the Elkins Family Law Task Force with their proposals for change in the family law courts. The report's overview remarked, "Without dramatic increases in resources and expertise, any effort at family law court reform will be the equivalent of rearranging the deck chairs on the Titanic. There is simply no way to meet the needs of parties in family law cases without the investment of significant money, time and expertise." Association of Certified Family Law Specialists, Report of the Association of Certified Family Law Specialists to the California Judicial Council's Elkins Task Force, p. 3. We agree completely with this astute observation. We believe the family courts are in dire need of additional funding and that parity with civil and criminal courts is a must. We believe that this goal is what the Task Force spent a great deal of time and effort attempting to reach, and we are deeply appreciative to the Task Force for the significant effort put into these recommendations. However, although we applaud the Task Force's intent behind the promulgation of their recommendations, we find ourselves unable to support many of them for two main reasons. First, implementation of the recommendations inherently relies on presently non-existent funding. Unfortunately, we fear that if the recommendations are implemented without this additional funding, many of them would impose additional unfunded mandates on courts already ill-equipped to meet the enormous burdens placed upon them. Second, the recommendations reduce the discretion given to family law judges and courts, especially when compared to that afforded to other divisions.	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Acting Program Manager Family Law Division Richard deBlois Family Law Facilitator Christine N. Carlson Certified Family Law Specialist Staff Attorney Family Law and Probate Division Superior Court of Solano County	We believe that this would reduce, not enhance, access to justice by tying the family court's hands even more than they already are. We urge the Elkins Family Law Task Force to consider proposing a specific plan to increase the funding of our family courts. Otherwise, the recommendations appear to be more of a wish-list than a practical turn-key plan for improving our courts. We further urge the Elkins Family Law Task Force to consider revising their recommendations to address the problems currently faced by our courts pending any implementation of the "pie in the sky" recommendations. We believe that all courts could benefit from guidance on how we can fix what we have with resources currently available to us. With these general comments in mind, we respond as follows to selected recommendations. Right to Present Live Testimony at Hearings Do not agree with the recommendation We believe that the recommendation to amend Rule 5.118(t) removes badly-needed discretion from the family court to conduct OSC hearings. We also find the "live testimony" requirement particularly problematic. Most self-represented litigants are unable to effectively present live testimony within the narrow timeframe allotted on law and motion calendars. Imposing mini-evidentiary hearings on already crowded calendars could only add to court congestion and further reduce the number of litigants that can be heard on any given day. Although the rule contemplates that the court could dispense with the live testimony requirement upon a finding of good cause, the steps imposed for making such a finding are unduly burdensome.	Right to Present Live Testimony Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.

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	We would support a modified version of the rule that permitted - but did not require - a judicial officer to take live testimony at a law and motion hearing. We would also support a version that included a limitation on "live testimony" to the swearing in of the parties and questioning only by the judicial officer. If a party wishes to cross-examine the other party or provide a witness, this is properly done at a separate evidentiary hearing. Finally, we suggest that the Task Force consider whether such a rule is appropriate for domestic violence cases.	Based on input from an attorney survey, and from the public-at-large, the Task Force learned that most self-represented litigants have serious difficulty writing declarations that contain admissible facts in support of their positions, and are at a particular disadvantage when facing opposing counsel with experience in writing declarations and making evidentiary objections. The Task Force agrees with the commentators' suggestion of taking brief testimony from the parties at the time of the hearing, and then taking additional testimony as needed at a separate time. The recommendation has been modified to allow judges to calendar additional testimony at a future time. Task Force does not believe there is anything in the recommendation that would prevent using this strategy.
	Expanding Legal Representation and Providing a Continuum of Legal Services We generally agree that increased funding for legal aid and self-help	Expanding Legal Representation and Providing a Continuum of Legal Services.

Commentator	Comment	Committee Response
	centers should be provided for those who cannot afford counsel, and that more attorneys should be encouraged to practice family law. However, we disagree with the recommendation that a form to request attorney fees be adopted. Family law already has a significant number of Judicial Council forms and another one is not necessary. Instead, we suggest that the Judicial Council modify the Income and Expense Declaration (FL-150) and the Application for Order and Supporting Declaration (FL-31 0) forms to expand the attorney fee request areas. Any information concerning a litigant's need for attorney fees can be dealt with there without requiring an additional form.	The Task Force has made the recommendation for an additional form based on feedback from attorneys who suggested that an attachment that was specific to attorney fees would be helpful to set forth the factors required. Given how many times FL-150 and FL-310 are used with no requests for fees, an attachment might be more productive than adding pages to that form.
	We also suggest that additional funding be provided to increase resources for those accused of domestic violence. Unfortunately, our court has seen a trend where the DVRO process is itself abused in order to obtain a "leg up" on the related marital matter or as a "quickie divorce" in and of itself.	The Task Force recognizes that cases where one side has counsel and the other doesn't often pose the most serious difficulties for the parties as well as the court. If one party has an attorney, it is optimal that the other does as well.
	Caseflow Management We strongly support the idea of caseflow management. However, we have several suggested modifications to the proposed rules and procedures.	
	Judicial Authority First, we strongly agree with the proposal that family law judicial officers have the same authority as other judicial officers to develop case management plans for individual cases. We agree that the parties	Judicial Authority - No response required.

Commentator	Comment	Committee Response
	should be required to participate in case management instead of only "opting in" by stipulation, and we suggest that parties be required to participate in trial management conferences as well. Order Preparation We disagree with the incorporation of order preparation into the court process without a guarantee of significant funding to implement it. Many courts, ours included, simply do not have the staff or funding to permit the creation of instant orders. Even if we did, the types of orders made in family law are not often reducible to check-boxes. Family law orders can be complex and often are best worded in paragraphs, not as check-box items on a form. Furthermore, the preparation of the final order by the court assumes the person preparing the order (1) understands all the terms of the order and (2) is able to accurately translate the spoken order into written form. Given the important nature of these orders, they should not be rushed. Accuracy should not be sacrificed for efficiency. Time Standards We also disagree with the time standards. We believe that the time standards as suggested are unrealistic and do not appropriately address the inherently personal nature of modifying a family relationship. We do support the idea of checkpoints, with the court meeting with the parties at least once a year to see where they stand in the process. Finally, although we agree that efficient use of time is critical to the courts, we are concerned by the recommendation for "innovative	Order Preparation Agree that order preparation may require additional funding in many courts. It is already part of the process for cases involving self-represented litigants in many courts and is part of the development of the California Court Case Management System. Time Standards These time standards are designed to encourage courts to prioritize family law matters in the same way that they prioritize other case types with time standards. These standards provide a large window for cases that need additional time. California Rule of Court 3.670 provides as a matter of policy that

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	alternatives to personal attendance." Although we agree that telephone appearances should be available in cases where a litigant cannot reasonably appear (e.g. the party resides on the East Coast or in another country), we believe that e-mails to the court are inappropriate, even if they are limited to case management conferences.	telephone appearances are favored in order to "improve access to the courts and reduce litigation costs, courts should permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases." It is unclear why an e-mail report on the progress of a case is less effective than another written communication. Of course, the e-mail would have to be copied to all parties; it must not be an inappropriate *ex parte* communication.
	Providing Clear Guidance Through Rules of Court. Local rules serve the important purpose of filling in the gaps left by the California Rules of Court, and are helpful in administering the judicial process at a local level. We believe that elimination of local rules and the imposition of one-size-fits-all rules on all courts would prove problematic. What works for Los Angeles County would not necessarily work for Solano County, and vice-versa.	Providing Clear Guidance Through Rules of Court The recommendation has been modified to recognize the importance of innovation in local court practice when statewide rules have not been adopted.
	Local, local rules We believe this is also true of "local local rules." Rules applicable to a particular department are subject to the same promulgation rules as court-wide rules, and are readily available upon request. Elimination of these rules is not the answer; increased compliance with the guideline and rules we already have and enhanced access to information is more appropriate.	Local, local rules This recommendation has been modified regarding "local, local" rules to reinforce the California Rule of Court that all standard policies and rules of a court must be circulated and disseminated as local rules.

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	We suggest that local rules be required to be organized and/or numbered in the same way as the California Rules of Court, as this would make them easier to find.	Local rules organization and numbering – This suggestion should be considered as part of implementation.
	Children's Voices We generally agree with the recommendation. However, we suggest the addition of a fourth recommendation that would state and clarify the borderline between allowed and disallowed involvement of children in the process, and provide meaningful sanctions for disallowed involvement.	Children's Voices The Task Force recommendations in this area have been redrafted since circulation for public comment and are included in Children's Participation and Minor's Counsel. The recommendations reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends against a blanket rule requiring or prohibiting children's participation in family court.
	Domestic Violence We support clarification of which orders survive the termination of a domestic violence restraining order. We agree that there is frequent confusion as to the effect of custody and other orders contained within	Domestic violence No response required.

Commentator	Comment	Committee Response
	DVROs once the DVROs terminate.	
	We request that the Task Force consider modifying the California Rules of Court or sponsoring legislation which would define "abuse" and "neglect" more specifically. We also suggest that domestic violence orders be made available for acts of abuse that go beyond a specifically defined threshold. We also urge the Task Force to recommend sponsoring legislation that would give courts the discretion to fashion a remedy to the level of domestic violence. Presently our laws mandate an "all or nothing" response to domestic violence, where perpetrators of domestic violence are treated the same and subject to the same orders whether the violence was name calling or attempted murder.	Domestic Violence and rules of court The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Additionally, the comment appears to be directed at the criminal statutes which was not within the purview of the Elkins Family Law Task Force.
	Finally, we suggest that the Task Force consider recommendations concerning stipulated dismissals of DVROs. Presently these are dealt with on a case-by-case basis, with few guidelines as to what the judicial officer should be doing when considering whether to sign the stipulation. It would be helpful to have such guidelines, such as protocols for interviewing the protected person alone to ascertain whether the stipulation is truly voluntary or coerced without violating the rule against ex parte communication.	Domestic violence stipulations Judicial training covers this issue; the Task Force recommends that this recommendation for protocols be referred to Judicial Council advisory groups addressing domestic violence.
	Enhancing Safety Although we are very much in favor of ensuring that children are as safe as possible, we disagree with the recommendation that Child Protective Services become involved in every case where abuse allegations are made. This would require inordinate increases in	Enhancing Safety The Task Force recommends establishing and funding pilot projects to implement promising practices for handling family law cases involving

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	funding that we simply do not have at the court and county level. Instead, we urge an increase in the flow of information available between the family law courts, Child Protective Services, and the juvenile courts. Alternatively, perhaps specialty high-conflict courts could be established in each county, or each county could be provided with funding to establish a cross-over court handling both the family law and juvenile cases, similar to the unified courts implemented in Yolo and other counties. Such a court could conserve judicial resources and yet still provide a wide range of services to families in need that are not available in traditional family court. Contested Child Custody We strongly approve of the recommendation to include confidential pre-litigation custody mediation. We believe that this could prove helpful in allowing parties to work out disputes over custody and visitation without having to resort to filing yet another motion. We urge the Task Force to expand the recommendation to include at least two additional provisions. First, we would like to see a recommendation that these additional mediations – and in fact all family law mediations - are to be paid for through state trial court funding, not local court funding. Although we strongly believe in the value of these mediations, our court is not in a position financially to assume the associated cost. Having mediation paid for through the state will undoubtedly increase the court's ability to offer ADR to the public. Second, we would like to see confidential mediation made available on an optional basis for other issues in family law, such as property division or support. We have seen the success of mediation in custody	allegations of child sexual and physical abuse. Contested Child Custody State trial court funding is currently used to cover costs associated with mandatory child custody mediation. The Task Force is aware of the concerns regarding insufficient resources for this and related services and its recommendations reflect the need to consider ways to increase and reallocate resources accordingly. Confidential mediation The Task Force recommendations on consensual dispute resolution support

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	cases, and we believe that it would be similarly successful for these other issues. We believe that if given the opportunity to meet with an experienced family law professional at the early stages of their cases, many litigants would resolve their matters sooner. This would be beneficial to all.	expansion of mediation into other areas.
	Minor's Counsel We fully support appointed minor's counsel, who have a difficult and often thankless task in representing children during high-conflict proceedings. We also appreciate the effort being made to protect minor's counsel, who are often asked to play the role of a custody evaluator and referee between two warring parents. That said, we fear that the recommendations as stated will only discourage more attorneys from seeking appointment as minor's counsel. We support the idea of education for the bench to clarify the role of minor's counsel, but we do not support measures that reduce the availability of minor's counsel. So few families can afford attorneys, much less the high cost of an evaluation. Even those who can afford evaluations are then put in the position of arguing against a recommendation perceived as unfavorable to them. Minor's counsel fills in a critical gap.	Minor's Counsel The Task Force recommendations are not designed to reduce the availability of minor's counsel but to support implementation of existing law and further clarify the role of minor's counsel in response to concerns raised during the course of the Task Force's work.
	We suggest that one solution may be to increase funding for court investigators, and increase their duties to include family law. Such a system works well for guardianships, which is another form of custody. Court investigators are neutral, have fairly unlimited access to necessary information, and do not represent the child (who, after all, isn't even a party to the case). Instead, the investigators are the court's "eyes and ears" and provide critical, unbiased, objective information	To the extent that resources are available to provide funding for investigators, the Task Force recommends expansion of options for litigants and courts. The Task Force recommendations reflect the need to provide information to the court to

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	concerning the proceedings they investigate.	assist in decision-making but also to avoid conflating minor's counsel and evaluators who are expected to perform different functions.
	Scheduling of Trials and Long-Cause Hearings. It would be preferable to have continuous calendars, but our court has inadequate resources. We find that attorneys and parties are typically unprepared for trial, which only delays the proceedings. Furthermore, we have a direct calendaring system where the judge familiar with the case hears the trial. We find this is to the benefit of all involved, but because of the shortage of judges, we must fit those trials in as best we can around law and motion. Therefore, we are given the unpleasant choice of either sacrificing law and motion to get more trials done faster, or fitting trials in around pre-existing law and motion calendars. Neither is truly ideal. We believe the solution would be to appoint more judges to the bench and ensure that family law is assigned more judicial resources. As that is not currently possible, we urge the AOC to reconsider their moratorium on hiring commissioners to fill in the gaps for judicial positions for courts that are understaffed. Hiring commissioners would allow more trials to be scheduled and more law and motion hearings to be heard, thus reducing the backlog and increasing access to justice for all.	Scheduling of Trials and Long-Cause Hearings. The Task Force anticipates that implementation of effective caseflow management can address some of the problems with attorneys and self-represented litigants being unprepared to proceed at the time scheduled for their hearings and trials. In many courts, additional judicial or other resources may be required. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	Litigant Education We generally agree with the spirit behind the recommendation, although we do not have the resources to implement it. However, we	Litigant Education Agree that creative partnerships such as those suggested in the comment

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	suggest that the AOC consider expanding potential sources for litigant education. For example, the AOC and local courts should seek creative partnerships with public universities and community colleges to generate and deliver inexpensive opportunities for relevant education of family law litigants. The content of this litigation should be based upon statewide standards, with room for authorized local variations.	would be very helpful in expanding litigant education. The AOC can help in developing this content so that there can be statewide standards with room for local tailoring.
	Expanding Services to Assist Litigants in Resolving Their Cases In addition to the recommendations made by the Task Force, we would like to suggest the creation of AOC family law circuit panels. The panels could be assigned in the same manner as the appellate districts, and would consist of volunteer family law attorneys and/or retired judges familiar with family law. The panels could go into the smaller counties or counties with fewer resources and provide mediation and settlement services.	Expanding Services to Assist Litigants in Resolving Their Cases This is a very creative idea that should be considered as part of implementation.
	13. Streamlining Family Law Forms and Procedures We wholeheartedly support simplifying the stipulated judgment process. Some of us are in favor of melding the OSC and NOM forms into one form. Others are against it, in fear it will confuse the process even more for litigants already lost in the process. We disagree with the proposed changes for service in family law matters. Although posting on a website might increase the likelihood of locating and serving an individual, it is fraught with potential security and fraud problems. We believe that the rules for service in family law matters should continue to mirror those for civil cases, which do not permit electronic service of motions except by stipulation and do not permit it for the service of summons. CCP 1010.6, 415.1 0 et seq.	Streamlining Family Law Forms Simplifying the stipulated judgment process – no response required Combining Notice of Motion and OSC form – no response required. Service by posting of a family law summons is authorized by *Cohen v. Board of Supervisors for the County of Alameda* (1971) 401 U.S. 371 at 382. That court relied on CCP 413.30 and followed *Boddie v. Connecticut* (1971) 401 U.S. 371 at 382, stating that service by mail at the party's last

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		known addressed and posted notice "is equally effective as publication in a newspaper." This recommendation would provide that service of a summons should be made by the internet rather than on a bulletin board at the courthouse.
	Judicial Branch Education We support this recommendation and suggest two small expansions. First, we suggest that education for judicial officers on limited scope representation be expanded to include "other versions of attorney assistance short of representation as the attorney of record." Second, we suggest that judicial officers be strongly encouraged to attend courses provided for family law attorneys.	Judicial Branch Education These suggestions will be forwarded to the implementation process.
	Family Law Research Agenda We agree that additional research is needed to enable appropriate decisions concerning family court resources. We also agree with the scope of the recommendations made by the Task Force. We offer two suggestions to complement the existing recommendations. First, we propose that Recommendation 1.A.g. be expanded to include classification of the subjects raised in OSCs and motions. We believe that this will help identify with greater certainty the specific areas of dispute being raised by litigants, which in turn will help identify the types of resources needed. We suggest a similar addendum to Recommendation 1.A.j.	Family Law Research Agenda The recommendation has been expanded to include issues raised in OSCs and motions.

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	Working relationships with universities Second, we suggest that the Task Force consider recommending that the AOC and local courts should form working relationships with universities and academic and professional associations to maximize opportunities to acquire the results of current research, and to instigate relevant research. Examples of crucial information include empirical relationship between domestic violence and factors such as age, education levels, substance abuse or other factors, for use in risk-assessment relevant to temporary and permanent restraining orders; use of graphics, color and other details of communication to enhance and increase accuracy of communication between self-represented litigants and the court; identifying both controllable and non-controllable factors that cause increases or decreases in the numbers of court hearings or the incidence of compliance or non-compliance with court orders so as to quickly recognize cases that will require more or less proactive case management." In closing, please allow us to reiterate our appreciation to the Elkins Family Law Task Force for their hard work and dedication to the improvement of our family law courts. We are grateful for the opportunity to contribute our feedback to their draft recommendations, and we look forward to reviewing the final recommendations once they are issued.	Working relationships with universities The recommendation has been expanded to include universities and academic and professional associations as partners in the research agenda where appropriate.
46. Nancy de Ita Attorney and President San Mateo County Bar Association	I think the most important recommendation is to have judges and mediators trained in cultural sensitivity and domestic violence victim syndrome. All too often our judicial officers have not lived in other countries and are unable to evaluate the witness from another culture. Many of my client's are poor and from another country. They may not	The Task Force recommends "Additionally, all judicial education, including courses addressing bias, should provide instruction to dispel misunderstandings and challenge

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	look the judge in the eye. They may not speak up. They may be afraid to go to the police. A busy judge may make assumptions that are incorrect. We have so many people from all over the world in our county. It should be mandatory that our judges get this training.	stereotypes about family law proceedings and family law courts, and should address cultural, ethnic, socioeconomic, and language barriers encountered by litigants in the courts." The suggestions about cultural competence in the domestic violence context will be forwarded to the implementation process. The Task Force further recommends that that training for mediators and evaluators address how to provide culturally competent services so that all litigants will have the greatest opportunity to access court services and resolve their disputes effectively.
47. Hon. Jeremias DeMelo Jr. Child Support Commissioner Superior Court of King County	Right to Present Live Testimony at Hearings. Overbroad requirement. The requirement that a judge 'must' receive live testimony, is unnecessary. The Rule should maintain discretion subject to the same factors which are proposed for the Good Cause exception -but which should be written neutrally. Elkins was denied live testimony at trial. To reach down with mandatory live testimony to every hearing when parties can already comment on the record, is not only unnecessary for most hearings, but burdensome.	Right to Present Live Testimony at Hearings. The Task Force received many comments requesting that there be no good cause factors and that judicial discretion to deny requests for live testimony should be eliminated completely. The Task Force recommendation maintains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must

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	There will be less access to immediate justice if cases take longer, because less will be timely calendared for a sooner hearing.	consider in their exercise of their discretion. The Task Force has heard from many courts that they are able to take testimony from the parties at the time of hearings without disrupting their calendaring system. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing is far more efficient than handling the often excessive declarations, and resulting motions to strike.
	Leadership, Accountability and Resources Subparagraphs 5 and 14. Disagree with the apparent bias of the task force that better judicial judgment is by way of fact, always existing in a judge and always preferential to talented and hard working commissioners. These are not mutually exclusive talents governed by way of title. Perhaps someday all Family Law proceedings will be heard by judges who run for re-election. Yet, the Commissioner increased use was not accidental or developed in a vacuum. Perhaps the automatic preference for a judge over a commissioner needs to be reconsidered, especially when commissioners are generally former family practitioners and many judges are former criminal law	Leadership, Accountability and Resources The Task Force acknowledges the depth of expertise that commissioners possess, and encourages SJOs to seek judicial appointment. And, the Task Force generally supports the existing Judicial Council policy that states that family and juvenile matters should be heard by judges rather than SJOs. As an exception to this general rule, where possible, IV-D commissioners should be permitted to hear all aspects of a family's case, not just the support

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	practitioners. Also, the funding and process by which commissioner numbers could be increased seems to be less burdensome than the creation a new 'judicial' position. I can understand the recommendation might be visionary, but the support therefore seems marginally logical at least as articulated. Enhanced use of Title-IV –D commissioners. Forgets history. Child Support Commissioners were encouraged precisely to expedite support orders apart from the rest of family law calendar constraints. Now that DVs have such a priority, the one case per SJO / JO proposal would cause Title IV procedures to be bogged down. Where will the increased time capacity for the existing Child Support Commissioner to hear the additional matters come from? The Support Commissioner is a solution to a problem that will resurrect if we return to the prior system. I happen to think that paragraphs 14 and 15 of task force recommendation 21. Leadership - appear to be contrary in logic. Do we want increased use of commissioners or don't we?	issues. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders. Enhanced use of Title IV-D Commissioners The recommendation has been modified to clarify that the recommendation to allow IV-D commissioners to "time study" to hear all aspects of a family's case is an exception to the general rule that supports judges hearing family law matters.

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	Thank you for all you do in seeking to improve the administration of justice. I appreciate the opportunity to provide input.	
48. John R. Denny Certified Family Law Specialist Newport Beach, CA	Scheduling of Trials and Long-Cause Hearings Day-to-day trials and long-cause hearings. Agree! Caseflow Management Information for Litigants This recommendation should be supplemented to require that the courts provide to litigants, at the time of the filing of a Petition, information about the various procedures for obtaining a divorce (or legal separation), including non-court procedures such as private mediation and collaborative law. Caseflow Management Streamlined Procedures This recommendation should be modified to include a reference to case in which the parties opt for private mediation or collaborative law. In both cases, until the parties opt out of said procedures, the parties should not be required to appear in court to report on their progress.	Scheduling of Trials and Long-Cause Hearings. No response required. Caseflow Management Information for Litigants Agree that courts should provide information about procedures for obtaining a divorce or legal separation and non-court procedures. Caseflow Management Task Force believes that it is important to have a next event scheduled for these cases, just as all others. No appearance would be required if the parties notify the court that they are proceeding in a collaborative or other out-of-court process. But it is important to protect those parties who start a collaborative law process, but are not able to complete their dissolution in this manner from falling through the cracks.

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49. Mary Anne Devine Family Law Facilitator San Francisco, CA	Caseflow Management I agree that there should be a case flow management system, but it should not be rigid. There is a reason that Family Law is exempt from Civil Fast Track Rules. Families deal with these issues in their own way and in their own time. They should not be pushed to resolve their cases. I am a Family Law Facilitator; when I started, I heard from many parties who were unaware that they had to take the steps to finish their dissolution. Our court has engaged in efforts to provide information about the process at the very beginning of the case and those efforts have worked. I now see far fewer litigants who think that they are automatically divorced by the court. I still see many families that may need to file for dissolution, but do not want to upset the status quo of their family life any more than necessary. These parties would benefit from a system that checks to see if they need help, but that does not push them through the system. Leadership, Accountability, and Resources I agree with many of the recommendations in this section concerning judicial education. However, I think that it was a mistake to eliminate the commissioner positions. Family Law is a complex area of the law, which changes constantly. It also involves dealing with people who are experiencing a great deal of stress in their lives and who, by and large, cannot afford to hire attorneys to represent them. Judges generally do not seek Family Law assignments and they only	Caseflow Management The system proposed by the Task Force is not intended to be rigid. The focus is on helping parties resolve issues and conclude their cases when they are ready to do so. Leadership, Accountability, and Resources The Task Force acknowledges the challenges of the family law assignment and acknowledges the depth of expertise that many long-serving commissioners possess.

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	stay in the department for 2-3 years. Family law attorneys that I knew when I was in private practice used to say that it takes five years of practice of family law before an attorney feels competent. Dealing with pro per litigants is very different from dealing with attorneys. Bench officers need to be aware of cultural, socio-economic and language differences. They need to be sensitive to the needs of the families that appear before them while ensuring that their cases are processed efficiently. The judicial work load can be overwhelming. Most judges try hard during their stay in Family Law, but, in my opinion, commissioners are better suited to hear matters in Family Law. Many have practiced Family Law before their appointments and most stay for on the Family Law bench for many years. Commissioners not only know the law, they know the families that appear before them. Family Law staff and bench need to work together as a team to ensure that litigants can access the system and exit the system with clear, enforceable orders. Court administration should ensure consistency in staffing so that staff who work in Family Law are experienced, knowledgeable and highly trained in the area of working with self-represented parties.	
50. Kathleen J. Dillon, Esq. (Law Offices of Kathleen M. O'Connor) Family Law Section CDR/ADR Standing Committee (South) State Bar	*The Elkins Task Force has made extensive recommendations to address a daunting problem how to improve access to the courts for parties to family law disputes, particularly when at least one party is self-represented. From evidentiary concerns, to litigant education, to increased options for implementing effective procedures for case management, the Task Force has made many suggestions that if implemented today, would improve the family law system, and	

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	alleviate some congestion in family law courts. This is not the only current notable occurrence in California family law. With the recent passage of AB 590 (Feuer, D-Los Angeles), which is the nation's first civil Gideon statute, all eyes are on California as we implement unique and groundbreaking ways to address the current limitations of the family law system. California has traditionally been at the forefront of meaningful change in family law, whether with the implementation of no-fault divorce, or mandatory mediation in child custody cases. Whether or not the expanded right to counsel to include qualifying parties to child custody disputes will solve the crisis in the family law system, it represents what our committee believes to be uniquely Californian in its attempt to tackle a problem with a daring and innovative solution. It is this type of innovation that our committee believes that the family law system needs at this time. We believe that the Elkins Task Force is well-poised to make recommendations that "represent a blueprint for change," a stated goal of the committee itself. (Elkins Task Force Draft Recommendations [hereinafter Report], Introduction, 5.) Change Nomenclature Comments Applicable To Draft Recommendations In General All references to "alternative dispute resolution" should be edited and changed to the more accurate, current and progressive "consensual dispute resolution." The use of appropriate nomenclature is a critical component to forming	Change Nomenclature The term "consensual dispute resolution" has been added where appropriate.

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	public opinion and first impression of concepts and processes. Nomenclature must accurately represent a process, as well as leave the reader with a positive impression. For example, as part of its recommendations, the Task Force has asserted the importance of changing the language used in the California Family Code to describe child custody and visitation to "parenting time," in order to "use nomenclature that more respectfully describes the time parents are responsible for, or spend time with, their children." (REPORT, Section 8, *Contested Child Custody*, 35.) Similarly, the State Bar Family Law Section ADR Standing Committee (South) has a new name, which more aptly describes the focus of the committee and its goals. The committee's name now includes reference to "CDR," which refers to "consensual dispute resolution," with the eventual goal that the term "ADR" will be eliminated when people are familiar with the term CDR. We believe that the term "consensual dispute resolution" or "CDR" more accurately describes mediation and collaborative law processes than "alternative dispute resolution." In addition, we believe that consensual dispute resolution should be anything but alternative it should be the entry point to the family law system, coupled with widely available party education. Furthermore, alternative dispute resolution processes have traditionally included arbitration, which, while limited in the family law context, is a viable option for certain parties. However, arbitration is an alternative dispute resolution process by which a neutral third party, or a panel of neutrals, imposes a decision, and is therefore not a consensual process.	The Task Force has incorporated the term consensual dispute resolution where appropriate.

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	Since we believe that consensual dispute resolution processes, whether mediation or collaborative law, should be the entry point to the family law system, CDR processes should be addressed separately from arbitration in the Report. RECOMMENDATION We recommend that the Elkins Task Force (1) separate references to arbitration from mediation and collaborative law in the Report, and (2) use the more accurate, modern, and appropriate term "consensual dispute resolution" instead of "alternative dispute resolution." The Task Force would benefit from having a consensual dispute resolution practitioner and specialist as a member. The references to consensual dispute resolution processes in the Report would benefit from the ongoing input of an expert who has a complex understanding of a wide-range of issues relating to mediation, court-connected consensual dispute resolution, and collaborative law. Familiarity with theoretical foundations and perspectives is important, as well as knowledge of the ways that a different socio-economic and ethnic groups experience mediation. In addition, a more complex understanding of power imbalance in relationships is required in order to address the topic appropriately. Since power is shared and dynamically exchanged in most relationships, concerns pertaining to power imbalance extend far beyond the cases in which domestic violence is present, or where one party has had exclusive management and control of the finances. This subtlety is not widely known or understood by those not trained and	A number of members of the Task Force are consensual dispute resolution specialists.

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	experienced in the challenging aspects of consensual dispute resolution. A member of the Task Force with theoretical understanding of the underlying CDR concepts as well as practical knowledge of CDR would allow the Task Force to address inadequacies within the current availability of CDR to all income levels. RECOMMENDATION That the Task Force invite an expert and practitioner of CDR from our Committee to join or advise the Task Force. B. Comments Specific To Sections of the Report. Consistent, positive treatment of consensual dispute resolution processes is needed throughout the Task Force's Recommendations The Task Force repeatedly refers to "alternative dispute resolution" throughout the Report. However, its treatment of consensual dispute resolution is inconsistent and not always positive. At certain times, the Task Force lauds the potential of improving access to consensual dispute resolution services, stating for example that "[w]hen parties are able to resolve their matters outside the courtroom, not only can they obtain a more positive outcome but it also means that more court time will be available in those instances where one or both parties have requested that a judicial officer decide their case." (REPORT, Section 12, *Expanding Services to Litigants in Resolving Their Cases*, 46.) With this statement, the Task Force insightfully points out that the use of consensual dispute resolution processes alleviates court congestion, by providing options for those who want to craft their own agreements, stay out of court, and have control over the outcome of their disputes.	

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	This makes room for other parties, many of whom have little or no chance of resolving their conflicts consensually. In addition, as the consensual dispute resolution options available to parties improve, along with party education, it should further reduce the numbers of parties who litigate, so that the volume of cases in the family courts becomes more manageable. However, in Section 11, the Report states that "educational materials and information should avoid a bias that supports settlement over litigation." (REPORT, Section 11, *Litigant Education,* 45.) (emphasis added). This oppositional treatment of consensual dispute resolution and litigation is incongruent with the reality of family law courts, the volume of cases, and what is in the best interest of children and families. For more extensive treatment of this issue, see Section E, infra at page 9. Elsewhere, in Section 3, entitled "Caseflow Management," the report states that "[s]ettlement assistance should be available throughout a case to assist parties in resolving all or a portion of their cases. However, ADR should not be utilized in such a manner as to limit a party's right to a full and fair hearing of any issues in dispute." (REPORT, Section 3, *Caseflow Management,* 20.) (emphasis added). Consensual dispute resolution processes are not intended to limit a party's right to a full and fair hearing. In fact, improving the quality and the availability of CDR processes should expand the parties' options, not limit them. Furthermore, issues pertaining to fairness of process, especially for parties with limited financial resources, are of critical	Agree that these statements are inconsistent and the statement regarding any preferences has been removed.

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	concern to those who are trained and well-versed in CDR theory and practice. While it may seem like a fine distinction, parties in CDR processes should be made to understand that litigation is available to them should they fail to consensually reach an agreement. (Litigation even remains an option to those in the collaborative law process. In the collaborative law process, attorneys and parties sign a disqualification agreement in which they agree that the lawyers must withdraw from the case should either party decide to litigate. While the parties will then have to find other representation, it is clear that even within the collaborative law paradigm, the parties still have the option of seeking judicial determination of their conflict, and are made aware of this option.) It should not be perceived as an "either/or" choice, but rather that consensual dispute resolution is the entry point to the family law system. With appropriate party education and opportunities for parties to develop their own solutions for conflicts, consensual dispute resolution merely makes room in an already over-burdened system for litigants who have no ability to settle. There will always be people who need the assistance of the courts to resolve conflicts; improved and increased use of consensual dispute resolution processes will only improve the quality of experience a litigant has in the court system, due to a reduced volume of cases. It is not intended to limit anyone's right to a fair hearing, as that is an option that all parties in CDR processes always possess. Recommendations	Litigant Education

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	In Section 11, entitled "Litigant Education," at page 45, strike the language from the following sentence as indicated "Given the wide range of issues and case types arising in family court, ~~educational materials and information should avoid a bias that supports settlement over litigation;~~ those litigants who are unable to settle and may require court assistance in resolving their matters for any number of reasons should be provided with information about proceeding through the court process."	The report will be modified to reflect this proposed modification.
	In Section 3, entitled "Case Management," at page 20, strike the language from the following sentence as indicated "Settlement assistance should be available throughout a case to assist parties in resolving all or a portion of their cases. ~~However, ADR should not be utilized in such a manner as to limit a party's right to a full and fair hearing of any issues in dispute~~." Any other statements in subsequent drafts of the Task Force's recommendations should portray CDR in a consistently favorable light. In addition, focus should be placed on improving the quality and availability of CDR resources to all parties.	Case Management While the Task Force understands that litigation is always an option, which is not always clear to litigants. It is important to make it clear that consensual dispute resolution should remain so, and not preclude parties from a full and fair hearing.
	In Section 11, entitled Litigant Education, on page 45, it states that "Judicial involvement and supervision in mediation of disputes is encouraged." While there are many working definitions of mediation, one definition, put forth in the preface to the Model Standards for Mediators, approved by the American Bar Association, the American Arbitration Association and the Association of Conflict Resolution, reads "Mediation is a process in which an impartial third party – a mediator – facilitates the resolution of a dispute by promoting voluntary	Litigant Education There are different definitions of mediation in the family law context. Given the often significant power imbalances in family law, it is often important to ensure that unrepresented parties are fully aware of their options.

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	agreement (or "self-determination'') by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement." (American Bar Association, American Arbitration Association, and Association for Conflict Resolution, Model Standards of Conduct for Mediators, August 2005, attached hereto as Appendix A, and available online at http//www.abanet.org/dispute/news/ModelStandardsofConductforMediatorsfinal05.pdf.) As such, incorporating judicial oversight in the mediation process is in opposition to the goals of mediation. In addition, the first articulated standard of conduct for mediators in the Model Rules is to promote self-determination of the parties through their work as neutrals. (*Id.)* Recommendation In Section 11, entitled "Litigant Education," at page 45, strike the following sentence, as indicated ~~"Judicial involvement and supervision in mediation of disputes is encouraged.~~" Suitability for Consensual Dispute Resolution Processes Should Not Be Limited to those Parties Who Indicate Interest in those Processes The Report states that early in a case, suitability for CDR processes should be evaluated based on whether the parties are interested in CDR. (REPORT, Section 3, *Caseflow Management,* 18, at subsection 2.) While the court should encourage parties who indicate an interest in CDR to pursue such options, suitability for CDR in general should not be limited to only those parties who indicate an interest in consensually resolving their disputes.	Consensual Dispute Resolution Processes The Task Force appreciates the thoughtful comment and references to some existing materials on the theories of conflict and resolution; however, the Task Force does not wish to adopt and generalize any particular psychological theory to all family law litigants, their children or cases. The recommendations of the Task Force

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	Limiting the use of CDR to only those who articulate an interest in such a process would short-circuit the effectiveness and true applicability of those options. Most parties in conflict believe that a solution cannot be worked out consensually, due to common intrapsychic processes such as attribution error and cognitive biases. (*See, e.g.* Thompson, Leigh & Janice Nadler, "Judgmental Biases in Conflict Resolution and How to Overcome Them," and Allred, Keith, "Anger and Retaliation in Conflict The Role of Attribution," in THE HANDBOOK OF CONFLICT RESOLUTION (eds. Morton Deutsch & Peter T. Coleman), 2000.) When a skilled neutral understands these phenomena, s/he can diffuse their effect and help the parties have a conversation, thereby making progress towards reaching agreement. The judicial officer should therefore not rely on the interest of the parties to designate their cases as suitable for CDR. Recommendation. The Task Force should eliminate reference to interest of the parties in CDR as establishing suitability for mediation or consensual dispute resolution in the context of case management. Local Rules that Facilitate Consensual Dispute Resolution and Party Education Must be Made Statewide California Rules of Court While our Committee understands that local rules serve to confuse pro pers and even attorneys who practice in multiple jurisdictions, it is important to acknowledge that different jurisdictions, and sometimes even different courts, have devised innovative solutions to problems they frequently encounter. For example, Los Angeles County Superior Court Local Rule 14.20(b) requires divorcing parents to attend an informational session on divorce	have adopted a differential approach to cases to facilitate appropriate case-specific processes and procedures for family law matters. The Task Force recognizes the significant value of settlement, but also recognizes there are situations that require judicial decision-making. Based on input from litigants, attorneys, judicial officers and court connected mediators, the Task Force has concluded that participation in any mediation process for family law litigants should be voluntary unless currently mandated by statute.

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	at the outset of a case. (Los Angeles County Superior Court Rule 14.20, attached hereto as Appendix B.) Another innovative local rule from San Mateo County is Local Rule 5.5, which requires both parties to a dissolution action or parentage case to be informed about options for alternative dispute resolution, including arbitration. (San Mateo County Superior Court Rule 5.5, attached hereto as Appendix C.) In accordance with that local rule, the parties, along with their counsel, must sign the local family law form FL-2, serve it on the opposing party, and file a proof of service with the court. (San Mateo County Local Form FL-2, attached hereto as Appendix D.) These are just two rules that facilitate party education and consensual dispute resolution. Other rules include streamlined, rapid processing of judgments drafted pursuant to consensual dispute resolution processes. Since consensual dispute resolution is a vital part of reworking the family law system, it is important that the Task Force recommend that statewide rules include the local rules that have proven to be most effective in encouraging consensual dispute resolution processes. Local Rules Recommendation Our Committee recommends that the Task Force evaluate local rules that facilitate consensual dispute resolution processes, and adapt them as necessary for statewide use. Affirmative Legislation The Need for Learning The Parties Need and Deserve Early Access to Substantive Information about Marriage and Parenting It is frequently only upon divorce or separation that a party even begins to understand the laws that pertain to marriage, and the rights and	Local Rules The Task Force recommends that local rules be reviewed to determine best practices for statewide use and these rules would certainly be considered. Affirmative Legislation Information is currently available on-line regarding rights and responsibilities in relationship to marriage and parenting.

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	responsibilities of parenthood. For example, the community property system is a mystery to most married people, even to those who are highly educated. How many of us have had prospective clients enter our offices, insisting that after a 14 year marriage they have no community property with their spouse, because they "never had a joint bank account, and always put their wages in an account in their own name?" In addition, many married people do not understand the general laws pertaining to spousal support and child support, let alone the fact that California public policy favors frequent and continuing contact between the child and both parents when custodial disputes arise. It is also possible that some of the animosity typical to parties in family law disputes could be the partial result of not having understood the legal implications of the marriage contract in the first place. Ironically, in virtually every other contract that we enter, whether to purchase televisions, or automobiles, or to become a doctor's patient, or consent to treatment, we are presented with elaborate written documents that outline our rights, responsibilities, and recourse that is available to us should a dispute arise. If more married people understood the legal ramifications of the marriage contract from the outset of the union, perhaps parties would not become so entrenched in untenable and unfounded positions during dissolution, separation, and other matters relating to custody and support. Legislators have proposed this type of legislation in the recent past, and	Given changes in the law, it is unclear whether information that parties received upon marriage some 20 years ago would be particularly helpful – and, in fact, parties may rely upon inaccurate information unless they are referred to a source that is kept up to date.

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	it has in previous legislative sessions passed both houses, but has never been signed into law.(AB-1920, D-Jackson, 2000; AB 889, D-Jackson, 1999. Information pertaining to the legislation available at www.leginfo.ca.gov, and attached hereto as Appendix E.) Legislation that has been proposed would require presentation of a Marriage Fact Sheet at the time when parties apply for their marriage licenses. This would constitute a practical, low-cost early education of the parties. Recommendation That affirmative legislation be proposed to implement a Marriage Fact Sheet that is given to couples applying for all marriage licenses in the State of California. Joint Petition for Parties in Consensual Dispute Resolution Processes The Petition for dissolution, legal separation and parentage poses the parties opposite each other, which in a traditional, litigated proceeding, may be appropriate. However, when parties have chosen consensual dispute resolution processes to work out their conflicts, the adversarial language on the Petition can be unsettling. It frequently makes parties question the other party's commitment to CDR. In addition, it becomes very difficult for parties to decide who will be Petitioner, who will be the Respondent, and when to file. The lack of a joint petition can push parties otherwise committed to CDR towards litigation, which again increases the volume of cases in family court. In addition, there is societal value to parties working out solutions to their own conflicts. That should be encouraged, and a joint petition would give legitimacy to this option.	Joint Petition This basic concept is addressed in the Task Force's recommendations regarding a Simplified Judgment process.

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	Recommendation. That affirmative legislation be proposed to create a joint petition for parties who are in consensual dispute resolution processes.	
	The Need for Learning from Other Jurisdictions about their Solutions to these Same Problems Jurisdictions from around the world have various important lessons to impart to us about how to handle family law disputes. For example, Australia has placed concerns of children of divorce as the government's top priority in fashioning laws pertaining to divorce and parentage. (Australian Government, A New Family Law System. Government Capitol Response to Every Picture Tells a Story, June 2005, accessed under "Publications," on www.ag.gov.au.) British Columbia, too, has implemented a system in which consensual dispute resolution processes are the entry point to the family law system. (See, e.g., "A New Justice System for Families and Children Report of the Family Justice Reform Working Group to the Justice Review Task Force," May 2005, available at http//www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf.) In addition to procedural and organizational structures, jurisdictions approach party education differently as well. Some jurisdictions' responses to the need for party education appear below.	The Need for Learning from Other Jurisdictions about their Solutions to these Same Problems The Elkins Family Law Task Force considered a variety of options from other countries in considering its recommendations.
	Los Angeles County PACT As previously mentioned, Los Angeles County Superior Court Local Rule 14.20(a) (3) mandates that divorcing parents attend an orientation	Los Angeles PACT Recommendations in Children's Participation and Minor's Counsel

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	course called "Parents and Children Together" (PACT), prior to a hearing or OSC. (Information about the P.A.C.T. course, attached hereto as Appendix F.) Divorcing parties may attend the three-hour course separately. In some cases, parties avoid taking the course, or finally manage to attend only shortly before judgment, which is a flaw in the current implementation of the program. In order to maximize its impact, the course should be taken as close to the initiation of the proceeding as possible. Los Angeles County Parenting in High Conflict Courses In addition, Los Angeles County used to sponsor Parents of High Conflict Divorce courses, which were once available through the Family Court Services office in the LA County courthouses. Due to a lack of funding, those publicly funded courses are no longer available. However, private mental health professionals now offer these multi-week courses throughout the Los Angeles area to teach parents how to handle their divorce in a way that will minimize the collateral damage to their children. Hawai'i Kids First Other jurisdictions have similar courses, but infuse the instruction with even more understanding of the importance of cooperative co-parenting. One such class is Hawaii's "Kids First" program. (Article on Hawai'i Kids First program, attached hereto as Appendix H.) When parties with children divorce in Hawai'i, the parties along with their children over 6 years of age must together attend a course. (Kids First enrollment form, attached hereto as Appendix I.) The parents apparently attend one session, while their children receive instruction that will assist them in understanding and coping with the divorce	support the idea that some children and families benefit from participating in various programs. Hawaii Kids First Recommendations in Children's Participation and Minor's Counsel support the idea that some children and families benefit from participating in various programs.

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	process. The point is to orient the parents' focus on the best interests of the children at the outset of whatever process the parties eventually choose to initiate. For those in abusive relationships with domestic violence, there is a form that can be filled out to avoid taking the course together. (Kids First form, exception, attached hereto as Appendix J.) Evaluating the success of this program, from the perspectives of the different stakeholders (parents, children, and judicial officers) will help decide if such a program should be implemented here in California. In other words, while we hope that California will continue to be a cutting-edge leader for meaningful change for families and for children in the family law system, we do not necessarily have to re-invent the wheel. Other jurisdictions may have answers to some of the problems plaguing the family law system that can either be adopted in whole or in part, or adapted to fit the needs of parties statewide. Recommendation That innovative and effective programs from other jurisdictions regarding consensual dispute resolution and public education should be explored and referenced in future versions of the Elkins Task Force recommendations. E. Additional Thoughts On The Complimentary Roles Of CDR And Litigation. Our Committee believes that CDR and litigation should not be placed in opposition to one another, and that by doing so, it ignores the reality of an over-burdened court system, as well as the inherent benefits of consensual dispute resolution.	Other Jurisdictions The Elkins Family Law Task Force considered a variety of options from other countries in considering its recommendations. These will continue to be examined as part of implementation. Consensual dispute resolution has been referenced in the Task Force recommendations as has public education.

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	Oppositional treatment of CDR and Litigation does not reflect the reality of an overburdened family court system In Los Angeles County, roughly 80% of family law litigants represent themselves in propria persona. (Conversation with Barry Goldstein, LA Superior Court Statistics Division, December 2, 2009. Figure is based on widely-cited estimate provided by various civil court administrators.) In 2008, there were over 90,000 family law filings in LA County courthouses, and just over 100,000 dispositions in family law cases. (Los Angeles Superior Court, Monthly Filings and Dispositions Report FAMILY LAW, January-December 2008, attached hereto as Appendix K.) By contrast, there are only forty-seven (47) family law judges in all of Los Angeles County. (The Hon. Marjorie Steinberg, Supervising Judge, Family Law Departments of Los Angeles Superior Court, presentation entitled, "Family Law Today and Tomorrow," July 1, 2009.) Anecdotally, looking at a family law judge's daily calendar in Los Angeles County would give anyone cause for concern anywhere between 16 and 28 matters on calendar daily. While the judicial officers of Los Angeles County take their work seriously and are highly capable and dedicated, the burden of the volume of cases is undeniable. Judicial officers in Los Angeles County Family Law Courts Encourage the Parties to Settle, Especially When Cases Involve Minor Children. Throughout their cases, most judicial officers in Los Angeles County repeatedly renew their advice to the parties that they attempt to consensually resolve their conflicts, especially when there are children involved. This goes beyond the statewide mandated mediation of child	The Task Force has made many recommendations supporting consensual dispute resolution and recognizes its value for the parties and the courts.

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	custody cases; this is a frequently repeated mantra, even when mandated mediation has not resulted in an agreement of the parties. Some judicial officers in Los Angeles County compliment the parties on the record when they are able to resolve custodial conflicts amicably. Others simply advise the parties that working cooperatively as co-parents will be necessary in order to raise well-adjusted children. However it is delivered, the message is clear work together, parents, to resolve your differences, and to figure out a way to effectively co-parent your children. But, judicial officers encourage settlement over litigation for myriad other reasons. Cases that settle are no longer matters on calendar, thus making room to hear other matters that may be more critical in nature, complex, or those that have no possibility of settling. In addition, the vast numbers of pro per litigants in the family courts impede the possibility of a swift resolution of even the simplest matters. Many judicial officers are also aware of the inherent limitations of a judicially-imposed decision, particularly when a family system is involved. While highly skilled, a judicial officer does not know the parties' children, or the parties, or who really is telling the truth, or even ultimately whether his or her plan will work for the family or for how long. When a case involves minor children, it is likely that the case will come before the court again, for some type of modification of support or parenting plan. Finally, judicial officers realize that from the outset of the case, parties in ongoing relationships must cultivate their ability to work together, to	

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	help provide a framework for decision-making over the long-term. When parties are able to settle their disputes consensually, they get a custom-made, tailored-to-their-own-family-and-values solutions. Sometimes these agreements mirror legal rights and responsibilities; other times, they reflect the parties' own values and priorities. Sometimes they reflect that parties' desire to rely on parental flexibility; other times the agreements are rigid and formal. The Evidence is Uncontroverted Heated, Protracted Custody Battles Damage Children. Most importantly, judicial officers in Los Angeles County encourage parents with minor children to consensually resolve their custodial disputes, due to the abundant and uncontroverted evidence that intensely litigated custody battles damage children. Well-known child psychologists, mental health professionals and family therapists, from Joan B. Kelly, to Judith Wallerstein, to Isolina Ricci, Philip Stahl and Donald Saposnek, all caution parents to conduct themselves carefully during the divorce proceeding, so as to minimize the damage that is done to children in the process. Often the length of a custodial dispute impacts a child's relationship with both parents, or interferes with access to extended family. Consensual resolution of parenting disputes where possible, maintaining frequent and continuing access to both parents, and encouraging a child to love both parents without fear of betrayal of the other are clear ways that mental health professionals have indicated that parents and agents of the legal system can contribute to making things better for the children of divorce. However, with all of this knowledge, and even though many of	

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	California's judicial officers in family court are well-versed in the importance of making child-centered decisions and not parent-centered ones, the family law system still allows and sometimes endorses behavior that is ultimately damaging to children. Legal gamesmanship that permits parties to obscure the meaning of protecting the children's best interests must be prohibited in the family law system. For example, asking children to choose between their parents, to side with one party or another, or to testify against a parent all represent ways that the court system permits institutional abuse of children, in the guise of serving a child's best interests. We believe that the family law system in the State of California must be principally guided by the need to protect children of divorce, and that all laws pertaining to divorce, legal separation, parenting time, and support be filtered through this lens. While perhaps a revolutionary concept to attorneys in the State of California, other jurisdictions, as we have said, have made protecting children of divorce the highest priority when crafting institutional plans, programs and laws pertaining to dissolution and separation. Consensual dispute resolution as the entry point to the family law system. Given the demands on the family law system, and the volume of cases in family courts, consensual dispute resolution and party education provide the logical entry point to the family law system. This does not place litigation in opposition to consensual dispute resolution; rather it places them along a continuum, which, as the Task Force aptly pointed out, would reduce the volume of cases that judicial officers need to oversee and decide.	

Commentator	Comment	Committee Response
	Substantive education early in the process could give parties information that would help them better understand the issues presented in their cases, such as basic community property principles, parenting, co-parenting during divorce, and the importance of both parents to children's development. Information and understanding of legal concepts could encourage parties to resolve their disputes. F. Conclusion The State Bar Family Law Section CDR/ADR Standing Committee (South) appreciates this opportunity to present our comments to the Elkins Task Force Draft Recommendations.	Substantive Education The Task Force has recommended substantive education early in the process to assist parties in making informed decisions.
51. Josef Marc Dion Legislation Coordinator Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services State Bar's Standing Committee on the Delivery of Legal Services San Francisco, CA	The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) reviewed the Draft Recommendations of the Elkins Family Law Task Force and offers comments on Sections 2 and 17 in the attached document. SCDLS very much appreciates the opportunity to comment and commends the Task Force for the excellent work in drafting the recommendations. The State Bar's Standing Committee on the Delivery of Legal Services (SCDLS) strongly supports the Draft Recommendations of the Elkins Family Law Task Force designed to expand delivery models and provide greater accessibility to quality legal services for family law litigants. The problem is complex and many-layered, and there is no single magic answer. The Task Force correctly recognized that any solution would have to consist of a continuum of services, tailored to the needs and abilities of the litigants, the issues presented, and the availability of resources.	

Commentator	Comment	Committee Response
	The comments below address recommendations found in Section 2, "Expanding Legal Representation and Providing a Continuum of Legal Services," and section 17, "Public Information and Outreach."	
	Expanding Legal Representation and Providing a Continuum of Legal Services Referrals to Private Attorneys For those who do not qualify for free legal services, SCDLS believes that the best and most desirable service is a referral to a private attorney who can give the litigant specific advice tailored to an individual case. The vast numbers of unrepresented litigants demonstrate that the problem is not limited to the indigent and the working poor. It is a middle class problem as well. Lawyer Referral Services play a critical role in matching lawyers with litigants.	Expanding Legal Representation and Providing a Continuum of Legal Services Referrals to Private Attorneys No response required.
	The realities of family law demonstrate that there should be encouragement for local bar associations and other LRS providers to establish modest means and low fee panels, as well as limited scope panels. We further recognize that, even with increased legal services funding, the working poor often have no meaningful access to legal assistance. We encourage continued training in limited scope representation so that lawyers have the skills to offer these services competently in appropriate cases. We recommend that unbundling be actively promoted as a mainstream, safe, and legitimate system for the delivery of legal services.	
	Courts should be proactive in encouraging LRS providers to expand these services, and using them as a referral mechanism. We also recommend that local minority bar associations, whose memberships	Continued encouragement of LRS providers to expand these services. The Task Force has recommended that

Commentator	Comment	Committee Response
	are often better equipped to assist litigants with limited English proficiency (LEP), the Family Law bench, and the presiding and/or supervising judges be actively involved in the discussion of encouraging and attracting private attorneys to work on unbundled cases.	courts provide encouragement for these unbundled services.
	Funding for Legal Services (page 15) The legal services community attempts to provide family law services to low-income litigants, but is woefully under-funded to do this work. These are some of the most important legal issues any family will face, and families are largely left to navigate the system on their own. Although many litigants can assist in their own representation with good coaching or unbundled legal assistance, many cannot, due to language, mental health, cultural, or other issues. The legal services system must be funded in such a way to assure quality legal assistance for issues such as child custody, protection, and preservation of support rights so that litigants receive the help they need to adequately protect their rights. We also strongly approve of the recommendation to expand legal services programs for appellate cases, since the current reality is that appellate relief is effectively unavailable for indigent and low-income litigants.	Funding for Legal Services – no response required.
	Expanding Self-help Services The self-help centers are one of the most successful family law programs to ever be instituted in California. Many are limited in what they can do due to funding and staffing limitations. Self-help centers should be the first stop for low-income family law litigants as they can serve as a clearinghouse for referrals to legal services or LRS programs, as well as performing their important function in assisting litigants with their paperwork. SCDLS is particularly concerned that limited funding	Expanding Self-help services No response required.

Commentator	Comment	Committee Response
	of self-help services encourages unscrupulous non-professionals to take advantage of an unwary public. Unauthorized Practice of Law (UPL) is a serious concern in our state, as many litigants turn to "notarios" and others for help which they are unqualified to provide, often under the false impression that they are consulting with an attorney. Additionally, many of the unscrupulous providers actually charge as much or more than an attorney would, even while turning out a shoddy product to litigants who believe, incorrectly, that they are getting less expensive service. While there is a role for qualified document preparers, supervision by an attorney is an important safeguard of consumers' rights. Since most litigants cannot afford full service attorneys, increased funding for the self-help centers would be an important first step to ensuring that litigants are receiving quality service from experienced professionals. The expansion of self-help services falls into several categories Increased staffing and funding for existing self-help centers to increase the number of litigants they can help; Expanding the subject areas beyond child support collection and related matters to allow them to assist in custody, property, and other family law issues; Expanding the nature of the services they offer beyond document assistance and coaching to actually appearing at hearings and assisting with settlement negotiations (this also relates to Section 12 of the report). Expanding the availability of clinics, which can assist greater numbers of litigants than one-on-one services can. Actively encouraging greater collaboration between self-help centers and legal services providers,	Expansion of Self-Help Centers Given the critical role of the court as a neutral in providing services, it does not seem appropriate to appear at hearings or negotiate on behalf of litigants. Many self-help providers currently provide mediation and other services to assist both parties to settle a case. Many programs are providing more services by workshops to enable more litigants to be served. Collaboration between self-help centers and legal services providers is critical.

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	including coordinated triage and referral systems. Availability of Attorneys SCDLS believes that the best solution for California families is that everyone who needs one has access to an attorney for self-help assistance, limited scope representation or full representation, depending on the needs of the client. Many attorneys who want to serve poor and middle income clients find that the challenges of private practice make it impossible for them to succeed, especially in light of the large student loans many new lawyers are burdened with. In order to correct this, SCDLS recommends the following Mentoring programs Without strong mentors, many new lawyers simply cannot succeed, and are forced to find institutional employment. The vast majority of family law litigants who have lawyers are represented by solo and small firm practitioners. A good example of a mentoring program, which should be encouraged and replicated, is Community Lawyers, Inc. in Compton, CA, where lawyers are given training, resources and mentoring in an "incubator" environment which significantly increases the chances that they will be successful in the marketplace. It does not matter how much lawyers care about serving the poor if they simply cannot support themselves doing it. Failure to provide skills training and mentoring simply sets them up for failure and leaves our most vulnerable family law litigants unprotected, or forces them to turn to non-professionals for assistance. Court-based mentoring This is an excellent suggestion, and could operate to solve two	Availability of Attorneys The Task Force is very mindful of the challenges faced by attorneys who want to serve poor and middle class clients but find that the challenges of private practice make it impossible for them to succeed. Mentoring programs No response required. Court-based mentoring No response required.

Commentator	Comment	Committee Response
	problems it would give students a place to learn their skills, while assisting the court in meeting the demands for legal help.	
	Pro bono Pro bono should be encouraged, along with limited scope representation. These issues really go hand in hand. It is difficult to recruit lawyers to volunteer for a complicated custody case, which might go on for months or years. By providing training in limited scope representation, recruiting volunteers with the promise of a limited commitment and ensuring that courts facilitate and encourage limited scope representation, many more lawyers could be induced to take family law cases pro bono.	Pro Bono No response required.
	Limited scope representation Limited scope representation is a critical component of the continuum of service, and it is unlikely that significant numbers of the currently unrepresented can afford full service lawyers under any circumstances. Lawyers look to the courts for leadership, and the courts should encourage them to obtain limited scope training and join family law LRS panels.	Limited scope representation Will add language regarding benefits of the courts providing support for limited scope representation and modest means panels.
	Increased recognition of and respect for family law lawyers and judges would have a positive impact on the number of attorneys practicing family law. Family lawyers are often perceived by their peers as "second class" lawyers, and family law is often considered an undesirable area of practice for both lawyers and judges. Family law cases tend to be emotionally fraught, drawn out, and messy. Until the profession and the courts treat family lawyers and family law judicial officers as full, respected, and important members of our profession,	Increased recognition and respect for family law attorneys No response required.

Commentator	Comment	Committee Response
	this "second class" perception will continue and good lawyers who might otherwise be drawn to family law will gravitate to other, more respected, areas of practice. Public Information and Outreach. This section of the report recommends a public information program and community outreach. SCDLS strongly supports this recommendation. A good place to start is through the self-help centers, but it should not stop there. Public information programs should advise litigants of services, which are available, wherever they fit on the continuum, and give them guidance which will assist them in choosing the level of service which works best for them. Not everyone needs a full service attorney, and many litigants would prefer to retain control over their cases, as long as they felt comfortable, they were aware of their rights and were getting good coaching. Any and all public information programs and community outreach, to the extent possible, should include language and culturally competent materials to meet the needs of the rapidly growing LEP litigants in California. SCDLS believes that providing greater accessibility to quality legal services for family law litigants is fundamentally an access to justice issue, which impacts not just family law litigants and those who serve them, but society as a whole. Poor people, particularly those who are LEP with family problems, should be able to get help. Individuals who lack the ability to self-represent should have access to full representation. Middle class litigants shouldn't have to mortgage their and their children's future just to get divorced or resolve a custody problem. Everyone who needs legal assistance should be able to find it at whatever place on the continuum is appropriate.	Public Information and Outreach The recommendation has been modified to specifically reference the availability of information at self-help centers. The recommendation already addresses the need to make information accessible to LEP litigants.

Commentator	Comment	Committee Response
	SCDLS appreciates the dedication, hard work, and commitment of the members of the Elkins Family Law Task Force, and encourages the Task Force to continue its important work in assuring that every Californian with a family law problem has access to quality, affordable legal assistance. Disclaimer. This position is only that of the State Bar of California's Standing Committee on the Delivery of Legal Services. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	
52. Deborah Dubroff Law Offices of Deborah Dubroff Oakland, CA	Providing Clear Guidance through Rules of Court (page 23 of recommendation) Agree. I think that the creation of uniform statewide rules for family law would create a far more efficient system and lower the litigation costs. Create Centralized Rules Oppose. This would create an unwieldy duplicity of reference materials, and when laws change, by statute or case law, the "simple" statewide rules would need to be updated to ensure conformity. Such a resolution appears to require inclusion of almost all statutes in the Code of Civil Procedures and Evidence Code. This recommendation seems unworkable, unnecessary, and unhelpful. Local Rules Agree. Applicable rules need to be streamlined to improve efficiency	Providing Clear Guidance Through Rules of Court No response required. Create Centralized Rules This is intended to reference rules of court, not all statutes. Local Rules No response required.

Commentator	Comment	Committee Response
	and reduce litigation costs. Applicable rules need to be streamlined to improve efficiency and reduce litigation costs. Scheduling Trials and Long Cause Hearings Oppose. This recommendation implies that other matters calendared would be "bumped." Counsel and the courts should overestimate the time required so that matters can be handled expeditiously. Just because a counselor or self-represented litigant underestimates the time his or her trial requires (which is sometimes done intentionally as a tactical strategy to get on the court's calendar sooner), other trials or long-cause matters should not be recalendared. This creates inefficiency and increases costs for the courts and litigants. Instead I recommend increasing court resources and staffing for family law cases so that there are sufficiently increased resources to alleviate the identified problem. Day-to-Day Trials and Long Cause Hearings Oppose. This solution seems like another procedural burden for courts to comply with and nothing that a court couldn't get around by making a finding of good cause for a variety of reasons. If this new burden is imposed, what is the effect of non-compliance? This is a waste of precious and limited court resources.	Scheduling Trials and Long Cause Hearings The prolonged continuances of hearings and trials so that there are weeks and even months between court sessions, were the source of numerous complaints from attorneys and litigants. Judicial time is wasted and attorneys' fees are increased as witnesses are prepared and then not called, and as judges review the status of the hearing or trial prior to each session. Matters that could be completely heard in two or three court sessions can end up taking five or more sessions due to the additional review and preparation time for both judges and attorneys. This also creates additional time lost from work for litigants. The issues of time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed during implementation of this

Commentator	Comment	Committee Response
		recommendation. The Task Force anticipates that implementation of effective caseflow management will address many of these issues.
	Notice**.** Agree. The taskforce's reference to the importance of time lost from work should not be overlooked. This presents a huge burden for litigants and one that is frequently treated as an irrelevant issue. Even though I disagree with the umbrella of the overall recommendation (bumping other calendared evidentiary hearings), this proposal should be supported and agreed-to as a standalone recommendation.	Notice. No response required.
	Streamlining Forms and Procedures Agree	Streamlining forms and procedures No response required.
	Simplifying Forms For Litigants Who Are In Agreement. Oppose. This solution will likely be highly problematic and take up precious staff resources while these changes are made and court staff, attorneys and litigants try to determine what they require. Current forms and laws don't seem that much more onerous than what this scheme contemplates.	Simplifying Forms for Litigants Who are in Agreement. The Task Force anticipates that instructional materials will be developed along with forms to assist courts, attorneys and litigants to use this proposed new procedure.
	Summary Dissolution Process. Oppose. If I understand that nature of the problem as the recommendation is drafted (and as I encounter it in my practice), the issue is that people don't understand they need to file a judgment after their petition. This is an educational issue, not a legislative issue.	Summary Dissolution Process. This is an educational issue, but it is also a design issue. There appears to be no strong policy reason for not allowing parties to submit their

Commentator	Comment	Committee Response
		proposed judgment at the same time as their initial pleadings since it is a joint petition.
	Simplify Forms For Motions. Oppose. Current forms and requirements simply need to be standardized statewide and users educated. Creating a third form is unnecessary, particularly since orders to show cause will still be necessary in some cases.	Simplify Forms for Motions This proposal would go from two forms to three. The case types requiring an order to show cause, such as contempt and domestic violence already have separate forms.
	Simplify Forms For Discovery. Declaration Of Disclosure Forms. Agree. Instructional materials for self-represented litigants should be developed	Simplify Forms For Discovery. Declaration of Disclosure forms No response required.
	Oppose. Since most couples file joint income tax returns, it is unnecessary to require them to exchange jointly prepared returns.	Exchanging jointly prepared tax returns For those couples that file separately, or where one party does not have a copy of the tax return, this is a simple solution to a discovery difficulty.
	Agree - Service of preliminary disclosure documents within 60 days of filing petition should be required. This would facilitate forward movement in cases to a great degree and helps to improve the accuracy of values assigned to assets and debts that are closer to the date of separation.	Service of preliminary disclosure documents No response required.

Commentator	Comment	Committee Response
	Discretion to Serve Disclosure Document – Oppose. There should not be judicial discretion to service of preliminary disclosure documents in cases in which there is no property or support at issue because the only way to ascertain whether property or support is at issue is by reviewing the preliminary disclosure documents. Expanded Discovery Forms. Agree Simplify Procedures For Service Of Process Agree Agreement Templates. Standard Parenting Plan Template Agree Standardize Default and Uncontested Procedures Agree. Thank you for the opportunity to submit these comments.	Discretion to serve disclosure documents – this discretion would be reserved for those cases such as summary dissolution where parties swear under penalty of perjury that there are no assets, debts or support issues. Expanded Discovery Forms No response required. Simplify Procedures for Service of Process No response required. Agreement Templates – Standard Parenting Plan Template No response required Standardize Default and Uncontested Procedures No response required.
53. Christopher J. Duenow President Family Law Section, SLO Bar San Luis Obispo, CA	Live Testimony Agree Early Needs Based Fee Awards Agree Check Points Agree	Live Testimony No response required. Early Fee Awards No response required. Checkpoints No response required

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Time Standards Agree Investigators Funding? Providing Information Minors' counsel is an efficient method for the court to determine best interests. Use of investigators and evaluators is a great idea, but 95% of litigants and the county/state do not have the funds. Unless funded, need to allow Minors' counsel to report, make recommendations, and present hearsay. Do Not Agree Evaluation. Court use of minors' counsel for report & in place of evaluator is efficient. Custody evaluator is expensive and time consuming. There is no money for this. Judicial Officers can ask for more evidence or give opinions they think appropriate. Agree if modified	Time standards No response required. Investigators The Task Force recognizes that additional funding may be required to implement this recommendation in many counties and thus, some may not be able to be implemented immediately. Providing Information The Task Force heard many concerns about minor's counsel being used in place of evaluators and seeks with its recommendations in Children's Participation and Minor's Counsel to support increased clarity and appropriate use of these resources. Evaluation The Task Force recommends clarification of the role of investigators and evaluators as well as minor's counsel so as to increase litigants' understanding of the processes and roles professionals may play in their cases.

Commentator	Comment	Committee Response
	Declaration of Disclosure Agree with timely disclosures with deadlines. 60 days for Petitioner; 90 days for Respondent.	Declaration of Disclosure The Task Force continues to think that 60 days for the Respondent is reasonable.
54. Hon. Becky Lynn Dugan Supervising Family Law Judge Superior Court of Riverside County	Thanks to all of you for your very hard work. Even if many changes are not implemented immediately, the work you have done sheds light on the difficulties and lack of resources in Family Law and that can only be helpful toward achieving future goals. Right to Present Live Testimony I strongly agree that live testimony should be allowed. This is imperative with pro pers, who often are quite incomplete and inarticulate on paper. It may be more imperative in cases where attorneys represent the litigants, since the declarations are written by counsel, and it has been my experience that there is a large disconnect between the "spin" put on some declarations and what the litigant is actually trying to say. Also, the bench officer can get little sense of the personalities and problems of parents, if they are not allowed to directly address the court. Most important, litigants need to feel that they have been heard and understood. Once they feel that, their compliance with orders is often better. However, even though live testimony is critical, I don't believe a rule is needed for it. The Reifler case does not forbid live testimony, as we all know, and many of us take live testimony every day, in every hearing. A trier of fact has always had the right to do that, as well as ask questions of the parties and witnesses. I couldn't function or get through my calendar without that ability. Moreover, we have always had the power to limit cumulative or time-consuming testimony.	Right to Present Live Testimony The Task Force is aware that there are many family law judicial officers throughout the state that are currently doing an excellent job of evaluating when live testimony is necessary. The goal of the Task Force is to extend this standard of excellence to all family law litigants, regardless of where their case is filed. While the Task Force agrees with the commentator that this is an issue for judicial education, it was decided that a rule was necessary to accomplish this goal statewide. The Task Force recommendation does not eliminate judicial discretion to exclude live testimony for good cause, but seeks to set out reviewable factors that judges must consider in the exercise of their discretion. They need only to

Commentator	Comment	Committee Response
		address those factors on the record that are relevant to their decision.
	A rule that we "must" receive live testimony is a bit scary, however, and a requirement that we make findings as to why we have not, in a particular case, adds to our already crowded workday and adds much to our clerk's workload, since those findings will be included in the court's minutes. In summary, a bad policy existed in Contra Costa. Some judges do their work in a way that does not promote due process or satisfaction with the courts. This is a training issue for judicial officers. I do not believe we need another rule to address it, especially a "mandatory" one.	
	Caseflow Management I strongly agree with the recommendation to eliminate the requirement that the parties have to stipulate to case management. Whether a case should be placed in "case management" should be at the discretion of the judicial officer handling it, not the litigants.	Caseflow Management No response required.
	I also agree with recommendation no. 6, as to streamlining default and uncontested cases. However, the majority of the other recommendations, checkpoints, assessments, and status conferences, would greatly increase the workload of the clerks and/or examiners, at a time we are furloughing and have hiring freezes.	The Task Force recognizes that many of its recommendations will require additional resources and cannot be implemented immediately. Models from courts that are implementing these practices should be shared to identify best practices to minimize the burden on staff.
	Instead, we should spend a day of training, after the Family Law Overview, about six months into a judicial officer's experience, to teach case management skills to judicial officers. We are often our own worst	The Task Force recognizes that judicial education on caseflow management is also critical.

Commentator	Comment	Committee Response
	enemies, allowing multiple continuances and not taking an active role in discussing the issues with the parties when they do come to court.	
	Children's Voices I applaud the recommendations that make a child able to be heard in Family Law. The Juvenile Court has understood for years now why this is so critical. I also agree that the judicial officer should be given broad discretion to tailor the manner in which a child's voice is heard.	Children's Voices No response required.
	Domestic Violence Survival of Orders I think F.C. 6345(b) makes clear that custody, visitation and support orders survive the restraining order. However, the question is whether or not it is a good idea to keep it that way. For years, this section has caused great confusion, is generally not known by even attorneys or law enforcement officers, and is illogical. Moreover, many of these orders are dismissed at the request of the victim, who has reconciled with the perpetrator. Every party assumes that ALL the orders the court made were dropped, not just the restraining order or that all of the orders ended when the restraining order ended. It is a reasonable assumption.	Domestic violence This comment should be considered during implementation.
	My recommendation would be to delete 6345(b) and instead place a warning on the information forms and the order itself, that the parties need to return to court to seek new orders from the court once the restraining order has been terminated.	Delete 6345(b) The Task Force recommendations reflect an interest in seeking further clarification of existing law in this area.
	Paternity and Domestic Violence cases There are several problems with allowing a stipulation as to paternity in	Paternity and Domestic Violence cases The Task Force recommendation seeks

Commentator	Comment	Committee Response
	a DVPA action instead of filing a paternity action. The primary problem is that many of these cases are dismissed by the parties. Further, A DVPA action is complete within 20 days. There is not time for parents, who are already in a volatile relationship, and largely unrepresented, to reflect on what the stipulation means. I have had more than one male stipulate to being the father even though he knew he wasn't, so that mom would get a higher child support award, so that he could win her back. I would hate to have to undo all that in my DVPA case, with its shelf life of not more than five years, especially if F.C. 6345(b) is modified. Finally, we do not allow dissolutions to be included in DVPA cases. I don't know why we would allow paternity actions. These cases are free of charge to the litigants and we already have difficulty getting them not to seek constant modifications that have nothing to do with the restraining order, in their DVPA case. F.C. 6323 allows us to make visitation orders if there is evidence, including a stipulation, that a party is a parent, so due process rights in that regard are already protected. Contested Child Custody Child Custody Mediation Services The pilot projects recommended sound a lot like what already goes on in non-recommending counties. If the parties don't reach an agreement, an evaluator is assigned to the case. It would be nice to have truly confidential mediation, but the problem is delay. Our most conflicted cases get assigned an evaluator who needs up to 90 days to do the evaluation. The judicial officer needs answers much more quickly. I agree with having the litigants do much of the work. I assign them the job of bringing me grade and attendance records, get agreements to	to increase access and improve efficiency in the area of parentage and domestic violence while protecting due process. If a bench officer believes that a stipulation is unjust, he or she need not accept the stipulation. Contested child custody Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services.

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	check criminal records, bring back drug test results, etc. I very much like the idea of allowing the parties to have a follow-up session with the mediator, if both they and the mediator think it is beneficial. The obvious problem is enough mediators to allow that to happen. Minor's Counsel I strongly agree that minor's counsel should not be making recommendations nor be used for that purpose. They should serve the same role they do in Juvenile Court. I agree with the recommendation to amend 3151. Streamlining Forms and Procedures I strongly agree with 4 (A.) Declarations of Disclosure are a constant nightmare, very confusing to the litigants, and a major cause of delay. Interpreters This should be obvious to anyone. We need interpreters provided in ALL family law cases, not just domestic violence. Priority should be given to cases with child custody at issue. Family Law Research Agenda I would include these additional types of data 1) The number of cases alleging DV; the number of cases alleging DV where children are involved; the number of DVPA cases filed; the number of DVPA cases dismissed after TRO and after permanent order at the request of the parties. Conclusion	Minor's Counsel No response required. Streamlining Forms and Procedures No response required. Interpreters No response required. Family Law Research Agenda Due to concerns raised about the number and specificity of data elements included under basic statewide statistical reporting, the recommendation has been modified to reflect broader categories of data reporting.

Commentator	Comment	Committee Response
	I am in agreement with many of the recommendations in the report. I do not believe we need new rules for most. Rather, we need a renewed emphasis on training in case management, proper use of our resources, and techniques which demonstrate that we are using these resources and taking control of our calendars in a neutral way which promotes fact-finding and due process, not just efficiency. Again, thank you for your efforts and dedication in this time-consuming project.	
55. Hon. Roderic Duncan (Ret.) Retired Family Court Judge Superior Court of Alameda County	*Commentator raised concerns about high cost of representation and noted the following I find the ability of the average pro per litigant to understand how to best represent him or herself is not much better now than it was in 1994. Students rarely have any expectation of obtaining employment with an existing family law firm. One of my students returned to do a guest lecture on that subject a year ago. He reported opening a solo practice after mailing his impressive resume to over 400 Northern California family law firms. He received no replies. San Francisco's established family law lawyers are charging $300 to $500 (and more) an hour for their time. The suburbs aren't much better. If successful lawyers would help to provide a way for beginning family lawyers to join together, share an office and the necessary extras and agree to charge no more than $150 an hour, I believe many divorcing people who are now in pro per could be well represented. Most of the costs could be paid by the participating attorneys. It obviously would be	Pro Per Litigant The Task Force agrees that many self-represented litigants have a difficult time representing themselves. Attorney Fees. The Task Force hopes that its recommendations regarding mentoring, training, limited scope representation will assist attorneys to provide services that more litigants can afford.

Commentator	Comment	Committee Response
	a large undertaking, but it would certainly help to provide better legal services to a large number of divorce litigants.	
56. William A. Eddy, LCSW, JD Attorney and Mediator Eddy Law President, High Conflict Institute	*Commentator provided materials including a DVD entitled "New Ways for Families" and a booklet entitled "Managing High Conflict People in Court." My recommendation is that there needs to be more responsibility placed on the litigants to work very hard to learn and demonstrate positive skills to the court, rather than reinforcing their preoccupation with blaming the other party (and professionals, including the court) and enforcing their negative, adversarial skills. We do a disservice to HCPs (High Conflict Personalities) when we allow them more opportunities to vent and point out the other party's faults, than they are expected to spend working on strengthening their own problem-solving skills. Right to Present Live Testimony at Hearings I do not oppose this recommendation in principle, but I would encourage the Task Force to recommend this on a trial basis in one or two counties first. I am very concerned that the court will lose its prior ability to "contain" people with high-conflict personalities. HCPs are chronically searching for their "Day in Court" to address issues which spring from their personalities rather than true legal issues. If they are going to have this Day in Court, they also need to be expected to have their "Day of Responsibility," in which they demonstrate their own efforts to seriously solve their family problems. They need to be focused on learning skills. Written declarations force parties to stop and consider what they are writing. This helps them focus and drain off or reconsider some of their	Right to Present Live Testimony at Hearings The court cannot decide who has the right to be heard on the basis of any litigant's personality. There are already sanctions in place to deal with frivolous filings and vexatious litigants. The section on Case Management also contains recommendations related to settlement services and the requirements to meet and confer prior to trial.

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	emotional venting. With an increased emphasis on live testimony, the courts risk opening more doors than they can close in regard to the emotional issues of HCPs. Commentator provided additional detailed information about HCPs including the following. Victims of domestic violence are a good example of parties who do not present well as litigants. Perpetrators are much better in the legal process, because they tend to think in adversarial terms and put a great deal of energy into charming and persuading others that they are victims themselves or at least innocent of any wrongdoing. More oral testimony will simply allow such persons to be more emotionally persuasive, as research shows that reading documents is more helpful to fact-finding than observing an emotionally-persuasive witness. Judges will have to be more thoroughly trained in these dynamics if the emphasis shifts to more live testimony.	The Task Force does not recommend the elimination of declarations. Domestic Violence Domestic violence cases, or other family law cases, are not alike to the degree that generalizations about one or the other party can accurately or safely be made absent any evidence. The usefulness of documents in fact-finding always depends on the content of the documents, their accuracy and reliability. For example, both attorneys and litigants have reported to the Task Force that many, often lengthy, declarations contain excessive factual assertions based on hearsay. Family law litigants are entitled to the same legal protections as all other civil litigants, and are entitled to confront and question anyone who is attempting to provide the court with information designed to influence the judge's decision. When there are conflicting factual representations by the parties

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		or other witnesses, the court is required to assess the credibility of the testimony. Although appropriate supporting documentation can be very useful, assessing the credibility of witnesses remains basically an interpersonal function for judges that necessitate their ability to see and hear directly from the witnesses.
	Children's Voices I agree with an emphasis on taking children's concerns into consideration. However, I am concerned that the recommendation does not give recognition to the distorted role of children in high-conflict families. Simply hearing a child's "expressed preferences" reinforces the role of "negative advocate" for children who have formed a disturbed alliance with a parent with a personality disorder. HCPs aggressively pursue and persuade people to advocate for their distorted perceptions, and their children are no exception. In a significant number of cases, children become alienated after repeated exposure to the emotional persuasion of an HCP parent. Ironically, reasonable parents do not have an alienating effect on their children, because they are not engaged in such constant efforts of persuasion or intimidation with their own children. Simply questioning whether a child has an "intelligent preference" misses the point of understanding the distorted role of children of all ages in highly disturbed families. Very smart and competent children can be caught in the web of psychological distortion promoted by one or two high-	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The recommendations also provide alternate ways for children to participate.

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	conflict parents. Without sufficient training and understanding of these family systems dynamics, courts are at risk of doing more harm than good. A cautionary statement along these lines should be emphasized in your recommendation. When the focus is too much on professionals making decisions, parents are diminished in their children's eyes and their ability to play an authority role decreases. Plus, parents are more motivated to settle their disputes after hearing their children's feedback and anguish. Your recommendations should include encouragement by the courts to exhaust efforts to have parents hear their children's input, before having professionals take over this task. Contested Child Custody I disagree with diminishing the role of “recommending” mediation. While I agree that recommendations should not automatically become court orders, I believe that recommendations serve five important purposes 1) High-conflict parents have expectations that are extremely opposite and often unrealistic. Receiving a recommendation significantly helps them narrow their expectations and bring them into a more realistic range of potential agreement. 2) High-conflict parents often can accept the recommendations of a neutral, caring professional, when they could not accept the same plan as a proposal from their former partner. 3) Once parents have received a recommendation, they can negotiate the fine details of an agreement which is their own. They get credit for reaching a settlement and are more committed to it than if the whole plan was forced upon them by the court.	Contested Child Custody The Task Force recommendations regarding child custody mediation seek to provide opportunities for courts to offer child custody mediation services akin to mediation services provided in civil matters. Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services.

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	4) They provide the court with the benefit of input from trained mental health professionals, without the cost of an investigation or evaluation. 5) Investigations, custody evaluations, and hearings usually escalate high-conflict parents' negative emotions and behavior - often to the point of never being able to directly communicate again because of all of the negative comments about themselves. The drawn-out and adversarial process of evaluations often spill over onto the children in such a negative way that the children become alienated from one or both parent and develop stress symptoms similar to those reported in war zones. I would encourage the Task Force to allow recommending counties to remain as they are, or to allow parents to make a choice between recommending or confidential mediation. Pilot Programs New Ways for Families places the burden on potentially high conflict parents of learning some very basic skills - *flexible thinking, managed emotions,* and *moderate behaviors* - in highly structured, short-term counseling, *before* the big decisions are made - even before their Family Court Services mediations. When they are successful, they do not need the court to make their decisions. When they are unsuccessful, the court can assess their efforts in improving their own skills first, before hearing evidence and argument. While I appreciate all of the work that you have done to streamline procedures and welcome self-represented litigants to the family court process, I believe you will fail to make a significant difference if you do not understand that making it easier to litigate for high-conflict parents	

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	will reinforce their bad behavior - unless you include an expectation that they will learn and practice more positive, child-friendly skills at the same time. Expanding Services to Assist Litigants in Resolving Their Cases These recommendations are all good and should be emphasized. Mediation, Collaborative Divorce, New Ways for Families, etc. are all much better alternatives than litigation for high conflict families. The litigation process is ideal for reasonable people with a legal issue which needs to be settled by the court. Reasonable people can separate themselves from their legal issues. For high-conflict people “the issue's not the issue.” HCPs have the greatest difficulty separating narrow legal issues from their sense of self and worth as a whole person. Court is where they often seek validation and vindication for their self-destructive behavior. Once their emotional wounds have been opened up in a public forum, they lack the skills to restrain and contain themselves. In general, from my experience, high-conflict families are much worse off after exercising their rights to their Day in Court on a repeated basis. HCPs need help calming themselves down, not reinforcing their anger, blame and projections onto others that the litigation process allows and encourages. High-conflict parents are those who shed as much responsibility as possible onto others - both in terms of blame and in terms of problem-solving. Services that expect them to take responsibility for resolving their own cases will benefit the parties, their children and reduce the need for the court involvement with non-legal issues. When rights trump responsibility, society loses.	Expanding Services to Assist Litigants in Resolving Their Cases No response required.

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	Judicial Branch Education This recommendation should include, under Educational Content, a section on "Managing High Conflict Personalities." These include managing self-represented litigants, represented litigants, and some professionals. The reasons for this suggestion are everything I have said above. Many of the recommendations described by the Task Force will place more burdens on judicial officers to manage high-conflict courtroom behavior, and to distinguish between personality-based issues and legal issues in making substantive decisions. In general, they will need more training than they currently have. Managing high-conflict people often involves doing the opposite of what you feel like doing. High-conflict people consciously and unconsciously trigger emotional upsets in those who deal with them. Proper training and preparation can significantly reduce the stress of dealing with these litigants. Overall, the issues addressed, the recommendations, and the open process of the Task Force are very encouraging. You have done a huge job! I hope my feedback is helpful.	Judicial Education The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content and it will be referred to the implementation process.
57. Cindy Elwell Legal Document Assistant Divorce with Dignity Alameda County	Legislation is already established to govern the legal document assistant (LDA) profession and we actually have a great state-wide organization, California Association of Legal Document Assistants, which should be represented on your Task Force. LDA's are a great help to people who cannot afford an attorney and should be supported by the Bar Associations and the courts. And the legislation governing them is quite complete and should not be changed. However, no one is aware of this profession and it should be	Legal Document Assistants. While the Task Force is mindful of the benefits that many LDA's provide to unrepresented litigants, it does not believe that a recommendations that the court refer to those services is appropriate at this time. Courts cannot refer to individual attorneys, only to certified lawyer referral services with

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	promoted through the courts just like the attorney referral services are.	consumer protections. Based upon the testimony provided at the public hearings, it appears that there is currently no effective consumer protection oversight of LDAs
58. Fred Emmer Attorney at Law Panorama City, CA	*In order to speed up the court process, especially at the Central District in Los Angeles, I suggest that all cases where both sides are pro pers or it is a default prove up by a pro per be sent to a special courtroom where 1. There would be interpreters available. 2. There would be family law facilitators or volunteer attorneys standing by to hear what the judge orders a party to do, i.e. prepare an Income and Expense Declaration, Order After Hearing, Judgment, etc. and assist them in getting it done so that the document will be prepared correctly and filed and the case may proceed and possibly be concluded. This would free up considerable court time to allow the cases with attorneys to get heard and not have 20 attorneys with their meters running watching the judicial officer going through cases that are not ready to be heard because the paperwork is defective or having to take charge of the case by asking both parties questions. Some may argue that separate but equal has no place in a courthouse, but case law states that pro pers are to be held to the same standards as attorneys, but this is clearly not happening. Sometimes it seems to attorneys that the judge is representing the pro per against their client.	Speed Up The Court Process Many courts throughout California are providing services such as that described for calendars where both sides are self-represented. This is a case management strategy that has proven helpful in many situations and should be considered as part of implementation.

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	In the 1980s in [one court branch] attorney pro tems sat in [one] Dept. and heard all default hearings so that the judicial officers did not have to. I have been told that also in the 80s there were [certain law firm] days in both family law and probate where their cases were all scheduled in one courtroom in the morning and 20 default prove-ups could be gone through in family law and countless probates could be handled efficiently. Cost of representation Family law representation is on the verge of becoming too expensive for the middle class in California, and, in my opinion, part of the reason for this is all the waiting time and continuances that clients are being charged for since we all charge by the hour. Don't suggest that we work for flat rates as many clients have asked me to do. In my 37 years of practicing law I have seen too many "simple cases" blow up where tens of thousands of dollars have been spent because one or both parties and/or their attorneys were being unreasonable. If I had taken such a case for a flat fee I would end up earning about $10 per hour if I was lucky. As it is, family law attorneys representing the low income and middle class have the highest uncollectable outstanding accounts receivables.	Cost of representation Agree that case management is critical to help maintain the costs of divorce. Minimizing continuances and using everyone's time wisely is crucial.
59. Leslie Dawson Partner Glenn & Dawson, LLP Walnut Creek, CA Lionel T. Engelman Engelman Accountancy Corporation San Mateo, CA	Right to Present Live Testimony at Hearings 1. The requirement of live testimony should be tied more closely to the pre-trial activities in the case. For example, requirement of exchange of facts, exchange of reports, and presenting issues to the court identified in depositions and a brief report to the court of the differences between the parties on the issues. Only after these items (as necessary on a case-by-case basis) have been reviewed by the court, should the court require	Right to Present Live Testimony at Hearings The Task Force agrees that the issue of notice – such as exchange of the factual basis for the orders requested is important. The role of declarations will be considered in more detail in

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Lorna A. Mouton Riff Beverly Hills, CA	live testimony. The calendaring of the court makes live testimony near impossible to be satisfied in less than two or three full preparations for the trial. 2. Live testimony is more critical in cases where one or both parties are in pro per and without benefit of experienced lawyers and accountants to present facts in a manner to which the court is accustomed. A change of the rule of court to include a requirement that the court receive live testimony "at the hearing on any order to show cause or notice of motion (or request for order) brought pursuant to the Family Code, absent a stipulation of the parties or a finding of good cause," is an invitation to possible misuse by professionals who did not submit timely responses. Recommended modification Live Testimony. At the hearing on any order to show cause or notice of motion (or request for order) brought pursuant to the Family Code, where either of the parties are in pro-per, absent a stipulation of the parties or a finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing and my ask questions of the witnesses. The judge has discretion to hear live testimony in cases where both parties are represented by counsel. Expanding Legal Representation and Providing a Continuum of Legal Services	developing implementing rules. Currently, the recommendation has been modified to include notice and offers of proof when testimony of witnesses in addition to the parties is requested. The need to exchange reports or other potentially evidentiary material is not affected by this recommendation, and does not vary from what is required when decisions are based on declarations alone. The Task Force has heard from many courts that they are able to take testimony from the parties at the time of hearings without disrupting their calendaring system. According to input from attorneys and family law litigants, individuals who are represented by counsel also want to have the right to present testimony at their hearings. The Task Force does not want to set one standard for self-represented litigants and another for represented litigants. Expanding Legal Representation and Providing A Continuum of Legal Services

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	1. Development of two tiered fee structure by attorneys may be helpful so there is a certain portion of the practice that is devoted to the financially strained cases. 2. Pro-bono activities should include panels of expert witnesses to provide information on their related areas of expertise. This area has not been developed informally throughout the state. 3. Include requests for pro-bono services and referrals to local non-profit law centers and income-based-fee law centers. 4. Similar to the local lawyer referral services, the forensic accountants and custody evaluators should be encouraged to develop modest-means/low-fee panels to offer services. 5. Expansion of self-help services a. Forensic accountants should be added to the self-help centers from a pool of pro bono volunteers. b. Expand the pro-bono program to forensic accountants, who can offer valuable services to the litigants and courts. Caseflow Management Generally, case management time standards may be relevant for a number of cases, but will not work with the crazy cases. Section 3 assumes that both parties are interested in moving the case along	1) Development of a two tiered structure – this is an interesting model that should be considered with the bar as part of implementation. 2) Many legal services agencies that coordinate pro bono do try to assist in locating expert witnesses. This is an area that should be considered more fully in implementation. 3. The term "legal services agencies is intended to cover all non-profit legal services program. 4. Agree that forensic accountants and custody evaluators should be encouraged to develop modest means/low fee panels as well. This should be considered as part of implementation. 5. Expansion of self-help services and pro bono– agree that it would be very helpful if forensic accountants volunteered Caseflow Management The proposed time standards anticipate that 10% of the cases will not be resolved within the normal time frame. There are many reasons why some

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	quickly. This will require compromises from both sides and that it is not always possible. Some clients are not willing to compromise on anything and many are just not done fighting. Possibly, the case could be sent to a special master after a given amount of time, with the parties bearing the costs. The special master can address the nit-picky disputes and give the parties the airtime needed, but at a financial cost. When the issues are narrowed down, or when the special master has the recommendations, the case can return to the court to finish up. This may deter the prolonged disagreements, if litigants know that it will cost them extra to do so. A case management commissioner might be helpful to evaluate the time and monitoring commitments suggested in the task force's recommendation. The role of the commissioner may be binding and/or recommendations to the judge. Item 12-Sanctions against attorneys. This provision may cause attorneys to sub-out of the crazy cases. How could this apply to cases where parties hire and fire multiple sets of attorneys and experts? Can there be a deterrent here, or some stop-gap measure? There should be sanctions against these litigants, especially those who do not pay the attorneys and experts and continually move onto the next professional. Providing Clear Guidance Through Rules of Court The rules should also include elements relating to expert witnesses' work, i.e., reports, discovery, meet and confer, etc.	family law cases take additional time and it is important to consider each case individually. The proposed standards should be reviewed as more information becomes available about reasonable time frames. Sanctions against attorneys. The court will need to review cases carefully to determine if the sanctions should apply to the attorney or relate to the client's behavior. Providing Clear Guidance Through Rules of Court The issue of use of experts should indeed be considered in statewide rules.

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	Children's Voices In order to assist the child in this transition during the divorce process, a mandatory ordering of the child to attend a peer group setting (with or without parents involved). The benefits would be the understanding for the child, that they are not at the root cause of the divorce, and parents' understanding of the emotions of the child. The cost of this education can be set by the court based on the income and child support aspects of the temporary support determinations. If the fees of this education cannot be afforded, then need based scholarships can be provided by education organization. In Northern California, the Kids Turn Program is one such education vehicle. Contested Child Custody There is concern that the way the child support guideline formula is set up results in a request for greater custodial time by the non-custodial parent than they actually will assume. If the formula is to be maintained, then there should be a substantial financial penalty for the non-custodial parent if their custodial time drops below a certain percentage. This may require some provision regarding a true inability of the parent to have custodial time with the child(ren). Some stop-gap provision can be put in place to assure that promises made regarding overall custodial time will be kept. Minor's Counsel It may serve the needs of the minor(s) to mention financial needs of the child and responsibilities related to them.	Children's Voices The Task Force recommendations support having the court make appropriate referrals and having services available to keep children informed and allow them to participate as may be appropriate on a case-by-case basis. Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel Recommendations in this section support implementation of existing rules providing guidance to counsel as to their role.

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	Scheduling of Trials and Long-Cause Hearings The provision of forcing long cause hearings to be held on consecutive dates is a positive move. While this may cause scheduling issues, ultimately it is providing a great service by allowing the parties, attorneys and experts to prepare once and be finished. This directly affects the fees on cases. The estimates of trial times need to be more accurate. The court should have the ability to limit the trial times and allocate time to specific issues of the case. Absent good cause, attorneys can be sanctioned for exceeding their trial estimates if the overage is greater than 10-15 percent. Litigant Education There is no mention of financial or tax issues. This is an important, although generally overlooked, component in the everyday divorces. This is an opportunity for the forensic accountants to get involved by providing some basic financial information to the courts and litigants. For example, taxability of support, tax consequences of debt relief, tax consequences of transfers of property and how to prepare a tracing, among others. The Family Law Section of the California Society of CPA's is a group of such accountants. Members of the section could develop workshops that individual section members can teach at their local courts. Information that is provided to litigants about various aspects of the family law process should be written in a manner that is comprehensible to a lay-person to enable those without counsel to	Scheduling of Trials and Long-Cause Hearings The Task Force agrees that the issues of time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed in developing implementing rules. The Task Force anticipates that implementation of effective caseflow management will address many of these issues. Litigant Education Agree that basic information about financial and tax issues should be provided to litigants. It would be very helpful if the section could develop workshops that section members can teach at their local courts. Additionally information could be made available on the statewide self-help website. Information That Is Provided To Litigants Agree that it would be very helpful to have information about family law finances written in an

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	better understand the process.	easily understood manner.
	In addition to the legal and custodial information, litigants need access to accounting and tax information to be able to identify whether certain issues are present in their case and how they can present and resolve those issues.	Accounting And Tax Information Agree that it is important for litigants to have tax and accounting information.
	Expanding Services to Assist Litigants in Resolving Their Cases The attorney-settlement officer should have the authority to appoint a financial expert, who has adequate experience to help resolve the financial matters. The authority might be the equivalent of a Section 730 appointment and, therefore, should include the method of payment of such services.	Expanding Services to Assist Litigants in Resolving their Cases The specifics of the procedures will need to be considered thoughtfully in implementation.
	Append recommendation 1 to include forensic accountants, if needed, to be involved to assist the court. Append recommendation 3 to include training for forensic accountants to participate in this process, and/or be able to teach portions of the program.	Forensic accountants would be very helpful to help the court resolve cases. There are likely a number of types of professionals who would be helpful and the Task Force hopes to encourage them all to work with the court.
	Streamlining Family Law Forms and Procedures Members of the Family Law Section offer great assistance in redesigning court forms that involve disclosures of a financial nature. It would be valuable to include such members in this process. The rules for discovery need to be clearly defined. The related form of discovery should include the listing of documents provided and the statement under penalty that no other documents are relevant to the Feldman-like	Streamlining Family Law Forms and Procedures Suggestions from the Family Law Section would definitely be appreciated in considering forms that involve financial disclosures.

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	issues, including disclosures. Emphasis on Feldman in the discovery process can go a long way in decreasing discovery problems. This, along with sanctions for perjury, encourages full disclosure and reduces much of the discovery nonsense that currently goes on. Append recommendation on Declarations templates Suggest a format that outlines the bullet points of facts (and issues) first. Enhancing Mechanisms to Handle Perjury The requirement of "essential element of evidence" will need to be defined clearly. Interpreters The recommendations of the committee has included persons with limited English proficiency, but has neglected those with hearing impairment. The inclusion of interpreters for the hearing impaired should be added. This would apply to recommendations 1, 1.A, and 1.0. Public Information and Outreach Financial experts can provide some input for material provided, i.e., major financial areas involved in the family law process, to the litigants. Include information about mediation and collaborative law, which have the potential to reduce the court's workload and benefit families by early resolution of cases. As the self-help center may turn people away who have substantial property, they could also distribute flyers of local groups of mediators and collaborative practice groups	Append recommendation on Declarations templates This recommendation will be considered as part of implementation. Enhancing Mechanisms to Handle Perjury This recommendation has been significantly modified in response to this and similar comments. Interpreters. Agree and will modify accordingly. Public Information & Outreach The Task Force has recommended that information about consensual dispute resolution and educational information be made available to litigants. Specific community partners and materials are best determined in the implementation phase.

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	along with attorney referral services. Television court has exacerbated the misconceptions about family court. Public education is necessary to countermand this. Judicial Branch Education Append 1.C. to add "for limited English speaking and hearing impaired litigants." Append 1.G. to add "needs-based attorney and accounting fees." Append 1.H. to add "Education for judicial officers to include information on the court's use of 730 experts. Append 2.C. to include hearing impaired litigants. Append 2.F. to include hearing impaired population. (Note that those in the deaf community have their own culture, similar to many non-English/limited English populations. Family Law Research Agenda Append l. A.C. to include cases involving hearing impaired litigants. Append 1.F to include input from forensic accountants, with family law experience, in the process.	Judicial Branch Education The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides specific suggestions about educational content and it will be referred to the implementation process. Family Law Research Agenda The recommendation has been modified to include cases involving hearing-impaired litigants. It is expected that a diverse range of stakeholders with different areas of expertise will need to provide input on

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		the evaluation of forms. This is a level of detail best left to the implementation phase.
60. Michelle Etin Litigant No county information provided	*Thank you for giving Californians the opportunity to review the Elkins Task Force Draft Recommendations. I am a layperson and a litigant, presently a pro per (having exhausted my financial resources). I am submitting not only my response to the draft recommendations, but also my own recommendations and, where I cannot actually formulate a recommendation fully formed; I am submitting my areas of concern so that someone may work with them to perhaps draft something usable. Right to Present Live Testimony AGREE. I believe this is absolutely essential not only to prevent court proceedings from degenerating into data-free prejudicial pronouncements such as would emanate from a king, but also for the most important reason we have courts are the only game in town. If you cannot be heard in court, your First Amendment right to petition your government for redress of wrongs has been automatically denied. US Const. Amendment I. Expanding Legal Representation and Providing a Continuum of Legal Services. AGREE. This is essential for equitable treatment of litigants, but not only for that reason. In child custody cases one often finds that the parent with more money is also the parent who has been devoting more time and energy to earning money and less time and energy to childcare. Thus, the parent likely to win when the game goes to the better-represented is likely to be exactly the parent who has not been	Right to Present Live Testimony No response required. Expanding Legal Representation No response required.

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	the caretaker for the children. The damage to the children is obvious in this situation. US Const. Amendment XIV. Caseflow Management I do not know enough to comment. Providing Clear Guidance through Rules of court. AGREE. The crazy-quilt patchwork of local rules is unnecessary and it would seem apparent that it denies equal protection of laws to Californians simply because they live in different places. Children's Voices. DISAGREE. ''Summary of comments I see no reason why a child cannot speak for herself at any age "of reason" – which would start, probably, at age seven, possibly earlier for an intelligent child. Surely nobody can dispute that a child who can go to school and make oral reports in class can also express herself adequately in other situations. With respect to the idea that a child is placed in too much stress if asked what her preference is about her own living circumstances, I find that suggestion absurd and contemptible. Surely a child will be under more stress if a situation develops where her preferences are absolutely ignored, which seems to be a fairly common occurrence in our court system, judging from the testimony taken at the Elkins Task Force hearings I attended. As long as there is such a thing as "minor's interview" in the court system of California, every child should have the absolute right to a "minor's interview" without intervention by ANY adult, regardless of that adult's position with respect to the litigation or with respect to the	Caseflow Management No response required. Providing Clear Guidance through Rules of court. No response required. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court

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	child. And each such "minor's interview" should be recorded and shown or read to the child to make sure it has been recorded adequately and accurately. Children's rights A child can be informed, in age-appropriate language, that she has the right to speak for herself or, if she feels like it is too stressful, she has the right to wait, or to do it in a different way (such as speaking to a tape recorder in a small private room), or to do it with a friend or relative present for support, etc. There will undoubtedly be some children who will say, "I don't want to say anything," and their wishes can be respected. Why should we presume that this is impossible when it is so logical, so easy, so obvious? For adults to decide that a child will be unable, unwilling, or untrustworthy to speak for herself mirrors the kind of attitude that, a mere hundred years ago, applied to women. The prevailing attitude was that their opinions did not have much weight because they were not aware enough, not trustworthy enough, not intelligent enough, not responsible enough, to speak for themselves. They didn't know their own minds. They needed to be spoken for by their superiors. They shouldn't even vote, because their votes would simply be duplicates of their husbands' votes. Now, if you look at this attitude and apply it to children, you see the same ideas cropping up now. Children can't tell us what they need, what they prefer, how they will do well, where they want to live, who has taken care of them, who has abused them, whom they fear, whom they love. Why not? They aren't able, and if they do express themselves, they are just being little "parrots" whose opinions have been programmed into them by domineering parents wielding enormous influence, which we should not allow courts, not their own	judges and the developmental differences and needs among children. Children's rights The Task Force recommendations address children's safety and participation as well as other areas that have an impact on them as their parents or other family members participate in family court processes. However, the Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	preferences, their own access to parents, their own expression of their own hopes, fears and desires. I believe every child has a life interest in his voice, his preference, and his hopes for the development of his childhood, being heard and considered. A child's life interest must, I believe, include, at a very minimum, the following inalienable rights a. The right to live with a parent or guardian of the child's choosing unless it can be proven beyond a reasonable doubt that there is some immediate, present, serious danger to his well-being that is inextricably intertwined with such residence. The examples that come to mind include a child wanting to live with a parent who is an active drug addict, selling drugs or conducting such an illegal business, or the like, or a child wanting to live with a parent whose I.Q. or mental condition makes it extremely unlikely that the parent can adequately provide for the child's needs, even with social services help available from the government. b. The right to limit contact by any family member or other person whom the child fears, or by whom the child has been hurt or threatened in the past. c. The right to a free, public education, to medical care necessary to maintain health, to basic food, clothing, shelter and other fundamental services needed to provide a certain minimum standard of creature comfort, health and nourishment. d. The right to address his grievances to a governmental authority that	

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	he can access and which he can address with his own stage of mental development and his own degree of verbal and other expression. This would include a child's right to leave his own parents even if they did not divorce, did not approach the family court, and did not actively seek interventions; all it would take would be the child's approach to some authorities such as school or police, and that child's "petition to his government for redress of wrongs" would be as valid as any adult's petition for custody of him. It seems to me that parents' property interests and liberty interests are placed above children's life interests if the children's voices are barred from court in any way, shape or form, even if that is done in the name of "protecting" the children from having to speak for themselves. No lawyer, no judge, no psychologist or psychiatrist or social worker should ever be able to substitute their own voice for that of a child about whom there is some sort of court action pending. Furthermore, if a child's voice is not available, on the record, officially, in court, there is room for all sorts of corruption, misfeasance and mal-feasance in office, by all sorts of personnel. Power corrupts. The kinds of power that are exercised over children are enormous if the children cannot ever speak for themselves. A child not having his own property and liberty makes it very easy for others who have liberty and property to corrupt the process by which a child's "rights" are defined. Domestic Violence. AGREE but wish to point out that the recommendations made long ago have been ignored, and it appears that we have not advanced at all, at least not measurably. If a child has been abused, and it is up to a judge	Domestic violence The Domestic Violence Practice and Procedure Implementation Task Force has move forward with implementing

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	to decide whether or not that child has been abused, there is already a serious problem. No expert can ever adequately answer this question "If this child were in fact abused, what exactly would he do or say?" No judge knows how a child would speak, how that would affect the minor's counsel or the "evaluators" involved, or what various results might accrue. For a judge to decide that there has been abuse or there has not been abuse, it is not much more reliable than the toss of a coin. It would seem far better to allow children who claim to have been abused to have some "cooling off" time during which they can undergo therapeutic and other help, and after that cooling off time, a joint decision can be made WITH THE CHILD involved, as to what to do going forward, how to relate to parents and significant others without the additional stress of litigation, lawyers, money, evaluations, repeated questioning, charges and counter-charges, etc. For those who are worried and concerned about false allegations of child abuse made by one parent or the other in order to gain leverage in a family dispute, such a cool-down and unlawyered period would be the best result. But there are other kinds of approaches, and they should be examined. Commentator referenced a study entitled CARO that she intends to have forwarded to the task force. Enhancing Safety. DISAGREE with most of this, and find it daunting to try to offer views, recommendations, and solutions. If a court is trying to take three parties' rights into account and those rights are in conflict, it is not always easy to provide for safety so long as at least one of those three presents a danger. I cannot say that I have worked on this problem and defer to those who have. I believe the report of the APA task force on	its recommendations and the Elkins Family Law Task Force has developed additional recommendations addressing children's safety and domestic violence. In many cases, it is in the child's best interest to participate in these proceedings and in others, due often to age or capacity, it is in the best interest of a child to not participate or to have more limited involvement in the case. The recommendations in these areas seek to strike this balance. Enhancing Safety The Task Force agrees this is a complex area that requires thoughtful and effective responses. Its recommendations seek to address and enhance children's safety in the family court.

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	domestic violence should be used as a strong guideline for the courts. DOJ also has resources available. Contested Child Custody. Commentator provided comments reflecting general concerns about the family court. Minor's Counsel. Of all the testimony I heard during the hearings for the Elkins Task Force, I think the most moving was the impassioned pleas for relief from the terrible problems faced by children being represented against their own interests by minors' counsel who are corrupt, uncaring, ignorant, hateful and/or weak. In this regard, I refer the task force respectfully to the letter and the spirit of the great U.S. Supreme Court Case "In re Gault," supra, decided in 1967. Gault was a juvenile who was declared delinquent and "tried" and sentenced without representation of counsel. In that case, it was held that a minor had a Sixth Amendment right to representation in legal proceedings involving his liberty, just as much as an adult. From Gault, we have evolved to a more intractable problem, not simply that children are deprived of counsel in "delinquency" proceedings (now termed "dependency" proceedings or the like), but that they have minors' counsel thrust upon them without the right to object to anything those counsel may do, whether they agree or disagree with the representation, and whether the representation even falls within the boundaries of the Canon of Ethics for Attorneys. Are there any cases where a criminal defendant's court-appointed counsel would have the right to plead his client "guilty" against the	Child custody No response required. Minor's counsel While the court may appoint minor's counsel in family law cases, unlike in juvenile court, children are not parties and in many instances, resources associated with appointing minor's counsel are available. The recommendations in this section address concerns about appointment of minor's counsel and the role they play and highlight existing law in this area that may require fuller implementation or further refinement to more effectively address these and other concerns.

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	client's own will, and say, as the reason for that action "He did tell me that he was not guilty but I don't believe him"? Are there any cases where a lawyer for a party in a civil action presses for a decision that the client opposes, and says, as the reason for that action "I determined that it would be best for my client to agree to the adversary's point of view in this case"? Are there any cases where a lawyer refuses to tell the court what the client insists is his position, and that lawyer nevertheless stays on the case in the face of the client's desire to fire him, and furthermore, cannot be sued for malpractice if he utterly abandons his client's cause and "throws the case"? Commentator noted concerns about the differences in family and juvenile courts for minors in terms of access to attorneys and the following My recommendations to remedy the abysmal situation now present in which children are often represented against their own interests and positions, are as follows Minors Access to Attorneys If a child is old enough to speak for himself, he should have a minor's interview, which should be recorded, and which the parties may see. Only if there is some overriding need for the child to have minor's counsel should one be appointed. The minor's counsel should not be chosen arbitrarily by the court; there	Minors Access To Attorneys The Task Force recommendations seek to avoid unnecessarily involving children who may be of a certain age but prefer that their parents or other family members handle the family law litigation without their involvement

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	is the danger that it will be a "plum" given by judges to lawyers to reward them for favors having nothing to do with the children they represent. Any child of age seven or more who needs minor's counsel, should be given the opportunity to choose from three qualified attorneys who are on a list that is not controlled only by the judge. Children should be allowed to speak with the three prospective minor's counsel and should be permitted to choose, based upon his own sense of who he thinks would best take care of his needs. If the family has lots of money, expensive minor's counsel may be used, but if either parent is without funds, court-paid counsel should be the only option so that one parent doesn't have the ability to sway the actions of the minor's counsel, ending up in a conflict situation. Minor's counsel should operate as to other lawyers. Privilege belongs to the child, not to the lawyer. The child, not the lawyer, has a right to accept or reject settlements. The minor's counsel does not take over as a parent or as a judge; the minor's counsel remains a lawyer. [10 through 21, I do not have comments, in that I have not done enough research to be confident about my responses. All the responses above are made after much official and unofficial research and I am very confident of them.] There are three matters that have not been subject of recommendations, but which I would like to take up because they deal with very important issues, namely (22) the mediation process and the stipulated settlements; (23) Pro se litigants and due process; and (24) the over-use of ex-parte orders to show cause that essentially do away with any normal concept of "notice and opportunity to be heard."	and to recognize that children of sufficient age and capacity who want to testify often benefit from doing so and may provide the court with helpful and relevant information. Given limited resources in this area and the wide variety of cases appearing in family court, the Task Force does not recommend appointing minor's counsel in every case or in every case in which a child seeks to participate or testify. Mediation Process Judicial officers are required by law to make custody decisions that are in the best interest of children while at the same time recognizing the benefit of settlement in these matters. Given that,

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	The mediation process and stipulated settlements. It appears that there are judges in the Family Courts who believe that stipulated settlements are to be respected when they, the judges themselves, would have ordered them, but that they are to be tossed out like yesterday's newspaper when they, the judges themselves, would not have ordered them. This is not only disrespectful of the process itself, it is contrary to the considerations of judicial economy, it fosters more rather than less resort to adversarial litigation, and it is essentially unlawful. One judge, on the same trial level as another judge who so-ordered a stipulated settlement, can undo that consent order without any legal justification, and totally destabilize a family. A judge who thinks a certain custodial arrangement is not the best that there could be can undo a court order without appellate upset. This is not just vexatious and dangerous to the system and its ability to provide stability and predictability to the litigants, it is also inappropriate in the extreme, in that it shows that the real deciding force in family law is not the family law itself or the Code of California, but a certain judicial cult of personality. Judge A would not have ordered a certain custodial arrangement so, using the excuse that "custody can be changed at any time," Judge A simply discards the work of the parties themselves and of Judge B, and enters a new order, canceling a valid consent order without an appellate reversal or even an appellate action. This seriously erodes trust in our system, strains the resources of the litigants, and destroys the stability of families. It also decreases the credibility of the process itself and encourages abuses of all sorts. Unscrupulous lawyers and litigants may actually use mediation to gain some advantage and then gather up steam for a challenge to the mediated settlement	there may be times that a stipulated settlement is viewed as not meeting the best interest standard. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	specifically to undo the other side's position, to which it already agreed in writing! This represents an intolerable abuse of the system and destroys faith in the constancy and leadership of the judiciary. Pro se Litigation. Pro se litigants are usually people who cannot afford lawyers. Let us be realistic to admit that this disadvantages them in the first instance, because they are not our most prestigious citizens who come fully equipped with their own law firms on retainer. But the more important issue is that pro se litigants are entitled to the same "due process" as anyone else. This is not usually understood by judges because it is obvious that most pro se litigants cannot reach the appellate realms to correct any deprivation of due process they may encounter. I think there should be a pro se ombudsman in the court system to provide a way for complaints to be heard in a genuine and unbiased manner, because the mistreatment of a litigant because he is unrepresented should not be countenanced. In addition to an ombudsman, I think there should be evening classes in the courthouse to educate pro se litigants on the rules, on general principles, and on alternative dispute resolution. The use of ex parte applications on orders to show cause. The inappropriate over-use of ex parte applications on orders to show cause has fairly taken over motions practice to the detriment of "notice and opportunity to be heard." The abuses are legion. I have been given less than 24 hours' notice on more than 50% of the motions and litigious applications in my case, although not one of them has been any kind of emergency. There have been orders entered that do not even reach the file so I have no idea what happened and cannot find out and cannot file appeals. This should be discouraged so firmly that lawyers can get sanctioned for filing ex parte applications when there is no	Pro Se Litigation The Task Force has recommended that an ombudsman position be available to handle complaints. Self-help centers provide information to self-represented litigants and, the Task Force has recommended that hours of operation be extended as resources become available. The use of ex parte applications on orders to show cause. The commenter's concerns regarding use of ex parte applications might well be helped by case management which could help resolve those issues before they become emergencies, and to provide clearer guidelines to parties about the use of ex parte procedures.

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	emergent situation and when the device is being used to gain advantage in a way that denies fundamental due process. To again quote from In re Gault, let me close by saying "Unfortunately, loose procedures, high-handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some [litigants] of the fundamental rights that have resulted in a denial of due process." In summary, when judges have unbridled discretion, when the appellate atmosphere is so rarified that there is, in actual fact, no substantial avenue to correct trial court error, misfeasance or malfeasance, and when a record of flawed procedures, fundamentally improper process and repeated denials of due process becomes apparent, the courts need guidance, correction, and regulation. In essence, I am saying that the courts need law. I look to the Legislature to remedy this situation. Additional documents regarding specific case provided.	
61. Edwin Fahlen Attorney at Law Fountain Valley CA	I support the amendments that are being proposed.	No response required.
62. Dr. Robert Fettgather Clinical Psychologist Campbell, CA	*The Elkins Task Force Recommendations are a welcome step toward necessary reform. Commentator voiced concerns about tactics used to increase litigation and the use of parental alienation syndrome.	No response required.
63. Diana Figueroa Family Court Services San Diego, CA	Children's Voices Child Interviews should be done. Interview children in their environments and conduct home evaluation.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel)

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	No recording or other's presence – continue to be confidential/protected. Child testimony in court should be last resort with assistance of FCS Domestic Violence CPS cross report at the time TRO is initialed. Enhancing Safety Children should be minimally involved FCS should continue to be experts. Collaborative FCS/CPS for domestic violence specialized not to expedite CPS/FCS cases.	reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The recommendations also provide for alternate ways for children to participate, including with the assistance of an evaluator or mediator. Domestic Violence Given the range of cases that come before the court, the Task Force has not recommended a blanket approach to reporting to CPS in domestic violence cases. Enhancing Safety The Task Force recognizes the range o cases that come before the family court and recommends a case-by-case approach to children's participation.
64. Steven L. Finston Attorney Beverly Hills, CA	*I appreciate the opportunity to provide the following comments to the recommendations. Commentator provided information on his background as a family law attorney.	

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	Live Testimony I thought that one of the differences between an order to show cause and a motion is that a motion requests a ruling on a procedural or discovery issue and that no testimony is taken, just argument of counsel. If there is going to be live testimony, there has to be procedures so that the court and the other party has adequate notice of the witnesses will be. Expanding Legal Representation. There should be simple forms for someone whether or not represented can get fees at the beginning of the case. I agree with the limited scope appearances for the purpose of obtaining attorney fees. But these appearances should be one appearance only. Too often where a party has retained counsel to request fees and for the hearing, the matter is not resolved at one hearing. If for whatever reason the court cannot decide the issues at one appearance, it should award fees so that the limited scope attorney is not stuck appearing multiple times when retained for one appearance only. Funding for legal services Probably 80% of the time I have represented alleged victims, not alleged perpetrators of domestic violence. That being said, there are numerous resources for victims of domestic violence but limited or no resources available at little or no cost for alleged perpetrators of domestic violence. There should be equal access to services for both sides. Availability of attorneys.	Live Testimony The practice regarding Motions and OSCs varies dramatically throughout the state, thus it is difficult to draw these distinctions clearly. The type of issue would be one issue for the judicial officer to consider regarding the need for live testimony. Expanding Legal Representation Agree that it would be best to try to resolve attorney fees at one hearing if possible. Funding for legal services Agree that services should be provided to both sides. Availability of attorneys. Availability of attorneys may vary

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	I disagree with this statement. I am not aware of a shortage of family law attorneys. I am not aware of any family law attorney who is not taking clients because they have too much business.	throughout the state. There may be a limited number of attorneys willing or able to provide services for litigants with modest means.
	See my comments above regarding Limited Scope Representation. To the extent possible, there should be only one appearance needed where there is limited scope representation. Attorneys are discouraged from Limited Scope Representation because they do not know how many appearances and continuances will occur before the matter is resolved.	Agree that limiting the number of appearances would be helpful in containing costs for the parties, attorneys and the court.
	Caseflow management Cases will move faster if there is legislation that the petitioner must serve the preliminary declaration of disclosure within a certain period after the petition has been served. Likewise there should be a set period that the respondent must serve the preliminary declaration of disclosure after the Response is filed.	Caseflow management The Task Force is recommending that the PDD be served by the petitioner within 60 days of filing the initiating pleadings and by respondent within 60 days of filing responsive pleadings.
	Cases would move much faster if conciliation court (mediation) dates are provided when the Petition is filed. In addition, when trials are set by the court and there have been no prior court appearances and there are children, when a trial date is given, there should also be given a conciliation court date.	Mediation dates would not be needed for parties who were in agreement, but the basic concept that mediation might be set without having to file a motion is one that should be considered as part of implementation.
	Case flow management would be better if certain matters such as discovery issues, contempt matters and the like would be heard by courts dedicated to these matters. Domestic violence and civil harassment matters should be heard by separate courts not regular	Dedicated courts can be very helpful, but this structure is likely to depend on the size of the county and its resources.

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	family law courts. Currently information on dissolution cases such as the civil case summary is available on line. Such information is not available in paternity actions. The reasons for keeping paternity matters "confidential" do not appear warranted in our current society. Paternity cases would move faster if there was civil case summaries available for these cases also. Minute Orders Case flow management would be better served if Minute Orders were available on line like Kern County provides. Form Interrogatories (Family Law) Case management would improve if the parties were required to provide answers to form interrogatories (family law). There should also be procedures for automatic disclosures of such things as change in employment, income. There are fiduciary duty requirements and duty to update information, but there is no clear mechanism to do so. Efficient Use Of Time.	Information Available On-Line The Task Force did not take a position on whether paternity actions should continue to be confidential. Given the sensitive nature of many family law matters, the California Case Management System (CCMS) is designed to require password protection for family law records. Minute Orders Given the sensitive nature of family law actions, the California Case Management System is designed to require password protection for family law cases. Form Interrogatories (Family Law) Form interrogatories would not appear to be required in every case – particularly in light of the declarations of disclosure. As part of implementation, procedures should be considered to develop a simplified process for automatic update of disclosures.

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	For motions, family law courts should be more like civil courts and issue tentative rulings. If the court is going to grant the motion and there is no opposition, the party should be able to submit on the tentative without making a court appearance. For example, if an attorney has an unopposed motion to withdraw as attorney of record, and the court intents to grant the motion, there is no reason for the attorney to have to appear in court. Courts should also expand the use of court call especially for procedural matters and where there are no witnesses and the attorney(s) estimate less than five minutes of court time. Written orders after hearing Where there are issues of child support, and the court uses Dissomaster and other programs to determine the amount of support, the court should also use these programs to issue the order especially for self represented litigants. There should also be a mechanism that wage withholding orders are also issued at the same time. Time standards. The completion goals appear unrealistic. A suggest to speed up the process is to have legislation that petitioners can waive the right to have to serve or receive the preliminary declaration of disclosure. For cases where there are few community assets or debts or where there is a short term marriage, there is no reason to for preliminary declarations of disclosure. If the respondent agrees to no preliminary declaration of disclosure, these cases can proceed much more quickly. If petitioner wants to waive this requirement and respondent does not, then the current requirements will remain.	Efficient Use of Time Agree that procedures such as that suggested should be considered. Tentative rulings can be very difficult for self-represented litigants to understand or feel as if they have had their day in court, so all such rules should be thoughtfully crafted. There is a civil rule encouraging telephone appearances and this should be considered for family law. Written Orders After Hearing Agree that the guideline calculation and other similar materials should be included with the order. Also that wage withholding orders are issued at the same time. Time standards The proposed time standards have been modified based upon comment. The Task Force has recommended that legislation be sought allowing the court to waive the declaration of disclosure in some limited cases.

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	Domestic Violence There needs to be clear rules when the court should or should not issues temporary restraining orders without notice. Too often, such orders are given without notice and the other party is restrained from having contact with the children until there is the hearing. This lack of contact with the other parent is detrimental to the children. When the hearing ultimately takes place too often when the other side is heard, the temporary restraining order is dissolved. Except in extreme cases, notice should always be required before temporary restraining orders are given.	Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Contested child custody. See comments above. In addition, the order to show cause should not be delayed because one party did not show up for conciliation court. Too often, the parties cannot be seen the day of the hearing, and the hearing is postponed. Failure to attend conciliation court should not be a basis for delay in the court making or changing custody and visitation orders.	Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Opportunity for cross-examination Too often Minor's Counsel is asked to make recommendations and acts in place of a mediator or evaluator. Whether there is a written or oral report, current law prohibits minor's counsel from testifying.	Opportunity for cross-examination The Task Force recommends changing the law so that minor's counsel does not submit a report that might contain these recommendations.
	Minor's counsel. See above comments. The recommendation provides that the results of	Minor's Counsel The Task Force recommends changing

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	counsel's investigation or father gathering should only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected. It is unclear how this can be done when there is no right to examine minor's counsel. Providing information on child's wishes The recommendation is that counsel should be required to present evidence. If counsel presents evidence then cross examination should be allowed and objections allowed to the presentation of such evidence. Removal of Minor's Counsel There are cases where one or both parties believe that minor's counsel is not acting in the best interests of the children, not protecting the children, favoring one parent over another, etc. There is no real mechanism for the removal or replacement of minor's counsel. Scheduling of Trials. I totally agree. Too often hearings are 1 or 2 hours at a time and there are multiple hearings, dramatically increasing the cost of litigation and the time for resolution. Judicial Education Judicial officers should obtain the recommended or required education before they take the family law bench. Too often judges are placed with little or no family law background and their "education" takes place on the job with seminars and educational programs later.	the law so that minor's counsel does not submit a report that might contain these recommendations. Providing information on child's wishes It is recommended that counsel for children function as other attorneys do in family law cases. Removal of Minor's Counsel Specific issues related to minor's counsel appointments, including when and how such appointment may terminate, should be considered as part of implementation efforts. Scheduling of Trials No response required. Judicial Education Rule 10.463 requires judges new to the family law assignment to complete a basic family law education course within 6 months of taking the assignment (or within one year in

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		courts with five or fewer judges. This comment, which urges the education to be required before the judge takes the assignment, will be referred to the implementation process.
	Streamlining Family Law Forms and Procedures Simplified stipulated judgment process p. 49. See above comments re waiver of requirements of preliminary declaration of disclosure. A simplified stipulated judgment should provide for waivers of preliminary and final declarations of disclosure especially where there is no Response filed and the parties are doing an uncontested judgment.	Streamlining Family Forms and Procedures The Task Force is mindful of the goal of declarations of disclosure and is concerned that in cases regarding more assets and debts than those of a summary dissolution that disclosure remains important for parties to reach informed settlements.
	Develop one comprehensive Request for Order form See above comments regarding the difference between an Order to Show Cause and a Motion. There should be two separate forms as now since they are different procedures.	Develop one comprehensive Request for Order form As described earlier, the procedures vary dramatically throughout the state regarding treatment of OSCs and motions.
	Declaration Of Disclosure Forms. The current Schedule of Assets and Debts form needs to be radically changes so that the parties disclose the values as of the date of separation. Currently it is very difficult to discover the amount of debt as of date of separation and the amount of such debt paid with either community or separate funds. Likewise bank accounts should be valued	Declaration Of Disclosure Forms This comment should be considered as part of the review of the disclosure forms.

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	as of date of separation and information should be disclosed regarding any deposits or withdrawals. Interpreters. Too often litigants and attorneys are at the mercy of the availability of interpreters. Rules should be loosened so that litigants can bring their own interpreters that do not have to be court certified. The family court system should look to how Immigration courts handle interpreters where the date for the continued hearing is not set unless an interpreter is available. Immigration courts line up the interpreters and then set the court dates. Currently there is no mechanism to let the courts know that an interpreter is needed. The order to show cause forms should be amended so that a party can indicate that an interpreter is needed Judicial Branch Education See above comments. 1 H. Limited Scope Representation p. 59. As indicated above, to the extent possible where there is limited scope representation, there should be one hearing only, or if not, attorney fees are awarded. Minute orders Minute orders should indicate what happened at the hearing and not just make reference to the official reporter's transcripts. Standard Procedures for Court Call There should be standard procedures for court call.	Interpreters Courts handle the issue of private interpreters in different ways. Certification is an important indication of skill of the interpreter. Agree that there should be a mechanism to identify when an interpreter is needed on motion forms. Judicial Branch Education See response regarding Limited Scope Representation above. Minute Orders Agree that minute orders should indicate what happened at the hearing and not just make reference to the official reporter's transcript. Standard Procedures For Court Call. Procedures for telephone appearances should be considered as part of

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		developing implementing rules.
	Custody Currently custody and visitation issues are handled in probate (guardianship) cases with different rules. There is no reason why there should be separate rules and procedures and laws because custody and visitation issues are handling in probate court and guardianship cases rather than in a family law court especially where one or both parents are alive and one or both parents oppose a third party have guardianship. There is no reason why the standard for terminating guardianship and changing custody from a third party to a parent should be different in a guardianship case rather than a family law case. The historical reasons for handling guardianship in probate no longer exist. Children are no longer considered property.	Custody These comments should be referred to the appropriate Judicial Counsel advisory group so that consideration may be given to ways of addressing the concerns which were not discussed by the Task Force given its focus on family law practice and procedure.
65. Roberta Fitzpatrick San Jose, CA	Right to Present Live testimony at Hearings Agree subject to modification below. *Commentator suggests that anytime accusations/allegations are made about a person, he/she should have the right to physically face the accuser. Testimony that has been filtered through a FCS Evaluator (especially one testifies that she doesn't have any verbatim statements from anyone, because she "types very fast while talking on the phone" is far too likely to be twisted by the evaluator's bias. Such testimony, being accepted by the Court, leads to decisions that are unjust. Commentator provided case specific information. Expanding Legal Representation and providing a Continuum of Legal Services. Agree with the recommendation.	Right to Present Live testimony at Hearings The Task Force agrees that the ability of the court to assess the credibility of witness testimony and for litigants to confront and cross-examination witnesses is particularly important in cases where there are material facts in controversy. Expanding Legal Representation and Providing a Continuum of Legal Services

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	Equal access to legal representation is of supreme importance, especially when custody and/or support are the main issues. The person with no money and no attorney loses. No indigent or financially unequal parent should have to face the power of the court and the power of the other parent to manipulate the court (and staff) because he/she has an attorney. That is a recipe for disaster (including death.) Even people who have been videotaped committing murder have more rights.	No response required.
	Caseflow Management. Agree subject to modification below.	Caseflow Management –
	Caseflow management established "Appropriate assistance" needs to include a court-appointed attorney for indigent litigants.	Caseflow management established While the Task Force agrees that it would be ideal to provide an attorney for indigent litigants, it is mindful that resources for this service are very limited.
	Caseflow management beginning at case initiation Add any cases including alleged or proven domestic violence or child abuse need direct judicial intervention (including a court-provided attorney for an indigent spouse) to keep the spouse-victim and the children safe.	Caseflow management beginning at case initiation This issue should be considered as part of developing rules on case management.
	Information for litigants Add a flow chart using both legal and vernacular terms will be developed and explained to each litigant. A basic template could be used and then personalized for each case.	Information for litigants A flow chart is one tool that is helpful for litigants. This strategy should be considered as part of implementation.

Commentator	Comment	Committee Response
	Cases requiring hearings and trial Especially in contested custody cases, no decisions should be made "ex-parte." Each litigant needs to be equally represented and have the issue resolved before a Judge. Flexibility in design Litigants need to each be carefully and clearly informed of what "due process" means in their case. There should be no "self-represented" litigants (except by choice) trying to manage a complex legal case, especially when the opposition is uncooperative. Courtroom management tools-legislation required Emphasize "litigants and their attorneys." No person should have to face hostile and arrogant judge without representation. Written orders after hearing Orders, even temporary ones, must not be filed without a hearing. Self-represented and attorney-represented parties need to be personally (and in writing) be informed of their rights (e.g. appeals). Time standards Add any cases not finalized in 2 years need a complete review, with equal representation for each party. Neither petitioner nor respondent	Cases requiring hearings and trial While ex parte procedures should certainly be discouraged, emergency situations do arise in the context of contested custody cases. Flexibility in design While the Task Force agrees that in certain cases it would be ideal to provide an attorney for litigants in complex cases, it is mindful that resources for this service are very limited. Written orders after hearing While ex parte procedures should certainly be discouraged, emergency situations do arise in the context of contested custody cases. Information on appellate remedies is available on the California courts website. Additional materials should be developed. Time Standards While the Task Force agrees that in certain cases it would be ideal to

Commentator	Comment	Committee Response
	may be unrepresented when the issues (especially custody and/or support) are not resolved within 2 years of filing.	provide an attorney for indigent litigants, it is mindful that resources for this service are very limited.
	Providing Clear Guidance through Rules of Court Agree subject to modification below. Please replace "should" with "must" in every recommendation. The functioning of the court must be clear to those who must be subject to its power. Doesn't the judicial process exist for the good of persons and of the people? It must not be such a mystery and obstacle. Judges who make their own rules must be stopped. For example, self-represented litigants must never be told by a judge that he will only speak to an attorney.	Providing Clear Guidance Through Rules of Court Development of statewide rules to provide clear guidance will help address these problems.
	Children's Voices. Agree subject to modification below. I do not see a serious mention of the judge's individual ability or inability to effectively interview a child. While such interviewing should not solely be left to someone else (FCS for example), the judge should have to state his/her qualifications for conducting any kind of interview with a child. Just as a teaching credential does not qualify someone to work with every possible student, being a judge does not qualify a person to effectively interview a child. If a judge is not qualified because of temperament, lack of education, or lack of experience, that must not exempt him/her from watching a videotape of an interview, and it certainly must not exempt him/her from formally meeting and talking with the children whose futures he/she is deciding.	Children's Voices The Task Force recommendations include providing training for judicial officers on how to best receive children's testimony.
	Domestic Violence.	Domestic Violence

Commentator	Comment	Committee Response
	Agree subject to modification below. It would have been helpful to have a summary of the recommendations by the Domestic Violence Task Force, so I wouldn't repeat something from their report, but I believe the following "rules" would be important No suspected or convicted perpetrator of domestic violence may be given unsupervised visitation or sole custody unless and until he/she has completed requirements of the court (e.g. anger management). No one convicted of domestic violence can be allowed unsupervised visitation or sole custody until examined and determined safe for children by 2 or 3 qualified mental health examiners. The victim of domestic violence must receive information and counseling about his/her rights and any resources available to help him/her "get on her/his feet" and to protect the children. Before any custody decisions are made, the following of 3 above must be documented. In no case may the effects of D.V. be ignored and those effects be used to malign or condemn the victim in court. To do so is to allow the perpetrator to continue to abuse the victim. Enhancing Safety. Agree subject to modification below. When a child has been the victim of molestation by someone the custodial or then-caregiving parent brought into the home, the child must not be put in the sole custody of that parent until and unless the previous victimization is thoroughly investigated and the parent is completely exonerated of any complicity and can prove that the child	The Domestic Violence Practice and Procedure Task Force's recommendations are attached to this Task Force's recommendations as an appendix. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Enhancing Safety The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. While the Task Force sought to address the safety of children in family courts in a number

Commentator	Comment	Committee Response
	will be in a safe situation. The custody arrangement should then be monitored by CPS. Any judicial officer or staff or judge who knowingly releases a child into the custody of a parent who has allowed or caused the child to be endangered needs to be held accountable and prosecuted for reckless child endangerment. No children are safe if judges and court staff can be neglectful and then be declared immune from accountability or any kind of consequences. Contested Child Custody Agree subject to modification below. Opportunity to respond Information must be provided to the parties, with the sources document, at least 48 hours before hearing. Opportunity for cross-examination Please emphasize that those providing information must be personally present (no video or audio presentations.) Information from family court services and evaluators	of ways, these specific issues regarding custody awards in this area is a substantive policy area in which the Task Force did not choose to make recommendations. Contested Child Custody Opportunity to respond The Task Force recommends that information be provided to the parties prior to the hearing so that they have notice and an opportunity to respond, however, given various approaches around the state, 48 hours notice may not always be possible. Opportunity for cross-examination The Task Force recommendations include requiring that those providing information be available for cross-examination. Information from family court services

Commentator	Comment	Committee Response
	No information should be presented by FCS unless it is accompanied by sworn written declarations and the sources personal testimonies. No derogatory statements about a parent may be presented without written documentation and personal testimony with appropriate proof. Parties must have access to written declarations at least 48 hours before any hearing. Commentator provided case specific information. Minor's Counsel Agree subject to modification. Role definition A brief, clear description of M.C.'s role, written both in the vernacular and in legal terms will be developed and distributed to child (if appropriate) and to each parent (party) to eliminate any confusion about counsel's role. Acting within the scope of that role why eliminate a report? That seems to diminish accountability. Courts' responsibilities No matter what rules are implemented (do they already exist, and have not been implemented?) if there is no real accountability (e.g. sanctions, punishments for judges who don't follow the rules.) the rules cannot protect or insure the best interests and safety of the children. Complaint procedures Change from "made available" to given and explained to the children and to each party (parents). If these are already the rules, why are judges not held accountable now for delegating their responsibilities?	and evaluators The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. The content of reports is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel Role definition A description of minor's counsel role could be developed as part of implementation efforts. The Task Force recommends eliminating the report because attorneys for children should be expected to provide information in the same manner as other attorneys and are not available to testify or be cross-examined.

Commentator	Comment	Committee Response
	Scheduling of Trials. Agree subject to modification. Please provide a definition of when there is a trial and when there is a hearing. This is not clear on case file papers.	Scheduling of Trials Technically, hearing results in an order while a trial results in a judgment. In family law hearings are brought before the court by way of Order to Show Cause or Notice of Motion. Trials are often set by the filing of an At-Issue Memorandum of some other trial setting process. In family law, many hearings deal with substantive issues that are fundamental to the case and can require significant court time. These are usually referred to as long-cause hearings. The length of hearing deemed to be long-cause differs among courts.
	Litigant Education. Agree with recommendation subject to modification below. In rec. 11, as in all other recommendations the word “should” must be replaced with the word “must” in too many sentences and rules for me to list. “Must” implies accountability and enforceability. “Should” is too wishy-washy!	Litigant Education- Until resources are made available to allow courts to implement these recommendations, the Task Force is reluctant to use the term “must.”
	Enforcement of Orders Lines of responsibility by court staff and family must be clearly defined. The next step in the process must be defined and explained, so the process doesn’t get filed away and ‘die”. For example, if the parent given final or temporary custody fails to fulfill his/her responsibilities	Enforcement of Orders Enforcement is often difficult. The Task Force has recommended that judges receive education on how to write orders in a way that help with

Commentator	Comment	Committee Response
	such as enrolling a child in school or such as maintain contact with Minor's Counsel or with the other parent, WHAT HAPPENS? WHAT ARE THE CONSEQUENCES?	enforceability.
	Expanding Services to Assist Litigants. Agree with the recommendation subject to modification below. Paragraph 5 of introduction "the neutral" someone in these many recommendations, it needs to state the requirement that the "the neutral", whether in FCS or otherwise, be neutral, and not in any way knowledgeable of either party, or their families. Bias can be deadly!	Expanding Services to Assist Litigants The Task Force recognizes that this suggestion may be impossible in a small community. The issue of bias is extremely important to address in education for both neutrals and litigants.
	Enhancing Mechanism to Handle perjury Agree subject to modification below The way things are, the party with an attorney can lie without any consequences. The party who is self-represented is defenseless. Add 2. When a self-represented (indigent) party alleges perjury by the other party, the self-represented party will be given counsel (attorney) to pursue charges of perjury.	Enhancing Mechanisms to Handle Perjury The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. Providing attorneys to indigent self-represented litigants who allege perjury by the other party is a substantive policy area in which the Task Force did not choose to make recommendations.
	Judicial Branch Education Agree subject to modification. I am interested in knowing what educational requirements there are currently for family law judges. They appear to be minimal (perhaps a 3 hr. orientation?)	Judicial Branch Education The requirements for family law judges are set forth in Rule 10.463 and include (a) Basic family law education

Commentator	Comment	Committee Response
	Children's needs education must include supervised practice with real children, before a judge is allowed to preside in family law. Re" empirical evidence I suggest that unbiased investigators thoroughly investigate cases. Fairness etc. add no court-employed participant (e.g. FCS) may be in any way association with or previously knowledgeable of either of the parties, their families, or the children of the parties. A judge must be elevated before appointment to FC to assess his/her level of knowledge/understanding for children, victims of domestic violence, the relevance of past criminal history. Any degree of arrogance or antipathy towards indigent, self-represented parties must disqualify a judge from family court. Once again, the consequences of a bad attitude by a judge can be irreparable and deadly. Court-connected Mediators if this is the rule, why isn't it enforced? Ongoing FL judges must be required to participate (not internet) in ? hours of ongoing relevant education per year.	(b) Continuing family law education (c) Other family law education Full text of Rule 10.463 http//www.courtinfo.ca.gov/rules/index.cfm?title=ten&linkid=rule10_463 The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content and it will be referred to the implementation process.
	Family Law Research Agenda Agree subject to modification below 19.4 page 65 Expedited appeals…Add Litigants must be informed that they may appeal, both in person and in writing. They must receive directions on when and how they may appeal, in person and in writing.	Family Law Research Agenda – The recommendation seeks to study the potential adoption of an expedited appeals process, not to specifically outline the elements of such a process at this time.

Commentator	Comment	Committee Response
	Court Facilities Agree subject to modification below. 4 self-help services Any persons seeking these services must be given privacy to make their request and to discuss their situations. Never should their private business be discussed as they stand in line in a hallway. Leadership, Accountability, and Resources. Agree subject to modification. Address the issue of judicial immunity. For example 21.12.A (complaint mechanism, page 74) is meaningless if every questions, challenge or complaints is stonewalled. If a judge and/or court staff person is automatically exempt from ever being held accountable for errors (especially those that lead to a child's death), the system is meaningless and protects the incompetent and/or dishonest people. No one should be above the law, especially when he/she/they have knowingly sent a defenseless child into harm's way.	Court Facilities This is a suggestion regarding not discussing issues in hallways should be considered as part of implementation and may involve training as well as more adequate facilities. Leadership, Accountability, and Resources. The Task Force believes that a well-functioning complaint mechanism will serve the public well. The principle of judicial immunity is critical to the judge's ability to decide cases in a fair and impartial manner.
66. Margaret Ford No county information provided	I think these courts should be monitored, as some of these judges are doing whatever they want and making up laws, and not abiding by the code of conduct. It is clearly an abuse of power - too much power. There is too much personality interfering with credible decision making.	The Task Force recommends the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position.
67. Hon. Don Franchi Judge Superior Court of San Mateo	Rule of Court. The Judicial Council should adopt this recommendation as a California rule of court. Existing rule 5.118 (f) should be amended in conformance	Rule of Court. The Task Force recognizes that there are a number of procedural matters

Commentator	Comment	Committee Response
County	with this recommendation. Live Testimony At the hearing on any order to show cause or notice of motion (or request for order) brought pursuant to the Family Code, absent a stipulation of the parties or a finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing and may ask questions of the witnesses. "At a minimum this section should read "upon request of either party, and with 48 hours notice. Another option is to have a Judicial Council form "Request For Live Testimony" or a box on the OSC or notice of motion forms that the parties can check requesting live testimony and having a time estimate so that the Court can calendar the case on a short cause or long cause calendar directly as opposed to having the parties come in and having to reschedule the matter to a much later date to allow for the taking of testimony. The clause as written would require that almost every hearing be an evidentiary hearing or at least that the parties be prepared for an evidentiary hearing. In San Mateo County most custody and visitation issues are resolved in mediation, often on	that are ancillary to the fundamental issues in the case, and can be adequately decided on the basis of declarations alone. With respect to substantive matters in which there are material facts in dispute, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient. Live Testimony The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. Which, if any Judicial Council forms will be initiated or modified in this regard will be considered as part of implementation.

Commentator	Comment	Committee Response
	the day of the hearing. It makes little since to require that witnesses be present and that evidence be ready for a hearing that may be resolved. In San Mateo County a typical motion/OSC calendar has upwards of 20 cases to be heard in 3 hours. Most are resolved by stipulations, through Family Court Services Mediations, or by a 20 minute or less hearing relying on the declarations and other documents submitted to the Court. If either party feels that live testimony is necessary, they may request an evidentiary hearing to be set on either a short cause or long cause calendar. This type of scheduling allows for the best of both worlds. Most cases are resolved quickly based on the pleadings and because the Court is not clogged with cases that don't really need testimony, the Court can calendar short cause and long cause hearings without long delays." Streamlined procedures for defaults and uncontested cases In a high percentage of cases, the parties can obtain a judgment without appearing before a judicial officer. Unnecessary court appearances increase the cost and inconvenience to the parties and are not a wise use of limited judicial resources. When the parties do not wish to appear before a judicial officer, when there is no legal requirement in their case for a court appearance, and when there are no other circumstances causing the court to believe that an appearance is necessary to advance the matter, the court should avoid implementing procedures that would create a requirement for a court appearance in the case. Pleadings may be reviewed by the judicial officer and appearances requested if necessary to determine whether the proposed judgment complies with the law. A goal of caseflow management should be to minimize or eliminate the need for court appearances in those cases that can be resolved by default or agreement of the parties.	Streamlined procedures for default and uncontested cases The Task Force was referring to unnecessary "prove-up" hearings as compared to status conferences to assist the parties in moving the case along.

Commentator	Comment	Committee Response
	"I disagree, requiring parties to appear at status conferences, keeps cases flowing through the system. Often these conferences are the only time that the parties even speak to each other about the case, and these conferences give the judicial officer the ability to direct the litigants to available resources for finalizing their divorce." Systems to finalize older cases "Along with this, the code should be amended to remove family law cases from the provisions of CCP 583.310. I have come across numerous cases where the parties have not received a final judgment within the five year frame. This is especially true in parentage actions where the parties have received temporary orders for custody and visitation, but have never received a Judgment. The statute itself makes no sense when applied to family law, as it gives the right to waive the statute to the defendant. Currently the statute is tolled if there is an order for support, at the very least this should be modified so that the 5 year statute should be tolled when there are orders for custody and visitation." Simplify forms for discovery. "Additionally, especially where there are no children involved, the parties should have the ability to waive the Preliminary Declaration of Disclosures."	Systems to finalize older cases This suggestion to amend CCP 583.310 should be considered as part of implementation of case management procedures. Simplify forms for discovery The Task Force has recommended that legislation should be considered to allow judicial officers to waive the PDD in appropriate circumstances.
68. Hon. Janet Frangie Judge Superior Court of San Bernardino County	I support this Task Force and agree with the recommendations. However, in 7 - Court Resources, I would recommend including that family law departments be staffed with legal research attorneys as it is with the civil departments. Furthermore, there needs to be a way to	Court Resources Agree. The Task Force recommendations point to the critical need for increased judicial resources in

Commentator	Comment	Committee Response
	gather the statistics so that ALL FILINGS are tracked (pre judgment and post judgment OSCs et cet.) instead of just initial filings. If all filings are not included, the results re workload are skewed. Thank you for doing this important work on behalf of the courts. (Judge Frangie noted These are personal comments not necessarily reflective of the Court's position.)	family law. The Task Force also recommends that the AOC develop and implement a program for self-assessment and diagnosis of the court's overall workload and resource allocation.
69. Bill Fuchs Alamo, CA	Commentator provided specific information on specific case and raised concerns about child custody evaluations and evaluators.	No response required.
70. Christopher Funtall Attorney Law Firm El Cajon	Live Testimony (Good cause exceptions) The Court should also be able to deny live testimony when the matter has already been fully litigated, unless there has been a change of circumstances. Meaning, we do not want to hear the same trial over and over.	Live Testimony The Task Force intends that requests to modify orders be included in the right to present live testimony. This recommendation allows judges to exclude live testimony for good cause. Judges currently have the authority to limit the scope of testimony, such as limiting it to the issue of whether or not there is a change of circumstances.
71. Emily Gallup Mediator Superior Court of Nevada County	Contested Child Custody I love the idea of a pilot program, but I have a suggestion. Could you also study whether it is beneficial to have the same or different providers doing mediation versus recommendation/investigation/evaluation? As a mediator in a recommending county, I like making recommendations when people get stuck. I think this is ultimately a time-saving measure, because I can use the information I've gathered during mediation to inform my	Contested Child Custody Specifics of the pilot projects recommended could be developed as part of the implementation of this recommendation.

Commentator	Comment	Committee Response
	recommendations/evaluations. Children's Voices This is a suggestion for mediators or anyone else who interviews children. I tell every child I interview something along these lines "Thank you for coming in. I want you to know that you don't have to be here, and you don't have to talk to me if you don't want to. I asked you to come in because I'm interested in hearing your perspective, if you'd like to share it. I don't expect you to 'choose between your parents'; I know most kids want some time with each parent unless one parent has a serious problem. Is there anything you'd like me to know?" I wonder if a semi-standardized opener could be used to help minimize children's stress during an interview. I do believe that interviewing children is sometimes essential for the court.	Children's Voices The Task Force recommends this comment be considered for implementation through training and education efforts.
72. Hon. Patricia Garcia Judge Superior Court of San Diego County	Right to Present Live Testimony at Hearings I do not agree with the Elkins' Task Force recommendation regarding Right to Present Live Testimony at Hearings. The rule implies parties can simply show up on the day of their hearing and present live competent testimony that is relevant, without notice to the other side. The rule runs afoul one of our most basic democratic principles of due process, notice and the opportunity to be heard. It also promotes a Jerry Springer type of environment where litigants just say whatever comes to mind at the moment, without consideration or reflection. We must be careful to not circumvent due process in our desire to provide greater access to the courts and justice. We must still require testimony to be submitted by declaration in pre and post judgment motions. It provides for notice and opportunity to be heard, and it allows the court to efficiently manage their heavy family law calendars. Requiring declarations also creates a record that is so often	Right to Present Live Testimony at Hearings The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. The issue of forms should be considered as part of implementation.

Commentator	Comment	Committee Response
	referred back to in later motions for modification. Allowing live testimony as a matter of course would create a void in the court's file record. I suggest the following Both Parties Represented by Counsel Pre- and Post-judgment OSC's and motions, by declaration only, unless the attorneys request live testimony (i.e., evidentiary hearing) due to the nature of the issue (e.g., a complex issue, credibility needs to be assessed, experts required, an issue reserved from trial, etc.), or the Judge believes it is necessary, but in all events, everyone is on notice that an evidentiary hearing will be taking place on a future date. Trial by live testimony, unless the parties and counsel stipulate otherwise. Neither Party or One Party Represented by Counsel Pre-judgment and Post-judgment OSC's and motions, declarations are preferred and should still be required (it helps the parties focus on the issues and to communicate under a more relaxed setting than in court), but the Judge should allow live competent testimony that is relevant, and of course the Judge can ask questions. If either party contests/refutes the live testimony and the Judge's decision will turn on	The Task Force concluded that basic due process requires that the decision to allow live testimony should be decided on the subject matter of the Order To Show Cause or Motion and whether or not there are material facts in controversy, not on where in the procedural process of the case the hearing takes place, or on the representational status of the litigants. The Task Force agrees with the types of factors set out by the commentator that should be considered in decisions about whether or not to allow live testimony and believes that they are adequately stated in the current version of the recommendation. Neither Party or One Party Represented by Counsel The recommendation has been modified, however, to allow for a continuance when requested after one or both parties have provided notice and offers of proof as to the proposed

Commentator	Comment	Committee Response
	the live testimony, then a continuance should be granted to give the parties an opportunity to corroborate their live testimony. Evidentiary hearings should be allowed for the same reasons and in the same manner as set forth above for "Both Parties Represented by Counsel." Trial by live testimony. Domestic Violence Declarations are required for the moving party. Declarations are preferred and should be required for the responding party. However, due to the nature of the issues and the short time within which a hearing takes place, live testimony should always be allowed. If either party contests/refutes the live testimony and the Judge's decision will turn on the live testimony, then a continuance should be granted to give the parties an opportunity to corroborate their live testimony. OSC re Contempt Declarations are required for the moving party. Hearing on the OSC should be conducted like a trial, by live testimony. Alternatively, I suggest the following The court must receive live competent testimony that is relevant at trial, in Contempt hearings, and in DV hearings. In DV hearings, the court shall continue the hearing to allow the parties to corroborate their live testimony if the Judge's decision will turn on the live testimony and the live testimony was not contained in a declaration served on the other party in accordance with the CCP. In all other OSC's and motions, the court may receive live competent testimony that is relevant only if (1) there has been notice and an	testimony of any additional non-party witnesses. Trial by live testimony. Domestic Violence The Task Force agrees that trials should take place by live testimony pursuant to IRMO Elkins. The Task Force did consider the issue of domestic violence and decided that the opportunity for the parties to present testimony is essential at all but the issuance of ex-parte temporary orders in domestic violence cases. Contested hearings on the issuance of restraining orders as well as other substantive issues that may be raised should include the right to live testimony absent good cause. The right to live testimony is particularly important when other types of evidence are not readily available as is sometimes the case in matters involving domestic violence allegations. The Task Force agrees that contempt matters should also be

Commentator	Comment	Committee Response
	opportunity to be heard, (2) an evidentiary hearing is requested and granted by the Court to occur on a future date, or (3) the court continues the hearing to allow the parties to corroborate their live testimony if the Judge's decision will turn on the live testimony (this option not available where both parties are represented by counsel).	conducted on the basis of live testimony. There is nothing in the recommendation that would prevent a party from requesting and the judge from granting a continuance for the purpose of corroborating their testimony. The Task Force has modified the recommendation to include the requirement of adequate notice, offers of proof, and a continuance to prepare when witnesses other than the parties are involved.
73. Theresa Gary Family Law Facilitator Superior Court of Kern County	Right to Present Live Testimony at Hearings. Delete entire proposed changes to CRC, Rule 5.118 (f). Instead, change CRC, Rule 5.118(f) to read The court may grant or deny the relief solely on the basis of the application, responses and any accompanying memorandum of points and authorities in lieu of live testimony Reason The proposed rule takes away the judge's discretion, control of the hearing, it is much too restrictive.	The Task Force received many comments requesting that there be no good cause factors and that judicial discretion to deny requests for live testimony should be eliminated completely. The Task Force recommendation maintains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion.
74. G. Scott Gaustad (Law Offices of G. Scott Gaustad)	The following are comments from the Mendocino County Bar Association, Family Law Section.	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Family Law Section Mendocino County Bar Association Ukiah, CA	CaseFlow Management As a general concept, the idea of case management in family law cases was not supported by our group. Sometimes, in family law cases, going slowly or not doing anything at the outset is the best way to ultimately have the case resolved without litigation. The clients frequently need a cooling off period to be able to participate rationally in the process because of the emotional upheaval involved in a separation. Case management often results in increased litigation costs for clients because of the preparation of case management statements and unnecessary court appearances. It can also result in an unnecessary use of judicial time. On the other hand, our group did appreciate the idea of having a check point system. An annual review by a judicial officer would avoid a case languishing because of attorneys and/or parties' failure to take appropriate steps.	Caseflow Management Agree that sometimes going slow is best in a case. This is an issue that can be discussed with a judge at checkpoints. The Task Force has recommended that strategies be developed to minimize the cost of checkpoints.
	We also support the proposal for legislation to authorize judicial officers to manage family law cases including providing the courtroom management tools set forth in subparagraph 11 of 3 at the court's discretion.	Case management legislative changes No response required.
	Scheduling of Trial and Long Cause Hearings These recommendations are the most objectionable to our group. In this county, there is one family law department and one judge assigned to that department. Evidentiary hearings are scheduled three days out of the week. Those include court trials and long cause hearings. Those days also include the law and motion calendar which starts at 930 a.m. and ends at 1100 a.m.	Scheduling of Trial and Long Cause Hearings The prolonged continuances of hearings and trials so that there are often extended periods of time between court sessions, were the source of numerous complaints from

Commentator	Comment	Committee Response
	When there is an evidentiary hearing/trial that is not completed in one day, giving it priority the next day would often result in evidentiary hearings that have been scheduled for months being continued which would create hardships for the parties and witnesses. If the trial were to take more than two days, the problem would compound exponentially. We are fortunate in that our family law judge is usually able to schedule the completion of the trial within a few weeks. Thai is in contrast to situations where cases are tried piecemeal Over many months. We appreciate the rationale behind the recommendation and the benefits to finishing a trial once started. However, in this county, and I suspect many other "cow counties", the proposal is not practical.	attorneys and litigants. Judicial time is wasted and attorneys' fees are increased as witnesses are prepared and then not called, and as judges review the status of the hearing or trial prior to each session. Matters that could be completely heard in two or three court sessions can end up taking five or more sessions due to the additional review and preparation time for both judges and attorneys. This also creates additional time lost from work for litigants. The Task Force recognizes that the issues of time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed during implementation of this recommendation. The Task Force anticipates that implementation of effective caseflow management will address many of these issues in courts of all sizes. The Task Force also recognizes that there are courts currently able to schedule long-cause hearings and trials in a reasonably practical manner. The recommendation may require even

Commentator	Comment	Committee Response
		these courts to make a shift in calendaring strategy, but is not expected to create any quantitative increase in caseload, in the time it takes to access hearing and trial dates or to extend the length of these proceedings. There is no reason that the number of continuances should be increased over existing rates. In fact, effective caseflow management is expected to reduce continuances by reducing the number of cases in which attorneys or self-represented litigants are not prepared to proceed at the time scheduled for their hearings or trials.
	Expanding Services to Assist Litigants We support the recommendations to simplify the stipulated judgment process, develop a single request for order form, and simplify forms for discovery and declarations of disclosures. Finally although not addressed in the report, there was discussion about making sure that forms and publications are compatible to both Windows and Macintosh operating systems. Thank you for your consideration.	Expanding Services to Assist Litigants No response required. Judicial Council forms and publications are published both in Word™ and PDF™ format. Both of these formats are supported on the Apple platforms with the appropriate software.
75. Saul Gelbart	At the outset, please allow me to express my appreciation for your	

Commentator	Comment	Committee Response
Attorney at Law Stegmeier & Gelbart, LLP Family Law Practice Costa Mesa, CA	service and commitment to family law in the State of California. I am grateful for your time and effort. I have practiced family law for over 25 years in Orange County. I am certified as a specialist and am a fellow in the American Academy of Matrimonial Lawyers. The practice of my law firm is limited to family law. The aforementioned is included so that you understand my practice rarely includes dealing with the Department of Child Support Services or unrepresented litigants. We are not involved in mediation or collaborative law. My perspective is from an attorney who represents mostly affluent litigants. My comments are as follows Live Testimony I agree completely with the Task Force's comments and suggestions regarding the "Right to Present Live Testimony at Hearings." [1]. Early needs based awards for attorney fees The Task Force is cognizant of the need for early needs-based fee awards. The reluctance of judicial officers to address the fee issue at an early stage of the proceedings is an error that results in under-representation. The concept needs to be expanded to fees for experts. [2.1.B]. Sanctions against attorneys The Task Force references sanctions against attorneys for delay tactics. This concept needs to be expanded and emphasized such that attorneys are sanctioned for failing to extend courtesies regarding second call, for over-scheduling hearings on a given day, from having witnesses on-call	Live Testimony Agreed. No response required. Early needs based awards for attorney fees The issue of early awards of fees for experts should be considered as part of implementation. Sanctions against attorneys The issues that the commenter raises regarding cases where sanctions would be appropriate should be considered as part of developing an implementing

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	more than an hour away, from delaying support hearings by instructing client to file with DCSS the day prior, etc. To place the burden of requesting sanctions on the "innocent" attorney may result in the failure of a settlement. The judicial officers need to become active in sanctioning attorneys for conduct that unfairly delays hearings. [3.12].	rule.
	Testing in custody evaluations Every mental health professional with whom I have spoken acknowledges that the testing done in a custody evaluation does not measure parenting ability. The cost and time delay relating to such tests is outweighed by their lack of relevance. It is time to instruct the experts that such testing is not required in order for the Reports to pass scrutiny. [11.2.C]	Testing in custody evaluations The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Minor's counsel The Task Force's comments on the misunderstanding and misuse of Minor' s Counsel needs to be emphasized. The present (over)use of attorneys for children is resulting in the abrogation of the right to confront and cross-examine witnesses. I have witnessed several attorneys representing children who have attempted to act as mental health professionals, judicial officers, and mediators. The role of minor's counsel is interpreted too broadly. [9].	Minor's counsel The recommendations in this section seek to provide further clarification as to the role of minor's counsel..
	Mechanisms to Address Perjury The Task Force's commentary regarding perjury (including inappropriately "completing" Income & Expense Declarations) is understated. If litigants became aware that penalties for perjury were imposed liberally and throughout the case, the costs of handling	Mechanisms to Address Perjury This recommendation has been modified based upon comments received.

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	dissolution matters would decrease. Lawyers would have less of a burden to find and prove the truth if there was less perjury. In a case that I am presently handling, the other party – when referencing himself – was bold enough to declare at his deposition that "you can say anything in family law and get away with it." The perception that there is no remedy for perjury must be changed. [14]. The litigation day is too short. I understand that there may be union considerations and that judicial officers and clerks need time to get work done off the bench, but ...first call at 900, break at 1015, lunch at 1200, afternoon call at 145, break at 300, and close for business at 430? If we include interruptions for ex parte applications and Domestic Violence matters, how many hours per day are actually being used for litigation? Court time will be used more efficiently if certain issues are excepted from the proceedings and referred to Special Masters (perhaps a list comprised of certified specialists who are willing to charge a set fee). The issues commonly referred would include (a) The identification, characterization, valuation and division of household furnishings and furniture. (b) Credits and reimbursement. (c) Overpayment of support and/or support arrearages. (d) Any "accounting" that would be time-consuming. It is my belief that the number of available courtrooms in a given county should be divided, pro rata, between unrepresented litigants and litigants with lawyers. If there are 14 courtrooms in a county and 50% of the cases have no attorneys, then 7 courtrooms should be "pro per"	The litigation day is too short. A Task Force goal is to facilitate maximizing the amount of time judges have to hear actually cases during the court day. The recommendation on case management (See Case Management) sets out the framework for a caseflow system which would help accomplish this goal by assigning a number of ministerial functions to qualified staff, but leaving decision-making to judges. Rather that delegating judicial tasks to others, the Task Force has elected to set out the possibility of creative caseflow management in the family court that would offer support services to judicial officers, assistance to self-represented litigants, and early and frequent opportunities for meaningful settlement assistance.

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	courts. Mathematically, the county would be providing exactly the same access to justice but, in reality, both sets of courtrooms would be streamlined to accommodate the situation and all courtrooms would be more productive.	Many courts have developed successful calendars for self-represented litigants and these models should be further explored as part of implementation. While a direct calendar department may be well advised to set up a time for pro per calendars, the potential for bias seems to arise when self-represented litigants are totally segregated into pro per departments where the judge hears only cases with two pro pers, and no attorney cases. The Task Force agrees with the commentator that the allocation of family law judicial resources should be fairly allocated for represented and unrepresented litigants. For example, neither self-represented litigants nor represented litigants should be asked to wait longer or shorter times to get to hearing or trial dates based solely on their representational status. Both groups should be expected to be prepared to move forward at the time scheduled for hearings and trials.
76. Rochelle Gelt No county information provided	AB 590 Under the newly passed AB 590, would it be possible to start an Elkins	AB 590 AB 590 sets out specific areas of law

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	Judicial Abuse Task Force Attorneys Service, using the funds from that bill, dedicated solely for litigants to come to and show their evidence of how the courts abused their rights of due process, (several locations all over California) and failed to protect children against abuse and neglect, or forced abused children to live with their abusers, or have unmonitored visitations? Whereas a law desperately needs to be passed, that grants these Elkins Attorneys the right to take the cases away from the courts' jurisdiction that the cases are currently under, and immediately grant them jurisdiction of an new elite court (which an immediate law needs to be passed to create) "Justice Abuse Supreme Court." Then the Elkins attorneys take these cases straight to this specialized Court, of whom have been verified trained in understanding the corruption, judicial abuse, and failure of the courts to protect abused children of the other Family Law Courts. To over urn, over rule, reverse, vacate, make new orders, and fine, sanction or prosecute the "players" who violated the laws? Where the litigants might actually find justice for their children and themselves, without being dragged through more lengthy court proceedings? The new recommendations are great for the up and coming, but we, the litigants who have already been abused and wronged have nowhere to go. We need help in exposing each and every minors counsel, therapist, monitor, evaluator, Commissioners and Judges, who acted unethically, immorally, or outright illegally. While I wrote before about the denied complaints from Cal Bar, and the presiding Judges, nothing will change unless there are new, strict laws passed, and groups available to expose the problems, at no cost to the litigants.	and procedures that are to be used to implement the pilot projects set up under that statute. It does not appear that this recommendation would comply with that statute.

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	Cal Bar will deny our complaints because perhaps they were not worded correctly, and we didn't quote the correct laws that were broken or they just don't want to fine their own. Isn't that why they are there? To protect the litigants, and not the attorneys? My biggest fear is that these recommendations you are currently working on, will be put into place, but the "players" will just figure out new ways around them. No one is held accountable. Ever. People can not change what they do not acknowledge. We need to acknowledge abuse in every realm. From domestic violence, child abuse, court abuse, judicial abuse, attorney abuse, on down the line. We need to implement a zero tolerance mentality. Unless drastic, dramatic, never been done before, things are implemented, nothing will change. These things need to be done expeditiously, as children are being abused and living in fear every day. Time is not a luxury many can afford. Otherwise, maybe the Elkins Task force can open up a class action law suit representing all litigants and children throughout all of California, who have been denied the right to due process, against the State. One last thought, if you also had a website where litigants could post or report names of minors counsels, opposing counsels, commissioners, judges, therapists, etc. that were corrupt, maybe you could monitor the names, and then audit the more frequently reported ones. Honestly, Cal Bar is completely useless.	The Task Force has not recommended such a website, but it does recommend the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
77. Carole Georges Owner, Senior Counsel Law Offices of Carole Georges Redondo Beach, CA	Expanding Legal Representation and Providing a Continuum of Legal Services Regarding "Referrals to private attorneys" local lawyer referral services should be encouraged not only to develop modest means panels and unbundled legal services, they should be encouraged to modify their rules so that Senior attorneys who are semi-retired and other attorneys such as those who are parents with pre-school children who wish to work twenty (20) hours a week or less may meet the professional liability insurance requirements of the referral services. At this time most of the local Bar Associations and County Bar Associations that have lawyer referral services assume that attorneys applying to be on their panels are working full time and thus they require $100,000/$300,000 in professional liability insurance. This is prohibitive for senior semi-retired attorneys who wish to work only part time and avail themselves of the part-time prof liability insurance available by one or two insurance firms acknowledged by the State Bar. At the same time these attorneys may be highly experienced in family law matters with sound judgment and would provide valuable representation resources for local bar association referral services.	Expanding Legal Representation and Providing a Continuum of Legal Services The requirement for liability insurance is contained in Business and Professions Code 6155 (f)(6). That statute further states that "By rule, the State Bar may provide for alternative proof of financial responsibility to meet this requirement." This comment will be referred to the State Bar for their consideration.
78. John J. Gilligan Attorney at Law Certified Family Law Specialist Long Beach, CA	With our continuing closed court days and inability of our family courts to keep up with the volume of filings, we need to push the collaborative/mediation model more to litigants. Perhaps a video or presentation by an attorney to every litigant should be required akin to the policy which requires parents to attend the PACT program. Better yet, require all litigants to attend mandatory mediation/collaboration such as in a civil case.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. The issue of mandating additional services, beyond existing requirements to attend mediation when there is a conflict over custody, is a substantive policy area in which the Task Force did not choose to make recommendations.

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79. Frederick J. Glassman Attorney Mayer & Glassman Law Corporation	Comments All Forms of ADR Available. We recommend that collaborative law specifically be mentioned as a form of ADR (there is an absence of collaborative law although mediation, arbitration and settlement conferences were referenced) for the following reasons 1. California has a definitive Collaborative Family Law Act. California Family Code Section 2013 has been in effect since January 1, 2007; 2. Numerous Superior Courts in California counties have adopted local rules that establish protocol for collaborative law as an alternative dispute process for family law cases including, although not necessarily limited to, the following (a) Los Angeles County Superior Court Rule 14.26; (b) San Francisco Superior Court Rule 11.3 and 11.1 i'; (c) Contra Costa County Superior Court Rule 12.5; (d) Sonoma County Superior Court Rule 9.26; and (e) San Diego Superior Court Rule 5.2.2. 3. Los Angeles County Superior Court has initiated an automatic transfer of a family law case that has otherwise been assigned to the trial department "earmarked" as a collaborative law case to the presiding Judge (held pending resolution by collaborative law process). Appropriate Family law Training for ADR Providers Collaborative law practitioners have already established prerequisite training for working in the collaborative law model. The training includes, although not limited to, identification of domestic violence; training to advise the client as to the risks and benefits of collaborative law; comparison of collaborative law to other process options including	All Forms of ADR Available. The Task Force recognizes the benefits of collaborative law and has referenced it in other sections of the report. It seems unlikely that courts will be able to provide collaborative law services as a court-based program. Appropriate Family Law Training For ADR providers Agree that the prerequisite training for working in the collaborative law model would probably meet standards. It could be reviewed as part of

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	mediation and litigation; confidentiality and ethics; role of the lawyer and allied professionals utilized in the process, including financial specialists, child development therapists, and communications facilitators (coaches); and interest-based negotiation. Minimum requirement is a Two-Day Basic Training, although some practice groups require Three-Day Basic Trainings.	establishing standards for other ADR providers.
80. Tammy Glathe Manager, Family Court Services Superior Court of Napa County	Overall, the recommendations promote standardization of all court procedures related to family law. When coupled with the recommendation to eliminate local rules except when required by statute, it appears that local flexibility is prohibited. We believe there needs to be an element of flexibility in all the recommendations to account for local differences. We are also very concerned that tipping the balance so far to the side of standardization will reduce any incentive for local court innovation –resulting in fewer program improvements that benefit families. Right to Present Live Testimony at Hearings Agree if modified Although mentioned in the section on interpreters, we recommend emphasizing the need for interpreters for parties and witnesses in this section. The fiscal impact across the state will be significant; however, provision of qualified interpreters will be essential to making the right to live testimony a reality for many. Implementation would have to be linked to additional funding and availability of qualified interpreters.	Overall The recommendation regarding local rules has been modified to address this concern. Right to Present Live Testimony at Hearings Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan

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		and seek adequate resources in the future.
	Expanding Legal Representation Agree if modified Referrals to private attorneys –how will this be implemented in communities that have few attorneys able/willing to volunteer? Clear guidelines about how and when people qualify are needed, as well as the skills, abilities and training required for the attorney volunteers.	Expanding Legal Representation; Referrals to private attorneys - This recommendation contemplates referrals to panels of attorneys willing to provide modest fee and unbundled services. They would be paid for their services. Lawyer referral services develop guidelines for screening for these programs.
	Funding for representation How will controls be developed to avoid misuse of the service, such as with vexatious litigants? What limits to time and scope of representation will be developed?	Funding for representation Guidelines would be developed as part of implementation. Legal aid agencies already conduct this type of screening and set out limits for representation.
	Caseflow Management Agree What about telephonic mediation? Or using Web Ex?	Caseflow Management These creative solutions may be explored by the courts.
	Rules of Court Agree if modified Statewide family law rules While standardization is appealing, are rules the best place to start? Should we start with understanding the local differences and why they exist? Will we be able to provide the resources needed to make some	Rules of Court Statewide family law rules. It appears that many local rules and practices were developed before unification. Important reasons for variations will be considered during

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	of the rule changes and resulting new systems a reality?	development and comment on proposed rules.
	Centralized statewide rules Grouping the current rules together would definitely be helpful.	Centralized statewide rules No response required.
	Children's voices Do not agree We have concerns regarding the purpose, terminology and approach in the children's voices section. In our view "examination" and "cross examination" on the witness stand should be a last resort, to avoid creating a lot of unnecessary trauma for children. While some minors have sufficient maturity and an understanding of the court process as to make their input relevant there are many other children that would be negatively impacted by the process. Before interviewing children becomes the standard protocol, we urge the task force to consider the overall implications of changing the existing philosophy of keeping children out of the conflict entirely whenever possible. Many teenagers are naturally outspoken and can--and do--voice their opinions regularly and strongly. Their appearances in certain legal settings likely would not negatively impact their development. Conversely, a child as young as 10 that would be asked to testify can expose this child to unnecessary stress. Presumably the purpose of obtaining their input would be used to help determine what is best for the child. In less contentious cases this is not necessary as the parents have reached a reasonable agreement with only guidance from a qualified mental health professional working for and with the court. Therefore the children that would be exposed to give testimony and	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children.

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	cross examinations would be in the midst of head strong parties that have already determined that the best interest of the child is secondary to their wants. Arguably both parents and attorneys could use the child's own words against the child. We are not clear on the reasoning behind the child interview proposals and are concerned that it is not always a good idea. For example, parents may want a child interviewed in hopes of the child expressing a preference for them rather than the other parent. A child, particularly a teenager, may think an interview signals that he or she gets to make the decision. Guidelines regarding when, how and why children would be interviewed are needed. It needs to be very clear to both children and their parents as to the purpose of the interview and how the information will be used. The process needs to be supported by local rules. Coordination with appointment of Minor's Counsel is also needed. If children are to be brought further into the legal process this must be balanced by a safe feeling environment that the process protects. We would like to see clarification of FC3042(a) to state what age is "old enough" as well as the criteria that deems it appropriate for a child to be interviewed or to testify. A child's need to be heard can be seriously overrun by an attorney that is not hearing what he/she wants to hear to resolve the existing case in their client's favor. When we have adults fearing the cross-examination of an aggressive opposing counsel to the point they say, "I'll just give in. I can't take this process any more", we wonder how to best protect children in this environment. If parties are ordered not to speak about the case or testimony what checks will be put in place to ensure that the children are not victimized	

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	at home? We are concerned that the child will always feel that no matter the decision (good or bad for one or both parents) it was their fault. If a child is to be interviewed, who will and how will the questions be structured? Will the mediator conduct the interview and report back to the judge? Will there be a list of pre-approved questions that parties can choose from? Or will an attorney be able to ask questions that they feel are pertinent to their case? In our view, it is imperative that child interviews include a judge and a mental health professional. Attorneys could submit questions in advance, but would not be present. The maximum number of adults present at the interview should be the judge, mental health professional and the court reporter to avoid intimidating the child. We also recommend that prior to the interview, the mediator or other mental health professional be responsible for preparing the child for the interview, including providing a tour of the space, presenting court concepts and the interview process. In advance of the interview, teens might be able to participate in a 60-90 minute class to provide the court overview but also some psycho-social education. If such a class were offered, parent approval/trust, advanced sharing of curriculum would be important considerations. The environment of the interview should also be considered. For example, the judge could come to the mediation offices where the atmosphere would be less imposing. Or the judge could be in chambers but not wear his or her robe to create a feeling of approachability.	Interviewing Children The Task Force recommendations reflect an interest in finding a balance that allows a child to appropriately participate in the court process and protects children from unnecessary trauma.

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	Additionally, it would be great if a volunteer or internship position could be created in bigger courts where LCSW/MFT candidates or CPS interns could come in and be the "chaperone" for the child giving them a tour and staying with them throughout the process then being available to answer any questions afterwards. This could serve as a pilot test for the idea of having CASA volunteers available assigned to children in family law cases.	
	Domestic Violence Agree if modified (applies to section) Survival of Orders Statute should indicate as in Juvenile Cases that "exit orders" or the last custody orders should be filed in an existing family law case or a new case should be opened. It would be optimal if the Judicial Council created an exit order form currently used in Juvenile where the restraining order is not granted but there are other surviving orders that remain. Custody and Support orders and any requests for modification should not continue to be filed in a denied/terminated/dismissed DVRO case.	Domestic violence Survival of Orders The Task Force recommends that specific implementation of the recommendations in this area be considered during implementation. The Task Force recommends that the law with respect to survival of orders be clarified where there is confusion.
	Paternity and domestic violence cases This is confusing because mutual restraining orders being are filed routinely. If this were to happen conflicting custody orders could be issued and more resources would be used not only in the courts but with other agencies to clarify orders and figure out which supersedes which order. What type of case filing would it be then and would the type of case filing be changed if the RO was denied or terminated but the paternity action remained? Would statistical information for case types	Paternity and domestic violence cases Existing law (California Rules of Court, rule 5.450) requires coordination of custody cases involving domestic violence to avoid conflicting orders. Specific implementation of this recommendation should be considered

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	then be counted from document types instead of case types?	and may be alleviated by integrated case management systems.
	Children's participation In DV cases it would be helpful if there was a finding that the child is or not at risk in visitation situations with the alleged aggressor to allow for mediation staff to help parents come to an appropriate agreement.	Children's Participation The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Enhancing Safety Agree if modified Hearing from children in chambers Presents an assumption that children will testify, but not an assessment as to if they should. We recommend that a decision to have a child testify should be very carefully considered and based on established criteria.	Enhancing Safety The Task Force recommendations with respect to children's participation have been moved to the section on Children's Participation and contemplate consideration on a case-by-case basis of when and how to include children in the process.
	Expedited Handling Minor's counsel should be added to the list of those that need significant and continuing training. Agree if modified	Expedited Handling Training for Minor's Counsel is noted in the section on Minor's Counsel.
	Child welfare services We support increasing communication from CWS. CWS may have identified concerns that have not risen to the level of an investigation	Child welfare services The Task Force recommendations in this section are designed to support the

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	but would be important to share with the Court to enhance family safety. Clarification is needed as to who would receive the information (judicial officer, mediator) and how it would be communicated. We would need a referral mechanism where CWS has conducted an initial screening but chosen not to become further involved. Information such as recommendations for restraining orders could be included on the official referral to the court. The limited funding for CWS needs to be addressed as part of these system improvements. For example, we currently have situations where parents have alleged abuse but it appears that CWS is unable to taken action due to resource issues. Protocols need to be carefully developed. For example, this increased communication could result in increased false allegations by one parent against the other. How is the determination for CPS involvement going to be made? Are there forms that parties will have to fill out under penalty of perjury indicating abuse that would then generate a referral to CPS and prompt their involvement? Contested Child Custody Agree if modified The costs of the additional resources needed to support these recommendations are significant, regardless of which mediation model a court currently offers. Further, the Napa community does not have the child custody evaluators needed to support the recommendations. Methods to obtain information If courts are encouraged to develop forms, wouldn't local rules be needed to explain the requirements? This seems in conflict with section	idea that children involved in cases involving allegations of abuse or neglect should be provided with the same access to child welfare services as children in cases where such allegations have been made and parents are not in family court. Specific implementation issues, including funding concerns, are recommended to be considered during the implementation phase. Contested Child Custody The Task Force recommendations in this area do not include unfunded mandates. Specific resource needs would be identified as part of implementation efforts. Methods to obtain information Forms requesting information such as family's work and child-care schedule

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	4. 3, that recommends elimination of local rules "except as required by statute or rule of court". Regardless of how the forms are developed, key information that should be requested includes family's work and child-care schedule and locations as well as the involvement of other relatives and step-parents to expedite agreement. Investigators and evaluators. To maintain being a non-recommending county, it would be helpful to have investigators and evaluators available. This allows for the contentious cases to be handled in a manner that meets the need of the family and court but does not interfere with the neutrality of mediator from a non-recommending county. Having the option of using an evaluator may be warranted, however, the danger is that litigants confuse the non-recommending county model with the few times that an evaluation/investigation is used and the reputation of the Napa court is misinterpreted as a recommending model. The evaluators ideally would be other employees than staff mediators so as to not confuse litigants thereby ensuring that the Court is able to clearly distinguish between mediation and evaluation services. Proper training and continuing education for investigators and/or evaluators should be highlighted in the recommendation. Child custody mediation services We concur with the intent of this section –i.e., to insure that parents are able to participate in the mediation process with confidentiality protections. We further support the belief that mediators should not do evaluations and that an independent reviewer should give	and location) could be developed for statewide use. Investigators and evaluators The recommendation has been redrafted to highlight the need for further clarification of the role of evaluators and investigators; existing statewide rules of court provide for mandated experience and training for evaluators and investigators. Child custody mediation services No response required.

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	recommendations to the court. Resources for child custody and mediation services What is the intent of the section? If a court is able to offer more services per family than the standards, will this be allowed? What level of local discretion will be accommodated? As stated previously, we want to insure enough flexibility in the recommendations for adjustments to local situations. We do, however, see some benefit in identifying some general case scenarios that tend to use more resources or have specific needs. For example, cases that involve a parent who is out of state or located hundreds of miles away in another county; could benefit from a longer first appointment to avoid return visits. Cases where parents speak a language other than English might also need more time. For example, a mediator working with Spanish speaking parents needs to have time to conduct the mediation, explain unfamiliar terminology, create the agreement, read the agreement in Spanish to the parents and give them time to consider whether they want to sign it. The entire process can feel rushed, sometimes causing parents to complain later that they were pressured. This seems to be significantly different from the experience of English speaking parents. Appropriate number of mediators. Although the amount of resources is clearly important, we also need sufficient bilingual bicultural mediators. Access to family court services We are intrigued by the idea of offering family court services mediation	Resources for child custody and mediation services The intent of this section is to highlight the need to provide a range of services and resources for families accessing mediation. Courts should have the flexibility to be response to the cases and families they see and families throughout California should have similar access to services that meet their needs. Appropriate number of mediators. The Task Force agrees that such services should be available as needed. Access to family court services Specific implementation issues could

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	prior to filing a motion but not sure how it would work. Providing mediation through a less adversarial means is appealing but how would it be funded? Would we be creating a situation of unfairness if some families were able to access mediation for free by not filing a motion while others had to pay? How would limits be established to insure this service did not overwhelm mandatory mediation? What recourse would a Court have if the parties failed to appear? What mechanism would trigger the case for mandatory mediation? Despite these concerns, we believe this model has cost saving potential and could lessen the adversarial nature of any future litigation.	be considered during implementation, including referring interested courts to courts already taking this approach.
	Child custody language. Yes, to reinforcing the nomenclature of parenting time. This makes the non-custodial parent less defensive and acknowledges the roles and rights of each parent descriptively and more accurately.	Child custody language No response required.
	Minor's counsel Agree if modified We understand the intent of the recommendations in aligning minor's counsel appropriately with statutory requirements. We believe that minor's counsel should be a well trained attorney who is sensitive to the needs of the children. In conjunction with these recommendations, there will need to be significant outreach to the psychological communities to build evaluator resources in communities like Napa that have limited availability of qualified individuals willing to serve as child custody evaluators.	Minor's counsel No response required.
	How will evaluator services be funded? It is clear that many families cannot afford the high cost of evaluations.	Evaluation services The Task Force recommends that resources be identified and allocated to

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		respond to the needs of families and cases that would benefit from an evaluator. As part of implementation, consideration should be given to whether cost-effective and appropriate services may be made available.
	Minor's Counsel Role Acting within the scope of that role. If minor's counsel statement is eliminated from being required to prepare a written statement, how can input be given and gotten from minor's counsel? Shouldn't minor's counsel be required to write a statement even if it is fairly general? Counsel's responsibility in representing the minor child's interests. A. Providing information. What is the benefit of minor's counsel, if recommendations are not given? Mediators in non-recommending counties use minor's counsel input when non-recommending county mediators have no leverage in complex and contentious cases. It seems this aspect of their role is important.	Minor's counsel The recommendations in this section support the idea that minor's counsel should participate in the proceedings as an attorney and provide results of fact gathering or investigation only in the appropriate evidentiary manner so that due process rights are adequately protected.
	Providing information on child's wishes Yes, minor's counsel should be mandated to the court to express to the child's wishes to be heard by a judicial officer if the child wishes this action.	Providing information on child's wishes No response required.
	Litigant Education Agree if modified We support many of the recommendations in this section.	Litigant Education

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	Information throughout the case Litigants also need very basic information about how to behave in Court. For example, there should be a video or tour with examples of where people need to stand, how they address the court, how they address each other and present evidence. This information could be provided by video, internet, volunteer's conducting tours. Avoiding Delays We are somewhat concerned about this recommendation, given that we schedule parents for mediation only after they attend orientation. We continue to offer an in-person class that covers many of the topics recommended here. We could "avoid delay" by not requiring attendance prior to mediation, but that would not be helpful to parents. Or we could replace the class with an on-line program. We strongly believe, however, that parents gain great benefit from the in-person class and after attending are able to approach mediation and co-parenting with increased knowledge and awareness. We consistently receive high marks on the class from parents week after week. We believe that this in-person process actually saves time and resources in the long run by reducing recidivism. Streamlining Family law forms and procedures Agree Judicial Council Forms Clear and easy to understand but also easy to translate for non-English	Information throughout the case Agree that litigants need information on how to behave in court. The AOC has prepared videos like this that will be available on the statewide self-help website. The recommendation in litigant education regarding orientation not delaying mediation should not interfere with the procedure described. The recommendation is designed to draw attention to the possibility that an overemphasis on orientation can sometimes prevent parties from being given the opportunity to resolve issues early in the process, thereby reducing conflict and unnecessary delay. However, orientation designed to enhance mediation and provide information relevant to case resolution through mediation seems valuable. Streamlining Family Law Forms No response required. Judicial Council Forms Recommendation modified to

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	speakers. Simplification for litigants in agreement and forms for motions Agree, but request simplification of all forms for ease of use by pro per's. Simplifying procedures for parentage Agree completely - simplifying procedures for processing all judgments would be helpful. Agreement Templates Samples of agreements could be made available made on line so parents could potentially write up their own agreement. The templates would not be made on official stationary, obviously, so there would be no confusion between what was self generated and what was court generated. At minimum the sample is a tool for parties to be self-empowered. In content there would be little difference between what parties do in a stipulated agreement than at the Self-Help Center however, guidance by FCS staff at that office can ensure and guide parents to understand the meaning of legal terminology. Of course, the process of mediation is preferable for parties to experience being in a collaborative process which is entirely missed if parties are not required to be in mediation. For some parties having this option may be appropriate. Enhancing Mechanisms to Handle Perjury Agree if modified Sanctions for Perjury but an easier contempt process as well.	incorporate translations. Simplification Agree that forms need to be used easily by self-represented litigants. Simplifying procedures for parentage No response required. Agreement Templates This suggestion should be considered as part of implementation. Enhancing Mechanisms to Handle Perjury Since contempt carries with it the possibility of incarceration, the

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		Constitution would appear to prevent any lowering of procedural or evidentiary standards in this area.
	Family Law Research Agenda Agree with recommendations. We support the research recommendations in this section. It appears to us, however, that wherever possible we should build on existing work as discussed below.	Family Law Research Agenda Performance measures recommendation was modified to include building on the CalCourTools model and family law measures developed in other states.
	Performance Measures For example, Standard 30 of the Standards of Judicial Administration recommends that courts use the Trial Court Performance Standards for performance measurement. Some courts in other states have tailored these standards for family law cases. The California CourTools program already in place could be expanded to include specific information for family law cases.	
	Coordination These recommendations could build on the Unified Family Court efforts tested in California. The desk book created for this effort by the CFCC is a great resource that could be the starting point for this recommendation.	Coordination The Task Force agrees that the work of the Unified Courts for Families Program, including the desk book, will serve as a good resource for implementation.
	Court Facilities Agree with recommendations	Court Facilities No response required
	Hours of Operation Litigants have requested more flexibility with hours and times, perhaps	Hours of operation Agree that this would be very helpful

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	one weekend per month for a parenting class and/or orientation.	as resources permit.
	Leadership, Accountability and Resources Agree This section includes many important recommendations.	Leadership, Accountability and Resources No response required
	Local communities The recommended local committees would help address family and juvenile issues in a comprehensive manner, similar to how many California communities address domestic violence prevention through established task forces. This idea is also very cost effective and could be initiated at any time by interested communities.	Local communities No response required
	Court ombudsman This position would standardize the complaint process, as well as provide a means of receiving suggestions and ideas from the public. This would help with the perception that the court is in charge of the grand jury which criticizes county departments but has no such accountability mechanism itself.	Court ombudsman No response required
81. William J. Glucksman President American Academy of Matrimonial Lawyers Southern California Chapter	The American Academy of Matrimonial Lawyers (AAML) was founded in 1962 "to encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be protected." Membership in AAML recognizes a lawyer's achievements in the field of family law and commitment to the highest standards of legal practice. The AAML Southern California Chapter ("AAML-SoCal")	

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	includes 90 members, all Family Law Certified Specialists. AAML-SoCal submits this letter in response to the Elkins Task Force (ETF) report. We first express our thanks and appreciation for the hard work and substantial time, thought and effort the ETF put into this daunting project. The result hopefully, will improve and affect the practice of family law in California for decades to come. As President of the AAML-SoCal and the representative communicator of our response to the ETF, I want to duly thank and acknowledge our sub-committee whose contributions have made this response possible, particularly Stephen Temko, Stephen A. Kolodny, Hon. Sheila Prell Sonenshine (Ret.), Dianna J. Gould-Saltman, James William Hargreaves, Ronald M. Supancic, Jonathan E. Johnson, and Bruce M. Beals. Right To Present Live Testimony At Hearings At the hearing on any to order show cause or notice of motion (or request for order) brought pursuant to the Family Code, absent a stipulation of the parties or a finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing and may ask questions of the witnesses. The ETF cites IRMO Reifler where the Court of Appeal held that trial courts are to determine on a case by case basis whether to rely on declarations or permit live testimony. However as the ETF explains many trial courts have done away with the taking of live testimony altogether, essentially relying exclusively on declarations. Focusing on the importance of credibility and excluding hearsay, the ETF recommends the mandatory taking of live testimony absent a showing	Right to Present Live Testimony No Response Required IRMO Reifler No Response Required

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	of good cause. AAML-SoCal Position AAML-SoCal believes the concept of due process requires live, in-person, witness testimony and the right to cross-examination. Presenting direct evidence by declaration deprives the trial judge the opportunity to observe the witness' tone, expressions, demeanor, etc. Moreover, lawyers rather than witnesses actually write the declarations, often referring to documents or "facts" without establishing a foundation. Indeed, many times the declarant would not have been able to lay a foundation. Evidentiary motions to strike are time consuming and may not be effective in dealing with objectionable testimony which the court considers before striking same. In addition to agreeing that live testimony is a priority, AAML-SoCal proposes that reasonable notice of witnesses (including a brief, general content of anticipated testimony) should be included as part of the Judicial Council form for OSC/Notice of Motion and Responsive forms. Such notice eliminates "OSC by ambush" and enables judicial officers to control Evidence Code Section 352 factors in managing the testimony. Despite the above, AAML-SoCal has concerns about the practicality of this recommendation. Based on the experience of counties which have eliminated declarations, undue back-logs and waiting for days for a courtroom to take oral testimony may result. Lack of attorney fees for the spouse in need is also a concern. In some if not many cases, counsel prepare for first OSC hearings without having been paid fees or	Due Process The task force agrees with this comment and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The task force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The decision about which, if any Judicial Council forms will be initiated or modified in this regard is an implementation issue which will be considered in developing the rule of court. Elimination Of Declarations The task force does not anticipate the elimination of declarations. See the section on Simplifying Forms and Procedures for the recommendations regarding declarations.

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	received costs. Mandated live testimony may hurt the dependent spouse who cannot afford to litigate early in the proceedings. In short this recommendation is feasible only with adequate judicial resources and the allocation of appropriate attorney fees. The right to present live testimony is diminished without the ability to do so. AAML-SoCal suggests that the ETF also consider the immediate division of liquid resources so each party has the potential of retaining consultants and experts. The ETF should also consider modifying Family Code 2550 to permit asset division prior to the dissolution trial. (Note however, courts should take care in making orders that divide liquid assets. The economically weaker spouse will be expending his/her share of community assets, which he/she may never recoup while the other spouse will be able to replenish their coffers and/or will not be required to expend capital.) There are a significant number of our Chapter Fellows who favor empowering trial courts with traditional discretionary authority to reject live testimony; recognizing that such discretion tends to diminish the mandate for live testimony. There are some attorneys amongst our ranks who favor hearing by declaration unless a party timely files and serves a request for live testimony. In such cases, live testimony would be mandatory. Such a procedure may likely result in less extensive declarations which still give adequate notice of the requested relief and basic facts upon which the requested relief is based. There are those who advocate permitting live testimony upon a showing of good cause, but that view is not only a minority position, but tends to undermine that essential component of Elkins mandating live direct testimony and cross-examination.	Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. The task force received many comments requesting that there be no good cause factors and that judicial discretion to deny requests for live testimony should be eliminated completely. The task force recommendation retains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion. The task force agrees with the commentator with respect to the hope that live testimony will diminish

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		the use of extensive declarations on many issues.
	Good Cause Exceptions -Factors To Consider Permitting good cause exceptions ignores the prohibitive cost of preparing party and especially expert witness declarations. Moreover the recommendation does not delineate when/how the court will determine to permit testimony by declaration. Conceivably parties will have to prepare declarations and oral testimony.	Good Cause exceptions Factors to consider Based input received by the task force and other commentators, the court and litigants are both best served by retaining judicial discretion in this area. The role of declarations is addressed in the section Simplifying Forms and Procedures, but will be considered more fully during the implementation process.
	As an over-riding concept, AAML-SoCal recommends that courts should hear Family Law matters like all other civil trials, applying the same rules of procedure and evidence. AAML-SoCal believes the court should receive all evidence, unless by stipulation of counsel, by live testimony or in accordance with other appropriate provisions of the Evidence Code, such as certified copies, etc. Comments on specific factors a. Whether the issues relate to substantive maters such as child custody, parenting time (visitation), parentage, child support, spousal support, requests for restraining orders or the characterization, division, or use and control of the property or debts of the parties. Comment If the Court determines that there is a material fact in controversy and this area of evidence relates to that material fact in	Evidence Code The task force agrees that the family law court should comply with the California Evidence Code. a. The task force believes that this concern is covered by requiring judges to state on the record or in writing the denial to allow live testimony, and believes that the factors requiring the consideration of whether or not there are material facts in controversy is sufficient.

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	controversy, then the evidence, unless by stipulation to the contrary, should be by live testimony or otherwise in accord with the provisions of the Evidence Code. b. Whether there are material facts in controversy. Comment See comment to "a."	b. The task force believes that this concern is covered by requiring judges to state on the record or in writing the denial to allow live testimony, and believes that the factors requiring the consideration of whether or not there are material facts in controversy is sufficient.
	c. Whether there is need to assess the credibility of the parties or other witnesses. Comment If the Court believes it should hear evidence on a subject matter, all testimony on that issue should be live, with the right to cross-examine, unless there is a stipulation to the contrary by both counselor otherwise in accord with the provisions of the Evidence Code. d. The complexity of the issues involved. Comment Same reasons as stated in c. above. Whether a complex or simple issue, if the Court is going to take evidence on it, it should be by live testimony subject to cross-examination.	c. The task force believes that this concern is covered by requiring judges to state on the record or in writing the denial to allow live testimony, and believes that the factors requiring the consideration of whether or not credibility is an issue is sufficient. d. The task force believes that this concern is covered by requiring judges to state on the record or in writing the denial to allow live testimony, and believes that the factors requiring the consideration of whether complexity of the matter is sufficient.
	e. The right of the parties to question experts or investigators submitting reports or other information to the courts. Comment In many cases, particularly those involving complex financial issues [tracings,	e. Agree that this is a meet and confer requirement should be considered as part of implementation of Case

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	valuations, etc.] the experts should be required to meet and confer, before testifying, to identify and prepare a schedule identifying their areas of disagreement. There should be no need for long, tedious direct examination on accountings, tracings and the like for matters where both experts agree. Except for this type of exception, if the Court is going to take evidence, it should be by live testimony subject to cross-examination or otherwise in accord with the provisions of the Evidence Code.	Management.
	f. Whether other relevant evidence on which to base a decision is necessary. Comment If the Court believes evidence should be given on a subject matter, all testimony on that issue should be by live testimony, with the right to cross-examine or otherwise in accord with the provisions of the Evidence Code.	f. This recommendation allows judges the discretion to require that all testimony on an issue be by live testimony. The Task Force agrees that the family law court should comply with the California Evidence Code.
	g. Whether the pleadings adequately provide the facts the court needs for a determination of the issue. Comment Pleadings are not evidence. If there is no joining of an issue, then no evidence is required at all. However, if the Court believes evidence is required on an issue, all evidence on that issue should be by live testimony, with the right to cross-examine or otherwise in accord with the provisions of the Evidence Code.	g. The task force agrees that pleadings are not evidence and has modified the language of the recommendation accordingly.
	h. Any other factors the court determines are relevant to the inquiry. Comment Too vague and open ended.	h. The task force believes there may be other factors not yet ascertained that would create good cause to deny the right to live testimony, and has included this factor to allow for that.
	(Note the Governor recently signed a bill funding court appointed counsel for family law litigants through a $10 filing fee increase. AB 590 (Feuer) mandates 20% of these funds go to court appointed counsel	Note – reference to AB 590 will be

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	for parents and children, particularly in cases where one parent has counsel and the other does not.) Attorneys Fees A. Statewide Rules and Forms Comment AAML-SoCal strongly supports creating statewide rules regarding the information to be submitted to the court to obtain an attorney fee award. B. Early Needs-based Fee Award Comment AAML-SoCal strongly supports the recommendation of the courts paying careful attention to early needs-based attorney fees awards rather than deferring the issue to trial. C. Assistance in Preparing Requests for Fees and Obtaining Counsel Comment AAML-SoCal strongly supports this recommendation with the clarification that counsel and not the self-help center staff and/or the facilitator should prepare the pleadings. Referrals to Private Attorneys Comment AAML-SoCal strongly supports local lawyer referral services to encourage and develop the modest means/low-fee Family Panel and attorney panels for unbundled legal services. The ETF should delineate how/who determines which lawyers will be on (and remain) on the panel. The family law sections of local bar associations should work with the courts to set up some panels and maintain some level of control over the persons who are permitted to remain on the panel.	included in the report. Attorneys Fees A. Statewide Rules and Forms No response required. B. Early Needs-based Fee Award No response required. C. Assistance in Preparing Requests for Fees Agree that if counsel is willing to do so, they should prepare the pleadings. Referrals to Private Attorneys The Bar Associations that provide lawyer referral services are charged with determining who can be on and stay on panels that they develop.

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	Funding for Legal Services Comment AAML-SoCal agrees with the spirit of this recommendation. The phrase "for litigants unable to afford private attorneys" is unclear. If a needs-based analysis is performed prior to providing low-cost or no-cost legal services, AAML-SoCal agrees with this recommendation. Otherwise, disagree. A. Increase Funding for Legal Aid to Assist with Family Law Matters Comment Again, so long as there is a needs-based analysis performed, AAML-SoCal agrees. B. Funding for Representation Comment AAML-SoCal supports this recommendation so long as there is a needs based analysis performed prior to providing representation. C. Expanding Legal Service Programs for Appellate Cases Comment Support if there is a needs-based analysis performed prior to providing the self-help appellate program. 4. Expanding Self-Help Services Comment AAML-SoCal recommends a modification to the tax payer paid service model of the self-help/facilitator centers. These centers should be required to do a needs-based analysis and then create a sliding scale, fee-based system. Those who truly need the service would pay nothing, while moderate income litigants would pay a moderate fee. Those litigants who could afford legal services and whose income crosses a threshold set by the	Funding for Legal Services Legal services agencies that provide representation do needs-based screening. Increase Funding for Legal Aid Legal aid agencies that provide representation do needs based screening. Funding for Representation Full representation services would involve needs based screening. Expanding Legal Service Programs for Appellate Cases Basic information about appellate procedure may appropriately be provided without needs analysis. Expanding Self-Help Services The issue of charging for court-based self-help services was considered by the Judicial Council's Task Force on Self-Represented Litigants. It concluded that the time and costs involved in screening and handling

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	legislature would not have tax-payer paid-for services available to them. Requiring the facilitator to perform a needs-based analysis would be simple and straightforward and would save taxpayers. It would leave more resources available to the facilitators to help those people who need it but cannot afford it. It would require some litigants who can afford the legal services to obtain attorneys, thereby speeding up the litigation process and creating a more efficient system. The Facilitator's primary goal ought to be assistance of pro per litigants in brief, quick matters, processing their documents rather than giving legal advice. It seems appropriate to enact legislation affording malpractice protection for those providing services in the self-help centers.	money was prohibitive. Services paid by taxpayers should be available to taxpayers. When parties have resources for counsel, a key function of a self-help center is to help a litigant understand the benefits of having counsel. Self-help centers also provide significant aid to the court as a referral source as well as providing education and information about the process. Under *Faretta v. California*, 422 U.S. 806 (1975), and following cases, the court cannot require parties to hire counsel.
	A. Increased Funding for Self-help Services Comment AAML-SoCal agrees Self Help services should be expanded. The goal would be to staff the centers with attorneys who can educate pro per litigants rather than having the judge do this during a hearing. (Also See B. below)	Increased Funding for Self-Help Services No response required.
	AAML-SoCal is concerned about outside self-help services, and purported paralegal services who provide services, often for very substantial fees, and the grossly inadequate quality of service they may provide. AAML-SoCal believes there should be some licensing and regulation of persons who provide those services.	Legal Document Assistants are regulated by California Business and Professions Code sections 6400–6401.6, 6402-6407 and 6408–6415. Representatives from that profession note that there are many unlicensed providers.

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	B. Self-help Services Expanded Comment AAML-SoCal agrees so long as the self help centers are need based. 5. Availability of Attorneys A. Mentoring Program Comment AAML-SoCal supports creating a mentoring program for new attorneys in Family Law. B. Court-based Mentoring Comment AAML-SoCal supports the court providing workshops or internship opportunities for law students and the local Family Law facilitator or Family Law self-help center offices, so long as the service is provided on a needs-based analysis. C. Pro Bono Opportunities Comment AAML-SoCal supports this recommendation and it should be predicated on a finding the litigant cannot afford competent legal service. D. Limited Scope Representation Comment AAML-SoCal agrees that limited scope representation may decrease costs. Establish Caseflow Management Comment AAML-SoCal agrees case flow management would assist in a great many cases, but it is important to allow families to have some control over the flow of their own case. AAML-SoCal urges that any case management protocol contain a provision permitting the parties to mutually agree to an "opt-out" for a period of time in the event their particular case has special circumstances. Circumstances would include possible reconciliation, illness of a party or family member; need to maintain health insurance, etc. The Court should not pressure the parties to move their case forward or dismiss it, at least for a reasonable time frame, if the parties both agree. As with civil cases, cases should be categorized according to type and	Self-Help Services Please see discussion above regarding limiting self-help services. Availability of Attorneys Mentoring Program No response required. Court-based mentoring See discussion above regarding limiting self-help services Pro Bono Opportunities Legal services agencies that coordinate pro bono do screening for eligibility. Limited Scope Representation No response required. Establish Caseflow Management The Caseflow Management recommendations set out by the Task Force indicate that there should always be another event scheduled with the court to preclude a case from "falling between the cracks." However, that next event could be set a year or more out depending upon the needs of the parties. All of these circumstances would be excellent reasons for a case not to

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	complexity so appropriate judicial resources can be allocated and marshaled for each case. Different skill and knowledge levels for judicial officers are required in different types of cases, just as is the case in general civil.	proceed. These issues can be reviewed with judicial officers.
	Appropriate allocation will not only speed the process but make the overall system more balanced and efficient. Cases involving simple wage earners [as contrasted to highly compensated corporate executives with complex compensation plans] should not be made to come back several times because the court is involved in a lengthy discovery dispute and cannot hear their case that day. Cases that involve extensive discovery disputes should not be sent out to discovery referees because the judicial officer who draws that case has many self-represented litigant cases and cannot devote sufficient time to the discovery disputes.	Appropriate allocation Agree that court appearances should be productive.
	Case flow management beginning at case initiation Comment AAML-SoCal agrees and suggests such a case management conference should be set, by simple notice, by Petitioner's counsel, within 30 days after service of the Summons and Petition. AAML-SoCal is uncertain how the assessment would occur. As discussed in 1. above, AAML-SoCal believes the plan should include opt out provisions permitting the parties to agree to opt out for a period of time.	Caseflow management beginning at case initiation Systems for setting case management conferences will be considered during implementation. Since the majority of parties are unrepresented, it seems impractical to rely on petitioner's attorney to initiate a conference.
	Checkpoints Established Comment AAML-SoCal generally agrees with this recommendation. We believe the plan should permit the process to be accomplished in a time and expense efficient manner. The plan should provide for the	Checkpoints Established Agree that it is critical to use the time of the court, counsel and parties efficiently.

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	submission of reports or declarations or phone appearances instead of requiring court appearances. Milestones for completing cases should be advisory, not punitive. Receiving an inquiry about whether discovery has been completed as expected is one process that might move a case along, however threatening an Order to Show Cause on penalty of sanction is hardly a checkpoint.	
	Early Intervention Comment AAML-SoCal agrees with this recommendation. While generally it is beneficial to families to resolve disputes earlier rather than later, family law litigation has a unique emotional aspect that few other areas of law have. There must be a balance between the desire for early resolution and the need for appropriate resolution. Many cases are simply not ready for resolution of issues, or even final identification of issues, at an early date. Imposition of arbitrary time lines, from which someone must then show some cause to deviate, impose unnecessary and inappropriate burdens and/or demands on parties.	Early Intervention The Task Force is mindful that early resolution may not be appropriate in some circumstances.
	Information for Litigants Comment AAML-SoCal agrees with this recommendation, subject to comments in the Education section.	Information for Litigants No response required.
	Streamline Procedures For Defaults And Uncontested Cases. Comment While AAML-SoCal generally agrees with this recommendation there is a concern that lack of any judicial oversight may result in abuse of the system by the more powerful [emotionally or financially] party in the litigation. There should be some judicial over-sight of the process of dissolving the marriage; this should not become simply a clerical function.	Streamline Procedures For Defaults And Uncontested Cases This recommendation does not contemplate this process becoming merely a clerical function.

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	Resources for ADR Comment We agree with this recommendation and suggest that the model of the mandatory settlement program already implemented in San Francisco and San Diego should be followed statewide. See San Diego County Local rules for model language. Cases requiring hearing and trial Comment While AAML-SoCal agrees with the general concept recommended, we disagree with the statement that cases involving child abuse or domestic violence should be scheduled to minimize "the need for ancillary experts paid for by the parties." Family law litigants should have the right to present experts as any other civil litigants as necessary in compliance with the Evidence Code. Moreover, there is no cause to "minimize" the need for ancillary experts in a child abuse case. Litigants should be free to present their case without restriction. Further, AAML-SoCal does not believe that the services provided by a brief "focused evaluation" are either complete, sufficient, or very helpful to the court. There could be a better utilization of those resources. Child abuse and domestic violence are, as we all know, very serious matters requiring prompt, focused court attention. Parties should not be inhibited in the types of witnesses they are permitted to call as witnesses, subject to existing rules of trial and evidence. AAML-SoCal does not believe a proper hearing on such important issues should be conducted without the right of a party to call those witnesses she/he feels appropriate. Flexibility in Design	Resources for ADR These models should be considered as part of implementation. Cases requiring hearing and trial While parties should have the right to present experts, many litigants testified that the court had ordered experts over their objections. This may be necessary in critical situations, but judges should be mindful of parties' resources and carefully analyze if expert opinions are critical or if a decision could be made after full evidentiary hearing. Flexibility in Design

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	Comment AAML-SoCal agrees with this recommendation. Efficient Use of Time. Comment AAML-SoCal agrees with this recommendation. In this regard, exploration of late afternoon/evening court services should be considered to provide a more user-friendly court to self-represented litigants who experience work-related issues by having to be in court during normal working hours. The periodic handling of self-represented litigants in a "night court" may provide substantial relief to already over-burdened calendars as well as something very beneficial to self-represented litigants. Courtroom Management Tools Comment We agree with this recommendation that courts may and should control the manner and pace of litigation. However, we reiterate our concern that parties to family law matters should not be rushed and in many cases, delay may be desirable in relation to reconciliation or best interests of children and their parents. Family Law cases are unique with many factors not seen in general civil litigation. The stipulation of the parties/counsel for delay should trump the Court's desire to clear a family law case from its calendar. The mandatory imposition of sanctions for discovery abuses, in an amount consistent with the costs incurred by the successful, or substantially successful, party will go a long way toward lowering the number of discovery motions, extensive reading by judicial officers and courtroom congestion. However, such plans should not inhibit or limit the rights of counsel to prepare for trial. Sanctioning Of Attorneys AAML-SoCal is opposed to separate sanctioning of attorneys Comment	No response required. Efficient Use of Time Expanded hours would be very helpful and should be considered as resources become more available. Courtroom Management Tools Agree that parties should not be rushed. Many parties report that their case has taken too long and the courts must also be mindful of this concern. Sanctioning Of Attorneys The issue of maintaining the attorney-

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	Sanctioning of attorneys naturally creates a conflict of interest with clients and potential severe stress on the attorney-client privilege. In the alternative, an attorney may not be able to defend against a sanction in light of the privilege. The present sanction provisions contained in CCP 128.7 are adequate. In the alternative, if such sanctions are considered, same must be on the ground that the conduct was "solely" the fault of the lawyer. Written Orders after Hearing Comment AAML-SoCal does not agree with this entire recommendation. The suggestion that the preparation of orders be incorporated into the court's process increases the burden on the judicial officers and staff. In most cases counsel cooperatively prepare the orders. Pro pers usually seek the assistance of the Facilitator's office. There is concern that memory lapses occurring after long periods result in unnecessary delay, disagreement and expense. Courts should encourage lawyers and self-represented litigants to take the time to prepare orders before leaving the courtroom. Statewide Rules of Court and many local county rules already provide detailed rules for timely preparation, and if there is dispute then submission to the court would be appropriate. Finalize Older Cases Comment AAML-SoCal agrees with this recommendation and finds this goal to be laudatory; however, this is a concern, given current economic woes, that there would be a better use for our limited financial resources.	client relationship will be critical in implementing this recommendation. As noted in the comment at 11, sanctions for discovery abuse may "go a long way toward lowering the number of discovery motions…" Written Orders After Hearing These matters are handled differently throughout the state. However, few self-represented litigants have orders prepared. This leads to lack of enforceability of orders and repeated hearings on the same issues. The California Case Management System is being designed to produce orders after hearing in many cases. Law students are used in some jurisdictions for calendars with large numbers of self-represented litigants. Finalize Older Cases Given that many of these cases are dismissed for lack of prosecution, leading to significant problems for the parties, implementing this recommendation could prevent many problems.

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	Time Standards Comment AAML-SoCal is opposed to mandated time standards. Families and parents and children should not be rushed to judgment in a family law matter simply because they have filed a petition for marital dissolution. Litigants and their attorneys should have the option, without penalty, of slowing the process down. Sometimes people change their minds about getting a divorce, and sometimes these cases only settle if the parties have enough time to calm down. The expectation of time standards as to when family law cases should be resolved is problematic as it will create an expectation that the judges need to complete and move their cases within certain specific timelines. Every family law case is unique and the timelines vary as to the circumstances and facts of each case. It is far more important that each party has an opportunity to be heard and his/her case not be unnecessarily rushed through some kind of system based on statistics. There needs to be flexibility in the schedules to allow for these varying facts including opt-out provisions. This recommendation appears to be an AOC centered recommendation to meet statistical goals rather than a proposal to assist families torn apart by the breakup of a marriage. Moreover, "bullet-point" time standards are unrealistic, particularly given the high number of self-represented litigants. Very substantial resources will have to be devoted not only to keeping track of these artificial time limits but in the follow-up and then calendaring and using of precious court. Providing Clear Guidance Through Rules Of Court Statewide Family Law Rules Comment AAML-SoCal supports this recommendation. Family law	Time standards Agree that litigants and their attorneys should have the option to slow the process down. Time standards are intended to provide the court with a standard for making their services available. It sets an expectation that appropriate resources will be available (including judicial time) to complete cases if the parties choose to do so. Most states have time standards for family law matters. The proposed standards contemplate that 10% of all family law cases would take over 2 years. Providing Guidance Through Rules of Court No response required.

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	statewide rules should be more comprehensive and incorporate the best procedures from local rules that are currently covered by statewide rules. Centralized Statewide Rules Comment AAML-SoCal supports this recommendation. However, the power to enact local rules should be preserved. Any local rule must be consistent with California statute (Evidence Code, Code of Civil Procedure) and due process (right to cross examination, right to present evidence). Local Rules Comment AAML-SoCal opposes this recommendation. Local rules should not be eliminated, but limited to procedural matters and in all instances consistent with statewide rules and Codes. Evidence should be controlled by the Evidence Code not local rules. There are many issues that are county specific for which centralized state rules can not apply (e.g. ex parte hours, ex parte appearances and judgment processing.) (It should be noted that many experimental/pilot and/or statewide rules germinate from local rules.) Local "Local" Rules Comment AAML-SoCal is supportive of this recommendation with modification. Judicial officers may publish standards of practice to educate the bar about the rules in his/her courtroom. These rules should be provided early in the process and be severely limited to procedural matters and not conflict with state law, state rules or local rules. Children's Voices AAML-SoCal opposes any recommendation that appears to encourage	Centralized Statewide Rules This recommendation have been amended to reflect this comment. Local Rules This recommendation has been amended to reflect this comment. Local, Local Rules This recommendation has been amended to reflect this comment. Children's Voices The recommendations in Children's

Commentator	Comment	Committee Response
	that children should testify. AAMLSoCal believes alternative means to obtain the children's voice should be implemented including 730 experts, FCS reports and/or minor's counsel. However, if the children must testify, then AAML-SoCal agrees with the recommendations.	Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children.
	Input from children (subsections) A. Comment We agree with this recommendation. B. Comment This statement accurately reflects the law but the section is rarely used as most judicial officers prefer not to speak with children. AAML-SoCal believes the studies on this subject are important and should be considered by judicial officers and that it is also important for judicial officers to speak with and hear from children. C. Comment	Input from children (subsections) No response necessary.

Commentator	Comment	Committee Response
	If a child is to testify in a termination proceeding, there is no logical reason why the court should not hear from the child in a custody/visitation case. D. Comment Involvement and participation of percipient witnesses, even minor children, are necessary components of due process. 2. Providing for child safety Comment AAML-SoCal agrees with recommendations A and B. 3. Exercising discretion and finding the least traumatic method for children to testify A. Parental Involvement Comment AAML-SoCal agrees with this recommendation. Involving other professionals Comment AAML-SoCal supports this recommendation. The mediator or an evaluator should have access to school personnel, records and private therapists' reports if the parents agree or the Court orders it based on the best interest of the child. With respect to the children's participation in programs, children of a certain age should be told about the importance of their voices being heard and telling the truth. In deciding to use third parties to interview children rather than receiving their direct statements, Courts must scrutinize those hearsay statements carefully as the interpretation of children's statements will arise through the prism of the experiences and agenda of that third party, no matter how sincere or neutral he or she intends to be. AAML-SoCal agrees with the concept of children having an opportunity to meet with the mediator but is opposed to the mediator reporting anything directly to	Involving other professionals No response necessary.

Commentator	Comment	Committee Response
	the Court. C. Involving the child Comment Children's testimony should be severely limited and not encouraged. AAML-SoCal does not believe it is appropriate to have parents present when a child testifies but respects the parents' due process rights to know what the child said and having an opportunity to question the child through counsel by questions the court asks the child. A court reporter should be present to insure appellate review unless expressly waived by the litigants. Alternate means to obtain the child's voice include a 730 evaluation, FCS report and/or minor's counsel. Domestic Violence Survival of orders Comment AAML-SoCal agrees with this recommendation to have support and custody orders continue/survive when a DV restraining order expires. Combining Paternity & D.V. Cases Comment We agree with this recommendation to permit stipulations regarding paternity in DV cases without filing a separate UPA action. However, UPA actions are confidential and DV actions are not. The confidentiality in paternity cases must be reconciled with the public record cases in DV actions. One way to accomplish this task is to repeal Family Code 7643. Access to Paternity Opportunity Program (POP) declarations	Involving the child The Task Force recommendations reflect the range of children and cases that come before the family court and provides for a variety of ways children might participate or testify, while protecting due process rights of the parties. Domestic violence Survival of orders No response required. Combining Paternity & D.V. Cases Family court files contain a confidential portion of the court file where child custody reports and recommendations and other information must be maintained, under the family code; the specifics of implementation of this recommendation should be considered during implementation. Access to Paternity Opportunity

Commentator	Comment	Committee Response
	Comment AAML-SoCal supports the recommendation to permit family court access to the paternity declarations signed in the hospitals. There is no reason to keep them confidential and it will expedite paternity actions and decrease costs. Procedural Changes Comment AAML-SoCal supports the recommendation to preserve due process. Children's participation Comment As above, AAML-SoCal discourages children testifying. There are opportunities to hear their voices through the Family Code, the Family Court Services mediator, minor's counsel, therapists and the section 730 experts. If children, as necessary percipient witnesses, must participate to ensure due process, the precaution noted in connection with Recommendation 5 should be imposed. Settlement Process Comment AAML-SoCal supports the recommendation to permit DV victims to be in a separate room during settlement processes. Settlement officers should encourage and facilitate separation of the parties where DV or other contentious issues exist. Form Changes Comment AAML-SoCal agrees. State-wide consistency Comment AAML-SoCal supports the recommendation to ensure there are state-wide judicial council forms to conform to the	Program (POP) declarations No response required. Procedural changes No response required. Children's participation The Task Force recommendations reflect the range of options children, families, and courts might consider when contemplating children's participation. Settlement process No response required. Form changes No response required. Statewide consistency No response required; form changes should be considered as part of

Commentator	Comment	Committee Response
	recommendations. Note that the existing form ONL Y permits application for a DVTRO on an ex parte basis. There is no mechanism to request a restraining order on noticed motion, only ex parte. If facts would support a restraining order but not an ex parte order there is no form which allows that and the forms are mandatory. Enhancing Safety Pages The Recommendation's title does not convey the topic being discussed and should be changed to reflect issues pertaining to children. Appropriate Procedures Related Procedures Comment AAML-SoCal believes this recommendation is flawed. First, AAML-SoCal discourages children testifying in court. Reliance on W&I section 350 is misplaced. This section permits informal hearings except "when there is a contested hearing." Most cases considered under this sub-topic include contested issues of fact and due process must govern. Dependency Court processes and procedures should NOT be allowed in Family Law Courts if it impacts the due process rights of the parties. Unquestionably, imposition of Dependency Courts procedures does impact due process. Hearing from Children in Chambers Comment AAML-SoCal believes that a child testifying is a balancing act taking into consideration the child's safety, parent's due process rights and children testifying through third parties. FC 7892 addresses this well. Examination of children in chambers is acceptable, so long as counsel are present, and the parties have an opportunity for input as	implementation. Enhancing Safety The Task Force agrees and title has been changed to "Enhancing Children's Safety." Appropriate procedures The Task Force has deleted this section; recommendations related to children's participation are addressed in Children's Participation and Minor's Counsel. Hearing From Children in Chambers The Task Force agrees and recommendations were developed to reflect his approach.

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	to the questions to be asked, including an opportunity to propound questions after testimony is given by the child. Expedited Handling Comment AAML-SoCal agrees with this recommendation. AAML-SoCal agrees with the special training needed for mediators, investigators, and judicial officers. Our San Diego Fellows urge the ETF to consider San Diego County local rules regarding ex parte appearances, expedited FCS appointments, & order shortening time for an early set of OSC. Child Welfare Services Comment This recommendation urges Child Protective Services (CPS) to be involved in all cases involving abuse and neglect. Additional work to establish appropriate protocols to clarify the relationship between juvenile court, family court and CPS should be considered. This recommendation does not take into consideration the varying degrees of conduct that fall within the umbrella of "child abuse and neglect," differences that are hugely meaningful. What we might consider abuse or neglect in family law would not even be given a moment's consideration by CPS. Family law cases should only be referred to CPS if, in the opinion of the judicial officer, the abuse or neglect is extreme enough to be the type of conduct they customarily deal with. Our experiences with CPS and Dependency Court have taught us that it is not a place to be unless circumstances are extreme. CPS has no resources to spare on the kinds of cases we normally see in the family law courts - their services are virtually ineffective in so many cases. Family law courts should not be coming down to the level of the lowest common denominator, we should be looking to increase the	Expedited handling No response required. Child Welfare Services The Task Force recommends child welfare services involvement in cases involving allegations of child abuse so that children whose parents happen to be seeking relief in family court are not denied access to the resources providing by the child protection system.

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	quality of the services we provide to families and children in distress. Contested Child Custody Overview The proposal improves FCS and the ongoing mediation issues are helpful and should be adopted, subject to the following concerns, as listed below Information provision Methods to Obtain Information Information forms to help mediators are an excellent idea but should be further expanded. Not only should the parents provide the work/childcare schedules, but a child's known extracurricular activities should be made known to the opposing side/court. Additionally, the courts should consider a confidential form (not to be made part of the court file and ergo public record) which includes a sheet of known health conditions, special needs, help already being received (i.e., therapists and tutors) and other relevant information that could affect the child sharing time. Steps must be taken to preserve and protect the children's privacy concerns. Investigators and Evaluators AAML-SoCal has no objection to this recommendation although we are concerned about how it is fiscally possible in today's judicial economic crisis. Opportunity to respond AAML-SoCal is not clear about this recommendation. AAML-SoCal believes that any information provided to the court should be simultaneously provided to the parties or, if in	Contested Child Custody No response required. Information provision Specific form development, including this comment, should be considered during implementation. Investigators and Evaluators No response required. Opportunity to respond The Task Force recommends that information that goes to the court should also go to the parties so as to

Commentator	Comment	Committee Response
	reports, provided to them prior to being provided to the court. The concern about timing of providing of information is particularly of concern if the information is being provided by a party or her/his counsel. Clearly, a party must be given an opportunity to respond, but in order to prevent false or misleading information being provided to the court by a party or their counsel, AAML-SoCal believes that prior or at least contemporaneous delivery of such information to the opposing side should be required. Opportunity for cross-examination AAML-SoCal strongly agrees with this recommendation. Investigation and evaluators This recommendation endorses double mediation, confidential and then recommending pilot projects. This recommendation appears to involve a confidential FCS meeting followed by a recommending FCS report. Mediation is by nature a confidential process and should remain so. There should be no reporting or recommendations by custody mediators to the court. This will eliminate the need for these important resources to continue to attempt to mediate custody disputes and avoid hearings. Further, because the mediators are provided with only a short period of time to meet with the parties, an often without the children present, the reliability of their input is questionable. The court should make decisions based on testimony, direct and cross-examination, of the persons having relevant knowledge of the facts pertaining to custody/visitation issues. However, judicial officers are ill-equipped to rule on parenting issues without a report from a qualified expert in the area. Therefore, if the	provide the parties notice and the opportunity to respond. Opportunity for cross-examination No response required. Investigators and evaluators Existing law allows for recommendations in contested child custody cases; the Task Force recommendation supports increasing opportunities for parties to mediate confidentially through implementation of pilot projects.

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	initial mediation process is to remain confidential, then it must be followed by some sort of reporting process independent of the mediation before the matter is to be turned over to the court for ultimate ruling. Another approach is to simply rename the process altogether - instead of calling FCS "mediation", it could be called Mandatory Meeting with FCS, or "parenting conferencing" that does not imply a confidential process. Resources for child mediation services AAML-SoCal agrees with this recommendation as long as there shall be no reporting or recommendations to the court by the mediators serving under the expectation of confidentiality. Appropriate number of mediators While a lofty goal, and supported by AAML-SoCal, given our financial circumstances, this seems unlikely. Access to family court services AAML-SoCal agrees. Information from FCS and evaluators AAML believes it is appropriate for FCS to make recommendations. While many judges adopt FCS recommendations, some do not. If the issue is the propensity for a judge's rubber stamp of FCS recommendations, the remedy is not to eliminate the recommendations	Resources The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Appropriate number of mediators Specific implementation and resources issues should be considered during implementation. Access to family court services No response required. Information from FCS and evaluators The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a

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	but to encourage judicial officers to exercise independent analysis of the evidence, submission of FCS recommendations before the hearing and an opportunity for fair cross-examination. Also APA ethic rules limit psychologists' recommendations regarding child custody to "sufficient data." If FCS personnel limited their recommendations to data obtained after one meeting they would be unable to make recommendations that go to the ultimate issue. FCS needs to say to a judge "I cannot recommend what is best for the child after just one family meeting."	substantive policy area in which the Task Force did not choose to make recommendations. The Task Force recommendation is for establishment and funding of pilot projects to give courts the opportunity to provide a range of services.
	Child Custody Language AAML-SoCal opposes deviation from the traditional approach to children's issues i.e. custody/visitation. The problem with eliminating the words "custody" and "visitation" from the mandatory vocabulary and usage of the court is that all published case authority, including controlling Supreme Court decisions (Carney, Burgess and LaMusga, use "custody" and "visitation" as the basis for its analysis. This recommendation is impractical and potentially impossible to reconcile under existing case law.	Child custody language Parenting Time The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.
	Culturally competent mediation services AAML-SoCal agrees.	Culturally competent services No response required.
	Minor's Counsel AAML-SoCal recently passed a resolution expressing its concern that lawyer's acting as minor's counsel, violate their ethical duty as a lawyer. This is particularly true in California. In many instances, a	Minor's Counsel No response required.

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	person acting as minor's counsel is asked to take information he or she has gained from his or her minor client in confidence as part of the attorney-client relationship and then use it to make recommendations that are or may be directly adverse to the client's wishes. While it is unclear what role the person acting as minor's counsel is filling, it is not the role of an attorney. Trial court judges tend to blindly follow the recommendations of minor's counsel on the theory no one is going to reverse a trial court judge who simply follows the recommendations of minor's counsel. The appointment of minor's counsel is a thinly disguised inappropriate delegation of judicial authority. If the recommendations of minor's counsel go against a litigant, the litigant cannot, by statute, cross-examine minor's counsel to find out the basis of his or her recommendations. Essentially, minor's counsel becomes a very powerful expert witness, even though he or she has little or no credentials to act as such. To make matters worse, he or she gets to express his or her opinion without having to explain whether the evidence on which his or her opinion is based is admissible or whether the legal theories he or she used are ones that can be considered by the trial court. For all these reasons and more, the recommendations put forth by the Elkins Report regarding minor's counsel should be adopted.	
	Minor Counsel's role Role definition AAML-SoCal agrees.	Minor Counsel's role No response required.
	Acting with the scope of that role AAML-SoCal agrees that minor's counsel should NOT be making recommendations to the court. Minor's counsel should seek requested	Acting with the scope of that role No response required.

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	orders from the court. Minor's counsel is a unique role. Minor's counsel is representing a non-party to the action. Minor's counsel is not a witness and does not submit declarations under penalty of perjury to the court. If the Statement of Issues is eliminated, presenting "evidence" via declaration for a motion would be extremely difficult, if not impossible in most circumstances. Therapists for children are generally unwilling and/or unable to be witnesses in these actions. Children certainly should not be submitting declarations (even assuming they are competent) to the court. It is difficult to ascertain how minor's counsel would present evidence or even seek relief on behalf of the minor client under these circumstances. As a result minor's counsel would have a reduced role. Eliminating the Statement of Issues Also excludes otherwise pertinent information that Judges historically desire when they are attempting to make determinations in these very difficult, highly-conflicted matters. This proposal, if adopted, will diminish the amount of information provided to the fact finder in these high conflicted cases, increase litigation and put children in the courtroom. There will be little need for minor's counsel. Minor's counsel should not make a recommendation unless the judge specifically requests it. A minor's counsel should prepare a report. As noted, AAML-SoCal discourages children testifying in court; so other arrangements should be made such as a 730 expert, probation officer, an investigator or FCS mediator. Whatever minor's counsel provides should be filed and served prior to the hearing. Presently minor's counsel appears and expresses views for the first time at the hearing. Parents are entitled to due process and	Eliminating the Statement of Issues The Task Force recommendations are not designed to increase litigation or deny the court access to information. The Task Force recommends that information provided to the court be presented in the appropriate evidentiary manner.

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	notice of counsel's position prior to hearing. Providing information on child's wishes AAML-SoCal agrees that minor's counsel must express the child's custody desires to the court, if the child so wishes. However, it is unknown how minor's counsel will present evidence so the court can determine if the client is "of sufficient age and capacity to reason so as to form an intelligent preference in the custody issues before the court." Will minor's counsel be cross-examining his/her own client? The proposition that minor's counsel must convey a child's express wishes, rather than permitting this to be in minor's counsel's discretion, sounds simpler than it is. What if the child makes rote, rehearsed statement? Is that what counsel conveys or does minor's counsel convey the context? Would it be inappropriate to delete the context? If minor's counsel explores the statement with the child who falls apart when challenged or can't provide any augmenting information, is that also conveyed to the Court or is that withheld? Court's Responsibilities to Ensure Accountability and Transparency in Appointment of Minor's Counsel Implement Role AAML-SoCal agrees with the recommendation but would request input on the content of any such role. Develop Procedures AAML-SoCal agrees with this recommendation.	Providing information on child's wishes. Specific issues associated with implementation of this recommendation should be considered during implementation. Implement Role The Task Force agrees that input during implementation of these recommendations would be useful. Develop Procedures No response required.

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	Complaint Procedures AAML-SoCal disagrees with creation of a local procedure for complaints about minor's counsel. Minor's counsel generally serves either with no compensation or at reduced rates. There is usually at least one parent (sometimes both) who is dissatisfied with minor's counsel and/or have complaints. Parties already have complaint mechanisms in place, such as the State Bar and the courts. Parties may file a complaint with the State Bar and they may file a motion to eliminate/terminate/replace minor's counsel and present any and all complaints to the Judge in the matter. Adding yet another forum of complaint is not merited. Meeting Requirements AAML-SoCal agrees with this recommendation. Education on the Appropriate Use of Minor's Counsel AAML-SoCal agrees with this recommendation Scheduling Of Trials And Long Cause Hearings Day to Day trials and long cause hearings AAML-SoCal agrees with this recommendation. AAML questions whether any of these recommendations may be implemented absent increased financial resources. In the alternative, methods should be considered to reduce litigation avenues i.e. issues that need to be litigated. More thought should be given to reducing litigation and create more trial time within the current budget. For example, with regard to domestic violence orders, the goal should be to allow everyone, particularly the poorest and most disenfranchised	Complaint Procedures This recommendation has been redrafted to recommend a statewide approach to handling complaints to promote consistency. Meeting Requirements No response required. Education on the Appropriate Use of Minor's Counsel No response required. Scheduling of Trials and Long Cause Hearings Day to Day trials and long cause hearings Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for

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	members of our population, to obtain domestic violence restraining orders in a fast, efficient, and cost effective manner. Because of the significant penalties attached to the issuance of a domestic violence restraining orders, people accused of domestic violence have no choice but to take any request for such an order very seriously and to spend an inordinate amount of court time resisting it. Every family law department consumes time adjudicating disputes over domestic violence. Because of the significant penalties attached to the issuance of a domestic violence restraining order, many trial courts are more reluctant to issue the restraining orders. Ironically, the laws that were intended to give victims of domestic violence more protection have resulted in making it less likely that they will obtain that protection. Domestic violence litigation could be eliminated if mutual personal conduct restraining orders were included on the back of the summons issued in every family law matter. The generic orders on the back of the summons will give law enforcement agencies an order to enforce, if one is needed, and will be all that is necessary in most of the cases. Since these orders will be issued in every case, none of the traditional penalties or presumptions should apply to these orders and no social stigma should be attached to them. If additional or further protection orders allowed under existing legislation are needed in a particular case that would justify the penalties and presumptions currently being imposed, a party should be free to pursue that protection. In the meantime, automatic protection will be issued to the poorest and least sophisticated members of our society. These are the people who need the protection the most and who currently have the least amount of access to California courts.	resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. Issues such as time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed during implementation of this recommendation should it be adopted by the Judicial Council. The Task Force anticipates that implementation of effective caseflow management will address many of these issues (see Case Management.) Family Code section 6305 prohibits mutual restraining orders absent several prerequisites outlined in that section, and the parties may not have complied with these requirements. Further, the Elkins Family Law Task Force supports the Recommended Guidelines and Practices for Improving the Administration of Justice in Domestic Violence Cases,

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		recommendation number 37. In that recommendation, the Task Force on Domestic Violence Practice and Procedure specifically states that courts should decline to approve or make domestic violence restraining orders that cannot be entered into DVROS or CLETS, commonly referred to as "non-CLETS" orders. Should the automatic restraining orders include conduct restraint orders, every family law summons would have to be entered into CLETS. This does not appear to be the intent of the commentator. There are also significant obstacles to enforcement of any blanket conduct restraint orders. The Task Force recognizes that a wide variety of solutions to streamline procedures should be considered. The suggestion of incorporating personal conduct restraining orders into the summons seems problematic for the following reasons 1. Law enforcement reports that it is very difficult to enforce any kind of mutual restraining order. A generic order regarding personal

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		conduct would seem to be very challenging to enforce. 2. Many parties who need restraining orders are not married, are not filing for paternity, or have been previously divorced or there is otherwise an existing case, so this would not eliminate the need for restraining orders. 3. Most divorcing or separating couples for whom violence is not an issue would probably not want to be subject to orders prohibiting them from contacting the other party, staying away from the other party and the other conduct orders contained in a restraining order.
	Litigant Education Summary The ETF states Family Law can be confusing and intimidating and wishes to educate litigants about court processes and "basic legal principles" to minimize stress, encourage appropriate agreements, and assist the parties in resolving their cases in a timely manner. Moreover, the ETF believes providing information about settlement options and assistance in preparing written agreements can help the parties arrive at solutions more tailored to their family's situation. The ETF states such an approach will avoid the expense and difficulties of high-conflict cases that may divert parents' time, energy, and money from otherwise being used for the benefit of their children.	Litigant Education The Elkins Task Force is mindful of the findings of the Task Force on Self-Represented Litigants that providing need based services is not effective for court self-help centers, but that centers should refer those parties with resources to appropriate lawyer referral and other services to obtain additional assistance. Agree that flow charts can be a helpful way of

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		providing information.
	Orientation and ongoing information and education on Family Law process AAML-SoCal endorses litigant education. However, self-help centers should be need based; and therefore, we oppose the implementation of this recommendation as presently phrased. While Paragraph A is entitled "Introductory Information" and claims self help centers will only provide help ''that describes the steps of the process," the actual language of the recommendation calls for "Parties should receive information about legal resources ... , free or low cost legal clinics, legal services, and county referral panels; information about limited-scope representation; information about options such as mediation and collaborative law." Consideration should be given to creation and distribution of "flow charts" so litigants can see in picture form how a case progresses.	
	Information about challenges of self-representation This paragraph appears to be inserted to placate the bar. With the extent and quantity of information and services that could be implemented under this heading, simply providing information about challenges of self-representation appears inadequate. AAML-SoCal expresses its concern that judicial officers do not act as counsel for self-represented litigants and that restraint in that regard, particularly if brought to the court's attention by counsel, be exercised.	Information about challenges of self-representation One of the key services of a self-help center is to point out the challenges of self-representation to litigants and establishing reasonable expectations.
	Review of Current Education While the heading calls for "review" of current education, it calls for the "court and its partner agencies to review their current education and self-help programs to insure the litigants in every Family Law structure	Review of Current Education Agree to remove term "partner agencies" which was intended to refer to legal services and similar programs

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	are better able to identify the process, navigate the legal system, and obtain a final resolution in their cases." (Emphasis added) AAML-SoCal is unaware of court "partner agencies." The use of this phrase simply solidifies the understanding that the implementation of these recommendations as they are now being proposed would be detrimental, if not fatal, to the Family Law Bar. Cost of providing this type of extensive education service is onerous and beyond the scope of the court system. While the California legislature has created the Facilitator's Office, AAML-SoCal does not believe its intent was to usurp all aspects of the legal process of Family Law. With the extensive "education" described in this section, the court system would provide litigants, at the expense of the taxpayer, lawyers and paralegal services. The courts may be able to provide pamphlet style information to more people but it is naïve to think the court's can adequately educate all self represented litigants particularly in light of Family Law's emotional component. Information throughout the Case The analysis here is the same as above. This section calls for "workshops on preparing for trial or finalizing required paperwork. The recommendation calls for "the self-help center or Family Law facilitator's office to provide litigants general information about evidence and the burden of proof in the form of guidelines directed to all parties .... " It appears the facilitator's office will be teaching and practicing law and will be providing trial strategy and evidence strategy to the public at the tax payer's expense. There is no discussion in this section for malpractice insurance, the effect of practicing law without a license, and/or the extensive burdens placed upon the "self-help center or Family Law facilitator."	as it is confusing. Information may be provided by pamphlets, on-line and in videos. It is certainly not intended to supplant the role of attorneys. There are for example, many pamphlets, websites and other sources of information regarding healthcare, but that is a supplement to, rather than replacement of physicians. Information Throughout the Case An example of how this can be provided is through videos explaining how to introduce and object to evidence. Templates that set out elements of trial briefs are also helpful. Certainly, whenever anyone is contemplating trial or long cause hearings, the cautions about need for representation are particularly critical. However, there are many low-income litigants who cannot find

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		representation and need assistance. Self-help centers operate under the supervision of an attorney. Additional funding is likely to be necessary to implement this recommendation in many courts.
	Orientation to Child Custody Mediation There is no objection to this section.	Orientation to Child Custody Mediation No response required.
	Mediation Orientation There is no objection to this section.	Mediation Orientation No response required.
	Parenting Education There is no objection to this section.	Parenting Education No response required.
	Information on Evaluation There is no objection to this section.	Information on Evaluation No response required.
	Information on Parenting Resources There is no objection to this section.	Information on Parenting Resources No response required.
	Information on Parenting Plans There is no objection to this section.	Information on Parenting Plan No response required.
	Avoid Delays There is no objection to this section.	Avoid Delays No response required.

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	Enhanced Parent Education Prior to Mediation There is no objection to this section. Referrals There is no objection to this section. Parenting Classes There is no objection to this section. Settlement Opportunities This recommendation calls for the "self-help centers and/or Family Court Service offices" to prepare sample parenting plan "templates" and states that these templates should be used for "parents who are in basic agreement on the parenting plan and need assistance in drafting an enforceable agreement." What is the purpose of the first level of mediation if these templates are available at the self-help centers? This type of "parenting plan template" is something that can be used directly through Family Court Services and does not need to be provided to the parties through the court's "self-help centers." This section also recommends 'Judicial involvement and supervision in the mediation of disputes is encouraged." The term ''judicial involvement" is not defined but it appears it would go beyond the scope of what a judicial officer's involvement should be in these situations. Enforcement of Orders While the basic recommendation that the court should provide information about enforcement of orders is acceptable, the recommendation then goes on to state that "orders need to be tailored to the family and parents should choose the level of detail that they want	Enhanced Parent Education Prior to Mediation No response required. Referrals No response required. Parenting Classes No response required. Settlement Opportunities Many litigants may not need to go to mediation if they are provided with tools to help them memorialize their agreement. That would allow more time for those persons who need a mediator's assistance. Judicial involvement intended to review agreements particularly if there are concerns about duress. Enforcement of Orders Agree that it would be very helpful if attorneys provided this information, but there are a limited number of attorneys for low income persons.

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	in their agreements, parties should be made aware of enforcement issues and understand that if a dispute arises later, they may benefit from having a more detailed order." These described duties typically are those of an attorney.	Basic information and warnings can be emphasized in this way.
	Expanding Services To Assist Litigants In Resolving Their Cases Pages Services to help parties with settling their cases AAML-SoCal agrees with this recommendation.	Expanding Services to Assist Litigants in Resolving Their Cases Services to help parties setting their case – No response required.
	All forms of ADR available AAML suggests all ADR should be voluntary with the exception of mandatory settlement conferences prior to trial. The parties should be in control of their cases. As family law cases are heard by only a judicial officer and not a jury, it is unknown what is meant by "arbitration (binding and nonbinding)." These terms as applied to family law should therefore be further defined. If the intent is to allow parties to utilize private judges in cases where parties agree to have their rulings either binding or therefore appealable, AAML-SoCal agrees this would be appropriate.	All forms of ADR available Some courts currently provide arbitration for parties for some types of family law disputes (including smaller assets).
	Appropriate family law training for ADR providers AAML-SoCal agrees with this recommendation. AAML-SoCal believes that the family law sections of the local bar associations should be encouraged to provide these services as it appears quite clear that the courts will not have the finances to do so. AAML-SoCal does not oppose ADR, mediation or settlement conference programs, recognizing that more than 95% of cases settle. AAML-SoCal is however concerned that the rush to ADR may result in lack of adequate	Appropriate family law training for ADR providers Agree that information is critical regarding issues to be considered. However, it is very difficult to suggest what rights would be in all contested issues. The Task Force understands that most ADR providers encourage

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	legal representation and litigants giving up rights they do not fully understand. Understanding that nothing can replace legal representation, it may at least be better for those conducting ADR mediation/settlement conferences to provide litigants with a written statement of their rights regarding the contested issues. Such a procedure would help to ensure parties are better informed before entering into agreements and hopefully result in fewer set aside motions.	participants to consult with an attorney and review any proposed agreement prior to signing it. That may be a more effective way to ensure that litigants are aware of their rights.
	Streamlining Family Law Forms And Procedures The Task Force has several comments and observations concerning forms. AAML-SoCal generally agrees with the ETF's report. In short, the standard of the form should be understandable to someone with a modest reading level.	Streamlining Family Law Forms and Procedures No response required.
	Simplified stipulated judgment process AAML-SoCal suggests the statement, "The parties would not be allowed to file a motion until the divorce or legal separation was final except in the case of emergency" needs additional thought and reflection.	Simplified stipulated judgment process Agree to remove the requirement that parties would not be allowed to file a motion until the divorce or legal separation was final.
	Declaration templates AAML-SoCal is unopposed to templates but strongly disagrees with page limits on declarations. Declarations are evidence. Consistent with due process, the admission of evidence should not be arbitrarily limited.	Declaration templates The issue of page limitations will be an important one to consider fully as part of implementing rules.
	Enhancing Mechanisms To Handle Perjury The Task Force recommends establishing civil sanctions to address perjury in cases where the perjury has serious consequences causing	Enhancing Mechanisms to Handle Perjury The recommendations regarding

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	measurable damage to a party. AAML-SoCal believes that perjury is rampant in family law cases and something needs to be done about it. AAML-SoCal believes that there are no adequate consequences imposed by the courts when perjury is committed and that this has resulted not only in lack of respect for the courts by litigants and lawyers but the virtually reckless abandon with which perjury is committed in family law cases. New Civil Sanctions AAML-SoCal supports civil sanctions in the event a party can show by clear and convincing evidence the other side knowingly or fraudulently misrepresented an essential element of evidence that cause some measurable damage to the other party. There is a strong need for consequences/remedies for perjury in family court due to the widespread problem. There remains a resounding voice amongst our Fellowship to the effect that the ETF's recommendations are not strong enough and that proof of such fraud should be shown by a preponderance of the evidence.	addressing perjury have been revised based upon these thoughtful comments.
	Standardize Default And Uncontested Process Statewide The Task Force recommends a consistent statewide procedure for submitting and filing default and uncontested judgments. Uniform Default and Uncontested Process AAML-SoCal supports this recommendation for a statewide protocol for submitting default and uncontested judgments subject to county courts modifying same in their local rules to suit the particular needs of the county. Processing judgment in Los Angeles County may well be different than a smaller Shasta County. No additional requirements	Standardize Default and Uncontested Process Statewide Uniform Default and Uncontested Process – Agree that any process should consider appropriate differences based upon size. No additional requirements

Commentator	Comment	Committee Response
	Local rules cannot add/change requirements to default/uncontested judgments beyond the statewide CRE protocol but merely set forth any requirements necessary to process the statewide completed form.	No response required.
	Full Review of Documents We support the recommendation to require the court to perform an entire review of all judgment documents and indicate every area where there is a problem that needs corrections.	Full review of documents No response required.
	Hearing only if necessary AAML-SoCal supports the recommendation to permit a declaration to be submitted to finalize the judgment and only require a hearing if necessary.	Hearing only if necessary No response required.
	Impose Timelines on Processing Judgments AAML recommends "All courts should ensure Judgments are processed within a reasonable period of time, such as within 30 to 60 days of the date the Judgment is submitted without error or omission, and the courts should ensure if there are errors or omissions in the Judgment, that such judgment be rejected and returned within a reasonable period of time."	Impose Timelines on Processing Judgments This recommendation has been modified to encourage development of timelines.
	Interpreters The ETF provides that one of the most fundamental components of access to the courts is to be able to understand the proceedings. Interpreters are mainly available for DV matters or government child support cases. Sometimes minor children conduct the interpretations for family members. To have interpreters available on the day of the hearing is important to reduce the need to continue hearings and increase litigants' access to the courts.	Interpreters No response required.

Commentator	Comment	Committee Response
	Expansion of availability of interpreters AAML-SoCal agrees that interpreters should be available in family law matters. Out-of-courtroom services We agree that interpreters should be available for self help services. Grant funding AAML-SoCal agrees the courts should apply for grant funding. Protocols AAML-SoCaJ agrees that protocols for sharing interpreters with criminal departments should be established. Early identification of need AAML-SoCal agrees with this recommendation. One suggestion is to modify the Petition, Response and perhaps the UCCJEA forms so litigants could mark a section that provides that the litigant or any party or children speak limited English. Perhaps, the Court can devote certain days of the week or month to bi-lingual cases and have the interpreters available on those dates in the courtrooms. Shared interpreter pool We agree with this recommendation. Scheduling We agree with this recommendation to consolidate calendars to reduce interpreter costs.	Expansion of availability of interpreters No response required. Out of courtroom services No response required. Grant funding No response required. Protocols No response required. Early identification of need Since many cases proceed by default, the identification of language needs might best be saved to forms to request a hearing. Calendaring issues should certainly be considered as part of implementation. Shared interpreter pool No response required. Scheduling No response required

Commentator	Comment	Committee Response
	Allocation of Resources AAML-SoCal agrees with this recommendation as well. AAML-SoCal believes that in courthouses that have multiple courtrooms dedicated to family law, that one or more courtrooms should be designated for the interpreter cases so that the services of the interpreters can be maximized and the needs of these litigants can be most efficiently handled in one court day. There will also be a residual benefit to the other courtrooms that transfer interpreter cases, litigants will not have to wait until the interpreter arrives and the court will be able to handle its calendar more efficiently. Public Information and Outreach Elkins Task Force reviewed the AOC's 2005 Public Trust and Confidence survey which showed the public's self-rated familiarity with the courts is low and the public is more likely to get information about the courts from the media than from the court. The public should have access to more information on their legal rights and services available through the court, particularly information that may help in early stages of litigation resulting in opportunities to settle cases early or resolve issues underlying the case. The study indicates that enhancing public information and outreach will help ensure that court users make the most productive use of their time in court. AAML supports all the recommendation. However given the budget crisis, great care should be taken before mandating programs without adequate funding. Public Information Program Developing a public information program is beneficial to the public and the courts. Community Outreach	Allocation of Resources Creative ideas such as these regarding scheduling will definitely need to be considered as part of implementation. Public Information & Outreach Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.

Commentator	Comment	Committee Response
	We support community outreach, subject to funding. Information Materials We support creation and dissemination of information materials, subject to funding. Resources We support increased resources, subject to funding. Judicial Branch Education Educational Content A. Children's Needs It would be helpful for judicial officers to receive training on how to interview children, whether they regularly interview children or not, so it is clear to judicial officers how difficult a task it can be. It would be helpful for judicial officers to also be educated concerning the reliability of information obtained from children. Family Court AAML-SoCal agrees with this recommendation.	Judicial Branch Education Educational Content The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content on judicial education re children's participation and it will be referred to the implementation process. Family Court No response required.

Commentator	Comment	Committee Response
	Interpreters AAML-SoCal agrees with this recommendation. Enforceable Orders AAML-SoCal agrees with this recommendation. Self Represented Litigants AAML-SoCal agrees with this recommendation. Procedural Justice AAML-SoCal agrees with this recommendation. Attorney fee awards AAML-SoCal agrees with this recommendation. Limited Scope representation AAML-SoCal agrees with this recommendation. Minor's counsel AAML-SoCal agrees with this recommendation. Leadership AAML-SoCal agrees with this recommendation. Fairness AAML-SoCal agrees with this recommendation. General family law education A. Ongoing family law judicial officer training	Interpreters No response required. Enforceable Orders No response required. Self-Represented Litigants No response required. Procedural Justice No response required. Attorney fee awards No response required. Limited Scope representation No response required. Minor's counsel No response required. Leadership No response required. Fairness No response required. General family law education The Task Force made

Commentator	Comment	Committee Response
	Judicial education for family law judicial officers should include the 45 hour class provided for practitioners who are taking the exam to become a Certified Family Law Specialist. The ongoing education should include the ongoing requirements for CFLS, which includes mandatory hours in specific areas of family law.	recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content and length of programs, and it will be referred to the implementation process.
	Family Law Research Agenda The proposal for a research agenda is likely to be beneficial, as statewide reporting of statistics may foster the maintenance/development of programs, and act as a diagnostic tool for spotting concerns/problems/trouble spots. However, it should be noted family law matters are more than statistics. Successes are not measured in how many cases are processed. Success is not measured in whether one county processes more cases per judge than another. Success is not measured by whether AOC statistical goals are met. Statistics should aid policy makers but no more. As a result, AAML SoCal rejects meeting statistical goals of processing so many cases in so many months.	Family Law Research Agenda The recommendation does not propose setting such statistical goals for case processing.

Commentator	Comment	Committee Response
	Research agenda for family law Basic statewide statistical reporting Collection of data. No opposition. Workload studies Collection of data. Caution "appropriate guidance to the courts" should not be used to implement statistical AOC goals to the prejudice of California families. Performance measures Caution "appropriate guidance to the courts" should not be used to implement statistical AOC goals to the prejudice of California families. Litigant Surveys Caution 'as to whether practical in current economic crisis.	Basic statewide statistical reporting No response required Workload studies This recommendation does not seek to impose statistical goals. It seeks to ensure that workload is measured accurately so that family courts receive a level of resources commensurate with their workload, which should benefit California families. Performance measures The recommendation includes a process for pilot testing and fully vetting the measures with the trial courts so that issues such as those raised by the commentator can be considered. Furthermore, performance measures are primarily for the purpose of self-assessment by the courts, not for external evaluations of or comparisons among courts. Litigant surveys Although many recommendations require and identify the need for additional funding, many others may be implemented without increased

Commentator	Comment	Committee Response
		resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	Evaluation of family law forms No opposition.	Evaluation of family law forms No response required
	Monitoring evolving issues in family law	Monitoring evolving issues in family law No response required
	Minor's counsel. Collection of data. No opposition.	Minor's counsel. Collection of data. No response required.
	Crossover between family law and other case types Collection of data. No opposition.	Crossover between family law and other case types Collection of data No response required
	Coordination between family court and juvenile dependency courts AAML-SoCal does not oppose potential movement of abuse cases to juvenile court in extreme cases.	Coordination between family and juvenile courts No response required.
	Expedited Appeals in Family Law Cases	Expedited Appeals in Family Law

Commentator	Comment	Committee Response
	Temporary custody awards are already subject to immediate writ review. (See Lester v. Leannae (2000) 84 Cal.App. 4th. 536) The Court of Appeals already grant expedited review for custody cases under priority provisions already adopted by the legislature. AAML-SoCal is opposed to application of the summary writ procedures used in juvenile writ proceedings to family law proceedings. These family law appellate cases contain many other issues and are not solely limited to custody matters whereas juvenile matters are solely related to custody. Review of research and best practices from other jurisdictions AAML-SoCal is informed that the ETF examined other jurisdictions when making its recommendations. Continued national and international trips, do not appear to be a good investment in State funds at this time. Court Facilities This recommendation seems to be an impossible wish list considering the financial state of affairs in this State, particularly in light of the budget constraints already imposed in each county (e.g., closing courts one day a month.) Regardless, it appears if funding were possible, the recommendation would substantially benefit the litigants, attorneys, courts and staff.	Cases The Task Force recommended studying the feasibility of implementing such procedures, rather than recommending their implementation outright, so that potential issues and concerns such as those raised by the commentator could be more fully explored. Review of research and best practices from other jurisdictions The Task Force did not take national or international trips, but consulted readily available written materials from other jurisdictions. Court Facilities Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan

Commentator	Comment	Committee Response
		and seek adequate resources in the future.
	Trial court facilities standards AAML-SoCal agrees with this recommendation.	Trial court facilities standards No response required
	Courtrooms AAML-SoCal agrees with this recommendation.	Courtrooms No response required
	Private Space for Consultation AAML-SoCal agrees with this recommendation.	Private space for consultation No response required
	Self Help Services Agree. AAML-SoCal recommends a need-based fee to help cover the expense.	Self-help services This recommendation is limited to the facilities aspect of self-help services and is not meant to address issues such as fees. The Task Force does not support the imposition of fees for self-help services.
	Family Court services AAML-SoCal agrees with this recommendation.	Family court services No response required
	Children's waiting rooms AAML-SoCaJ agrees with this recommendation.	Children's waiting rooms No response required
	Co-location of services AAML-SoCal agrees with this recommendation. Sheriff Deputies serve as Family Law bailiffs in several counties (e.g., L.A and Orange). Many	Co-location of services No response required.

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	have extensive Family Law court experience. Orange County judges, for example, have been advised because of budget constraints Sheriff Special Officers (SSO's) will replace Sheriffs deputies after June 2010 in Orange County. There is more emotion, danger and potential for breaches of safety in the family law courts than any other court house area. Experienced bailiffs many times cut off problems before they occur. They see problems develop and deal with them before the problem is out of control. The ETF recognizes "family courts have a relatively high incidence of violence, whether directed at litigants, attorneys, judicial officers, or court staff. " It also states "every family law courtroom should be staffed by a deputy sheriff or other law enforcement officer". The AAML-SoCal strongly encourages the ETF to make clear Safety is a Number One issue and no second best alternative should be used in family courts. The Legislature should mandate that Family Law bailiffs shall be Deputy Sheriffs or of the same level that serve as Bailiffs in felony criminal departments. This is not just an issue for family law judges, but for attorneys, parties, witnesses, and the public. The recent announcement of the AOC it will look to creating and training a cadre of bailiffs for the courts is not the answer. It merely centralizes the issue away from local control to San Francisco. We have good security locally-we should not to lose it. Accessibility AAML-SoCal agrees with this recommendation. Hours of Operation	Safety The recommendation was expanded to propose court security for family law being commensurate with that of the felony trial courts. Accessibility No response required. Hours of operation

Commentator	Comment	Committee Response
	AAML-SoCal endorses the use of occasional night time hours for litigants. However, these should be scheduled well in advance. Attorneys and court staff have families to be considered as well as security and staffing needs.	Issues such as security staffing needs are addressed in the existing recommendation.
	Equipment and Technology While AAML-SoCal would like to recommend dissomaster in the court room at counsel desk for immediate calculation of child support; such a suggestion seems economically out of touch with current conditions and could result in wasted court time while counsel and/or parties use the dissomaster at counsel desk. Accessible computers should be made available in every court building (e.g., in attorney conference rooms). AAML-SoCal recommends greater use of electronic filing.	Equipment and technology The availability of computers and e-filing are addressed in the existing recommendation.
	Leadership, Accountability & Resources The ETF notes family law has considerably less resources than other courts and more resources should be provided to family law, including more judicial officers and staff. Experienced judges with a temperament for family law should be appointed and family law judges should have a greater role in the court system.	Leadership, Accountability & Resources Agree No response required
	Promoting Family Court w/enhanced judicial leadership AAML-SoCal supports the recommendation to elevate CA Standards of Judicial Administration section 5.30(c)(2) to a California Rule of Court and include it as a duty of the Presiding Judge under California Rule of Court, Rule 1O.603(c)(l). Rule 5.30(c)(2) directs the Presiding Judge to ensure family court has adequate resources.	Promoting Family Court. Agree No response required
	Family and Juvenile Court Role	Family and Juvenile Court Role.

Commentator	Comment	Committee Response
	AAML-SoCal supports the recommendation that family and juvenile supervising or presiding judges are members of internal executive committees. Family Court Management & Resource Allocation AAML-SoCal supports the recommendation to insert an annual training module/summit on implementing Rule 5.30 recommendations in family law and publication of guidelines. Self-Assessment on resource allocation AAML-SoCal supports the recommendation for AOe to develop a program for self-assessment and diagnosis of each court's workload, technical assistance, best practices and obtaining resources for children and families. Judicial Appointments & Assignments AAML-SoCal strongly supports the recommendation for changes to the judicial appointment process to encourage family law attorneys to apply and to modify the application such that it would highlight the qualifications, characteristics and experience that are important in family law judges. AAML-SoCal strongly supports the recommendation that the judicial nomination/Governor appointments secretary receive information about the importance of family law experience in judges. We also support the recommendation of requiring judges to have at least two years of judicial experience prior to working in a family law assignment. We further recommend all judges who work in family law take the MCLE requirements to become a Certified Family Law Specialist prior to working in family law and are mandated to take MCLE credits each year in family law, while they are on the family law bench.	Agree. No Response required. Family Court Management Agree. No Response required. Self-assessment on resource allocation. Agree. No Response required. Judicial Appointment & Assignments. Agree. No Response required.

Commentator	Comment	Committee Response
	Assignment of Judicial Officers to Family Law AAML-SoCal strongly supports the recommendation that each superior court should allocate the number of judges to family law in accordance with the percentage of work load in family law. AAML-SoCal suggests the recommendation be changed from "should allocate' to shall allocate. Currently only 9% of the judges are in family law while family law has 20% of the workload. Attached hereto as Appendix I is a copy of the AAML-SoCal Resolution Encouraging More Judicial Appointments of Qualified Family Law Lawyers (also endorsed by the Association of Certified Family Law Specialists [ACFLS]. Without such an increase in family law judicial officers, many of the Elkins recommendations are impractical. The increase will provide judicial officers with sufficient time to hear important, complex and lengthy cases in an orderly fashion rather than piecemeal or a few hours per day. It will allow sufficient judicial officers to deal with the ever increasing numbers of self represented cases as well as those with counsel. It will allow the hearing of paternity, civil domestic violence, (Orange County for example currently has less than 13% of the judicial officers in family law courts.) Court Resources AAML-SoCal supports the recommendation to provide research attorneys to family law judges and increase the number of court and FCS staff in family law. We also support increasing staff to assist with orders/judgments, ministerial/non-judicial functions and procedural document review. We support e-filing/fax filing statewide.	Assignment of Judicial Officers. Agree. No Response required. Court Resources Agree. No Response required.

Commentator	Comment	Committee Response
	Ensuring Access to the Record AAML-SoCal supports the recommendation to ensure there is a court reporter in every courtroom. This is a due process issue and makes drafting orders extremely difficult when counsel do not agree on an order or a clerk cannot record everything the judge said, and the minute order is vague. Meaningful appellate review is denied when the record does not include a reporter's transcript.	Ensuring Access to the Record. The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms.
	Ensuring Access to recording for orders Court reporters/tape recording are of assistance in preparation of orders. The recommendation that parties receive court orders upon leaving the courtroom may not be feasible. However a copy of the minute orders should be made available forthwith.	Ensuring Access for recording for orders. The revised recommendation on access to the record addresses both the concern about access to appellate review, and finalizing court orders. The Task Force concurs that parties should receive written orders before leaving the courtroom whenever possible.
	Calendaring Approaches AAML-SoCal supports the recommendation of dedicated calendars for self-represented persons, domestic violence, contempt, etc.	Calendaring Approaches. Agree. No Response Required.
	Inclusiveness/collaboration AAML-SoCal supports the recommendation to have a committee	Inclusiveness/collaboration. Agree. No Response Required.

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	focused on how to improve family law.	
	Transparency/accountability In theory, AAML-SoCal supports the recommendation for a complaint process. However, judicial officers are already subject to review. Attorneys are subject to review through the State Bar. It is questionable whether another complaint forum is necessary or cost effective.	Transparency/accountability In order to improve public service and address concerns about accountability, the Task Force recommends the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position.
	Consistency with local & statewide rules The AOC may develop self-assessment rules to ensure counties are in compliance with state rules. However, local rules should still be permissible. See Recommendation 4, also.	Consistency with local & statewide rules.
	Family & Juvenile Assignments AAML-SoCal supports the recommendation to allow more than 10 commissioners, subordinate judicial officers (SJOs), per year to be elevated to judges.	Family & Juvenile Assignments. Agree. No response required.
	Enhanced use of Commissioners in Title IV-D AAML-SoCal supports the recommendation to permit commissioners in Title IV-D cases to hear all aspects of the case, including support, custody, property, DV restraining orders. It is usually low income families who have IV -D cases, and requiring them to go to two different courtrooms is financially and personally cumbersome on them. The issue to be clarified here is to ensure the parties can decline	Enhanced use of Commissioners in Title IV-D. Agree. No response required.

Commentator	Comment	Committee Response
	to stipulate to a commissioner in Title IV -D cases where issues other than aid-based support are being heard. On behalf of the Board of Directors and the Fellows of the American Academy of Matrimonial Lawyers, Southern California Chapter Resolution Of Southern California Chapter Of The American Academy Of Matrimonial Lawyers Encouraging More Judicial Appointments Of Qualified Family Law Lawyers The American Academy of Matrimonial Lawyers (herein "AAML") is a national organization comprised of the leading family law lawyers in the United States. For over 50 years, it has been dedicated to the dual goals (i) of advancing the standards of practice in family law cases and (ii) of encouraging fair, reasonable, and expeditious resolutions of family conflicts. In furtherance of these goals, the Southern California Chapter of the AAML has reviewed and analyzed the problems facing the Family Law Departments of the Superior Courts in Southern California. As part of this review, Fellows of the Academy have interviewed the Supervising Judge of the Family Law Departments in all of the major counties, including, but not limited to, Los Angeles County, Orange County, and San Diego County, as well as several past and present Presiding Judges of those courts. This document is the result of the above described investigation, interviews, and research. Its purpose is (i) to identify and to describe problems that exist in the California judicial system as a result of the historical failure to appoint lawyers with family law experience as judges of the California Superior Court and (ii) to suggest a course of action that will help alleviate these problems. While the statistical data and information collected varied slightly from county to county (and is	

Commentator	Comment	Committee Response
	available, upon request, for review by any interested party), the overall picture presented and the problems being experienced in each county are essentially the same. The facts that have given rise to this resolution can briefly be summarized as follows 1. Except for the occasional traffic ticket, most members of the California taxpaying public will never have any involvement with the criminal justice system. Similarly, most of them will never be involved in a civil law suit. The majority of these paying customers, however, will be involved in a family law proceeding. Currently, 35% of all the children in California are born out of wedlock, and the majority of them will be depending on the court system to obtain child support. More than half of all marriages in California end in marital dissolution. Well over half of all of California's children are, at some point in their lives, the product of a single parent home. 2. For most members of the public, their interaction with the Family Law Department of their local California Superior Court is the primary basis on which they will form their opinion of the judicial system. The issues heard by that court dramatically affect their lives. It determines not only when, where, and how often they see their children, but how much money they either pay or receive in the form of support and what portion of the assets they have accumulated they will be able to keep. If the participants in a family law proceeding feel they were treated unfairly or were heard by a judicial officer who was not qualified or interested in their case, this feeling leads to a disproportionate lack of respect for and poor attitude toward the entire judicial system.	1. No response required. 2. The Task Force recognizes the critical role that family courts play and the importance of improving, among other things, procedural fairness, judicial education, and resource allocation.

Commentator	Comment	Committee Response
	3. Despite the personal importance of family law, particularly to the litigants, a judicial assignment to a Family Law Department is generally considered to be the least desirable assignment. Part of the reason for this is that the vast majority of attorneys appointed to the bench have no family law experience. Early in their careers, these judicial candidates decided that they did not want to handle family law matters or deal with people who were so personally invested in the outcome of their litigation. Naturally, after being appointed to the bench, these new judges prefer to hear cases with which they have had some experience and which deal with areas of the law with which they are somewhat familiar. As these young judges gain seniority, they use that seniority to avoid hearing family law matters.	3. The Task Force made recommendations that attempt to address the issues that make the family law assignment undesirable for some judges. The need for appropriate resources, both staff and judicial, must be addressed. The Task Force encourages attorneys with family law experience to apply for judgeships. The Task Force believes that over time, the effect of the changes it recommends will be to dramatically increase the desirability of the assignment.
	4. In addition, the workloads of family law judicial officers tend to be substantially heavier than those in other departments, and, by any measure, they are not given adequate support staff. Unfortunately, the manner in which statistical information is kept by Superior Courts does not adequately reflect this disparity. For example, when a petition is filed and a summons is issued in a family law case, it is considered a single civil filing. Regardless of how many subsequent motions and orders to show cause are filed and/or how many times the parties return to court for hearings or trials, it remains "one single civil filing." When analyzing staffing needs, Supervising Judges and court administrators talk in terms of "actual court time" and disregard the chambers conferences, the research time, and the analysis and decision time that tend to take the majority of the judicial officer's time in family law matters.	4. Agree. The Task Force made recommendations that directly address the need to improve the workload measures in family law.

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	5. For Supervising Judges, making assignments to the Family Law Department is problematic. Not only are judges not standing in line for these assignments, there are few, if any, experienced candidates from which to choose. Typically, and historically, with some noticeable exceptions, family law lawyers have not received judicial appointments. Only a handful of Certified Family Law Specialists have ever been appointed to the bench, and the overwhelming majority of attorneys receiving appointments have never handled a family law case. The reason generally given for not appointing family law lawyers to the bench is their lack of "jury trial" experience. While it is true that family law lawyers have little jury trial experience, since jury trials are not allowed in family law matters, this fact is generally more than offset by the fact that, in order to obtain their certification, Certified Family Law Specialists tend to have far greater "trial" (albeit court trial, instead of jury trial) experience than the experienced civil attorneys who are routinely appointed to the bench.	5. The Task Force encourages experienced family law attorneys to apply for judgeships, and it suggests further changes to the judicial appointment process for the Governor's consideration.
	6. The net result is that both family law lawyers and family law litigants understandably feel that the court system treats them as second class citizens. Many of the judges who hear family law cases resent the fact that they have been assigned to the Family Law Department, have no interest in family law cases, and have no experience in the field of family law. They have been assigned to the Family Law Department, generally for a short period of time, because they are new, because they have "drawn the short straw," or because they are being punished. More often than not, the judges assigned to the Family Law Department are the youngest and most inexperienced judges, fresh either from the District Attorney's Office or from the Public Defender's Office. For	6. See response on 3. (above).

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	these judges, a family law assignment is part of their initiation and the price they pay for being a new judge. While these new judges seldom complain, looking at the assignment as a temporary respite until they can be reassigned to a criminal or other preferred division, they tend to leave their family law assignments at the first opportunity, leading to further disarray in the constantly changing bench of the Family Law Department. 7. For years, the solution to the "Judges don't want to do family law" problem was the "court commissioner." Judges appointed commissioners, and commissioners, rather than judges, did most of the work in the Family Law Departments. The system worked fairly well because the commissioners, unlike the judges, were forced to stay in the Family Law Department for years at a time, where they gained invaluable experience. Now, in virtually every courthouse, the commissioners are the most experienced family law judicial officers. Unfortunately, because of recent changes in California law, there will be no new family law commissioners. In the future, every judicial officer who hears family law cases will have to be a Superior Court judge. This fact significantly exacerbates the current problem. No one is arguing that a family law lawyer is necessarily a better family law judge. Having acknowledged that, however, experienced family law lawyers who turn out to be good judges tend to end up both running and staying in Family Law Departments for longer periods of time. These experienced family law lawyers/judges end up being the structure and stability on which every good Family Law Department is built, and these judges end up being the judicial officers before whom the most	7. The Task Force recognizes and appreciates the expertise, experience, and skill of many family law commissioners. And, the Task Force generally supports the existing Judicial Council policy that states that family and juvenile matters should be heard by judges rather than SJOs. Therefore, the Task Force encourages experienced SJOs to seek appointment to the bench. (Note, as an exception to this general rule, where possible, IV-D commissioners should be permitted to hear all aspects of a family's case, not just the support issues. The Task Force based the recommendation to allow IV-D commissioners to hear all aspects of a

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	difficult and complex cases are heard. 9. The bottom line is that there is a severe shortage of judicial officers with family law experience. Unless things change, this shortage of judicial officers with family law experience will become even more severe over the next few years as commissioners retire and are replaced by new Superior Court judges. Because of this problem, Family Law Departments will not have the necessary judicial resources to do the work they need to do and that the public deserves. This situation has hurt and continues to adversely affect the respect in which the general public holds our judicial system. For the reasons set forth above, the Southern California Chapter of the American Academy of Matrimonial Lawyers respectfully requests that, in connection with all future judicial appointments, the persons responsible for the appointment process (i) recognize that there is currently a shortage of judges with family law experience, (ii) realize that this shortage of judicial officers with family law experience has adversely affected the reputation of the judicial system and the respect the general public has for that system, and (iii) give due consideration to the importance of appointing judges with family law experience. While recognizing that the goal of the appointment process is and should always be appointing the best qualified judicial candidates; candidates with family law experience should not be excluded because they lack jury trial experience.	family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders.) 9. The Task Force encourages attorneys with family law experience to seek appointment to the bench. As noted above, the Task Force also recommends further changes to the judicial appointment process that are consistent with the points made in this comment.
82. Hon. Christine K. Goldsmith Judge	Agree with proposed changes if modified [Streamlining Family Law] Forms and Procedures 13	The recommendation to allow parentage matters to be handled as part

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Superior Court of San Diego County	I am concerned that allowing a Paternity Judgment to be processed at the time of a DV Restraining Order will confuse the issues to be presented at a restraining order hearing and result in hearings which are needlessly lengthened and continued as a result of its inclusion. It should likewise be noted that virtually all DVTRO requests are processed with fee waivers due to the alleged violence. If we make these files into mini-paternity cases, we allow litigants to avoid paying filing fees for processing and handling potentially years of proceedings.	of a DVPA action is designed to improve access for litigants; specific issues associated with implementation should be considered as part of those efforts.
83. Tom Gordon Senior Counsel and Policy Director The Center for Legal Empowerment, Accountability and Reform (CLEAR)	Founded in 1978 as HALT, the Center for Legal Empowerment, Accountability & Reform (CLEAR) is the only national organization dedicated to advocacy on behalf of users of the legal system. With 20,000 members nationwide, including over 3,000 in California, CLEAR's role is to ensure consumers' voices are heard when important changes to the legal system are proposed. CLEAR supports the recommendations of the Elkins Family Law Task Force subject to the modifications described below. The changes the Task Force proposes would be life-changing to the many thousands who use the family law system each year but who cannot afford a lawyer. CLEAR believes the following Task Force recommendations would go a long way towards creating a more user-friendly court for laypersons, and many of them could have the same effect in other California courts that are frequently used by non-lawyers Expaning Services Increase access to alternative dispute resolution	I Expaning Services Increase Access to ADR No response required.

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	Streamline forms and procedures Interpreters Make more interpreters available Public Information and Outreach Increase public information and outreach resources Court Facilities Make court facilities more user-friendly for non-lawyers Expanding Legal Representation The only recommendation we would modify is Recommendation 2 "Expanding Legal Representation and Providing a Continuum of Legal Services." Providing a continuum of legal services to meet the range of legal needs is essential to the delivery of justice by our legal system. Although some types of family law issues—complex custody disputes, for example—are likely to require representation by a lawyer, there are other areas people should be able to handle with minimal or no assistance from a lawyer. Expanding Self-Help To be sure, Recommendation 2 includes many proposals that would be of great value to legal consumers. For example, expanding the types of self-help services available and increasing funding for them would be particularly valuable reforms. However, other measures would help 2 Californians even more, both by lowering costs as well as by laying the groundwork for dramatically improving access to representation.	Streamline forms No response required Interpreters No response required. Public information and outreach No response required Court facilities No response required Expanding Legal Representation The Task Force recognizes that there are some family law issues that parties may be able to handle with minimal assistance from a lawyer. Expanding Self-Help No response required.

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	Improved Self-Help Services For simple matters, such as uncontested divorces, many parties will be able to represent themselves effectively with just a small amount of instruction. Any investment the court makes in self-help services will show a significant return through a reduction in the resources needed to deal with underprepared pro se litigants. California's small claims advisory services have already shown a positive impact on the experience of pro se parties and the court personnel who serve them. Expanding this type of advisory service to family law would have a similar impact. To deliver the greatest value to consumers, the courts should leverage their investment with those made by the many self-help websites that offer excellent information and access to forms at reasonable prices. Limited Scope Representation Bar associations should continue to encourage limited scope representation as another way to lower the cost of legal services. Many people without the means to provide a $5,000 retainer would happily pay $100 or $200 for an attorney to coach them or assist them with discrete tasks. To further expand the availability of such assistance, we advocate going a step beyond this Task Force recommendation and modifying California's Rules of Professional Conduct and Rules of Civil Procedure in order to resolve ethical ambiguities for lawyers providing unbundled legal services in all areas of law. Drawing upon proposals in a recent white paper by the ABA's Standing Committee on the Delivery of Legal Services, we have developed a set of recommendations to facilitate unbundling, which can be found at http//www.clearlegal.org/images/stories/CLEAR_Model_Rules_for_Un	Improved Self-Help Services Each trial court now has self-help assistance in family law, and it has, as the commenter suggests, proved very effective. Many California courts have worked to develop strong on-line resources as well. Limited Scope Representation California has developed rules, forms, procedures, and training on limited scope representation and has addressed all of the issues considered in the recommendations described in the document referenced in this comment other than rules regarding communication with unrepresented parties. The State Bar is currently considering such rules as part of the revision of the Rules of Professional Conduct.

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	bundled_Legal_Services.pdf. Legal Document Assistants The Task Force's recommendations leave a gap in the continuum of legal services. There is a lot of territory between the types of matter that can be handled through unbundled legal representation and those that consumers can handle entirely on their own. This gap can be filled by Legal Document Assistants (LDAs). Authorized by Section 7800 of the Business and Professions Code, LDAs are registered and bonded professionals who prepare legal forms at the direction of a client. They play an important role both in assisting pro se parties and as part of a menu of services available to those using and offering unbundled legal services. The Task Force should recommend that courts refer pro se parties to legal document assistants where appropriate. CLEAR notes that LDAs are not only licensed by the State of California and registered in their counties of operation, but also that many have years of experience practicing under a lawyer's supervision. Furthermore, LDAs are usually women, often bilingual and almost always are more easily accessible than the local courts. Under the current regulatory scheme for the profession, however, LDAs are often constrained with respect to the services they are allowed to provide. For example, LDAs who provide clarification about questions appearing on court forms, or who point out that a client is using the wrong form, risk running afoul of unauthorized practice of law restrictions. There should be a way for clients to benefit from the full expertise of LDAs. Former state bar president Jeff Bleich stated in the June 2008 edition of the California Bar Journal that "[W]e might allow	Legal Document Assistants While the Task Force is mindful of the benefits that many LDA's provide to unrepresented litigants, it does not believe that a recommendations that the court refer to those services is appropriate at this time. LDAs reported that the services they provide are the same as self-help centers. However, they charge for their services and do not operate under the supervision of an attorney. Based upon the testimony provided at the public hearings, it appears that there is currently no effective consumer protection oversight of LDAs. Current Regulatory Scheme The current regulatory scheme for LDAs is directed by statute and involves areas other than family law. The Task Force did not choose to make recommendations in this area.

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	some legal services to be performed by less-than-full-service lawyers including students, specialists (sort of the legal equivalent of nurse practitioners) or apprentices." President (now Ambassador) Bleich understood what the medical profession recognized long ago when it admitted midwives, physicians' assistants, and residents to limited practice alongside doctors Professional knowledge, training and judgment need not always be bundled into one trade. LDAs are the nurse practitioners of the legal profession. Thus, it is not surprising that they often have close referral and advisory relationships with local counsel. We therefore respectfully suggest and ask that the Task Force recommend the development of a family law certification program for LDAs, which would allow them to expand the services they offer beyond form completion once they demonstrate an appropriate level of competency in the field. CLEAR applauds the Task Force's efforts and its thoughtful recommendations, which will go a long way towards achieving the goal of equal access to the family law system for all Californians. With the small but important additions outlined above, that access would be expanded even further.	The current regulatory scheme for LDAs is directed by statute and involves areas other than family law. The Task Force did not choose to make recommendations in this area.
84. Geoffrey Graybill Attorney/Mediator Sacramento, CA	Recommendation That Discretion Of Family Law Courts In Child Custody Matters Be Eliminated* Commentator raises concerns about litigants in family court not being provided with meaningful due process as a result of volume and number of unrepresented parties as well as lack of access to appellate review. Commentator suggests family law courts should not have the authority to make custody decisions beyond those agreements reached	Discretion Of Family Law Courts The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	by parents. Concerns about training content for court staff is also noted, including concerns about specific organizational training content. Specific comments on recommendations follow Domestic Violence Survival of Orders Seeks to make these peremptorily determined custody and child support orders survive termination of the restraining order. Procedural Changes Urging unspecified notions of "due process rights" and "fair hearings" is disingenuous in that the drafters suggest nothing to overcome the deliberately inculcated bias against male parents seeking shared custody. Paternity and domestic violence cases and Family law court access Use the context of DVRO hearings as an opportunity to badger typically unrepresented accused males into conclusive judgments of paternity much like the rampant exhortation by bench officers in the not- too-distant past "you don't object to her request for a restraining order do you; you've both resolved to live apart anyway" [without explaining to him that the stipulation will foreclose any meaningful parenting time and increase costs to him for supervised visitation, custody evaluations and interminable trips to court to try to restore some semblance of a family relationship with his kids]. Children's Participation Calling for children's participation in domestic violence proceedings in the court's discretion, which in practical terms means it will be heard and given weight if its favorable or can be construed as favorable to the	Domestic Violence Survival of Orders The Elkins Family Law Task Force recommendations seek to increase access and address due process concerns in a variety of ways including through education, resource allocation, and improved procedures, all of which are designed to improve procedures and processes for all litigants. Children's Participation The recommendations in Children's Participation are designed to enable a balance to be struck so that

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	female parent and not otherwise, would in actuality be wholesale incorporation of AFCC-Cal ideology. Recommendation 6-8 would impose AFCC-ideology statewide which will be a disaster for children as the [specific case identified] case exemplifies. These criteria put male parents in a double bind that amounts to a conclusive presumption of parental unfitness or of prejudicially diminished parental aptitude or skills. If the male parent seeks judicial assistance to protect his children from abuse and violence by a female parent, any pretext will be sufficient to absolve even the most abusive female parent by finding him the "dominant aggressor" systematically inflicting emotional abuse which leaves the female perpetrator "no choice" but to be abusive and violent herself. On the other hand, when undeniable abuse by and/or serious psychopathology is discovered in the female parent during the course of a child custody investigation, the male parent is deemed unfit or of diminished parental aptitude or skill for not standing up to her and protecting his children so that he receives only supervised visitation with resulting maximum child support obligations which subsidize the continued abuse of his children. A well-known published case exemplifies this scenario. See, LaMusga v. Superior Court The Recommendations for addressing these obvious pathologies simply call for more resources to expand litigation assistance to the unrepresented and commandeer appellate representation that is already in short supply. It is common knowledge that the resources to implement these recommendations will not be available which reduces them to a catalogue of theoretical and unrealistic palliatives.	determination of whether children testify is based not on content but on a variety of factors including their interest in testifying as well as their age and capacity.

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	Even if all recommendations were adopted, due process and equal protection of the law would be unavailable in child custody proceedings because all evidence presented is pre-interpreted through mandatory "training" provided to bench officers, facilitators, mediators, evaluators, special masters and minors' counsel under the auspices of the Administrative Office of the Courts (AOC), which is the administrative arm of the Judicial Council, and otherwise. Unfortunately the AOC is very secretive about the content of this "training." However, the rules of court promulgated by the Judicial Council require all court-related child custody functionaries to be "trained" about domestic violence. The nature of the training can reasonably be deduced from training on domestic violence provided by and under the auspices of the Association of Family Courts and Conciliators (AFCC).	Domestic Violence Training Rules of court reflect statutory mandates regarding domestic violence training and national research on promising practices in this area.
85. Erwin L. Green Huntington Park, CA	I have several comments. First when an attorney is retained, the cause of his/her client should be stated as CLIENT wants....not as attorney chooses...My attorneys conveniently omitted the fact that very substantial real and personal property was brought into marriage that was ultimately disposed of without an accounting ever being provided..second, I cannot retain an attorney because the scope and content of my cause is wrongdoing by attorneys of record..a convenient manner to protect fellow Bar members/colleagues from being held accountable for WRONGDOING! There is substantially more that the State Bar negates its obligation to members clients. The overhaul of FAMILY LAW is LONG OVERDUE!	The Task Force cannot comment on specific cases. Conflicts between attorneys and their clients are not frequent, but can be very frustrating for all concerned when they do arise. There are, however, some options for a litigant who has complaints against their attorney. Most local bar associations have panels for fee arbitrations in which a litigant can contest attorneys' fees they have been charged. There is also the opportunity to consult with a legal malpractice attorney to see if a cause of action for negligence or other liability might exist. Complaints can be pursued with

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		the State Bar's disciplinary panel. The Task Force agrees with the commentator that it is unfortunate when the entire profession is help responsible for the wrongdoing of a few attorneys.
86. Lyn R. Greenberg Licensed Psychologist Los Angeles, CA	The Task Force has noted throughout the report that litigants of all income levels may benefit from the involvement of mental health professionals, either as mediators, evaluators, or therapists/counselors. (Many will also benefit from the involvement of parenting plan coordinators.) On this issue, it may be useful to consider and address some of the barriers to obtaining adequate services for families. Barriers to counseling services co-exist with other problems in access to medical care, and clearly the Elkins TF cannot resolve those. Other barriers to quality service, however, are specific or exacerbated for the populations we deal with. Lower income families are often forced to rely on agencies whose therapy cases are assigned to interns or unlicensed professionals. Middle-income families may have some insurance coverage for counseling services, but the insurance company may sharply limit coverage, exclude court ordered services, or rely on personnel who are untrained in handling high-conflict custody disputes. There is a shortage of well-trained specialist therapists even among the private practice community. In general, an enormous training gap exists on these issues, as high conflict families often require different and more carefully planned services than traditional psychotherapy. Additionally, the prevalence of attacks on mental health professionals	Services The Task Force considered issues related to access to services; recommendations reflect the need to identify, reallocate, and provide resources to families. Mental Health Professionals

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	involved with child custody cases has made many professionals reluctant to provide services to this population. This also applies to physicians, particularly those treating children, who face the dual burdens of being denied adequate payment by insurance companies (some are collecting as little as 30% on the dollar) and facing time-consuming demands from court-involved parents who are not paying their medical bills and then demand further, unpaid services from the physicians. Increasingly, pediatricians are simply telling these litigants that the pediatrician's practice cannot serve the child and referring them elsewhere. The suggestions I offer here are based on a variety of sources, including my own experience, discussion with colleagues, observation of dialogue in interdisciplinary communities, etc. They obviously will not solve the whole problem, but they may offer a start on some of these issues. •It may be useful for the next phase of the Elkins project to include a formal opening of dialogue with the mental health and medical communities who serve these populations, or perhaps create an advisory panel of some kind with representation from the private practice communities. Mental health professionals (MHPs) have been invited to participate here as others have, but since some of the solutions to the problems we face may require organizational actions, some kind of formal collaboration with the Association of Families and Conciliation Courts, the California Psychological Association, or other such organizations may be helpful. This may be useful both in mobilizing some resources to assist with the gaps in training and resources, and in promoting some interdisciplinary understanding. For	The Task Force recommendations are designed to better define the role of various professionals working in and with the family court and to improve processes and procedures for the benefit of families as well as those working with them. Formal Collaboration The Task Force recommends that implementation of the recommendations include working with court-connected professionals and the public to address these and related concerns.

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	example, it may be useful for the legal and judicial communities to understand the ethical and licensing requirements that apply to mental health professionals, the risks to mental health professionals court-involved families, and the double bind that is created when a professional is caught between the orders of the court and a licensing board that can revoke one's right to practice. (Often, licensing boards will respect orders of the court on certain issues. On other occasions, they hold the mental health professional to certain standards even if the court has ordered the professional to violate those standards. Too often, the mental health professional has the burden of paying private counsel to protect the mental health professional from being sanctioned either by the court or the licensing board. In addition to the fact that this is an unfair burden to put on the mental health professional, it is not likely to lead to the MHP being willing to continue to take on child custody cases. Many trial judges are understanding if an MHP declines to do something, or to express an opinion inappropriately, based on ethical standards (which are incorporated into licensing regulations/law in this state). Of course it is a waste of resources to have a trial judge order an MHP to do something, have the MHP demur based on ethical or licensing requirements, and then have the court convene another hearing only to find out that the MHP cannot do what the trial judge wanted him or her to do. Some interdisciplinary education to assist judicial officers in understanding MHPs obligations, and in using our services appropriately, may avoid unnecessary hearings, waste of resources, and eventual impeachment of professionals who stray from standards of practice. Additionally, it may be useful to differentiate between the level of professional risk faced by court staff and the much greater risk faced by private practitioners.	

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	Address the training gap Many problems and disputes, particularly where therapeutic services are concerned, result from poor or inadequate training in the mental health professionals providing the services. Medical professionals may also be unaware of the provisions of joint custody orders, orders requiring consultation between parents, or the risks of relying on history from only one parent. Poorly conducted therapy can escalate rather than reducing conflict. It may be a good use of resources for local courts to sponsor trainings for various agencies regarding the special issues in providing treatment to court-involved families. I know of professionals in several communities who might be willing to be involved, or even volunteer their time to conduct such training. Even if some compensation or reimbursement of expenses is provided to trainers, the result of having better trained therapists in the community would be a huge increase in resources available to families who do not have the means to hire specialists. It may be hard to reach all therapists on insurance panels, but community agencies and some managed care facilities or low-cost centers could more easily be reached.	Address the training gap The Task Force recommendations include recommendations for training and education of court-based and court-connected professionals.
	Enhance informed consent Support detailed stipulations and orders. One of the most common errors by court-involved mental health professionals, and those who engage them, is skipping over the informed consent process. In many jurisdictions, the evaluator or therapist receives nothing but a one-line order to "do therapy" or "do a custody evaluation." No information about the case, or what the court is looking for, is provided, and the mental health professional is actively discouraged from employing the kind of comprehensive order that would prevent disputes later. I have	Enhance informed consent Existing law requires that the court provide specific information to the appointed evaluator. The Task Force recommendations support providing more clarification about the roles of investigators and evaluators and providing information to litigants about all court processes and

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	seen, and heard about, many costly hearings regarding disputes about what therapeutic information is privileged, whether a waiver is valid, whether a therapist needs the client's consent to release records, etc. Often, these disputes lead to conflicting instructions provided to the MHP by the Court, the attorneys, the MHP's insurance company or attorney, and the client. MHPs are neither qualified nor empowered to choose which law to follow, yet all too frequently find themselves being asked, ordered, or pressured to do so. Thorough informed consent, including detailed stipulations and orders, can address the most common issues which create problems after the case has proceeded and one of the litigants is unhappy. This process often allows the litigant to review what will be expected of him or her as part of the evaluation or therapy. If the person is represented, the stipulation can be provided to counsel. If the person is unrepresented, the MHP may refer the therapist to self-help resources or low-cost legal services to review the document. Faced with diminished resources, time pressures and families in distress, it is often tempting to bypass this process and tell the MHP to "just get started" without the detailed consent or the court's signature on the order. There are few more dangerous mistakes that a private mental health professional can make than proceeding without a signed order or adequate informed consent. While it may seem more time consuming to follow these steps, ultimately, it is far more expensive and time consuming to retroactively address disputes on issues that should have been clarified up front. The process of establishing the order, whether for evaluation, treatment or parenting plan coordination, also allows for some interface between the MHP, counsel and even the court. The result is likely to be that the order, once issued, will be a realistic representation of what the MHP can ethically and practically provide. It will avoid the situation in which evaluation	procedures.

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	conditions are set that will not allow a real opinion to be reached, or therapy conditions are established that will make success impossible, because these conditions were established without mental health input. Informed consent procedures, including sample orders, have been presented in the past at judicial and interdisciplinary training and should likely be continued as new judicial officers arrive. This content should also be addressed in any trainings sponsored for mental health professionals. (MHPs do not get this material in graduate school, because our population is such a small segment of the population at large.) Enhance judicial support for mental health professionals who provide appropriate service. If a mental health professional completes a detailed informed consent and obtains the signatures of parties, counsel (if any) and the court before beginning services, the MHP should be able to rely on the terms of that order or stipulation. While abuses by MHPs certainly occur and should be dealt with if ethical standards are violated, it is fundamentally unreasonable to create a situation in which an MHP has executed a thorough informed consent with parties and counsel and had it signed by the court, and the MHP has relied on and adhered faithfully to the terms of that order, only to have part or all of that order disallowed by either the same or a subsequent judicial officer because one of the parties changes his/her mind. MHPs who face such challenges generally do not have insurance coverage for them – our malpractice coverage covers only licensing complaints and malpractice suits. No mental health professional can stay in business if they risk spending twice as much in unpaid time and legal fees as they earned on a case to begin with. Based on the arithmetic alone, many MHPs have "caved" to such tactics, but some very skilled people are reducing or	Judicial Support The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	eliminating their involvement in evaluations or high conflict cases generally, because of these issues. Certainly, many MHPs are reducing their availability for reduced fee cases, because they have to make up the time wasted or money lost on such issues. The Court and the parties will usually be able to find someone to take a case, but many qualified people are being much more selective. Every profession needs to have accountability, and ours is no exception, but the Court may find that lower-conflict behavior will occur in the parties or counsel if they are also accountable for the decisions and agreements they make. I hope this is helpful…	
87. Hon. Mary Ann Grilli Judge Superior Court of California Santa Clara County	The Elkins Task Force has done an excellent job of reviewing and highlighting many key issues facing the Family Courts of California. Their efforts and commitment to the area of family law are definitely appreciated. My comments regarding the specific proposals are as follows Right to give live testimony As currently drafted, the proposed rule would require the court to accept any competent testimony that is relevant and within the scope of the hearing. One solution would be to replace the word must with may, but that could leave the courts in the same position as they are now. Perhaps a solution would be to reference the rules of evidence in the rule itself. That way, duplicate evidence, which might be otherwise competent and relevant, could be eliminated.	Right to give live testimony There is nothing currently in the recommendation that would interfere with a judge's authority to limit testimony that is cumulative, hearsay, or would be otherwise inadmissible under the California Evidence Code. This suggestion about specific language should be considered during

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		implementation of this recommendation.
	Expanding Legal Representation In B, the words one party should be replaced with either party. In C, please consider whether the fee petition format could be standardized for the self service centers around the state. The last sentence of C is a very important section and should be a new section in order to highlight it. Another option would be to include it in section 3.	Expanding Legal Representation Agree to change of one party to either party. A standard fee petition should certainly be considered as part of implementation.
	Increased fudning for legal aid There is an assumption that there is funding for legal services in domestic violence matters. This funding is very limited. Perhaps some revision of the language could be made to clarify this.	Increased funding for legal aid The Task Force recognizes that there is limited funding for all types of family law cases.
	A number of the options in section 3 will require funding. Perhaps some pilot programs could be done under the new legislation passed in 2009 in order to ascertain the costs and which programs provide the best results for parties.	Agree that many of these options will require funding and that AB 590 will provide helpful information about costs and best practices.
	Caseflow Management There is a critical need for legislation in this area. Currently, the code section which refers to case management talks about doing it only with a stipulation. Many courts proceed with a form of case management through the use of status conferences or other case management tools. The code needs to be changed to allow for case management. I would recommend that section 11 be first to deal with the legislation need.	Caseflow Management No response required regarding need.
	Differential Caseflow Management	Differential Caseflow Management

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	In section 2 of the recommendations, it appears that there is a recommendation for differential caseflow management. A number of states have adopted rules for this practice, but it will require a careful analysis of which system will work best here in California. Will it be a unified system for the whole state or will local courts have options to manage their calendars in a different way based upon the size of the calendars and other factors. This is a very complex area and it may require an implementation study with a smaller group to propose all of the details for this.	Agree that different options will need to be carefully examined as part of implementation.
	Streamlined Procesdures In section 6, I strongly support a standard procedure for default and uncontested matters. At the same time, however, we need to simplify the forms and process, so that parties and attorneys can avoid having paperwork rejected in one court that would be accepted in another.	Streamlined Procesdures Agree – this is also discussed in the recommendations regarding simplifying forms and procedures
	Reources available for ADR In section 7, concerning ADR availability, there should be some mention of the need for special procedures for domestic violence matters.	Reources available for ADR The Task Force has addressed this important concern in its sections on ADR and domestic violence.
	Efficient use of time In section 10, there is reference to allowing courts to provide alternatives to court appearances, such as phone appearances. There should be rules on a statewide basis that permit certain appearances by phone. There are civil rules that limit phone appearances and there are some rules regarding phone appearances in child support, IV-D, matters. The drafters will need to decide whether the rules should be	Efficient use of time California Rule of Court 3.670 now sets forth a policy favoring telephone appearances. This is an important area for discussion as part of implementation.

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	mandatory or optional. In other words, should the judge have the option to require an appearance in person for a particular hearing? Sanctions against attorneys This section should apply to both attorneys and self represented litigants. The section talks about situations where both parties are self represented, but does not seem to deal with the often difficult situation where one party is represented and one is not. The section should cover all options. The section also appears to propose monetary sanctions only. There may be other options that should be explored for sanctions. Orders After Hearing The concept that the Court should always prepare the orders after hearing has a significant cost associated with it. This would require substantial staff time and court staff is already stretched beyond its limits. Generally, attorneys do their own Orders After Hearing. One potential solution to some of this would be to have a uniform rule that specifies the timeframe for when the Order After Hearing has to be submitted and which provides the opportunity for review by opposing counsel. When one or more of the parties are self represented, the issue of whether the party has an opportunity to review the order before it is sent to the judge or at the same time needs to be clarified. A number of courts have rules about this and it would be a good time to harmonize the rules. Systems to Finalize Older Cases This section really belongs as a part of the earlier discussion on case	Sanctions against attorneys The section has been modified to more clearly express that reimbursement may be appropriate for self-represented litigants. While the Task Force focused on monetary sanctions, other options may be explored in developing implementing rules. Orders After Hearing Agree that there can be significant costs associated with preparing orders after hearing. However, there are likely to also be cost savings. In a study of cases comparing cases where orders had been prepared by the court to those where they had not, those parties who had not had orders prepared were twice as likely to return to court on the same issue as the first hearing. Timelines and review practices should be considered as part of implementing rules. Systems to Finalize Older Cases Methods to accomplish this goal

Commentator	Comment	Committee Response
	management. Some courts provide for case management conferences or status conferences for this purpose. Time Standards This whole area will require some careful study and research. One option to consider as a part of this would be to require status reports as are done in Probate when a case reaches one year and 18 months, along with some expectation language. Rules of Court Statewide rules of court on some issues in family law would certainly make it easier for attorneys and self represented parties to know what to do around the state. However, consideration needs to be given to having some flexibility for local programs, as well as the differences between the counties regarding how custody and visitation are handled. To be specific, having a statewide rule for ex parte matters could cause a significant increase in staff needs, which will increase costs. In a number of counties, parties or counsel need to appear for ex parte matters. In others, ex parte matters are done on the papers alone. There would need to be a decision made on which system is allegedly the model system for adoption into a statewide rule. Is one definitely better than the other. One possibility would be to have two clear options and require that the courts opt into one or the other Having statewide rules that are simple and easy to understand is a goal worth working toward. It will require a great deal of work and time to draft and revise these proposed rules. A small working group would be helpful on this vital issue.	should be considered as part of implementation. Time Standards This proposal anticipates regular review and appropriate modification of any time standards. Rules of Court The Task Force has modified its proposal to recognize the value of local rules in certain situations. Staff Needs The impact on staffing should certainly be considered as part of implementation. The option of two clear rules is one that should be considered. Statewide rules No response required.

Commentator	Comment	Committee Response
	Providing Clear Guidance Through Rules of Court Having statewide rules that clarify which civil rules, if any, apply and how things are supposed to be done would be very helpful. This is a very complex and time consuming process and a great deal of resources will need to be committed to this. That is not to say it should not happen, rather that resources and volunteers will be needed.	Providing Clear Guidance Through Rules of Court No response required.
	The elimination of local rules could be a very difficult process. For example, in the custody and visitation area, counties can be either recommending or confidential. Statewide rules would need to allow for the various procedures for custody matters, which are better done on the local level. I would recommend that there be a detailed review of the local rules around the state with the idea of seeing which local rules could be put into statewide uniform rules. In addition, there should be room for local programs that provide assistance to parties in a number of different ways. For example, Santa Clara County has a staff person whose title is court settlement officer. He assists parties and counsel in resolving their matters. It would truly be a shame to lose the ability to have local options such as requiring parties to meet with the settlement officer and many others around the state. This section should be amended and there should be a study done as a part of the process.	Elimination of Local Rules The Task Force has modified its recommendation to recognize that there are additional appropriate reasons for local rules. Local rules should certainly be reviewed in developing statewide rules.
	Children's Voices The last sentence of this section could raise some ethical issues for judicial officers. It would depend on who is doing the program and what the content was to be. For example, if the program is put on by an interest group that only works with one side of the case, a judicial	Children's Voices Agree. The Task Force recommendation has been modified to include reference to the Code of Judicial Ethics.

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	officer might not be willing to participate in the program. Please consider putting language into this section that says something like, within the terms of the judicial canons of ethics…	
	Children's Voices There should be some reference to appointing minor's counsel in this section. The various options outlined in this section are not all open to judicial officers absent a stipulation of the parties. For example, to have the child testify in chambers with no attorneys or parties present has some real due process concerns absent a stipulation.	Children's Voices This section has been redrafted and is now "Children's Participation and Minor's Counsel." The Task Force recommends that testimony always be done on the record, even when there is a stipulation that permits the child to testify in chambers.
	Domestic Violence The survival of orders after the expiration of the restraining orders does require some legislation. While it is clear from the forms, the code is not as clear currently. The legislation might also clarify the issue of priority of orders. For example, currently criminal orders trump family court orders. If, however, the family order is more restrictive than the criminal order, should that not be the order to follow?	Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Statewide consistency Tthere should be very careful consideration about whether DV cases should only be subject to state rules. Here again, the issue of ex parte procedures arises. In our court, for example, parties are permitted to fax file their request for restraining orders from the local DV agencies and no appearance is required at the ex parte level. It would be a shame to eliminate this option.	Statewide consistency Statewide rules of court do not prohibit fax filing in these cases so this procedure would not be prohibited. The intent of the recommendation is to ensure that courts consider whether any local procedures might violate or conflict with state law.

Commentator	Comment	Committee Response
	Enhancing Safety Expedited handling of child abuse allegations is an excellent idea. This will require some legislation to accomplish the goal. Currently, courts should all have protocols for handling child sexual abuse matters under section 3118. These should be reviewed with the idea of developing a standard procedure linking the courts and the social services department and setting the time lines for the investigations.	Enhancing Safety No response required.
	Child welfare services Also goes to the issue of linking the court and social services. The concept of treating children the same regardless of where they enter the system is also a good idea. It will, however, require some legislation and some funding to accomplish. The CASA recommendation may be problematic given the federal mandates relating to where they can serve. There has been a pilot program involving CASA volunteers in family court and it did not end in a request to expand their services into the family court arena.	Child welfare services Specific implementation issues for this recommendation should be addressed during implementation.
	Contested child custody The evaluations referenced here are sometimes called brief focused evaluations. Courts should be encouraged to create programs like this which could hold down the cost for the parties. There would need to be funding for additional mediator/evaluators who might be needed.	Contested child custody Specific implementation issues, including identification of needed resources, should be part of implementation efforts.
	Appropriate number of mediators The need for mediators is very high and courts definitely need this vital resource in order to effectively handle our caseload. This is an excellent recommendation.	Appropriate number of mediators No response required.

Commentator	Comment	Committee Response
	Minor's counsel The number of days should specify court days or calendar days for clarity. The rule might also include some language about setting a termination date for minor's counsel's role. Some courts have an order within the appointment order that provides that the appointment terminates in two years, absent an extension by the court. Courts should also develop clear procedures concerning the process for paying minor's counsel and parties need to be made aware of the process from the outset. Finally, this section should include a proposal to eliminate the statement or reasons language in the law currently. Minor's counsel should not be an evaluator or a witness in these matters. Scheduling of Trials The concept of a day to day trial involves a significant increase in judicial resources for family court, which will require funding. While day to day trials may appear to be the best option, there could be others which provide a similar high standard for these trials. Options should be explored before changing the entire system.	Minor's Counsel This section has been redrafted and is now covered in Children's Participation and Minor's Counsel. Details regarding procedures as noted in the comment should be considered during implementation. Paying minor's counsel Agree. The recommendations address costs and payment. Statement or reasons Agree. The Task Force recommends eliminating the use of the Statement of Issues and Contentions. Scheduling of Trials Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded.

Commentator	Comment	Committee Response
		Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. There are courts that are currently able to provide long-cause hearings and trials without undue interruption of the proceedings. The Task Force anticipates that implementation of effective caseflow management will address many of these issues. Additional strategies to provide reasonable long-cause hearing and trial procedures should be considered in developing implementing rules.
	Litigant Education The idea of educating litigants is a good one, but it will require additional funding to the self service centers in order to accomplish it.	Litigant Education No response required.
	Providing information about self representation is also a good idea. Included in this information could be information on ADR and limited scope resources open to parties.	Providing information Agree that information about ADR and limited scope would be helpful.
	Information throughout the case Presents some ethical concerns. The court could be in the position of giving legal advice to parties at each step of the process.	Information throughout the case The recommendation proposes that this information would be general and often provided in group settings to avoid giving legal advice.

Commentator	Comment	Committee Response
	Information on evaluation Raises the issue of who is the creator of the list and who maintains it. Courts have been very reluctant to vet the lists or even to keep such lists. Settlement opportunities It is not clear what is meant by judicial involvement and supervision in the last sentence of the section. Expanding Services Bringing services to parties to help settle their cases is an excellent idea. There will need to be funding to accomplish this. All forms of ADR available Legislation is needed in order to mandate referrals to ADR. The civil programs have worked well and, with funding, the family court could also accomplish the goals.	Information on evaluation Agree that recommendations regarding these lists should be considered as part of implementation. Settlement opportunities Judicial involvement and supervision is intended to mean that if there are indications of adult or child safety that judicial officers may need to inquire as to the voluntariness and appropriateness of the agreement. Expanding Services No response required. All forms of ADR available The Task Force has not recommended that referrals to ADR be made mandatory. Most litigants report a desire to try to resolve issues and presumably would choose to try to do so if ADR options were available and affordable.
88. Susan Groves Family Law Facilitator Superior Court of California San	Leadership, Accountability, and Resources I agree that the family law supervising judge (FLSJ) should have an elevated status, akin to a presiding judge, in a court where there are a	Leadership, Accountability and Resources

Commentator	Comment	Committee Response
Diego County	large number of family law departments. I also believe that the FLSJ should be the involved in coordination of staff and judicial resources and development of access to community resources. However, I do not agree with the recommendation, as written, that the family law supervising judge should have a formal role in the management of the court's self help center (SHC) . Court administration and operations should work closely with the FLSJ to ensure the SHC is meeting the needs of the self-represented litigants and the court in the most efficient and expeditious manner possible. This work should be undertaken as a team. In most courts, however, FLSJs rotate in and out of that assignment; some stay longer than others. Having the FLSJ in a formal management role has the potential to cause disruption because in essence there would be a new "judicial manager" every two or three years, each with his or her own perspective on how the SHC should operate. Many family law judicial officers have had experience in the delivery of self-help services, while others not as much or at all. The overall operation of the SHC should be left to the manager of director of that program, with input from the FLSJ and court administration. All major changes in program policy or procedure should be made in consultation with affected court stakeholders such as the family law bench, court administration, and managers of family law business offices and courtroom clerks. If the recommendation is adopted as currently stated, the term "formal management role" should be well defined. For instance, would the role of the FLSJ extend to personnel issues, including hiring? What would	Family law supervising judge (FLSJ) The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.

Commentator	Comment	Committee Response
	be the hierarchy and to whom would the SHC manager/director report to? Furthermore, if this recommendation is adopted, each court should be allowed to opt in or opt out in the best interest as determined by each individual court.	
89. Jibran Joseph Hannaney Orange County , CA	Commentator provided comments on specific case.	No response required.
90. Shelley Hanson California Litigant Sacramento, CA	There is one thing I really liked in the Elkin's reform. There was the provision that would not make parenting time-share a factor in child support. This would be a good thing. Of course controlling abusers would be still be motivated to fight for children, but this will help some mothers and children. However, the inadmissibility of declarations provided to mediators/Minor's Counsel will create a yet another problem for abuse victims, and an advantage for abusers. These declarations are provided to mediators in cases where there is little documented evidence but multiple witness accounts of violence. Rather than demand all witnesses appear in court, a recording can be made of their collateral statements made to mediators. OR...they could participate by telephone as is done in the vast majority of administrative hearings for unemployment benefit appeals cases in many states. Testimony given under oath via telephone is considered just as valid as in-person testimony. Forcing all witnesses to personally appear in court would leave victims with little ability to "prove" their cases.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Recording A recording of a conversation with a mediator would not allow for cross-examination of that witness, nor would judges be able to assess the credibility of the witness. See the section on Case Management for recommendations about telephone appearances.

Commentator	Comment	Committee Response
	It is not believed that in-person testimony is imperative for a judge to make a finding of credibility. Abuse victims would lose witness accounts if all were forced to make time to appear, but there would be a sound compromise if telephone participation were allowed. As for recognizing primary parenting, it's a good idea, and should have been done all along. But it could be a hard thing to prove. Plenty of abusers will be going all out to paint their former mates as unfit in any way they can, and children will continue to suffer. Honestly, I don't see the reform, if* There is not true or fair reform IF- 3044 section F is not strictly enforced, so that abuse victims are aware of their rights at the onset of litigation, and provided the protections against the award of joint legal or physical custody to abusers, as stated within California Family Law Code Section 3044. * There is not true or fair reform IF- The elusive and vague "finding" of domestic violence is still not considered to be met, whenever the evidence of abuse as listed in section 3011 are provided. These include E.R. Reports, Police Reports, Safe House Records, CPS Reports, and TRO records being presented by victims. * There is not true or fair reform IF- There's still no effort to hold "mediation" to the same standards of transparency and recording as any other courtroom testimony. ALL mediation sessions should be recorded just the same way that all other nature of court proceedings are recorded so that there is a way to validate what is stated in Mediation Recommendations.	FC 3044 The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Task Force report includes recommendations addressing litigant education. Mediation The Task Force recommends that mediators providing recommendations to the court be available to testify and be cross-examined so that parties have the opportunity to address these types of concerns. Information the mediator

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	ALL documents provided to any mediator should also be made a part of the court record, so that every single bit of evidence that has been considered in the recommendation will be available as part of a trial. This will eliminate the practice of mediators selectively excluding evidence, or considering evidence that has not been made a part of the record and made available to both parties. *There is not true or fair reform IF- There is also no mention of demanding a written legal argument for any custody determination, or a movement to record all mediation proceedings if they are going to be considered binding. All too often, what is said behind closed doors and what is placed into their reports is inconsistent, and it would inappropriate to uphold the mediator/or even Minor's Counsel's written word as to what a child has said, without a recording to back it up if it were contested. Time and again I am hearing of older children's preferences being distorted from a mediation or Minor's Counsel session to the written report. *There is not true or fair reform IF- ALL documents provided to a mediator are not filed in the courts as evidence so that evidence of abuse is continually tossed into a file and ignored in mediation recommendations. *There is not true or fair reform IF- Also the mandatory court appointment of Minor's Counsel (section 9) is disaster for children, the vast majority of whom have been cared for primarily by their mothers all their lives. No social institution has ever forcibly separated more children from good and caring mothers than the nation's family courts. Minor's counsel has historically been a	relies on should be provided to the court and the parties so that the parties have notice and an opportunity to respond. Minor's Counsel The Task Force recommendations on Children's Participation and Minor's Counsel are designed to improve the processes and procedures in this area and address these and other related

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	major barrier to justice, not a liaison. When there IS Minor's Counsel, ALL proceedings and sessions that are being utilized in order to form recommendations should be recorded and made a part of the record as listed above for mediators. I'm not sure how this merges with existent law, and there was no mention in the Domestic Violence/Child Custody portion of Family Law Code Section 3044. I especially am not happy with the verbiage of the court's opinion of a "finding" of domestic violence. This is what hurts abuse victims most. Victims are entering proceedings with Emergency Room records, safe house records, CPS reports, domestic violence restraining orders, and police reports, even with photos, and still being told they don't have a "finding' when they ask about the protections of Family Code Section 3044. The law needs to uphold that this evidence which is listed in the statutes as what counts as evidence of abuse, and not leave it up to the opinions of court professionals. Family Code Section 3044 and 3011 specifically state that the above documents count as evidence. Cases with hard evidence should not be held to the vague "finding" that gets victims discounted, and their children handed over to perpetrators. No one with this amount of evidence should be told they don't have a "finding". This is just another way to discount abuse and force victims into costly litigation/mediation. Real reform for victims would mean no mandated mediation in cases with hard evidence of violence (as stated in 3011 and 3044). In cases that are mandated into mediation with little evidence, but allegations of abuse, all mediation proceedings should be considered as transparent as any other legal proceeding, including fully recorded sessions, otherwise a mediator's recommendation/testimony would be considered "hearsay". Allegations of abuse made in mediation	concerns. Domestic Violence/Child Custody Portion The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Task Force does, however, support the Judicial Council's Domestic Violence Practice and Procedure Task Force's report and their current efforts to implement recommendations in that report, including those relating to child custody and domestic violence (see appendix).

Commentator	Comment	Committee Response
	should be made a part of the record as well, and custody must be denied to abusers. There also is no mention of maintaining the continuity of care in the majority of cases where mothers are primary care givers. I am more than a little concerned that the task force doesn't seem to be addressing that fact that laws (3011 and 3044) aren't being enforced. Most troubling is that even though the California Office of the Courts is responsible for one of the most comprehensive studies validating that 75-78% of contested child custody are the result of domestic violence, contested custody proceedings are continuing with little change to protect victims and some changes (mandating Minor's Counsel) that will make the experience even more likely to result the continuation of practices that violate the human rights of mothers and children attempting to escape a violent environment. I hope our opinions really do count. Be aware that victims of family violence who have experienced years of further abuse through family court litigation are often emotionally and financially drained. Coming forth to even address this can take more energy than they feel they have. Bear this in mind when tallying up the actual number of victims who were able to come forth with comments. For each of us who do, there will have been many who just could not bring themselves to do so.	Contested Child Cusotdy The Task Force recommendations primarily address procedures; the issue of what is considered by the court in making custody determinations is an area of substantive law in which the Task Force chose not to make recommendations.
91. Kevin Harleman	Commentator provided brief in specific case.	No response required.
92. Terry Harris, MSW	I am writing on behalf of Shasta Women's Refuge, a domestic violence	

Commentator	Comment	Committee Response
Client Advocacy Manager Shasta Women's Refuge Redding, CA	and rape crisis center in Northern California. We have been assisting men, women and children impacted by interpersonal and sexual violence for 30 years. We wish to submit comments pursuant to the Elkins Family Law Task Force Draft Recommendations. We applaud the Task Force efforts to ensure that family law litigants are afforded full fairness, justice and resources under the law, and, most importantly, that the best interest of children are protected. Caseflow Management Agree. The court should become responsible for orders after hearing and making them available immediately following court. To put this administrative responsibility on victims under stress and without attorney representation risks the safety of victims and children. Children's Voices Children's Input. Disagree in part. A minor child of any age should never be required to give direct testimony in open court in his/her own custody case even when the court determines there exists probative value. Domestic Violence Children's Participation. Children should be spared being directly in the litigation process if the abuser is a parent. This is not to say a child's input cannot be sought with the assistance of a child-focused mental health professional.	Caseflow Managemnet Agree that domestic violence matters are a high priority for courts to prepare orders after hearing. Children's Voices The Task Force recommendations do not suggest requiring that children provide testimony in open court; the recommendations provide a range of options the court might consider depending on variety of factors including the impact on the child.. Domestic violence The Task Force recommendations regarding children's participation reflect the range of cases that come before the family court and the need to

Commentator	Comment	Committee Response
		consider that some children want to testify or participate and others do not.
	Enhancing Safety We agree with the need to provide more resources and efforts focused on the independent substantiation of domestic violence and/or sexual abuse through speaking with neighbors, teachers, etc. However, just as an unsubstantiated report of abuse by CPS does not mean that abuse did or did not occur, unsubstantiated reports should not signify that parents are trying to alienate children from the other party.	Enhancing Safety The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Litigant Education Orientation to Child Custody Mediation Agree with modification. More effort should be made to making sure that the timing, organization, and format of the information is presented in such a way that it is easily understood by litigants with various reading, writing, language and comprehension skills.	Litigant Education No response required.
	Enforcement of Orders Agree. However, leaving the detail up to parents invites problems in the future. Mandating a long form detailing a parenting plan could avoid the parties coming back to court to address issues left unaddressed in a poorly drafted plan. This can be accomplished with the assistance of a mediator if needed. Even if it takes parents more than one session with the mediator to complete the parenting plan, it would reduce court time. Thank you for the opportunity to comment and participate in enhancing safety and justice in California's family courts.	Enforcement of Orders Agree that assistance from mediators may be required to prepare an detailed parenting plan.

Commentator	Comment	Committee Response
93. Nancy Heckrott Berkeley, CA	Contested Child Custody Comments 1. In a contested child custody case, collateral contacts are essential to obtaining a more accurate picture of the family situation than can be gleaned from interviewing the parent's and children merely. Interviewing collateral contacts ought to be mandatory before a mediator/evaluator make his/ her recommendations. Relying on parental interview will too often lead to assumptions that are based on which parent comes off better or more compelling to the evaluator, rather than on a true, or at least more accurate, picture of the parent/child family dynamics. 2. Evaluators should be compelled to answer parents' questions regarding the recommendations without having to be in a trial setting. If the evaluator recommends a custody arrangement in conflict with one parent's opinion on what is best for the child, then that parent ought to be allowed to know why this recommendation was made and challenge these reasons if he/she believes them to be in error. As the system stands now, the only time an evaluator is held accountable for his/her recommendations is when there is an actual custody trial and the evaluator is called to testify and be cross-examined. 3. It is almost always in the best interest of the child for a child to have both parents involved as much as possible in their lives. Parental time share should be 50/50 as a default unless there is very compelling reasons to split the time differently -- such as a parent not wanting to have their child 50% of the time, or if compelling evidence is adduced showing that a parent lacks the responsibility or maturity necessary for a 50-50 time share. If an agreement was made between parents at an	Contested Child Custody 1. Existing statewide rules of court provide guidance on mediation proceedings; the task force did not make recommendations in this area. 2. The Task Force recommends that those professionals, including evaluators, who provide recommendations or reports to the court, be available to testify and cross-examined. 3. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	earlier time outside of court that favors one parent's time over the other, it should be verified that the parent with less than 50% time share actually wants it that way. There are decisions and/or agreements made under stress or out of ignorance about how the system works that ought not to be summarily accepted by the Court if a parent wants to share equally in the upbringing of his/her child(ren). 50-50 time share is usually in the best interest of the child and it should not require a lengthy court process to undo something less than 50-50 if there is no compelling reason for there not to be 50-50 time share.	
94. Lana Hescock National Coalition For Family Justice West Santa Clara, CA Robin Yeamans Lawyer Law Office of Robin Yeamans Los Gatos, CA	Live Testimony Agree. This recommendation is superb. I was never able to understand how the *Reifler* case (forbidding testimony at hearings) could be constitutional. Also, judges tend to use that case as punishment; that is, if your case is perceived as trouble, it gets *Reiffer-ized* whereas there's nothing (except repeated returns to court) to justify this treatment. Legal Representation The recommendation for early needs-based fee awards (Rec. 1 B, page 14 AGREE) is right on the mark. In many cases we see a represented, relatively affluent party successfully trashing to unrepresented other party for no reason except that the unrepresented party can't fight as well in court. Short of actually having adequate legal services programs, this recommendation is key to making family court function. We see the outcome of too many cases determined by money and who controls it. It is very important to provide legal services to people who can afford an attorney for only a small part of the case---a part that may, however, be crucial such as a dv restraining order or custody/visitation issues.	Live Testimony No response required. Legal Representation No response required.

Commentator	Comment	Committee Response
	Case Flow Management Disagree. As long as the governor appoints mostly prosecutors and county counsel, the new judges have no clue at all as to how to manage the cases, and the more tightly they try it, the worse the cases will get.	Case Flow Management The Task Force has made many recommendations regarding appointments to the family law bench and judicial education which are designed to address these concerns.
	Clerical calendaring and electronic tracking of cases is very important.	Clerical calendaring No response required.
	The law making parentage cases "confidential" should be changed as there is currently no stigma from bearing a child out of wedlock---but preventing these parents from checking their cases on-line like other "legitimate" parents is very unfair. The only way to get information on these cases is actually go down to court with a notarized release. This makes representation in a parentage case much more difficult and expensive.	Parentage Cases The Task Force has not made recommendations regarding changing the statute regarding confidentiality of parentage files. Designs for the California Court Case Management System allow parties to get access to these records on-line with password protection, just as with other family law files.
	Streamlined procedures for defaults and agreements Agree. As a lawyer who has practiced more than 40 years, I often find myself sharing a rueful laugh with opposing counsel when we have an agreement and can't even get a judgment done. Sometimes we may have together, say 213 century of experience---and we can't get a default judgment done. The judges don't come into direct contact with this part of the process. And they have no idea how badly it works.	Streamlined procedures for defaults and agreements No response required.

Commentator	Comment	Committee Response
	Increased Sanctions Disagree. As long as the family court judges don't really understand the dynamics of the cases, particularly where abuse is involved, they can't correctly figure out whom to sanction They often end up helping an attorney pound a pro per into dust.	Increased Sanctions The Task Force has made many recommendations regarding appointments to the family law bench and judicial education which are designed to address these concerns.
	Written orders after hearing Agree. Having court help in accomplishing prompt orders after hearing would be a very good thing.	Written orders after hearing No response required
	Elimination of local rules is a great idea Agree. Commentators provided information on their experiences with local rules and the importance of accountability.	Elimination of local rules No response required.
	Children's Voices Comment 1 on page 2§ Disagree. The focus on the child being "caught in the middle" of a dispute is a way of negating the role of violence and abuse. This is a part at the debate between whether the problem is violence/abuse or "high conflict." The latter concept eliminates the need for accurate analysis, just like worrying about the child caught in the middle of two equal parties; judges will seize on this idea, and it is very harmful in abuse cases. • The choice of appearing at a hearing and speaking to the judge must belong to the child, not to the judicial officer. Every parent whose custodial rights are at issue must be given the opportunity to examine/cross examine on the witness stand, the child/children who are	Children's Voices Recommendations in Children's Participation and Minor's Counsel emphasize the need to consider children's wishes, consider hearing directly from a child of sufficient age and capacity, and providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate. The recommendations in Children's Voices (changed to "Children's

Commentator	Comment	Committee Response
	the subject of the custody litigation as a matter of fundamental due process. • Children in family court must be afforded the same civil and human rights as Children in juvenile court (W&I Code Section 349) to be given notice of hearings affecting them, a choice of attorneys if one is appointed, and the ability to speak directly to the court. • To preserve due process, there should always be a court reporter present when a child testifies or speaks directly to the judge, or such communication or testimony must be captured on videotape and the record of such testimony shall be readily available to every party. • Parties or their attorneys should be able to submit questions to the judge for the child to answer (to ensure the child is not traumatized by an aggressive parent or attorney). Commentators suggested the Task Force recommend ratifying the UN Convention on the Rights of the Child.	Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children. The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency

Commentator	Comment	Committee Response
		court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court. The Task Force recommends that

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		testimony from children be on the record.
	Domestic Violence Agree with modifications The judges' mass failure to understand the dynamics of abuse and violence is probably the most serious problem in family court. So I was quite disappointed to see that all the Elkins Committee could do was to point to a 2-year-old recommendation from some other committee, which remains unenforced. WHY did that recommendation remain a dead letter in a report? What needs to be done to change that? How can a different outcome occur now? As a group the judges seem to go into mass denial regarding child abuse---but when it is child SEXUAL abuse, this needs to be multiplied almost to infinity. I cannot tell you the numbers of women who've contacted me after raising issues of child sexual abuse and then not only losing custody of their children as a result but being placed on supervised---or no---visitation. Commentators recommend "outlawing the doctrine of Parental Alienation" and that the Kelly-Frye standard be applied to psychological testimony.	Domestic violence Implementation of the domestic violence recommendations is underway.
	Enhancing Safety Disagree but want children heard Children's testifying in chambers is not helpful. Commentators indicated that in their experience, they have seen many problems with children testifying in chambers.	Enhancing Safety This section has been redrafted and is now "Enhancing Children's Safety." Recommendations on children's participation are now found in

Commentator	Comment	Committee Response
	Agree with modifications It is extremely important that custody evaluators would learn the distinction between family and juvenile courts. There are cases where CPS does NOT find abuse, and yet the family court SHOULD act to prevent FUTURE abuse. The standards are not the same. I often find FCS personnel think that if CPS decided not to act, FCS should likewise not act. This is a major error. Increased involvement of CPS in family court cases will not improve things they have a very different function from FCS. For children to have access to people like attorneys and CASA's is different from forcing such personnel onto children and refusing to remove them even when the children want to get rid of them. Because represented parties cannot be interviewed by counsel, having court-appointed counsel for children has the effect of gagging the children in cases where their own counsel neglect to talk to them and to convey their views, If their own counsel doesn't do that, this means that no counsel can do that. And, regrettably, courts seem to have a preference for counsel who will not bother the judges with the children's wishes, I have never heard a judge tell a child's attorney that the attorney is doing something wrong where they're shaping the litigation but never speak to their own clients.	"Children's Participation and Minor's Counsel." The Task Force recommends child welfare services involvement in cases involving allegations of child abuse so that children whose parents happen to be seeking relief in family court are not denied access to the resources providing by the child protection system.
	Contested Child Custody Agree. Additions below are the key to improvement. It requires the custody evaluator's information to be given to litigants, Nothing could be more important to due process, This is a crucial component of due process, Using the civil Discovery Act, a litigant can---at great expense---presently pull this information out of the evaluator. But it costs so much that only litigants with a lot of funds can do it. This	Contested Child Custody No response required.

Commentator	Comment	Committee Response
	recommendation is a much fairer approach. Opportunity for cross examination Also, requiring those who do the reports or provide information be able for cross-examination (Agree additions below is a good idea.) These are the cases that clog up the courts, especially when abuse is alleged, and the court ignores it or thinks the abuser is a really nice person (even though everyone else in the family says otherwise). These cases must come back and back. A great deal of the family court's calendar could be eliminated if the court could figure out these cases. Mediators should never provide recommendations to the court. I come from a confidential-mediation county, a non-recommending county, and this has been the better approach. Eliminating most child custody evaluations would be a good thing, In most cases the judge's common sense is better than these paid vampires who become "highly thought of at court"—and those are the worst. Custody evaluators should be used rarely and only in cases with no allegations of domestic violence, child physical or sexual abuse, or substance abuse. As one judge here said, "If they're crazy, I can tell it If they're not crazy, I don't need a psych eval." Psych evaluations, especially as a substitute for custody evaluations, were not used before about 1992 (which is the approximate beginning of the Custody Wars, caused by federal statutes compelling the increase of child support), psychological testing should be discouraged due to expense, intrusiveness and invalidity, I've done extremely thorough discovery in such cases, and it virtually ALWAYS comes down to the fact that the purported psychological evaluators send test answer sheets to computer	Opportunity for cross examination No response required. Eliminating Child Custody Evaluations The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	scoring companies which send them printouts, which they copy WORD FOR WORD into their report as if those words were their own thoughts. Commentators noted availability of upcoming book on this topic. • Unproven theories such as parental alienation theories are not to be used or considered. • Evaluators are paid by the court pursuant to Family Code Section 3112. • The law should be changed so that even if parties must stipulate to the evaluator's report being admissible, it should not be "received in evidence ... [as] competent evidence as to all matters contained in the report". Hearsay in these reports is a huge problem, and the lawyers don't know that if they stipulate the report into evidence, their client has given up the right to confront the witnesses. This law should be changed. • The court must provide a clear, effective complaint and oversight process for parties, especially self-represented litigants, who allege that evaluators have not complied with statute and rules of court. Judges should be educated so that when a custody report violates Rule 5.220 it should not be admitted into evidence. I've repeatedly proved such violations to judges---but they admit the reports into evidence anyway. There is no sanction whatsoever for violative evaluators. Commentators provided their views on appropriate parenting plans.	Parental alienation The Task Force did not make recommendations regarding the basis on which child custody decisions are made. FC 3112 Family Code Section 3112 This code section appears to refer to situations in which court employed investigators conduct the investigation not private evaluators or investigators. It is not clear that courts are expected to cover the costs of private child custody evaluators or investigators in situations other than when they are employed by or on contract with the court. Complaint process The Task Force agrees that such processes need to be clear and accessible to parties.

Commentator	Comment	Committee Response
	An independent and effective complaint process must exist and information on how to access and use it must be provided in writing to all parties, including to children over 10 years of age. There must be an effective means of protection from retaliation against the complainant by court officials, including independent 730 evaluators, who are the subject of the complaint. When there are allegations of domestic violence, child physical or sexual abuse or Substance abuse Violence is epidemic in contested custody cases. Violent men are more likely than others to request custody. The judges should study the report of the APA task force on domestic violence. Presently, when something other than a trial is held, the procedural deck is stacked so that the 730 evaluator or the FCS screener MUST win. If that person is the court's witness and is called first, the attorney for the parent who disagrees must cross-examine that witness. The "expert" can convey their recommendation to the court in, say, 20 minutes. That requires 20-40 minutes of cross-examination. Then the parents absolutely do not have the opportunity to present either their own, or another expert's testimony within the allotted hour so---they lose. It's a hopelessly stacked deck. Hearings should be of adequate length. There should be due process of law, including the opportunity to present a case, at all custody-visitation hearings. Over and over we'll see the court say how great the child is doing, the child has been with an abused parent (which the court often does not understand), the child is complaining that the other parent hurts them, and then they are forced into the custody of the parent they say hurts them. Judges need to be	

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	trained to ask If a person is really so horrible due to some mental condition (like PAS), and yet the child is doing great in all areas of life except it doesn't like the other parent, is it possible that the custodial parent is ok? We see a lot of abused parents declared mentally dangerous and placed on supervised visitation whereas the other parent may actually be physically dangerous. Often, evaluators tell the court that a child has been coached---with virtually no factual basis and certainly no scientific basis for such claims. Some children have large vocabularies, and this causes their statements to be suspect as "coached." Also, when violence and abuse occur in a family, the victims MUST talk to one another about it, and, given that the acts were part of physical reality, they may well come to a consensus about what occurred, and they may make similar statements---but this does not render the statements untrue or coached. The court must err on the side of caution regarding child safety and protection from physical/sexual abuse.	
	Culturally compeneten mediation services Calling for "Culturally competent mediation services," Agree. Is very important. Commentators provided their view of the need for this type of training in working with immigrants and other populations.	Culturally compeneten mediation services No response required.
	Minor's Counsel Agree that minor's counsel act within role is great. Commentators noted national experience with concerns about minor's counsel.	Minor's Counsel No response required.
	Agree that minor's counsel should leave it up to the judge whether or not to consider the child(ren)'s preference is superb. The minor's	Providing information on child's wishes

Commentator	Comment	Committee Response
	counsel should not be able to gag the Child. We should go by the ABA guidelines for representing minors and give up the idea that minors' attorneys should advocate for what these attorneys think is the child's best interests, concealing the child's preference from the court. Often, minor's counsel conceals children's extremely important allegations from the court. If input is provided to the family court by a minor's counsel regarding the child's custody and/or visitation, such counsel must be subject to examination and cross examination by the parties regarding such input, as a matter of fundamental due process. This also makes those of us who serve as minor's counsel aware that we should be careful in defining the extent of statements we make. The law should be changed so that children can fire an attorney if they want to. If they strongly disagree with court-appointed counsel but can't get rid of them, the child cannot be heard. There should be very little need for minor's counsel. This was part of Judge Jack Komar's January 2000 Protocol for Change in Family Court. And for several years after that, the court kept track of who was being appointed in an effort to diversify, instead of appointing cronies. Also, following supervising judges would call minor's counsel and ask, "Are you still on the case? Is it active? Could you withdraw?" Such inquiry was highly appropriate. Commentators provided information on experience with particular attorney representing children, highlighting the need for review. Scheduling of trials	No response required. Court-Appointed Minor's Counsel The recommendations in Children's Participation and Minor's Counsel address improving the appointment process for minor's counsel. The issue of how to terminate or replace minor's counsel given the various reasons they are appointed, the ages of the children, and issues related to payment of such counsel is a substantive policy area in which the Task Force did not choose to make recommendations. Scheduling of trials

Commentator	Comment	Committee Response
	Agree, but make stronger The recommendation not to break up custody trials into little pieces is very well taken In Santa Clara County we've been fortunate to have judges give importance to custody cases and comply with the code section giving them trial preference. Commentators noted experiences vary across counties. The recommendation should be that the pendency of other non-custody cases must be set based on Farn. Code 3023 "(a) If custody of a minor child is the sole contested issue, the case shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date and shall be given an early hearing. (b) If there is more than one contested issue and one of the issues is the custody of a minor child, the court, as to the issue of custody, shall order a separate trial. The separate trial shall be given preference over other civil cases, except matters to which special precedence may be given by law, for assigning a trial date," Add. A major complaint I hear from around the state is that judges continue and continue cases until the parties just eventually quit. Judges are under an ethical duty to decide matters that come before them, and continuing things time after time after time does not comport with this duty. Streamlining Forms & Procedures, Most of this section Agree is great. Declarations Disagree. A page limit should not be set on declarations. A major problem is that it only takes a few words to state a lie. But to rebut a lie takes pages and pages to rebut each lie. I know how horrid it is for	Agree No response necessary. Streamlining Forms and Procedures No response required. Declarations More guidance on what information is appropriate in a declaration may help parties focus on relevant information

Commentator	Comment	Committee Response
	judges to receive page after page of gray print (or exclamation marks and capitals, etc.) and have to try to find if there is anything of any relevance concealed therein. Nonetheless, the resolution is not a page limit but more judges and resources. This leads right into the next section\ Perjury Disagree. This recommendation is sadly lacking. Perjury is a way of life in family court---not just by litigants but also by attorneys. The litigation privilege plus anti-pro-per attitudes have resulted in blatant lying by certain attorneys. And it takes a lot more effort to disprove lies than to make them. Fee awards should address these issues. The prevailing attitude, once we prove that a lie has been made is, “Ok, counsel you’ve proved that was false---now move on.” Then we move on to trying to disprove the newest set of lies, and that too takes a huge effort. I also see pro per’s draggling along behind certain lying lawyers and usually not successfully unmasking the lies. This is a huge problem. When it is proved that one party has lied to the court, judges should consider applying that to their future testimony. It shouldn’t just be, “Ok, move on.” It should be considered in fee awards not just regarding sanctions, but lying creates a NEED for fees on the part of the one who has to keep disproving the lies. This is one aspect of family court that really brings it into disrepute with those who enter our portals—the inability to deal with perjury. Statutes and case law already permit the setting aside of orders obtained with perjured testimony in many cases. Something more is necessary to change the situation. Default & Uncontested Procedures	and reduce the need for lengthy rebuttal declarations. Perjury This recommendation has been amended based upon concerns raised by the comments. Default and Uncontested Procedures

Commentator	Comment	Committee Response
	Agree. Bravo for your recommendations. The judges never see this process, and yet this is the face of the court to most of the public. It does need fixing. Interpreters Agree but with modifications. A major unserved area is people who are fluent enough in English to sort of function, but really should have an interpreter. I speak fluent Spanish and pathetic German, and if I tried to go to court where either language is spoken, I know I'd need an interpreter Judges don't realize this! They think that if someone is able to sort of speak, they can function without an interpreter. When the litigant also has PTSD or ADD, for the non-native speaker to proceed without an interpreter is a mistake. Judges tend to suspect a ploy. I recently watched a judge who was talking with a Chinese person, and the judge thought this guy understood him---but from the audience it was obvious that wasn't the case. Judges need to learn how to speak to nonnative English speakers and semi-illiterate people. They need to be taught when they are not communicating. They need to be taught to speak slowly with a space between each word and in very simple sentences. Even if they seem condescending to some people, that'd be better than the present situation. Judicial Branch Education Agree with additions! Yes, the judges need more education, and education on specific issues. One problem is that judges used to be able to accept certain gifts---free educational classes and free literature. When judges came to Santa Clara County, I used to send them a copy of my book But then the rules changed, and judges could accept virtually nothing. I think the rule that prevents them from accepting	No response required. Interpreters Agree that training is critical to assist judges in communicating effectively with litigants with limited English proficiency and in determining the language capacity of litigants. Judicial Branch Education This comment proposes a change that appears beyond the scope of the Elkins Family Law Task Force, as it deals with judicial ethics.

Commentator	Comment	Committee Response
	seminars, CDs, tapes, and/or books on their specific subject area should be changed. This doesn't mean they should get paid vacations to "seminars" in Hawaii, but they should be able to receive relatively low-cost items.	
	Family Law Research Agenda Agree with additions. While we need info, the key thing is not lack of info. The key is the determination to change family court. If things are being studied, add to the list Whether male/female litigant is unrepresented, opposing a represented party. Due to economics and the lack of early need-based fee awards, it is extremely common to see an unrepresented low-earner female opposing a represented higher-earning male; this amounts to serious gender bias within the system.	Family law research agenda Basic statewide statistical reporting Reporting is intended to be limited to caseload and workload indicators that are readily available through case management systems. The suggested additional data elements would require extensive manual data collection from court files and some may not even be available in court files.
	Performance Measures Agree with additions Data are needed about cases in which children are ordered into custody or unsupervised contact with sexual or physical abusers identified by the children or law enforcement. As I mentioned above, this is the subject of my chapter in a soon-to-be-published book. I had psych and/or custody evaluations that were about 10 years old, and I contacted the families to see what had happened with them. Mostly, when the evaluators' recommendations ignored DV and abuse, the children had eventually returned to the non-abusive parent--broken and in pieces emotionally, It is a shame to have the family court destroying young people when it's not necessary. The need to determine whether such things as psychological evaluations (as performed) are helpful is urgent.	Performance Measures The recommendation was intended to be general in order to cover a broad range of possible performance measures. Specific measures are not outlined because priority areas of inquiry may shift over time and because the feasibility of collecting the necessary data needs to be explored.

Commentator	Comment	Committee Response
	The data are now available and merely have to be examined-but not by the in-crowd that does the psych evaluations. This information needs to be examined by someone who is in a financially neutral position.	
	Coordination between family and juvenile courts Agree with modifications. Coordination with family and juvenile courts. When CPS has looked into a child's situation, this information should be available to family court, including to the litigants. I've had to go to Juvi court and make motions to get it, and sometimes they're granted only in part. But if confidentiality is to protect the child, not the system, this is precisely when the records should be used, not hidden.	Coordination between family and juvenile courts The recommendation is limited to researching possible ways of improving coordination between family and juvenile courts and is not intended to set out specific policies or procedures at this time. The Task Force recommendation is only to encourage experienced SJOs to seek judgeships. The SJOs would still be subject to the entire judicial appointment process.
	Leadership. Accountability, and Resources Agree except last sent of 14 + additions The recommendations, while acceptable, do not go far enough. Litigants want accountability!!!! I've seen cases where there is failure at every level. The police don't activate the correct mechanism to protect the child they fail to videotape the child's first interview. The teacher overlooks the bruises or odd behavior. The doctor does an inadequate examination, and/or	Leadership. Accountability, and Resources The Task Force recognizes the need for accountability, and believes that its recommendations to create a complaint mechanism, provide public information about how to resolve complaints, and to evaluate the creation of a court ombudsman

Commentator	Comment	Committee Response
	fails to report clear abuse. The lawyer fails adequately to represent the litigant. The judge fails to protect the child, The court reporter's transcript is a disaster, and sometimes knowingly falsified. The evaluator doesn't get the picture. The psychologist does a pseudo evaluation. The child's therapist doesn't report abuse, The bailiff walks the abuser out to the abuser's car, as if the victim were a threat The visitation supervisor thinks the abuser is really charming and a wonderful parent. The on-line case information is incorrectly entered into the computer. Etc. etc. I have seen cases where alert personnel---like a female bailiff who talked to us when a witness was assaulted in the courthouse and Family Court Services had her kicked out for making too much noise. In the end, it was the guy who was hauled off in handcuffs, and having that bailiff present who could "hear" the witness was crucial. But every single judge---not just the supervising judge---has to begin taking an active role in trying to make the system work. Supervised/monitored visitation Doesn't go far enough. I have seen many, many, many cases where a person is placed on supervised visitation largely because they present poorly in court and made the judge or evaluator angry. The parent's contact with the child(ren) is limited largely by money. And if the money runs out---that's the end of the parent's contact with the child(ren). When supervision is placed because a parent is a suspected Alienator or thought to have a character defect, the court should take a hard look at whether supervision is really necessary, given the huge cost The Komar Protocol said that orders for supervision should include provisions for periodic reviews, and this was a good (but	position are important steps toward that goal. Supervised/monitored visitation This recommendation deals with the unmet need for supervised visitation services. This comment addresses whether and how court orders supervised visitation. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force

Commentator	Comment	Committee Response
	unimplemented) direction. Ensuring access to the record. Recommendation is good. People should be able to obtain transcripts. The laws in this regard have lagged far, far behind technology due to the strength of the court reporters' lobby. But that lobby needs to give way to the litigants' needs for due process. Ensuring access to a recording for preparation of orders Recommendation is good but doesn't go far enough. I used to bring a tape recorder into court to record the judge reciting the order. Then came 9-11 and bomb scare fears and the prohibition of recording devices. To the extent that there were fears of bombs, the technology has now completely changed. Recorders can be in tiny form which simply could not be a bomb (or if these tiny recorders could be a bomb, so could other tiny objects). Phones come into court. With high tech phones in court, it's silly to prohibit parties from openly using them. Rumor has it that some naughty litigants already make recordings unknown to judges. Parties should be able to do this openly, Family and juvenile court assignments Disagree. It is not the role of the Elkins Committee to campaign for commissioners who are interested in becoming judges. I hear a lot of complaints from around the state about commissioners, and a blanket endorsement of them by this Committee is highly inappropriate.	did not choose to make recommendations. Ensuring access to the record. The Task Force has modified the recommendation based on the public comments to provide a broader range of options for parties to obtain a low-cost official record.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
95. Steven G. Hittelman Certified Family Law Specialist Minyard Morris LLP	Live Testimony Agree subject to modification Should also include procedure for uniform "offer of proof" to expedite direct testimony, either by adding CRC or providing specific family code statutory structure. Expanding Legal Representation Agree Caseflow Management Agree subject to modification Time standards have to take into account time for service of process. A negotiation to be realistic. 20% within 9 months, 75$ within 16 months, 90% within 24 months. Orders After Hearing The court should not be preparing orders after hearing. Rules of Court Agree with the recommendation Children's Voices Agree with the recommendation Domestic Violence	Live Testimony The Task Force agrees and has modified the recommendation to include an offer of proof whenever a party requests to present testimony from additional witnesses. Expanding Legal Representation No response required. Caseflow Management Time standards have been modified in response to comments. Orders After Hearing Research indicates that there are fewer hearings if the court prepares the order after hearing for self-represented litigants. Rules of Court No response required. Children's Voices No response required. Domestic Violence

Commentator	Comment	Committee Response
	Agree with the recommendation Enhancing Safety Agree with the recommendation Contested Child Custody Agree subject to modification FC§3183(a) must be deleted to provide true confidential mediation and due process for the parties. Minor's Counsel Agree with the recommendation Ordering disclosure of child/client statements may disrupt privilege of relationship "Ability to reason" is a judicial determination. Scheduling of Trials Agree with the recommendation	No response required. Enhancing Safety No response required. Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel The Task Force recommendation for a legislative change to Family Code section 3151 mandating disclosure results from concerns raised by the public that some children have not felt that their wishes were accurately presented by counsel. Given the particular role minor's counsel plays in representing children, the Task Force believes such legislative reform is necessary. Scheduling of Trials No response required.

Commentator	Comment	Committee Response
	Litigant Education Do not agree Too expensive a proposition to provide education to litigants in all languages and at a level all litigants will understand.	Litigant Education As part of implementation, it will be important to identify which languages are priorities for translation, and how best to accomplish this goal in a fiscally sound manner.
	Expanding Services Agree with the recommendation Court ordered arbitration is and new and good idea.	Expanding Services No response required.
	Streamlining procedures Agree with the recommendation	Streamlining procedures No response required.
	Eliminate local forms Make the “good” forms and processes statewide. OC example – expedited forms for entry of a stipulated judgment.	Eliminate local forms No response required. The example suggested will be reviewed as part of implementation.
	Enhancing Mechanism Agree with the recommendation Does “measurable damage” include increase in fees/costs?	Enhancing Mechanisms re Perjury This recommendation is being significantly revised based on comments and this language will be removed.
	Standardize Process Agree with the recommendation Interpreters	Standardize Process No response required. Interpreters

Commentator	Comment	Committee Response
	Agree with the recommendation Public Information Agree with the recommendation Can this be done cost effectively (as with litigant education, a lot of money for questionable pay off) Judicial Education Agree with the recommendation Family Law Research Agenda Agree with the recommendation Court Facilities Agree with the recommendation Leadership Agree with the recommendation	No response required Public Information Implementation efforts will have to include an analysis of the costs and benefits of each approach. Judicial Education No response required. Family Law Research Agenda No response required Court Facilities No response required. Leadership No response required.
96. Cynthia Holton Family Law Attorney Public Law Center Orange County	On behalf of the Public Law Center, I am writing to provide input on the draft recommendations of the Elkins Task Force. The Elkins Task Force Recommendations' sensitivity to the problems faced by the family law court and its litigants is impressive. It will be exciting to watch the ameliorating effect of these comprehensive recommendations on the practice of family law in the future. Right to Provide Live Testimony at Hearings, We agree with the recommendation that judges should rely on live testimony at hearings. Live testimony allows judicial officers to	Right to Provide Live Testimony at Hearings No response required.

Commentator	Comment	Committee Response
	ascertain the credibility of parties and witnesses and it assures parties their rights of due process. Furthermore, family law declarations (particularly when they are prepared by self-represented parties) frequently include inflammatory accusations against the other party and statements that violate evidentiary rules. This occurs partially because parties feel the declaration is the only method of getting their information and concerns in front of the judge. Nevertheless, parties' assertions must be weighed and live testimony is the way judicial officers can do this.	
	Moreover, self-represented parties who use computer programs such as I-CAN to create Orders to Show Cause and the attached declarations frequently do not include more than a couple of sentences in their declarations. Here, self-represented parties do not understand the importance of the declaration and those who help parties use I-CAN usually refrain from establishing an attorney-client relationship with the parties. Live testimony is the only way to flesh out the issues underlying the Order to Show Cause. Section B (page 13)	I-CAN No response required.
	The wording of this section and the accompanying sections (a through f) is ambiguous. The factors to be considered are not really "good cause exceptions." Furthermore, the factors are so broad as to allow a judge to decide whatever s/he wants - they can be used to support or overrule live testimony. The judicial bias should be to allow live testimony.	Wording of the sections Specific language regarding finding of good cause will be reviewed as part of drafting implementing rules which would be circulated for comment.
	Expanding Legal Representation and Providing a Continuum of Legal Services, Funding for legal services We agree with the task force's recommendation for increased funding	Expanding Legal Representation and Providing a Continuum of Legal Services Agree to reference the Sargent Shriver

Commentator	Comment	Committee Response
	to provide legal services for litigants. How the Sargent Shriver Civil Counsel Act, AB 509 (October 11, 2009) will influence this section should be considered and delineated.	Civil Counsel Act, AB 509 in this section.
	Pro bono opportunities and D - Limited Scope Representation We agree training pro bono attorneys in family law matters would potentially increase the numbers of pro bono lawyers willing to take family law cases. The importance of encouraging attorneys to represent litigants using limited scope representation cannot be overstated and sections C and O go hand-in-hand. Attorneys frequently shy away from family law matters because the cases appear to continue indefinitely and because family law litigants can be emotional and difficult to deal with on a long term basis. Since limited scope representation allows attorneys to represent clients for individual hearings on individual matters, it has great potential for encouraging pro bono lawyers to take cases. The link between these two sections should be explicit in the recommendations.	Pro bono opportunities and limited scope representation Agree – will revise recommendations regarding pro bono to reference limited scope representation.
	Limited scope representation frequently fits well with family law. Litigants in child custody and child support cases appear and disappear. When they decide to go to court to modify an order, they desperately need an attorney but once they receive an order, they often do not reappear for a couple of years. Limited scope representation works well for attorneys in these types of cases.	Limited scope representation No response required.
	Minor's Counsel We agree with your proposals concerning minor's counsel. Section 1 A - Role Definition and B - Acting within the scope of that role (page 37)	Minor's Counsel No response required.

Commentator	Comment	Committee Response
	The problem of minor's counsel doubling as psychologist cannot be overstated. Courts liberally appoint minor's counsel and use minor's counsel to perform less expensive psychological evaluations in spite of the fact the appointee is not a psychologist, but an attorney. A clear definition of minor's counsel's role as attorney is necessary. Judicial officers will be central in assuring minor's counsel acts within the scope of its role. Streamlining Family Law Forms and Procedures We agree with the recommendations concerning the streamlining of forms. Judicial Council Forms and Local Forms should be available in languages other than English. Many forms are available in Spanish and while forms are filed in English, Spanish translations of forms allow self-represented parties to fill out the English forms accurately by placing the English and Spanish forms side by side. Forms in other languages would be welcome in counties where large communities of people speaking those languages reside. For example, in Orange County, forms in Vietnamese would be helpful. Interpreters Out-of-courtroom services (page 55) We agree interpreters are needed in self-help centers and mediation. The choice of languages for which interpreters are appointed should coincide with the needs of individual counties/communities. For example, Orange County has large Hispanic, Vietnamese, and Iranian populations. Orange County self-help centers should, therefore, provide interpreters of Spanish, Vietnamese, and Farsi. Thank you for this opportunity to comment. Please contact me if you have any questions.	Streamlining Family Law Forms and Procedures Agree with this suggestion. Will add recommendation regarding translation of forms into commonly spoken languages. Interpreters Agree that interpreters should coincide with the needs of individual counties/communities to the extent possible.
97. Gwendolyn Jackson	I have reviewed the Elkins Family Law Task Force Draft	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Paralegal/Legal Document Assistant Notary Public Shasta County , CA	Recommendations and wish to comment on certain provisions, both pro and con. Commentator provided information on professional background I concur with the comments and proposals of MARCEL NEUMANN, President of the CALIFORNIA ASSOCIATION Of LEGAL DOCUMENT ASSISTANTS of which I am a member. Mr. Neumann is correct in his comment that the profession of Legal Document Assistants was not given “equal weight” as we were not asked for comments at all. This Task Force is either ignorant or it ignores the fact that there are certain educational requirements applicants for registration as Legal Documents Assistants must fulfill in order to be considered and approved, in addition to being bonded. We are not fools who decide one day, “Oh, gee, I think I want to be a paralegal or a Legal Document Assistant”, Even the most seasoned attorneys either bemoan the problems associated with a Family Law practice (or leave it to their secretaries to practice for them), or, leave the practice altogether because of its inherent problems. Mr. Neumann in his comments addresses certain portions of the Draft Recommendations quite boldly, accurately and professionally, in my opinion. Now, I will briefly provide my comments as follows Expanding Legal Representation and Providing Continuum of Legal Services I have witnessed attorneys demanding large retainers from clients who cannot afford the fees to begin with only to have the attorney either not do the work or fabricate conflicts with the opposing party in order to	Comments And Proposals Of LDAs It is very difficult to have full representation of all the professionals who provide assistance to litigants – and to the many litigants themselves who have provided much helpful information. The Task Force is aware of the requirements for LDAs as set out in the Business and Professions Code. Expanding Legal Representation and Providing Continuum of Legal Services The Task Force heard many very disturbing reports of inappropriate

Commentator	Comment	Committee Response
	pad the attorney's bill. Result Client financial ruin and/or hardship; distrust and contempt for attorneys. In keeping with my responsibility as a law student and as a Legal Document Assistant, I referred two different clients to divorce attorneys. The first client was charged $3,500 for a simple winding up of a dissolution as to one (1) issue of financial responsibility of the parties and obtaining a Judgment. The client appeared for the hearing where his case was called within the first 15 minutes of the hearing, while his attorney was in other courtrooms appearing on other matters. The attorney charged the client $600 for that day, instead of what should have been no more than his $250 hourly rate. To make matters worse, the attorney failed to file Judgment as to Status Only which .is what the client requested. The client returned to me, requesting the issue as to status be prepared, so he could remarry. The client asked for another attorney referral. I prepared a Motion to Bifurcate the issues, but, I directed him to another attorney, who made matters worse. She and opposing counsel took the Motion to Bifurcate off calendar. The client's new attorney met and spoke with the opposing spouse who was still represented by counsel, and, then, tried to deal with her own client as if he were the problem in the matter. The client returned to me and I was able to complete the process to allow Judgment as to Status Only be entered and the client obtained his divorce so that he could (happily) remarry. The financial issue was soon resolved through bankruptcy as the opposing spouse was unfairly attempting to extort money from the client, as was proven through past relationship histories. In another case, the wife asked me for a referral for a dissolution and I referred to a divorce attorney, who also charged her $3,500 in 2007. For	behavior by a variety of professionals providing family law assistance. Persons with complaints against attorneys can make complaints to the State Bar. Local Bar Associations also have fee arbitration panels which include non-lawyers who can help clients who have fee disputes with their attorneys.

Commentator	Comment	Committee Response
	that, he prepared the Petition, Income and Expense Declaration, Declaration of Disclosures, etc. and obtained a spousal support award for which she has not been able to collect as the husband is nowhere to be to be found nor is he legitimately employed. Wife had a stroke in 2008, is now on disability, and could not apply for her retirement because she still was not divorced. In February 2009, she returned to me in tears because she had no more money and was not divorced. I was able to help in obtaining Judgment as to Status Only and she is approaching trial on the one remaining community property asset, which she should be able to handle on her own, although, I know she would appreciate my being there to help her - but, I cannot, legally. (See Mr. NEWMANN's recommendations submitted November 30, 2009.) I received a call from a woman in 2007, who even though she had retained an attorney to protect her interests in a divorce (relatively short marriage with a pre-nuptial agreement in place), she lost everything and her attorney took $25,000 from her in fees. I was shocked that this woman's divorce problems were still on-going as I had worked part-time for the attorney in 1998 and was acquainted with her client. This particular attorney has a long history of demanding large retainers, not doing the work and continuing to take the client's money. The woman was left with nothing. She needed more legal help than I was able to give her, legally, although, procedurally, I knew what needed to be done. There is no legitimate reason that Legal Document Assistants should not be allowed to assist those seeking self-help without fear of being accused of the unlawful practice of law, other than the State Bar	The scope of practice of Legal Document Assistants is set out by the Legislature. The Elkins Family Law

Commentator	Comment	Committee Response
	Association's prejudicial and continual attempts to delegitimize paralegals and Legal Document Assistants through far-reaching legislation. I believe we have earned the right to represent people in Court to some degree; and, that we have earned the right to be able to speak with persons openly and without fear of reprisals.	Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Caseload Management Sanction against Attorneys In addition, where parties are both self-represented, the judicial officer should be permitted to order the parties to pay sanctions to the Court. Care must be taken to inform the parties of the imposition of sanctions should any they attempt to use delays. Care must also be taken to give a deadline as to when those delays would end before imposition of sanctions. I do not want self-represented people to be sanctioned simply because the Courts need money and would have the power to impose the sanctions at will. There must be over-sight of the Judicial Officer to prevent abuse of power. If the opinion is that I am being unfair, investigate the practices of the Department of Child Support Services.	Case Management Sanctions Against Attorneys – This section has been modified to make it clear that the focus is on reimbursing the other side for their costs associated with the inappropriate behavior.
	Time Standards Docs this Conflict with Paragraph 12?	Time Standards This paragraph does not conflict with paragraph 12.
	Domestic Violence Paternity and domestic violence cases. I believe the Family Law Code should be amended to set a 3-year time limit from the date of birth of a child, within which a mother may bring a paternity suit. In my experience, mothers wait until it is too late for the non-suspecting father	Domestic violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a

Commentator	Comment	Committee Response
	to establish a relationship with the child, then suddenly want money to support the child. It is extortion and it prostitutes the child. The intent of the Legislature was to protect the interests of the child; not fund salaries and benefits of State employees. I know of several cases where this has happened.	substantive policy area in which the Task Force did not choose to make recommendations.
	Expanding Services to Assist Litigants in Resolving Their Cases Provide a form for litigants to inform the judiciary if their attorneys of record have created stalled or continued cases in efforts to pad their bills and obtain inf1ated fees from clients.	Expanding Services to Assist Litigants It is unclear how this information would be helpful to the court. It might be appropriate for a fee dispute, which would generally not be before the family court.
	Streamlining Family Law Forms and Procedures Local Forms. Make Local Forms PDF friendly so that we can input information from the computer. Also, if the Local Form says "Optional", Clerk cannot insist on use of Local Form.	Streamlining Family Law Forms and Procedures Make local forms PDF friendly: this is currently a local resource issue, but should be considered in implementation.
	Streamlining Family Law Forms and Procedures Hope changes will be published for availability to all.	Streamlining Family Law Forms All Judicial Council rules and forms are published on-line and are available at no charge.
	In summary, the foregoing are just a few examples of what takes place in my world as a Legal Document Assistant/Paralegal. No one approached me to ask my opinion; so, to say that "equal weight" has been given to all is not true. Our opinions were discriminately not	The Task Force has heard from many Legal Document Assistants in public hearings, through comments and other means, just as it has heard from a

Commentator	Comment	Committee Response
	sought out, which is not fair. We have earned the right to have a place in the system; we provide much needed assistance to the public and to continue to dismiss us is grossly unfair. I respectfully request that full attention be given to the recommendations of Marcel Neumann, President, California Association of Legal Document Assistants.	variety of other professionals such as child custody evaluators, forensic accountants, law librarians and other groups who were not represented on the Task Force. It is very thankful to have these perspectives.
98. Judith A. Kaluzny Mediator, Attorney and Counselor at Law Fullerton, CA	*Commentator provided information about her background including her experience as an attorney and mediator and noted her attendance at the public hearings and the Litigant and Advocate Input Meeting and the following comments Introduction Comments: Lawyers. You assume people do not retain lawyers for family law because they do not have the money. It has been my experience that people do not want to spend their children's college funds to have a lawyer take over their lives. And it has been my observation from the many stories I have been told by those going through or having been through divorce that having legal representation itself can be "an enormous barrier to accessing justice in family court," page 2. A ruthless duel between lawyers is no way to develop the best parenting plan for children. I heard that lawyer tell You, "We do what clients ask us to do." If the client wants to destroy the other party, lawyers have been known to do that. Lawyers are in charge of the people's lives, not the judges. Due Process.	Introduction Lawyers. Surveys of self-represented litigants were conducted as part of self help center evaluations. In each survey, the majority of self-represented litigants reported that the reason they are without counsel was because they could not afford an attorney. The Task Force agrees with the commentator that heightened animosity between opposing counsel can be potentially problematic for clients and for the court, and encourages civility among family law attorneys as well as good faith attempts at settlement of cases. Due Process.

Commentator	Comment	Committee Response
	A Judicial Council survey of litigants found that in family law, people want "their stories to be heard" and "procedural fairness." "Due process" is found in the Bill of Rights, and the Elkins court specifically did not consider that concept in their decision. Seems to me the state is not taking anything in dividing up jointly owned property upon request from the parties, or assigning parenting plans at the request of the parents. People can do these things themselves and present a judgment for Signature of the court. The state is does not reach into their lives to compel them. One of your members told me it was "due process" that killed Family Court 2000. Commentator provided historical background on view of due process and her perspective on of the impact no fault divorce in the state. My comment as to how a family law process should be was given to you when I spoke to you April 7. I will append it to this commentary for convenience. It applies to Sections 1,2,3,4, 10, 11,12, 13 and 17. Paragraph 6, "…consultation with interested stakeholders ..." The only valid stakeholders in the process of divorce are the men, women and children of this State. All those making money from the divorce process-court employees excepted- are trafficking in, and in too many cases, exacerbating, human misery.	While the Elkins case was decided on an evidentiary basis, the hearsay rule itself is firmly grounded in the concept of due process. The constitutional right to confront and cross-examine any witness providing testimony in a case is a fundamental right, protected in practical terms by the hearsay rule, among others. The Task Force anticipates that the recommendation on the right of the parties to present live testimony at their hearings will further the goal of procedural due process in family courts. The Task Force encourages family law litigants to settle their cases without the need of a hearing or trial; however, when such events are necessary, family law litigants should be entitled to the same procedural safeguards as any other civil litigant. Consultation with interested stakeholders The Task Force recognizes that the parties themselves are key stakeholders, but does believe that there is a role for attorneys, mediators, therapists and others to help litigants

Commentator	Comment	Committee Response
		with their legal issues just as in any other type of legal or personal concern
	Children's Voices Clearly define the role of minor's counsel Comments. Minors' counsel is neither fish nor fowl nor good red herring. Abolish that role. At the last CFCC conference April 23, the first panel noted that 65% of people are doing their divorces without lawyers and that by the end of the case 80% are without lawyers. One commented, "We need a lawyers' bail-out!" Next session I went to Minors' Counsel workshop. I asked and was told, "Appointment of lawyers to represent children is way up." Lawyers bailout, I thought. Children MUST be taken out of the litigation process. Any lawyers for children should be as in juvenile court. Agree Item 1, especially a; Item 3, but mandate opportunity and programs that provide information to all families and children. That might prevent it turning into a disputed case.	Children's Voices The recommendations in "Children's Participation and Minor's Counsel" highlight the need for increased clarity regarding the role of minor's counsel in family court proceedings.
	Contested Child Custody Comments. That something drastic needs to be done was clear from the testimony I heard and stories I have heard for years, and some experience, and strongly illustrated by the AFCC resolution declaring it "a public health crisis" the way children are dealt with in family court. See also a recent article in the Christian Science Monitor, appended below, estimating 58,000 children given to the abusive parent One litigant in San Francisco had the answer sit the parents down to	Contested Child Custody Recommendations include considering referrals to appropriate services and development of pilot projects, each of which provide opportunities for innovation to address these issues.

Commentator	Comment	Committee Response
	write a parenting plan immediately when a petition is filed; those who will not - should be assigned to a committee. That committee should consist of court employees with appropriate experience and training, and/or experts-perhaps a threat assessment specialist-- from a vetted list assigned in rotation. A standardized list of question for an interview with each parent separately to identify domestic violence and other behavioral or pathological hazards to the children's mental and physical health. To reduce acrimony at the outset, the judicial council should revise the petition to eliminate "custody" and "visitation" and instead have something like "We have a parenting plan which is attached" or "We would like help working out a parenting plan" or "The court will have to order a parenting plan for us." Then immediately the parties are taken into mediation or the committee is assigned and gets to work before the situation festers. Children must be removed as pawns and weapons. That is the protection they need. If the Elkins FLTF does nothing else, do this. Safe and Sane Divorce, a project of California Future" Our mission is to create a non-adversary, task-oriented divorce process so that families where the adults no longer can live together can separate with least trauma to themselves and to their children. The purpose for the Project is the completion of modernization of divorce law that the state legislature started in 1972. Before 1972, if a wife could prove that her husband caused the divorce, she would be awarded more than half the property and money than husband. Likewise, if husband proved wife the responsible party, he was awarded more property and more money than she. When the fault of either party	Revise The Petition The Task Force recommends review of where it may be appropriate to use "parenting time" instead of "visitation." The Task Force has considered with

Commentator	Comment	Committee Response
	was made irrelevant, there was no need for an adversary system. The need for this Project is to be found in every family law courtroom in this state, probably in all states. The primary initial task is the development of a comprehensive alternative to the adversary system. A preliminary outline is as follows 1. Wife and/or husband decide divorce is inevitable. One or both make an appointment with the Family Relationships Facilitator's office which will provide them with an outline of all possible matters to be considered in dividing their family, and the guidelines for decision-making on each issue. (See attached example) 2. Each will then answer a detailed questionnaire designed to determine suitability of the couple for mediation or arbitration. Assistance for each person in her primary language shall be provided as needed. Each questionnaire shall be reviewed by a facilitator before a person signs and files it. These questionnaires shall be confidential. 3. The answers will be reviewed by a triage committee which will assign the family to mediation or arbitration and domestic violence proceedings if appropriate but not already initiated. No case involving domestic violence, verbal abuse or other intimidation on the part of one party toward the other will be assigned to mediation. Rules of confidentiality shall apply to the mediation process. 4. Each party shall fill out detailed statements listing all known assets, whether separate, community or quasi-community; all income and sources of income; education, training and work experience; and all assets and debts. Each party will be assigned an assistant, one speaking her or his primary language, to assist in completing these statements. The parties shall provide to the Facilitator's office and to each other these statements plus documentation for each asset, liability and Source	interest the family law process set out by the commentator. The commentator's outline puts forth many effective suggestions having to do with caseflow management.(See chapter on Caseflow Management) Examples are the availability of qualified professionals to work with litigants prior to filing, case-specific analysis of each case, language services for all litigants, open discovery, financial mediation/settlement services, the availability of experts and fee arbitration. Consideration is expressed for the safety of victims of domestic violence and the confidentiality rights of the litigants. The particularities of the suggestions make them more appropriate for the Task Force to consider during the implementation phase of the project when drafting rules regarding caseflow management.

Commentator	Comment	Committee Response
	of income. 5. The couple or either party may then file a petition for dissolution of their marriage. 6. The couple will be assigned an arbitrator or mediator. Each family will have two mediators or arbitrators, one for issues regarding a parenting plan (formerly termed custody), one for property and support issues. Mediators and arbitrators shall have appropriate training and experience in their respective areas. 7. Both arbitrators and mediators will have a rotating panel of experts available for appraisals and forensic accounting, and questions regarding parenting plans as necessary. Each party may without stated cause reject the first expert assigned; the second or subsequent expert may be rejected upon cause, the determination of which shall be assigned to a hearing officer. 8. Each party may be assisted by an advocate in the arbitration process. The arbitrator may assign a particular issue to an evidentiary hearing officer. A party may request an evidentiary hearing on a particular issue, and that request for a hearing shall be granted or denied by a three-person panel. 9. When agreements or decisions on all issues have been reached, reduced to a writing signed by the parties and their mediators or arbitrators, the terms of those agreements or decisions shall be written as a judgment by a trained clerk, reviewed by a hearing officer and the dissolution of marriage granted. 10. Qualification and appointment of hearing officers remain to be determined. All panels shall have at least one woman and one man as members. 11. The above procedures, adapted as appropriate, shall apply to all other domestic relations matters as currently assigned to “Family Law.”	

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	12. The amount of fees charged to each couple shall be based upon the net worth of the parties and the services required to complete resolution of the case. Payment of the fees may be assigned to either or both parties upon consideration of the relative income, separate property and degree of cooperation in the process of each. 13. If the parties fail to agree to payment of fees in mediation, or if a party objects to the fee payment orders of an arbitrator, the fee dispute shall be assigned to a three-person arbitration panel which shall consider the recommendation of the arbitrator. 14. A system for review of the effectiveness and fairness of the mediators and arbitrators shall be established. Attached article from Christian Science Monitor Child Abuse when family courts get it wrong. By Kathleen Russell	
99. Susan Kasser, MFT, Court Mediator Marcie Kraft, MA, MS, JD, Court Mediator Rachel Curtis, MS, Court Mediator Vince Morda, MFT, Court Mediator Sara Patterson, MFT, Court Mediator Wendi White, MA, Court Mediator Art Cardiel, LCSW, Court Mediator Brian Adams, MFT, Court Mediator Ventura County Court Mediators	Responses to Proposed Changes by Ventura County Court Mediators Children's Voices As mental health professionals, we are trained in, and have experience with, interviewing children, and are very careful not to make the children feel they have to state a preference for one parent over the other when their parents are involved in custody dispute matters. We make it a priority to let children know their parents and/or the Judge are/is the ultimate final decision-maker on custody matters, but the thoughts and opinions of the children (if they have a sense of what's going on) are important to us as we attempt to assist their parents and the Judge in determining a parenting plan in the children's best interests. The mediator's ability to interview children as part of the mediation	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The recommendations also reflect the

Commentator	Comment	Committee Response
	process helps reassure the parents we are truly focusing on their children and their best interests. By interviewing children in conjunction with the mediation process, we are able to provide the Court with very important and relevant information, while at the same time, shielding the children from ever having to enter an actual Courtroom. Often, children who participate in the mediation process have an idea why they are being interviewed. Being included in the mediation promotes a sense of empowerment for these children, as they understand their voice is important to the process. It is rare when a child will leave an interview with a mediator feeling emotionally distraught. Often, children leave the interview feeling reassured they will not "lose" either parent and/or have to choose one parent over the other. In the process of interviewing children, mediators have an opportunity to do a brief assessment regarding the immediate need for mental health services for the children, and can communicate this information to the parents and/or to the Court. In disputed cases, the ability to interview children can possibly provide the mediator with clarification regarding issues upon which the parents present conflicting details (i.e. whether parents drink, whether there's been domestic violence, etc…) The interview process may reveal to the mediator if a child is being coached by a parent on what to say, thereby providing valuable information to the Court pertaining to that parent's lack of	fact that children who do not want to testify in court may benefit from talking with a mediator or evaluator to learn more about the process, for example.

Commentator	Comment	Committee Response
	understanding regarding his/her child's overall psychological wellbeing. Contested Child Custody The ability of mediators to make recommendations allows for relevant information, issues, and concerns to come to the attention of the Court which might otherwise not be known if the mediation had no resulting recommendation. This dissemination of important information can occur either during the process of explaining a recommendation to the parties/attorneys, or through direct testimony to the Court. Many parents enter mediation with the hope and expectation they will reach an agreement. While there are some parents who will remain silent on certain issues if they know there will be a recommendation at the end of the mediation for fear it could place them in a bad light, mediators generally find if one parent is hesitant to address an issue, the other parent will bring it up, thereby allowing the mediator to fully speak to all relevant matters. Mediators who have conducted both recommending mediations and non-recommending mediations have not experienced a higher number of agreements in the non-recommending mediation process. The ability of a mediator to make a recommendation to the Court provides the Parties with a sense of closure, and an ability to move forward, even when they are not in agreement with the recommendation. Having a recommendation reduces the potential for ongoing "drama" between parents by providing a clear resolution. During review mediations it is not uncommon for recommendations	Contested Child Custody Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services.

Commentator	Comment	Committee Response
	that have been adopted by the Court to be the preferred order by the once objecting parent. In a confidential mediation setting, cases where there is no agreement and the Court requires additional information will often be referred for an investigation. This could result in a different mediator/evaluator conducting the investigation/evaluation which increases the likelihood that old information will again be "rehashed" which is counterproductive to reaching a resolution and reducing acrimony. It also opens the door for manipulation by certain parents who realize certain issues elicit certain responses. However, in certain cases where a 730 custody evaluation is warranted, we can always recommend this occur, which results in a custody evaluator, not a mediator conducting a full custody evaluation. Recommendations allow for "partial agreements," thereby permitting certain issues to be resolved quickly, and leaving other issues, upon which the Parties cannot find common ground, to be included in the mediator's recommendation to the Court. The process of a recommending mediation does not put the mediator in a "time crunch." On those rare occasions when, at the end of mediation, a mediator does not feel s/he has had enough time to make an informed recommendation, a Continuance can be requested. When these uncommon instances occur, Parties/attorneys are generally very appreciative of the mediator's thoroughness in wanting to fully address all relevant issues. In a case where a recommendation is made, the Parties/attorneys are	

Commentator	Comment	Committee Response
	provided with an opportunity, before they enter the courtroom, to question the mediator regarding his/her rationale for the recommendation. This process not only helps the Parties better understand why the mediator is making certain recommendations, it can also open the door to an agreement between the Parties, as they begin to dialogue regarding what they agree, or don't agree, with in regards to the recommendation.	
100. Barbara A. Kaufman Attorney Law Office of Barbara A. Kauffman San Rafael, CA	*Commentator noted concerns that courts may be providing representation to those who can otherwise afford it, that information requested was too detailed in the survey circulated for lawyers, concerns about courts following the law and the following Live testimony I agree that live testimony should be permitted, but I am adamantly opposed to judges being encouraged or allowed to ask questions of the witnesses. Judges begin acting like lawyers, and being trained lawyers, they ask inappropriate questions at times. I have had this happen twice, in two different San Francisco cases, in the last two month. Commentator provided comments on specific case reflecting the above concern and the following [A]llowing judges to involve themselves in the proceedings turns them from impartial triers of fact, to an active participant in the presentation or rebuttal of a party's case. This puts the parties and the lawyers in a terribly inappropriate and awkward position, and may give one side an amazing advantage--especially when a party or lawyer wants to but is unable to challenge the judge's line of questioning, or leading questions.	Live testimony The California Court of Appeal has explicitly the necessity for, and approved, such judicial behavior. See *Ross v. Figueroa* (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d289. This is particularly important when litigants are not represented by counsel. The American Bar Association Standards Relating to Trial Courts, standard 2.23 states in its commentary as follows "…*Where litigants represent themselves, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be*

Commentator	Comment	Committee Response
		necessary to supplement or clarify the litigants' presentation of the case." They may not, however, act as an advocate for a litigant. Judges are required to use their discretion expeditiously when asking questions of any witness; they must ask questions allowed under California law, and maintain their position of neutrality.
	Caseflow Management More so than in other cases, knowledge is power in family law. Parties dividing children, property and income in an emotionally-charged setting are often at their worst, and they have incredible incentives to lie. The spouse with access to the business, financial records, income, etc. often has a huge advantage. Parties should NOT be encouraged to, or forced to, settle their cases without the opportunity to know their rights, and make an informed decision about key issues in their lives. Any rule or procedure that directly or indirectly forces parties to try or settle their cases without sufficient information should NOT be implemented.	Caseflow Management Agree that parties should not be forced to settle their case without being able to make an informed decision.
	Sanctions against attorneys Sanctioning attorneys in family law cases would have a very dangerous chilling effect. The best argument against this proposed change is found on pages 23-24 "providing clear guidance through rules of court". To wit "Because family law is a type of civil case, many of the statewide civil rules apply to family law proceedings, but others do not. It is	Sanctions against attorneys Agree that implementation of this proposal should be tied to development of clearer statewide rules of court as described in the recommendations of the Task Force.

Commentator	Comment	Committee Response
	confusing and difficult for a practitioner, let alone a self-represented litigant, to be able to navigate the various rules that apply to family law. Statewide family law rules do not address many areas of practice, and thus trial courts have developed rules and procedures to address the gaps. Unfortunately, local rules often serve as traps for the unwary. Even attorneys sometimes have problems in following local rules, and these issues are exacerbated for the self-represented." At present, the Lexis Nexis CA Rules of Court book is over an inch thick. The rules therein are in tiny type. In addition, local rules are often hundreds of pages long. The rules are in a constant state of flux, and change every year. In addition, interpretation or application of a rule may be subjective, rather than objective. As a single example, in a family law proceeding when is an ex parte application appropriate? What is an emergency justifying ex parte relief under state and local rules? Attorneys in family law cases are often required to make swift judgment calls about abuse, custody and financial matters that are of extreme importance to their clients, based on information the client has provided to the attorney. If an attorney makes the wrong call and fails to seek emergency relief in certain situations, the stakes can be very high in family law. Sanctioning family law attorneys will pit lawyers against their clients. The client may need and request that the attorney seek relief, and be willing to pay for making the request. But if the attorney may be sanctioned for going forward, the attorney may act in his interest, not his or her client's interest. This is just one example. Children's voices Children in family law proceedings should be able to participate in	Statewide family law rules Agree that more robust California Rules of Court regarding family law will be of assistance to parties who have a difficult time finding and complying with local rules. Children's Voices Recommendations in Children's

Commentator	Comment	Committee Response
	proceedings to the same extent that they do in juvenile proceedings. Relying on others (minor's counsel, mediators, etc.) to convey a child's wishes often does not work for children who have the ability to speak for themselves and may result in inaccurate reporting. One parent may coach the child as to what to say to the person in question, or only certain questions may be asked by the person in question. If the person in question has aligned with one parent, that alignment may act as a filter for information gathered and disseminated to the court. Minor's counsel may not be cross-examined, and this is especially problematic if there is no way to test what he or she "reports"- Enhancing Safety All third parties involved in investigating and reporting to the court must be available for cross-examination by the parents. Court and public employees (mediators, investigators, police, CPS) should be available for cross examination at no charge. Parents should not have to pay to cross examine someone who is making a report to the court. Contested Child Custody THERE SHOULD BE NO RECOMMENDING MEDIATION. PERIOD. Commentator provided specific case information and concerns about mediators not adhering to legal requirements and too often using a "cookie cutter approach" to working with and providing information about families. Minor's Counsel	Participation and Minor's Counsel emphasize the need to consider children's wishes, consider hearing directly from a child of sufficient age and capacity, and providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate. Enhancing Safety The Task Force recommends that those professionals providing recommendations be available to testify or be cross-examined. This should be done in a way that is most accessible to parties to protect due process. Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel

Commentator	Comment	Committee Response
	The ABA guidelines for appointed counsel in abuse cases should be adopted in family law. Minor's counsel should work on behalf of his or her client just like any other lawyer does, and not superimpose his or her own view of what is in the "best interests" of the client. Further, parents are being bankrupted by the appointment of minor's counsel, because Family Code section 3150 et seq and related Rules of Court do not have a specific mandatory "need and ability to pay" component that regular attorney's fees (under Family Code section 2030-2032 and 271) have. Courts usually require parties to share the cost of minor's counsel. Either the court needs to pay (which should happen in abuse cases, for reasons set forth in the ABA guidelines), or fees have to be allocated based on mandatory consideration and analysis of need and ability to pay. This creates another problem; however-minor's counsel may be swayed in favor of the parent who pays them. Streamlining Family Law Forms and Procedures The danger in encouraging litigants to engage in a procedure where they mediate an agreement, and then present the stipulated judgment along with their petition, is that a smart, wealthy dominant spouse could easily trick a compliant; less sophisticated spouse into entering into an agreement that is one sided. Further, parties often lie on their disclosures. That is a fact. Often, the lies are not discovered, until much farther along in the proceedings. If the court wants to encourage such settlements, it should, as part of the process, create a summary pamphlet of the law--custody, support, property, attorney's fees, discovery, etc., with a reference to the applicable code sections, and provide this to litigants. There should be a mandatory cooling off period where the litigants have ample opportunity to follow up and look at the law, and the litigants should be strongly encouraged to consult	The Task Force recommendations reflect existing statutory law and statewide rules of courts and provides for further clarification of the role and areas that should be reviewed for amendment or clarification. Existing rules address the need to consider ability to pay and costs and recommendation calls for review of those costs. Streamlining Family Law Forms and Procedures Agree that summary information about the law would be very important to providing basic information to help litigants determine whether this is an appropriate vehicle for them. Information on setting aside judgments due to inaccurate statements on disclosure documents should also be considered. The six month waiting period for the divorce to conclude may serve as the mandatory cooling off period suggested by the commenter.

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	with independent counsel. Perjury People lie in family law because perjury is not punished. One Marin County deputy DA recently said that in his 25 years on the job, he has never seen perjury (a felony) committed in family court proceedings prosecuted in criminal court. In addition to sanctions, it should be prosecuted as the crime it is. Judicial Branch Education There should be statewide, mandatory UNIFORM training of judicial officers and court appointees and employees (mediators, evaluators, minor's counsel, etc.) so there is accountability. This is the only way to affect quality control, and make sure there is uniform application of the law. The Judicial Council can create inexpensive CDS of educational material, which can be disseminated to the courts, and which should also be available for public viewing. Online courses should also be available. L.itigant surveys Litigants should have the ability to complete surveys directly online, with the information provided directly to the AOC, about their experience in family court. This is a simple, inexpensive way to gather information and assure quality control.	Perjury This is a serious issue and the Task Force has revised its recommendation to reflect the need to consider a variety of mechanisms to address this problem. Judicial Branch Education The Task Force made recommendations about a variety of issues that should be addressed. This comment provides specific suggestions about the uniformity of educational requirements and the format for delivery. These suggestions will be referred to the implementation process. Litigant surveys The Task Force recognizes the need for greater accountability, and believes that its recommendations to create a complaint mechanism, provide public information about how to resolve complaints, and to evaluate the creation of a court ombudsman position are important steps toward

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		that goal. The suggestion to allow litigants to complete surveys online will be forwarded to the implementation process.
	Access to the record All family court proceedings should be videotaped, and inexpensive DVDs of the proceedings should be provided to litigants who request one.	Access to the record The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. The Task Force is recommending permitting other options – including audio recording – to make an official record available in a timely and more cost effective manner in family law.
101. Jennifer Kelleher Directing Attorney Legal Advocates for Children & Youth San Jose, CA	On behalf of Legal Advocates for Children & Youth, a program of the Law Foundation of Silicon Valley, I offer the following comments and suggestions on the Elkins Draft Recommendations. As background, Legal Advocates for Children & Youth is a unique legal services organization that provides free legal and social services to children and youth in Santa Clara and San Mateo Counties in a number of civil legal arenas. In particular, LACY provides representation in family law matters to teen parents and young victims of domestic violence. LACY also serves as court-appointed counsel for children in family law matters in Santa Clara County. As a provider focused on the needs of children, our comments focus on how the recommendations affect children involved in custody proceedings. LACY can provide a unique perspective on the issues facing children and minor parents in all aspects of custody proceedings. LACY is also currently contracted by	

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	the state to provide court-appointed representation to all children in Santa Clara County who are subject to abuse and neglect petitions in Juvenile Dependency Court. As such, LACY has worked extensively with children involved in the court process. Overall, LACY supports the recommendations proposed by the Task Force. Family Law matters are complex, high conflict and usually involve pro se litigants who have a poor understanding of the process or the court hearings and court orders. The recommendations would vastly improve the quality of the process from beginning to end. LACY has specific comments on the areas involving children's voices, domestic violence, enhancing safety, and child's counsel. Children's Voices LACY supports the proposed recommendations with modifications. LACY agrees that the legal process should maximize protection of the child while still allowing for meaningful participation when appropriate. LACY strongly supports the recommendation that courts develop guidelines for the determination of when and how children should participate in the court, and further supports additional clarification on the role of minor's counsel. LACY firmly believes that when a child will be a participant in any court proceeding other than an interview with Family Court Services, the child must be afforded counsel. Without counsel, the child has no neutral party to prepare the child for testimony, explain the court process or even the parameters of the hearing, and to support the child through the process as an unbiased third party. Child's counsel can also assist the court in assessing how fully the child is willing and prepared	Children's Voices The Task Force did not recommend that in every instance in which a child participates in court proceedings that counsel be appointed. The Task Force recognizes that due to costs and in some parts of the state, limited availability of minor's counsel, such a mandate might result in preventing children from being able to participate.

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	to involve him or herself in the matter. For example, some children have serious fears about testifying in court in front of their parents but would be willing to provide testimony outside of their parents' presence. Other children want to provide input only if their parents will never know what information they shared. It is critical that children know exactly how the information they provide will be weighed, evaluated, and shared in order for their involvement to be positive and empowering. Even in the best of circumstances, parents will often provide information to their children that is inaccurate, misleading, or biased about the court proceeding, the judge, and the other parent. Child's counsel can guide the child through the process to ensure maximum fairness to the parties, minimize coaching or bias from the parents, and protect the child from emotional harm in the process. The Task Force might consider recommending that child's counsel be appointed for the limited purpose of assisting the child in testifying if a full-fledged appointment is not warranted. Without the benefit of counsel, the court will have no ability to control or even monitor the impact of testimony or involvement on children in its proceedings. In cases where a child's testimony is not warranted but input and feedback on the child's wishes is helpful to the court, LACY supports expanding the use of trained Family Court Services personnel to interview children or gather information on the child's perspective. Care should be given in this process to informing children how this information will be maintained and whether the information shared has any protection of confidentiality.	Protection of confidentiality The Task Force recommendations reflect the range of options that may be available to courts and families considering children's participation, including talking with family court services mediators, evaluators, or investigators. Existing statewide rules of court require that family court services staff provide information on

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		the limitations of confidentiality.
	Domestic violence LACY agrees with the recommendations with modifications. Specifically, LACY recommends that when a child participates in a domestic violence proceeding as witness, child's counsel must be appointed even if it is for the limited purposes of protecting the child as a witness. For example, Santa Clara County Superior Court has appointed our office in a limited scope to serve in this capacity when the child was served with a subpoena to testify. The child's attorney should identify the child's willingness and ability to testify and file the appropriate motions with the court to provide the child with the maximum protections, including a motion to quash the subpoena if testimony would be detrimental to the child. In cases where domestic violence is at issue, the child's safety is at risk and the protection of counsel is warranted.	Domestic violence The Task Force did not recommend that in every instance in which a child participates in court proceedings that counsel be appointed. The Task Force recognizes that due to costs and in some parts of the state, limited availability of minor's counsel, such a mandate might result in preventing children from being able to participate.
	Enhancing Safety LACY agrees with the recommendations with modifications. Specifically, LACY recommends that when a child participates in a proceeding as a witness and there are allegations of child abuse, it is imperative that the child be appointed counsel even if it is for the limited purposes of protecting the child as a witness. For example, Santa Clara County Superior Court has appointed our office in a limited scope to serve in this capacity when the child was served with a subpoena to testify. The child's attorney should identify the child's willingness and ability to testify and file the appropriate motions with the court to provide the child with the maximum protections, including a motion to quash the subpoena if testimony would be detrimental to	Enhancing Safety The Task Force did not recommend that in every instance in which a child participates in court proceedings that counsel be appointed. The Task Force recognizes that due to costs and in some parts of the state, limited availability of minor's counsel, such a mandate might result in preventing children from being able to participate. However, with respect to cases involving allegations of abuse, the

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	the child. Children who are alleged victims of abuse and neglect are always appointed counsel in Juvenile Court proceedings to ensure their safety and protection. Cases concerning the safety of the child should warrant the same protection. Minor's Counsel LACY agrees with some of the recommendations but requests further clarification as to several of the recommendations. First and foremost, LACY agrees that further clarification regarding the roles and responsibilities of minor's counsel are greatly needed across the state. Children receive vastly different levels of representation based on the interpretation of duties by the individual attorney. Some counsel believe that their role is limited to promoting the child's best interest and do not engage the child at all in the case, including neglecting to meet or interview the child regarding critical issues. Other counsel represent children in a traditional attorney-client role advocating for the child's stated interest. The role of counsel for children has been studied nationally and there is no national model espoused by all jurisdictions. LACY suggests the Task Force recommend a hybrid model similar to that articulated in Welfare and Institutions Code section 317 providing that the child's attorney must meet with the child and articulate their wishes but also must provide advocacy on what is in the child's best interest. While, the proposed recommendations provide the additional guidance that the child's opinion must be expressed to the court, the remainder of the recommendations regarding the role of child's counsel are too ambiguous to provide any further clarification. In addition, the recommendations do not contemplate the role of minor's counsel in a case involving a non-verbal child, or a child that is otherwise unable or	Task Force recommends that pilot projects be developed so as to consider promising practices in this area, including the role of minor's counsel. Minor's Counsel The Task Force is aware of existing statutory law and statewide rules of court providing guidance as to the role of minor's counsel in family court. This section of the recommendations has been redrafted and now as "Children's Participation and Minor's Counsel, and the Task Force sought to provide further clarification in this area. The support in the recommendations for judicial discretion and case-by-case consideration of when a child might testify reflects recognition that a case might involve a non- or pre-verbal child or a child not interested in testifying.

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	unwilling to express his or her wishes. LACY has concerns about the Task Force's proposal that child's counsel not make recommendations to the court. While LACY agrees that child's counsel is not an evaluator, nor should child's counsel ever testify, it does seem necessary that a child's attorney conduct an independent investigation of the case from the child's perspective. The recommendations are very ambiguous as to if and how a child's attorney should bring that information to the court's attention, if at all. CONCLUSION LACY praises the efforts and work product of the Elkins Task Force and looks forward to being involved in the implementation process. Commentator provided information on contacting her for follow-up.	The Task Force recommendations contemplate that minor's counsel would present information from his or her fact-gathering or investigation in an appropriate evidentiary manner.
102. Vanessa Kirker Certified Family Law Specialist The Family Law Section of the Santa Barbara County Bar Association (South County) Subcommittee on the Elkins Family Law Task Force Penny Clemmons, CFLS, Ph.D Laura G. Dewey, CFLS Jennifer E. Drury Vanessa Kirker, CFLS Matthew Long Marlene W. Valter, Psy.D.	On behalf of the members of the bar in South County, Santa Barbara Right to Present Live Testimony at Hearings We ask the Task Force to expand its recommendation to address the following concerns If the parties and counsel know that they will have the opportunity (and in fact the obligation) to present their case through live testimony, there is no incentive to provide quality declarations that fully lay out the facts and that provide adequate notice of the legal and factual issues the parties must be prepared to address at the hearing. We ask that the Task Force acknowledge in its recommendation that creating an expectation of live testimony for every hearing will likely have the effect of significantly reducing the quality of family law pleadings. The Task Force should encourage Courts to provide written notice to litigants of their obligation to provide adequate pleadings (i.e., providing notice of	Right to Present Live Testimony at Hearings The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues

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	legal and factual basis of the parties' position), with accompanying sanctions should litigants fail to do so. If the parties and counsel are not given any indication in advance that the Court believes that a good cause exception exists to find that live testimony in not necessary, counsel will be forced to incur the expense of preparing for any and all live testimony that may ultimately prove to be unnecessary. If Counsel has taken their obligation to provide appropriate pleadings seriously, the Task Force=s recommendations have now doubled the cost of the hearing. The Task Force should recommend that the Court provide notice to the litigants at least 48 hours in advance of the hearing that it does not believe live testimony is necessary. (Via email?). Expanding Legal Representation And Providing A Continuum Of Legal Services The Task Force determined that legal information and advice are critical in Family Law matters, including a continuum of services, so they recommend Attorneys fees Development of statewide rules and forms for obtaining attorneys fees. How about a Judicial Council form that is an instruction sheet for —how to file for attorneys fees, listing all of the forms and backup documentation needed. Early needs-based fee awards	where there are material facts in controversy. The decision about which, if any Judicial Council forms will be initiated or modified in this regard is an implementation issue which will be considered in developing the rule of court. Expanding Legal Representation And Providing A Continuum Of Legal Services Attorneys Fees This suggestion regarding a Judicial Council instruction sheet with information regarding how to file for attorneys fees should be considered as part of implementation of these recommendations. Early needs-based fee awards

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	The court should make findings regarding the need for fees, disparity in access to money, and whether or not one party is able to pay. (Throughout this section, the Task Force uses the word ―should I would change it to ―shall)	Language that requires these findings should be considered as part of the rules drafted for implementation.
	Assistance in preparing request for fees to obtain counsel Pro pers should be given assistance with the forms for fee requests/awards.	Assistance in preparing request for fees to obtain counsel No response required.
	Referrals to private attorneys Low fee family law panels should be established, including unbundled services.	Referrals to private attorneys No response required.
	Funding for legal services Funding for Legal Aid should be increased so that they can provide more services to FL litigants.	Funding for legal services No response required.
	Funding for representation Funds should be made available for ―critical need cases.	Funding for representation Funds should be made available for appellate, self-help and critical needs cases - AB 590 (Feuer) was enacted in October 2009 and will provide funding for pilot projects to address cases of critical need including domestic violence and child custody. Preference will be given to those cases where one side is represented and the other is not. This pilot project will help address some of the key questions about
	Expanding legal services programs for appellate cases Self-help programs for appellate cases should be established (Where is the money going to come from? Who determines what is a critical needs case?)	
	Expand Self-Help legal services Increase funding for self-help legal services Expand Self-help centers with instruction and/or training materials	

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	regarding evidence.	identifying critical need and how funds can most effectively be used.
	Availability of attorney Increase number of FL attorneys in California. Pretty tough sell, given the current economic climate and poor business climate for FL attorneys)	Availability of attorney Agree that funding for many of these projects is a longer-term goal due to the difficulties in the economy.
	Mentoring Programs Mentoring programs to be established locally & statewide Court-based mentoring Pro bono ―opportunities‖ be made available for FL attorneys. This could be good for the newbies, or for those who need their trial experience to be CFLS.	Mentoring Programs: Court-based Mentoring Pro Bono opportunities No response required.
	Limited scope representation	Limited Scope representation No response required.
	Case Flow Management We ask the Task Force to explicitly tie together recommendation 3 (automated case management system with checkpoints established at regular intervals) and recommendation 10 (Unnecessary court appearances should be avoided). Creating a checkpoint necessarily creates additional interaction with the Court - which will be very expensive and inefficient if that interaction occurs in the same manner as it now occurs (written submissions followed by a court appearance). Recommendation 3 is only workable if recommendation 10 is taken seriously. 5	Case Flow Management The importance of streamlining procedures is an important one that must be considered as part of implementation.

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	Providing Clear Guidance Through Rules of Court Statewide family law rules. Implementation of statewide rules, which incorporate the ―best procedures practices from local rules, would be a major overhaul of the Family Law Rules section of the CRC. Presumably, the Judicial Council and the Legislators would work in concert to obtain the goals in this section and section 2. I would be interested to know who would be designated to identify the ―best procedural practices from local rules. These new centralized and uniform rules would have to be somewhat flexible to legislate for the bigger 25 judge counties, as well as the single part-time judge counties. On a more parochial level, I have the following comments Uniform Ex Parte Rules Anacapa Division of the Santa Barbara Superior Court (South County) has 3 ―family law judges. Only one of them practiced family law. There are no written procedures for hearing ex parte applications and so each Judge has his own routine. One of the Judges routinely hears ex parte applications in the courtroom with a court reporter present, one of them routinely decides ex parte applications on the paperwork alone, issuing a ruling without having the attorneys in his chambers, and the third hears ex parte applications in chambers, no reporter present. Further, the ex parte notice requirements are the subject of much discussion. Clearly, the Elkins Commission realized that fact. Although no mention of sanctions was made in this section of the recommendations, it is our firm belief that the issuance of sanctions for bringing substantive ex parte applications when an OST would be	Providing Clear Guidance Through Rules of Court Statewide family law rules Agree that revisions of rules will involve a major overhaul. Judicial Council committees will be responsible for preparing an initial draft that will be circulated statewide for review. It will be important to recognize the appropriate variations based upon size of courts and other factors. Uniform Ex Parte Rules This variation in procedure likely poses challenges to the bar and self-represented litigants. Statewide rules would presumably be of assistance – even to have uniformity in a county. It is difficult to suggest mandatory sanctions unless clear guidelines are set forth. This would be an issue to consider in drafting statewide rules.

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	appropriate, or seeking ex parte orders when there is no exigent circumstance should be the subject of mandatory sanctions – and judicial officers should be encouraged to impose appropriate sanctions for the misuse of the ex parte process. Evidentiary objections to declaration testimony This is perhaps the most egregious practice in which some attorneys engage. The format for making objection should, of course, be standardized. But again, the repeated submission of clearly inadmissible testimony in declaration form must be sanctioned, either by way of monetary sanctions or issue preclusion. Requests for Evidentiary Hearings The presumption in favor of live hearings is addressed in a different recommendation. However, given that presumption, there must be a statewide uniform procedure for making the request. Springing a live hearing on self-represented litigants or even represented litigants at the last minute is neither efficient nor will it lead to better decisions – faster maybe, but not better. If a litigant wants an evidentiary hearing on a law and motion matter, he or she must specify the issues before the court, the witnesses and the expected areas of testimony. There must be some procedure for the opposing side to object to a live hearing or to seek a short continuance to permit limited discovery, and then the hearing must be limited to the issues set forth in the request. It is a hubristic fantasy entertained by some judicial officers that they can ―ferret out the truth by acting as 2nd chair to one side or the other or both. The rules of evidence are well-established and intended to provide the Court with the most reliable statement of facts. Rather than advocating the erosion of the rules of evidence in domestic relations matters because	Evidentiary objections to declaration testimony This is a topic that should also be considered in implementation. Requests for Evidentiary Hearings The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The scope of testimony should be limited to the issues raised in the pleadings. The Task Force anticipates the use of reasonable

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	self-represented litigants don't understand them, if a party wants to represent him or herself in an on-going matter, they should be required to attend a class or two on the evidence code. Additionally, the Judicial Council forms should be VERY specific regarding what information is permitted and what is not. Finally, the Facilitator's office must be more diligent about including only admissible statements in the paperwork.	continuances when necessary to provide adequate notice and opportunity to prepare a response to facts arising in the testimony of the parties at the hearing. Additional information should be developed for self-represented litigants regarding the rules of evidence and what type of information is admissible and what is not.
	Centralized Statewide Rules Is it the recommendation that the Rules of Court for ―regular civil cases be duplicated into a Family Law Rules section, along with the―family law specific rules? And then, the recommendation goes on to state ―the rules should strive to simplify the procedures the parties must follow. Is this a recommendation that the ―regular civil rules be revised?	Centralized Statewide Rules The recommendation is that some rules may need to be modified; others can simply be referenced as applying to family law.
	Local Rules The aegis of Local Rules should be defined, specifically, by the Judicial Council. Local Rules should be reviewed and accepted by the Judicial Council for consistency with the CRC.	Local Rules No response required.
	"Local" local Rules I agree with the recommendation – they should be outlawed in their entirety.	Local, local Rules No response required.
	Children's Voices	Children's Voices

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	Input from children. We agree that children might meaningfully participate in a given family matter. Providing for child safety and well-being in court proceedings The Judicial officer must control the examination of the child witness to protect the best interest of the child. We agree with this recommendation. Children's input should not necessarily need to be equated with testifying in a courtroom We agree with this recommendation. However, instead of Minor's counsel assisting the child for court testimony we suggest a neutral Court Appointed Special Advocate for the child could assist the child in preparing to participate in family law court and be present during the child's testimony. We agree that persons skilled in interviewing children should be utilized in the child testimony process. Exercising discretion and finding the least traumatic method for child involvement. Parental involvement We agree with this recommendation Involving other professionals and providing information We agree with this recommendation. Involving the Child	Input from children No response required. Providing for Child Safety and well-being in court proceedings No response required Children's input should not necessarily need to be equated with testifying in a courtroom The Task Force recommends consideration of the role of Court Appointed Special Advocates in family court matters as part of implementation efforts. Parental involvement No response required. Involving other professionals and providing information No response required. Involving the Child

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	We agree that different settings to take children's testimony should be considered, however, due process for the parents should be a paramount consideration when making such decisions. Preferred is a determination of the child's competency as a witness and following procedures set forth in the welfare and institution codes regarding children's testimony whether the content of the testimony involves abuse or other family law parenting disputes. Enhancing Safety Appropriate procedures Related procedures We agree with the task force recommendation. We also recommend that a Court Appointed Special Advocate (CASA) should be appointed to assist in preparing a child for testimony in Family Law Court. b. Hearing from children in chambers We agree with the task force recommendation. It should be emphasized that the competency of a child witness must be determined. Court procedures should allow adequate testimony as foundation to understand the potential contexts of a child's statements before hearing children's testimony. Expedited handling We agree that allegations of physical and sexual abuse require expedited handling; however, the conclusion of investigations should have equal expedited handling. For example, if an investigation provides the court with compelling information to support abuse, an expedited court hearing should determine that finding and clarify child access. Equally, if an investigation provides the court with compelling	The Task Force agrees that due process must be protected during these proceedings and recommends that all testimony be on the record. Enhancing Safety Appropriate procedures Related procedures The Task Force recommends that the use of Court Appointed Special Advocates be considered as part of implementation efforts. b. The Task Force recommends that all such testimony be conducted on the record. Expedited handling Approaches to expedited handling of post-investigation procedures including hearings scheduled immediately following the results of an investigation should be considered as part of implementation of the pilot

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	information that does not support abuse; an expedited court hearing should determine that there was no finding and clarify child access based on no finding.	projects for these cases.
	Child welfare services We agree with this recommendation.	Child Welfare services No response required.
	Contested Child Custody Recommendations Information Provision Methods We agree with the task force recommendation that due process rights must be protected. A form requesting key information from the parties would expedite some aspects of the processing contested custody; however, information on these forms would not be the sole information in which custody would be based. For example, parenting competency is a factor that should be considered over the parties work schedules.	Contested Child Custody Recommendations Information Provision Methods The Task Force agrees that the information on the form should not be the only information used in determining custody.
	Any orientation sessions about the legal process should be presented in a clear manner that can be understood by parties who come from varied cultural backgrounds.	The Task Force agrees that any orientation sessions about the legal process should be presented in a clear manner that can be understood by the parties.
	Investigators and evaluators We agree that the courts clarify if they need information from investigations (without recommendations) or evaluations (with recommendations) submitted to assist the court in decision-making process.	Investigators and evaluators No response required.

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	Opportunity to Respond and Opportunity for cross-examination We agree any information to the court is subject to due process procedures. Child Custody Mediation Services We agree that parents should have the opportunity to settle disputes in mediation. We disagree that recommendations from a mediation session is good information that the court should rely upon. The mediation process is distinctly different from the evaluation or investigation process. Persons respond differently to the differing questions that are asked in these two different contexts. Therefore, the information provided to the court is not necessarily accurate. Mediation, too often, relies on one to two sources of data interview information and observation. Parents who are verbally astute and know how to present well to influence others have a distinct advantage to parents who do not possess these same skills. Verbal and social presentations are not criteria that accurately distinguish parenting skills. It do they accurately determine that one parent as more competent than the other. As a result, the courts are not getting accurate information to base their opinion or to make court orders. It would be best to have mediation confidential and any investigation or evaluation a separate process. Investigations and evaluations submitted to the court must include multiple data sources interviews, observation, collateral or third party information, questionnaires, and sometimes testing. If county resources require mediators to provide recommendations the recommendations should include the data sources for each recommendation, i.e., a recommendation is based on interview statements 10 only, or recommendation is based on interview statements and school records,	Opportunity to Respond No response required. Child Custody Mediation Services The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	etc. Santa Barbara County could participate in a pilot program about confidential mediation vs. recommending mediation Resources for child custody mediation services. Santa Barbara County adequately provides scheduled mediation services. Appropriate number of mediators Santa Barbara County makes efforts to utilize mediation services to serve the community. Access to family court services Allowing parents to use family court services mediation prior to filing a custody/visitation motion would increase pressures on resources. Although it is a good idea for parents to work through problems with a mediator prior to filing in court, this could be offered by private sources before adding these additional costs to court budgets. Court would have to show a significant settlement rates in mediation services to show that mediation prior to filing would be cost efficient. Information from family court services and evaluators We agree with this recommendation. Child Custody language Parenting time is adequate language to ensure both parents understand their responsibilities. Culturally competent mediation services	Resources for child custody mediation No response required. Appropriate number of mediations No response required. Access to family court services The Task Force recommendations that implicate resources are suggested to be considered as part of implementation efforts. Information from family court services No response required. Child Custody language No response required. Culturally competent mediation

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	We agree with this recommendation.	services No response required.
	Minor's Counsel Acting within the scopre of that role Recommends that Family Code Section 3151(b) should be amended to eliminate the written statement of issues and contentions. Although Minor's Counsel may have fully discussed his or her position with the parties in advance, Minor's Counsel has no obligation to do so and the Statement of Issues and Contentions is one way the Court can ensure that all parties are warned prior to the hearing regarding Minors Counsel's position. We ask that the Task Force either recommend that Family Code section 3151(b) more clearly define the a statement of issues and contentions@ as an offer of proof, or, if it is going to recommend the elimination of the statement of issues and contentions, we ask the Task Force to recommend some other method of providing notice of Minor's Counsel's position that meets the Task Force's concern that Minor's Counsel not testify.	Minor's counsel Acting within the scopre of that role The Task Force recommends that information minor's counsel might submit during the court process be provided in an evidentiary appropriate manner that would include ensuring parties had the same information as the court as well as an opportunity to respond to such information.
	Providing information on child's wishes Recommends that section 3151 be amended to remove Minor's Counsel's ability to independently determine under Family Court section 3042 whether his or her client is of sufficient age and capacity to reason so as to form an intelligent preference in the custody issues before the court. The recommendation asks that Minor's Counsel be required to present evidence such that the court itself can make the appropriate determination. Although this makes sense to the extent that Minor's Counsel should not be testifying, it should be noted that a likely result of this recommendation is that the minor child will be	Providing information on child's wishes The specific issues associated with implementation of this recommendation should be considered during implementation; however, the recommendation does not preclude use of an offer of proof as part of this process.

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	asked to testify so the court can establish his or her capacity to reason. The only other evidence Minor's Counsel could present to establish the minor child's capacity to reason would be an expert witness, which would presumably be the therapist that we don't want to testify so that the child will feel safe saying anything he or she wishes to while in therapy. All other useful testimony would likely be hearsay. Since Minor's Counsel is often appointed in an attempt to avoid the necessity of having the Minor Child testify, Minor's Counsel should at least be able to make an offer of proof that the child is of sufficient age and capacity to reason. Anyone wishing to challenge that offer of proof would then have the right to call witnesses, including the minor child, to test that offer of proof. Most parties would wish to avoid challenging Minor's Counsel's assertion unless it were truly necessary, thus accomplishing what we would hope is everyone's wish avoiding testimony by the Minor Child unless it is truly necessary. Scheduling of Trials and Long-Cause Hearings Implementation of this recommendation would not, for the most part, change anything in our courtrooms, except the strung out trial. It strikes me that if the Courts begin to take more evidentiary hearing at the spur of the moment as recommended in 1, we need to address the challenge presented to Judicial officers in finding space and time to hear those —brief matters – and a process to ensure that those —briefly matters remain just that. Day-to-day trials and long-cause hearings. We agree with this recommendation with one caveat the —good cause exception eviscerates the rule unless good cause is well-defined by the CRCs. 13	Scheduling of Trials and Long-Cause Hearings The Task Force recognizes that there are courts currently able to schedule long-cause hearings and trials in a reasonably practical manner. The goal of the Task Force is to extend this standard of excellence to all family law litigants, regardless of where their case is filed. Specific language of the proposed rule will be considered during the implementation phase.

Commentator	Comment	Committee Response
	Litigant Education Orientation and ongoing information and education on the family law court process. It would be helpful to have orientation and information prior to the filing of a case. Mediation needs to be emphasized prior to filing and immediately upon filing. Mediation services should be provided by the court in the same format as custody mediation. The Courts should work with Family Law Bar members to provide ongoing regular presentations in the community regarding the legal process for dissolution AND post judgment issues. For many litigants, there is significant litigation post judgment and this requires the same educational goals and objectives as pre judgment education. Litigants should be encouraged to observe family law court hearings. Orientation to child custody mediation. Parents should be informed of mediator's education, training, and experience. The orientation prior to mediation should include information about children's rights.	Litigant Education No response required. Orientation to child custody mediation Information about orientation content is contained in California Rules of Court, rule 5.210 but is not limited to that required content. Providing information to parties about mediator education, training, and experience

Commentator	Comment	Committee Response
		and about the role of children in the process should be considered as part of implementation.
	Enhanced parent education prior to mediation Elkins recommends court should develop referrals to parenting education class. This raises a philosophical question - should courts be in the business of making referrals? I think not.	Enhanced parent education prior to mediation California Rules of Court, rule 5.210(d)(2)(C)(i) requires mediators to help parties "locate counseling and other services."
	Currently, Family Custody Services provides a list of people available to provide supervised visitation. There is no screening to be on the list. However, litigants believe the individuals have been approved by the court.	Supervised visitation lists Courts should develop procedures for such lists including processes for being added and removed.
	Settlement Opportunities This education should not be limited to the early stages of the process but continued until a Mandatory Settlement Conference. Many litigants who were opposed to settlement may find themselves much more flexible after one court appearance and observing what really happens in the courtroom.	Settlement Opportunities No response required.
	Enforcement of orders Enforcement of orders is minimally dealt with in the Recommendations. Yet, at least with regards to custody and support, the drafting of the order is of utmost importance. This area needs to be fleshed out.	Enforcement of Orders Agree that this is an area that should be fleshed out as part of implementation.
	Expanding Services To Assist Litigants In Resolving Their Cases	Expanding Services to Assist Litigants

Commentator	Comment	Committee Response
	The Task Force has concluded that settlement is a good option to avoid litigation and therefore recommends 1. Services should be made available to help parties settle their cases. Settlement programs should be established in the courts with trained attorneys and judicial officers. 2. All forms of ADR should be made available, including early ADR, 3. ADR providers should be given FL training. (Our comments This is all good. Need we say more?)	in Resolving Their Cases No response required.
	Streamlining Family Law Forms and Procedures General form review There should be samples of completed Judicial Council Forms. It is unclear why local forms should be made optional. If they don't conflict with state Judicial Council forms, and the particular county utilizes them because it is helpful to their process, they should not be optional.	Streamlining Family Law Forms Agree that samples of completed Judicial Council forms would be helpful. Some models are currently on the Courts self-help website. The rationale for local forms being made optional is that practitioners from other jurisdictions often have significant difficulty complying with these requirements as do self-represented litigants who are not assisted by local programs.
	Simplifying forms for litigants who are in agreement Elkins recommends a simplified process for parties in agreement even if they have children. Children need the protection of the court. As an example, Mediators make CPS reports. If parties have children, there is a need for more oversight. Parties who choose the simplified stipulated judgment process would be	Simplifying forms for litigants who are in agreement Agree that custody agreements can be reviewed by judicial officers deserve close review from courts. Stipulated Judgment process

Commentator	Comment	Committee Response
	prohibited from filing a motion until final judgment except in an emergency. Who determines what an emergency is? What is the rationale behind this proposal? Why would the right to file a motion be prohibited? What would be the legal effect for example of filing a custody motion after final judgment because it was prohibited if not an emergency? Simplifying the process is an excellent idea provided it doesn't shortchange children. Simplify forms for motions The recommendation is to eliminate OSCs except for contempt and domestic violence. The option to file an OSC for custody should remain so that the judge has an opportunity to eyeball the parents. Simplify forms for discovery There is a recommendation to revive the 60 day rule after filing the petition for filing PDD. This would be onerous. No rationale for its revival is stated. Simplify procedures for service of process It is recommended that indigent litigants who cannot afford the costs of newspaper publication be able to ask the court to post pleadings at court house. This appears to hold potential for abuse of process. Perhaps, newspapers could take upon themselves the civic duty to post without charge just as they do filings.	This recommendation has been modified to remove the provision that motions may not be filed unless there is an emergency. Simplify forms for motions The opportunity to eyeball the parent would presumably come from the right to live testimony. Simplify forms for discovery Many attorneys reported that they are having a difficult time receiving disclosures from other parties. They have suggested that to save attorney fees and client frustration that these deadlines should be reestablished. Simplify procedures for service of process The procedure for posting at the courthouse is already in place based on *Cohen v. Board of Supervisors for the County of Alameda* (1971) 401 U.S.

Commentator	Comment	Committee Response
		371 at 382. This recommendation would provide that service of a summons should be made by the internet rather than on a bulletin board at the courthouse.
	Recommendation is post judgment motions should not require personal service. Given the state of the postal system, service, if by mail, should have to be certified and if no receipt is received then personal service is necessary.	Post judgment motions and personal service This recommendation has been modified to add provisions to demonstrate that mail service is likely to be to the right address.
	Simplifying procedures for establishing parentage No comments	Simplifying procedures for establishing parentage No response required.
	Declarations Should declarations have page limits? Doesn't the length of the declaration add to the court's knowledge of the litigant? Shouldn't the litigant have the opportunity to write everything they need to say as long as it complies with the rules of evidence?	Declarations Many judicial officers reported that long declarations do not necessarily add to their knowledge, and, are likely to lead to offers of inadmissible evidence. The issue of page limits should be carefully considered as part of implementation.
	Agreement Template Voluntary Stay Away Orders could be done by template and obviate the need for a formal RO.	Agreement Template This should be considered as part of implementation.

Commentator	Comment	Committee Response
	Enhancing Mechanisms to Handle Perjury Perjury is certainly a problem that family law litigants face. It is agreed that there should be a mechanism for curbing perjury and sanctioning litigants who perjure themselves. This recommendation suggests that litigants have the opportunity after a court order has been made to prove by clear and convincing evidence that the other side knowingly or fraudulently misrepresented an essential piece of evidence. Further, in order to get any of the stated relief (set aside of order, sanctions, attorney fees and costs, costs for time off work) the litigant must show that the misrepresentation caused measurable damage to him/herself. The manner in which this recommendation is written does nothing to curb or punish the litigant who perjures him/herself in real time. This recommendation does not provide a mechanism that a litigant can use during the pendency of a motion to deal with the misrepresentation. It is designed so that the sanctions, etc. are sought after a court order is made. This approach is problematic for two main reasons (1) punishing the behavior after the hearing requires that there be an additional motion filed, hence, more litigation, and (2) in the case of a custody/visitation decision based on misrepresentations on which the court relied (i.e. an essential piece of evidence), a custody/visitation order would have presumably gone into effect before a perjury motion could be prepared, filed and heard by the court. Assuming the parent could prove the legal standard set forth in the recommendation, and the court order was set-aside, the children would potentially suffer from the instability caused	Enhancing Mechanisms to Handle Perjury This recommendation has been modified based upon the concerns noted in these comments.

Commentator	Comment	Committee Response
	by the dueling orders. Perjury should be dealt with at the time that it occurs, whenever possible, to avoid (1) additional attorney fees or time lost at work to litigate a new motion, and (2) orders being made on misrepresentations that can later be set-aside. Standardize Default and Uncontested Process Statewide The Task Force has decided that we really could use consistent statewide procedures for default and uncontested judgments, so that you don't have to relearn the procedure for each and every county or division, so There shall not be any local rules that change the statewide standard. Full review of all documents submitted. Now here is a good idea The clerk has to go through the entire Judgment packet that you submit and find all of the errors at once, rather than finding an error in the first few pages, going no further, then sending it back to you, just so that they can send it back again when they find another error on page ten, and so on. The clerk would be required to make a list of ALL of the errors on the reject sheet, so that you can correct them all at once. A hearing will only be held on the matter if necessary. Interpreters Comment Minor children should be forbidden by the court to act as an interpreter for their parents. Period.	Standardize Default and Uncontested Process Statewide Full review of all documents submitted. No response required. Interpreters While this is certainly ideal, until interpreters are available, it does not

Commentator	Comment	Committee Response
		seem appropriate to deny those parties with limited personal and financial resources access to the courts.
	Expansion of availability of interpreters Comment This is ideal but a very expensive undertaking. There would need to be a mechanism by which litigants notified the court ahead of time that they need an interpreter. The Task Force should consider having litigants pay some amount (on a sliding scale) to a fund to support this program.	Expansion of availability of interpreters Agree that adding a provision of forms requesting or responding to a hearing that state a need for an interpreter should be considered as part of forms development.
	Out-of-courtroom services Comment Again, this is an ideal recommendation but it does not take into account the immense cost associated with such a task. Courts should recruit bilingual staff but not to the exclusion of monolingual staff who are equally or more qualified.	Out of courtroom services Given the number of litigants with limited English proficiency, bilingual skill would certainly be valuable for staff and might reasonably be considered as part of qualifications
	Grant funding. Comment Agreed to the extent practical.	Grant funding No response required.
	Protocols. Comment Agreed.	Protocols No response required.
	Early identification of need. Comment Agreed. This is simple – modify initial pleadings and motion applications to include an inquiry regarding the need for an interpreter.	Early identification of need These suggestions should be considered as part of implementing

Commentator	Comment	Committee Response
	When inputting case data, LEP litigants can be flagged in the court docket so that when motions, etc. are filed, the court is immediately made aware of need. There can also be a simple Judicial Council application for interpreter that would be filed with motions. Shared interpreter pool Comment Agreed. Scheduling Comment Agreed. There could be designated days of the week when LEP cases are heard so that the interpreter's hours could be by design. Recruiting bilingual judges, commissioners, and court reporters is also an option. 21 Allocation of resources Comment Agreed. Public Information and Outreach. This section recommends greater effort in providing public education about court services. The Task Force's recommendation necessarily relies on each Court's willingness to utilize its resources to further these objectives. This recommendation is unlikely to be followed unless there is some follow through. We ask that the Task Force include a recommendation that the Administrative Office of the Courts continue to conduct surveys or utilize other methods for determining how well the Courts are doing in educating the public.	this recommendation. Shared interpreter pool No response required. Scheduling Under the California constitution, court proceedings must be conducted in English, so bilingual judges and commissioners may not be required. Allocation of resources No response required. Public information and outreach Centralizing content development at the state level, rather than leaving it to individual courts, will help to minimize the local court resources necessary to provide information and outreach. With respect to surveys assessing how well the courts are educating the public, that should be a branch-wide effort and should not be limited to

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		family law.
	Court Facilities Trial court facilities standards. Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. Courtrooms. Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. Private space for consultation and settlement Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. Self-help services Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. Family court services. Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. 6. Children's waiting rooms. Comment This recommendation represents an ideal and we are in agreement. Practicality and funding are potential issues. 7. Co-location of services. Comment This recommendation represents an ideal and we are in	Court Facilities Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.

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	agreement. Practicality and funding are potential issues.	
103. Stephen Kolodny Family Law Attorney Kolodny & Anteau A Partnership of Professional Corporations Beverly Hills, CA	*As a founding partner of Kolodny & Anteau, and as an active Family Law practitioner, I submit this letter with the comments my partners and I have on the Draft Recommendations of the Elkins Task Force. Commentator provided information on professional background as a family law attorney and the following comments I/we [the lawyers at Kolodny & Anteau] want to express our sincere thanks to the Task Force for the hard work and substantial time, thought and effort that went into the daunting project of preparing the draft Recommendations. It is our sincere hope that the Elkins Task Force will ultimately cause the substantial improvement in the practice of family law in our state for decades into the future, affording, amongst other things, the children who come in contact with the system the ability to be children, children leading "normal" lives free of hunger and fear. Commentator provided general comments on the recommendations and the following Because of the current economic crisis affecting the State, it is apparent that many of the funding requirements for the achievement of the goals of the Task Force cannot be achieved. As in the past, I/we believe that the Family Law Sections of local bar associations need to "step-up." as was the case in the past, to establish panels that will provide some of the services the Task Force recommends, services that should be provided to litigants in the family law system. I, and the lawyers at Kolodny & Anteau, would like the Elkins Family	

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	Law Task Force to consider the following comments regarding certain portions of its Draft Recommendations. I will not be commenting on all aspects of the Draft Recommendations, many of which, such as providing more education and services we support - our focus will be on the Draft Recommendations that pertain to custody, property and litigation issues. Right To Present Live Testimony At Hearings I/we strongly believe that the concepts of due process and the resolution of disputed issues require the live, in-person, testimony of witnesses in support of the claimed position coupled with the right to cross-examine any such witness. Unless a higher standard of proof is required by statute, the burden of providing the preponderance of evidence should always [except if there are exceptional circumstances established by clear and convincing evidence] be satisfied by live, in-court, testimony [unless there are statutory or case law exceptions, such as for an out of state or unavailable witness] and the ability to cross-examine all such witnesses. The concept of presenting direct evidence by declaration is unacceptable because it deprives the trial judge of the opportunity to observe the witness testify and observe their tone, expressions, demeanor, etc. while testifying on direct examination. Declarations are written by lawyers and may [often do] refer to documents or “facts” for which no foundation was, or could be, established. Motions to Strike from declarations are not an effective manner of dealing with objectionable testimony because the objectionable testimony, which would not be heard at trial, has to be	Right To Present Live Testimony At Hearings Agree. No response required The Task Force has not recommended the elimination of declarations. (See section on Simplification of Forms and Procedures.)

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	considered before it is stricken. Thus, with regard to the recommendations in this section, I/we Live Testimony Agree with Recommendation Good Cause Exceptions Agree, in part, with Recommendation. If the Court determines that there is a material fact in controversy and the area of evidence relates to that material fact in controversy, then the evidence, unless by stipulation to the contrary, should only be by live testimony. Good Cause Exceptions Subsection a Agree with Recommendation Subsection b Agree with Recommendation Subsection c Do not agree with Recommendation If the Court believes that evidence should be given on a subject matter, all testimony on that issue should be by live testimony, with the right to cross-examine, unless there is a stipulation to the contrary by both counsel. Subsection d Do not agree with Recommendation For the same reasons as stated above, whether or not a complex issue, if the Court is going to take evidence on it, it should be by live, in-court, testimony subject to in-court cross-examination.	Right To Present Live Testimony At Hearings The Task Force has decided that it is in the best interests of the courts and the public to retain judicial discretion to exclude live testimony should there be good cause to do so. Thus, rather than mandating that live testimony be allowed whenever there is a material fact in controversy, the recommendation expressly states that the existence of controverted material facts is a factor that judge's must consider in exercising their discretion. Judges must also consider whether the or not the issue is a substantive one. In cases where there is a substantive issue with material facts in controversy, the recommended factors that must be considered would most likely result in the use of live testimony on that issue. There are other cases where the issue is procedural and ancillary to the fundamental matters in the case, and a decision on the basis of declarations is clearly appropriate. In such situations, there may be one controverted material

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	Subsection e Recommendation is a more complex question. In many cases, particularly those involving complex financial issues [tracings, valuations, etc.] the experts should be required to meet and confer, before testifying. The experts should be required to identify and prepare a schedule identifying their areas of disagreement. There should be no long, tedious direct examination on accountings; tracings and the like for items that experts agree have been correctly reported. With only the foregoing exception, if the Court has a contested issue it should only be resolved by live testimony subject to cross-examination. Subsection f If the Court believes that evidence should be given on a subject matter, all testimony on that issue should only be by live testimony, with the right to cross-examine. Subsection g Pleadings are not evidence. If there is no disputing an issue, then only limited evidence would be required and there is no need for cross-examination on a non-contested issue. However, if the Court believes that evidence is required on an issue, all evidence on that issue should only be by live testimony, with the right to cross-examine. Subsection h Recommendation is unclear. I/we believe that if the court wants evidence, in the absence of stipulation of counsel, it should only be by live testimony. I/we strongly believe that Family Law cases should be handled, in trial, like all other civil trials, with the same rules of procedure and evidence as required in all civil cases. I/we recognize that there are some Evidence Code exceptions to live testimony, such as certified copies. I/we are not suggesting that there be	fact on which a judge may decide to take live testimony, yet be able to proceed on to complete making the decision on the basis of the declarations. The Task Force agrees with the comment related to expert testimony and has modified the section on Case Management to include a meet and confer requirement for these experts. The Task Force agrees that the court must be in compliance with the California Evidence Code.

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	any changes in the Evidence Code, in fact, I/we strongly support its strict application to all contested issues in Family Law cases. Expanding Legal Representation and Providing A Continuum Of Legal Services Attorney fees Statewide rules and forms I/we agree with this recommendation. Early needs-based fee awards I/we agree with this recommendation. Assistance in preparing request for fees to obtain counsel I/we agree with this recommendation. Referrals to private attorneys While I/we generally agree with this recommendation, the concern is in how the persons who are permitted to be on panels will be determined. I/we encourage the family law sections of local bar associations to work with the courts to set up panels and maintain a strict level of control over the persons who are permitted to remain on the panel. Funding for legal services Recommendation and all the sub-parts. While I/we agree generally with this recommendation. However, in this era of financial distress it seems	 Expanding Legal Representation and Providing A Continuum Of Legal Services Attorney fees Statewide rules and forms No response required. Early needs-based fee awards No response required. Assistance in preparing request for fees to obtain counsel No response required Referrals to private attorneys Agree that lawyer referral services should thoughtfully develop and implement these panels. The Task Force anticipates that the panels will be set up by certified lawyer referral services and be subject to their guidelines, rather than being created by the court. Funding for legal services Agree that additional funding will be required. Volunteer assistance from

Commentator	Comment	Committee Response
	that it will be difficult to achieve this goal. I/we would encourage family law sections of local bar associations to work with the courts to set up panels and maintain a strict level of control over the persons who are permitted to remain on the panel. Expanding self-help services Recommendation and all the sub-parts. While I/we generally agree with this recommendation. However, in this era of financial distress it seems that it will be difficult to achieve this goal. I/we believe that family law sections of local bar associations be encouraged to work with the courts to set up panels and maintain strict controls over the persons who are permitted to remain on the panel. I/we believe that the Legislature should be encouraged to enact legislation that would afford protection against malpractice for those persons providing services in the self-help centers. I/we encourage the Task Force to request such legislation. Incresed funding for self-help services I/we have considerable concern about the outside self-help services, and purported paralegal services that provide services to poor people. I have experienced gross abuses by these services, and negligence in what they do and do not tell people, usually for very substantial fees. Not only do they provide inadequate services to people and allow them to believe they their marriage is terminated when they have not completed sufficient documents to do so, but they then refuse to provide corrective assistance without the payment of substantial additional fees. I/we believe there should be licensing and regulation of persons who provide those services.	private attorneys should certainly be considered. Some self-help centers work with their voluntary legal services agency which provides malpractice insurance for volunteer attorneys. Expanding self-help services The Task Force intends to reference court-based self-help services with this recommendation. The Task Force heard many very disturbing reports of inappropriate behavior by a variety of professionals providing family law assistance including attorneys. Legal document assistants are licensed, but there appear to be other persons providing self-help assistance who are not following those requirements.

Commentator	Comment	Committee Response
	Availability of attorneys Recommendation and all the sub-parts. I/we generally agree with this recommendation.	Availability of attorneys No response required.
	Case Flow Management I know there is a gross imbalance of allocation of judicial resources between general civil and family law. I believe family law involves about 20% of the overall time expended by courts, all of which is consolidated in under 10% of the resources. The gross unfairness of this, and the terrible over-burdening of the family law bench, and their history of "burn-out" is very unfortunate. There must be a reallocation of judicial resources so that the Family Law Courts are provided with substantially more judges so their work load is more balanced and does not prevent them from having reasonably normal lives because of their excessive load. To the extent this is within the purview of the AOC of the JC, I believe there must promptly be a re-examination of this judicial resource imbalance. I know that civil litigation, particularly tort litigation, has always been afforded more judicial resources and has a strong lobby that achieves that for them with the court and the Legislature. This is an opportunity to rectify that imbalance.	Case Flow Management No response required.
	Caseflow management established I/we agree with this recommendation. As in civil, I/we believe that cases should be categorized according to type and complexity so that appropriate judicial resources can be allocated and marshaled for each case.Different skill and knowledge levels for judicial officers are required in different types of cases, just as is the case in general civil. Appropriate allocation will not only speed the process but make the	Caseflow management established Agree that effective case management is critical to use the time of the parties, courts and attorneys most effectively.

Commentator	Comment	Committee Response
	overall system much more balanced and efficient. Cases involving simple wage earners [as contrasted to highly compensated corporate executives with complex compensation plans] should not be made to come back several times because the court is involved in a lengthy discovery dispute and cannot hear their case that day. Cases that involve extensive discovery disputes should not be sent out to discovery referees because the judicial officer who draws that case has many self-represented litigant cases and cannot devote sufficient time to the discovery disputes. Additionally, the use of discovery referees, another one of those delegations of tasks because of lack of time, generally imposes very substantial additional expenses on litigants that are unable to afford it. Separating the trial judge from the discovery disputes, particularly when that judicial officer will have to make fee orders, is also improper as that judicial officer who uses a discovery referee will not have a full and complete understanding of what went on. Reviewing a recommendation is never the same as knowing what went on in the case.	The Task Force intends that with the enhanced resources and capacity of judicial officers to manage cases, that the concerns expressed by the commenter regarding discovery referees can be addressed.
	Caseflow management beginning at case inititation I/we agree with this recommendation, although I/we do not agree with the language “the parties’ interest in alternative dispute resolution”. From decades of experience, I know that virtually every litigant is desirous of finding a way to settle their case in a reasonable manner, the problem is always what is reasonable. To suggest, in this Recommendation, that parties may not be interested in ADR is, we believe, not a positive way to approach this issue and that language should be eliminated or modified. A case management conference should be set, by simple notice, by Petitioner’s counsel, within 30 days after service of the Summons and Petition. The trial court should be	Caseflow management beginning at case inititation This issue should be developed further in rules implementing Case Management. Increased information regarding ADR is anticipated to help encourage more parties to participate. Since most parties are unrepresented, this Case Management conference might be more easily set through automated processes by the courts.

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	granted liberal powers with regard to case management, something which will involve modifying existing legislation. Checkpoints established I/we generally agree with this recommendation. I/we believe that a process must be formalized to allow for this to be done in a time and expense efficient manner, taking into consideration that self-represented litigants are often not easily able to take a lot of time off from work. I/we believe that counsel or a self-represented litigant should be able, upon request, to appear for most of these type matters by telephone. I/we also believe that there should be a night court, or a Saturday court, to better serve the needs of working people. Early interventions I/we generally agree with this recommendation. Concern surrounds the timing of these "interventions" because many cases are simply are not ready for resolution of issues, or even final identification of issues, at an early date. Imposition of arbitrary time lines, for which someone must then show good cause to deviate from, impose unnecessary and inappropriate burdens and/or demands and/or appearances and/or expense on parties. Information for litigants I/we agree with this recommendation. Streamlined procedures for defaults and uncontested cases While I/we generally agree with this recommendation, I have a serious concern that lack of any judicial oversight may result in abuse of the system by the more powerful [emotionally or financially] party in the	Caseflow management beginning at case inititation Agree that implementing rules must be mindful of the need for litigants to not have to take a lot of time off from work. Night court and Saturday court hours should certainly be considered as additional funding becomes available to the courts. Early interventions Agree that early intervention is not appropriate for all cases. However, it is something that should be considered by judicial officers. Information for litigants No response required Streamlined procedures for defaults and uncontested cases While the Task Force agrees that judicial oversight is important, that

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	litigation. There should be some judicial over-sight of the process of dissolving the marriage, this should not become simply a clerical function. Resources available for ADR I/we agree with this recommendation but do not understand the reason for its inclusion as this is what presently occurs. Cases requiring hearings and trials I/we agree with the first part of this recommendation although it may be unclear what is meant by "minimizing the need for ancillary experts paid for by the parties." I/we do not believe that the services provided by a brief "focused evaluation" are either complete or very helpful to the court and there could be a better utilization of those resources - in fact, I believe they are very improper, constitute an abuse of due process rights and are just a disguised way for the court to transfer decision making responsibility to someone who has no ability to determine truth or even time to delve into all relevant factors. I have seen, on several occasions when I have either observed or been involved in these "focused evaluations," the mistakes made and the difficulty in establishing the mistakes made. Child abuse and domestic violence are, as we all know, very serious matters requiring prompt, focused court attention. Parties should not be inhibited in the types of witnesses they are permitted to call as witnesses, subject to existing rules of trial and evidence. I/we clearly do not believe that a proper hearing on such important issues should be conducted without the right of a party to call those witnesses she/he feels appropriate. Flexibility in design	may be done by review of pleadings rather than requiring an appearance by parties for a default hearing. Resources available for ADR Settlement assistance is not currently available in all courts throughout a case. Cases requiring hearings and trials The reference to "minimizing the need for ancillary experts paid by the parties" is designed to minimize transferring decision making responsibility from the judicial officer – not to preclude litigants from hiring those experts if they choose to do so. Flexibility in design

Commentator	Comment	Committee Response
	I/we agree with this recommendation. Efficient use of time I/we agree with this recommendation. In this regard, exploration of late afternoon/evening court services should be explored to provide a more user-friendly court to self-represented litigants who experience work-related issues by having to be in court during normal working hours. The periodic handling of self-represented litigants in a "night court" or a Saturday court may provide substantial relief to already over-burdened calendars as well as be something very beneficial to self-represented litigants. Courtroom management tools – legislation required I/we generally agree with this recommendation upon the condition that both litigants do not agree to either slow down or delay the process for reasons that are acceptable to both of them. Family Law cases are very unique and have many factors not seen in general civil litigation, thus making them different in terms of the "rush to conclusion" that may be appropriate in civil litigation but not appropriate in a dissolution case when not desired by both parties. The stipulation of the parties/counsel for delay should trump the Court's desire to clear a family law case from its calendar. In terms of courtroom management tools, I very strongly believe the mandatory imposition of sanctions for discovery abuses, in an amount consistent with the costs incurred by the successful, or substantially successful, party will go a long way toward lowering the number of discovery motions, extensive reading by judicial officers and courtroom congestion. Legislation should be passed to make the imposition of	No response required. Efficient use of time Agree that exploration of late afternoon/evening court services should be considered as additional resources become available to the courts. Courtroom management tools – legislation required Agree that design of a family law case management system must recognize that family law cases have special characteristics. Sanctions for discovery abuse No response required.

Commentator	Comment	Committee Response
	sanctions against counsel available as they are often the guilty party in the discovery abuses or improper conduct. Sanctions against attorneys I/we agree with this recommendation. Written orders after hearing I/we agree with this recommendation. Systems to finalize older cases I/we do not agree with this recommendation. Although the goal is laudatory it seems that there is a better use for our limited financial resources. Time standards I/we do not agree with this recommendation. Imposition of time limits/standards will impose potentially unnecessary burdens on litigants. For the reasons above stated, time standards in civil litigation are not appropriate in family law. The potential for wasting money in resisting unnecessary or inappropriate time limits/standards is high. "Bullet-point" time standards are unrealistic, particularly given the high number of self-represented litigants. Very substantial resources will have to be devoted not only to keeping track of these artificial time	Sanctions against attorneys No response required. Written orders after hearing No response required. Systems to finalize older cases Implementation of this recommendation is likely dependent on resources, which would not seem to be substantial. It may be less expensive for the court to help finalize an existing action than to process a new one with added complications when parties mistakenly believe they have been divorced. Time standards Agree that these standards will need to be developed more fully as part of implementation. They are designed to ensure that courts can provide adequate resources to allow those parties who want to conclude their case in a timely manner to do so. Automation of checkpoints and other

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	limits but in the follow-up and then calendaring and using of precious court time.	methods to ensure effective use of the time of litigants, attorneys and the court will be critical. But without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet.
	Providing Clear Guidance Through Rules Of Court I/we agree with all four recommendations. There should be no local rules.	Providing Clear Guidance Through Rules of Court No response required.
	Children's Voices Input from children I/we generally agree with this recommendation. Subsection a I/we agree with this statement.	Children's Voices Input from children No response required.
	Subsection b I/we agree that this is an accurate statement of the law but note that it is rarely used, most judicial officers referring not to speak with children. In my personal experience, it is exceedingly difficult to get most current judicial officers to speak with children despite the statutory provisions saying they must consider the child's wishes. Although I am not personally familiar with the studies referred to, I do believe it is very important for children to feel that their voice is heard. I also believe that it is important for parents to know that the court has considered the wishes of their children.	Subsection b The Task Force agrees that it is important for the court to consider the role of the child on a case-by-case basis and to take into consideration, among other factors, the interest a child has in testifying or participating in some other way.
	Subsection c	Subsection c

Commentator	Comment	Committee Response
	I/we acknowledge this Family Code section. If a child is to testify in a termination proceeding, there is no logical reason why the court should not hear from the child in a custody/visitation case.	No response required.
	Providing for child safety and well-being in court proceedings and its sub-parts. I/we agree with the statements contained therein.	Providing for child safety and well-being in court proceedings and its sub-parts. No response required.
	Exercising discretion and finding the least traumatic way for child involvement. Parental Involvement I/we agree with this recommendation.	Exercising discretion and finding the least traumatic way for child involvement. Parental Involvement No response required.
	Involving other professionals and providing information I/we agree with the concept of children having an opportunity to meet with the mediator but I am very strongly opposed to the mediator reporting anything to the Court. These mediators tend to have an inappropriate amount of emphasis placed on their recommendations, those recommendations being made with the absence of substantial information or time to do an evaluation.	Involving other professionals and providing information The recommendation reflects existing statutory law allowing mediators to provide information to the court under certain circumstances.
	Involving the child I/we agree with the recommendation that the Court be required to find a balance to get evidence from the child in a way least harmful to the child BUT also permits the parents to have due process rights in knowing what was said by the child and having an opportunity to question the child, either through counsel for questions asked the child by the court.	Involving the child No response required.

Commentator	Comment	Committee Response
	Domestic Violence I/we agree with all the recommendations in this section. Enhancing Safety. Appropriate procedures I/we take no position about this recommendation as I/we believe that there are almost no cases in which there are not contested issues of fact. Due process must occur in these cases. Dependency Court processes and procedures should not be allowed in Family Law Courts if it impacts on the due process rights of the parties. I believe that examination of children in chambers is acceptable, so long as counsel are present and the parties have an opportunity for input as to the questions to be asked, including an opportunity to propound questions after testimony is given by the child. Under no circumstances should any Dependency Court process be utilized in Family Law courts. The circumstances in Dependency Court are tremendously different that what is presented in a Family Law court. Thank you for your consideration of my/our thoughts on these very important subjects.	Domestic Violence No response required Enhancing Safety Appropriate procedures No response required.
104. Raven Kras Santa Monica, CA	Domestic Violence I believe that the court's obligation in matters involving violence must go beyond a mere abstract mandate of giving appropriate consideration. Domestic violence and related issues can be extremely complex and investigations might not always reflect reality. Therefore, it is important that the participating child is afforded and provided the extra support and security of a qualified therapist during the process, and for an adequate period of time thereafter.	Domestic Violence The Task Force recommendations include support for parties and children being referred to and provided with appropriate resources to address issues related to the case in family court.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
105. Rachel Kronick Rothbart Director of Legal Services Harriett Buhai Center for Family Law Los Angeles, CA	On behalf of the Harriett Buhai Center for Family Law, we thank you for your hard work in researching the state of family law in California, listening to the stakeholders and producing these recommendations. We are hoping that your recommendations will improve access to justice for all family law litigants, ensure fairness and due process and provide for more effective and consistent family law rules, policies and procedures. We are writing this letter in lieu of the Draft Recommendations Response Form. Right to Present Live Testimony at Hearings Agree with recommendation subject to modifications as described below As to Live Testimony: While we believe that the judge must receive any live competent testimony that is relevant and within the scope of the hearing, we are also concerned that this recommendation is still unclear as to when live testimony is required and when it is not. Declarations still serve an important purpose and provide notice as to what issues arc pending before the court. Allowing more live testimony will most likely clog our already very busy family law departments. We also realize that Motions to Strike have burdened our judicial officers as well. We would recommend that the Judicial Council create a simplified form for attorneys and litigants to use when filing such Motions to Strike and create Rules of Court as to when such Motions to Strike can be filed. Further we would suggest a special master (someone other than the Judicial Officer hearing the case) to review the Motions to Strike and make tentative rulings. One of the central issues in the Elkins Case was that the self represented litigant had to submit declarations in lieu of testimony at	Right to Present Live Testimony at Hearings The Task Force does not anticipate the elimination of declarations. See the recommendation on Simplifying Forms and Procedures for a recommendation regarding declarations. The more specific role of declarations and which, if any Judicial Council forms will be initiated or modified in this regard will be considered in developing implementing rules. The issue of appointment of a special master to hear motions to strike should be considered as part of implementation. The Task Force believes that this issue has addressed by the Elkins opinion.

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	time of trial. The Task Force should include in its recommendations that in all trials, live testimony will be taken. Further, there does not seem to be a standard in our family law departments. We have found that it is sometimes difficult to prepare for court hearings as lawyers representing clients or preparing litigants to represent themselves. The difficulty is that one does know whether live testimony will be taken or if the judicial officer will only review declarations. For a large practice area like Los Angeles, this difficulty is extremely burdensome especially if one practices in many courtrooms. We would recommend that the Task Force suggest clearer standards as to when live testimony will be taken at OSC/Motion Calendars. Expanding Legal Representation and Providing a Continuum of Legal Services Agree with the Recommendation Caseflow Management Agree with the recommendation subject to the modifications as described below We are concerned as to scheduling of the checkpoints that will be established in the design of the Case management System. We are concerned that the intervals will be too short in between thus burdening the attorney or self represented litigant for unnecessary court appearances. As to Section II, page 20, we are concerned that the focus	Standard The Task Force agrees that the standard should be to hear live testimony, particularly on substantive issues where there is a material fact in controversy. The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. Expanding Legal Representation. No response required. Caseflow Management The issue of scheduling for checkpoints should be considered as part of implementation. There will be a variety of factors to consider including resources and evaluation from pilot courts regarding best practices.

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	is incorrectly placed on judicial officers instead of attorneys and/or self represented litigants. The recommendations states, "Judicial officers should, with the input of the litigants and their attorneys, have the ability to control the manner and pace of the litigation by a method appropriate to each case. This recommendation goes to the issue of who should be in control of litigation. Too often, we have witnessed judicial officers ramping up the setting of trials at a way too early stage in the ease. In some of our eases, the judicial officer sets a trial immediately after a Response is filed. Perhaps this setting of a trial would be good in cases in which there are simple issues (e.g. no kids, no property). However in our experience, judicial officers are setting trials too early in the case while is discovery is being started or pending discovery. This proves to be troublesome in the area of cases where the parties have community property interests in a pension or other type of retirement plan. Divorcing the parties prior to the submission of a Qualified Domestic Relations Order can have significant negative and devastating effects for the litigant who is the alternate beneficiary of the plan (i.e. the spouse of the plan participant). Too often, we have asked the court for a continuance or to take the matter off calendar so that our clients can have more time to secure their interests. Depending on the judicial officer, our client may potentially lose their rights if the court decides that time and efficiency outweighs their community property right. Sanctions against attorneys We would suggest that where parties are both self-represented and the judicial officer orders sanctions to be paid to the court, we would suggest that the recommendation be changed so that the judicial officer	The Task Force heard no other testimony regarding judicial officers setting trials too quickly. Most concerns related to delay. This would indeed be a concern in cases if a pension had not been joined. It might also implicate a change in practices of the attorney or legal services agency to try to assist litigants in completing their cases in a timely way. Sanctions against attorneys Agree with proposed change. The recommendation has been modified in response to the comment.

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	can order the self-represented litigant to pay sanctions to the other self-represented litigant or the court. Written orders after hearing We commend the Task Force's commitment to have orders prepared as part of the court process, we have three concerns. First, we would ask the court to inquire of the litigants of whether any legal services provider or attorney is assisting them and if so the court should direct them to these entities so that they can help the litigant draft and prepare the orders in a timely fashion rather than the self-help centers which are heavily burdened. Second, we would suggest that the Judicial Council draft forms to allow attorneys and/or litigants a way to correct mistakes found in prepared orders in this expedited fashion. In our own cases, we have discovered orders prepared for our clients by the Self Help Center to be drafted incorrectly to the detriment of our client. Third, we would recommend to the Task Force that the Judicial Council create more settlement form so that attorneys and self represented litigants could use these forms to reach an agreement whether or not there is a matter pending on the calendar. Providing Clear Guidance Through Rules of Court Agree with the Recommendation Domestic Violence Agree with recommendation subject to the modifications as described below. Survival of orders We wholeheartedly agree that proposed legislation should be drafted and passed to provide clarification as to whether support and custody	Written orders after hearing It is unclear how a legal services agency that was not at a hearing would be in a better position than the court to prepare an order after hearing. It might be very valuable for a legal services agency to provide proposed orders for judicial officers to complete or to collaborate with the court based self-help provider to identify specific problems and consider solutions. Agree that additional settlement forms to memorialize agreements would be helpful. Providing Clear Guidance Through Rules of Court No response required. Domestic Violence No response required.

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	orders survive the termination of a permanent restraining order. California seems to be divided in opinion as to whether such orders continue once a restraining order's protections have expired. Paternity and domestic violence cases Do Not Agree with the recommendation While the Center sees the efficiency of allowing families to stipulate to paternity and thus prevent a second family law filing and understands that additional trips to the courthouse may endanger victims of domestic violence, the Center questions whether such stipulations will serve families in the long run. Establishing paternity has long term and far reaching consequences. The intention of the Domestic Violence Prevention Action case is to protect victims of domestic violence. It is meant to be an expedited process to protect victims of domestic violence. Establishing paternity in an expedited process may not be good for the victim and his/her children. There are many facts, issues and considerations that must be reviewed when deciding a paternity case. We are concerned that not all information regarding parentage that should be provided to the court will be presented to the court at the time of the domestic violence restraining order. Contested Child Custody Agree with the recommendation but would suggest having culturally and linguistically competent staff. Minor's Counsel Agree with the recommendation subject to the modifications as	Paternity and domestic violence cases The Task Force believes providing families with the opportunity to handle parentage matters to some extent within a DVPA action supports access and efficiency. Contested Child Custody The Task Force agrees and its recommendations include providing training and culturally competent services. Minor's Counsel The recommendations with respect to

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	described below. With our cases, the Center has found that Minor's Counsel have a lot of power with little oversight and unfettered discretion, Given-this power, they should be more regulated in terms of training, oversight, and qualifications. The Center agrees with the recommendation that the role of minor's counsel should be clearly defined and that they should not be selected in lieu of a mental health evaluator There should be more standards in terms of training, selection and appointment- In our county, judicial officers in various departments select the same minor's counsel over and over There does not seem to be any transparency in the process. Legislation dictates the type of training a child custody evaluator must have in order to complete evaluations for the court. We would recommend that the training for minor's counsel be similarly provided for in legislation including training on domestic violence, cultural competence and socioeconomic issues. In addition the Center supports a better complaint process. We have seen too many cases in which minor's counsel did a poor job for their client (the child). There does not seem to be an adequate process to raise concerns about the minor's counsel without causing backlash from the minor's counsel and even the judicial officer. Without some procedure in place, parties' due process rights are violated. On another level, the notion of a minor's counsel seems to violate due process. Reports given by minor's counsel are not subject to cross-examination. Yet, litigants can hardly refute reports presented to the court. Often times, these reports are given orally without any advance notice to the parties. The Center would recommend that all reports be written and served upon the attorneys. Litigant Education Agree with the recommendation subject to modifications as described	minor's counsel support full implementation of existing statewide rules covering training and qualifications for minor's counsel. The recommendations also support a statewide process to address complaints about minor's counsel. The recommendations regarding reports by minor's counsel supports providing that information in an evidentiary appropriate manner which would include proper service of all documents. Litigant Education Information throughout the case

Commentator	Comment	Committee Response
	below. Information throughout the case The last sentence states that "Care should be taken to provide these opportunities in ways that do not interfere with attorney-client relationships for those who are represented." The Center, in existence since 1982, has been a pioneer in providing legal advice to self-represented litigants through the use of volunteer attorneys, paralegals, law students and members of the community. We enter into attorney-client relationships with our clients and provide legal advice to them. However in the majority of our cases, we do not provide direct representation to our clients. Yet the Recommendation as written by the Task Force seems to negate the attorney client relationship we have established with our clients. The entry of self-help into the continuum of services is a much needed addition for litigants. Our business model has changed since the courts and other legal services providers have entered into the world of self-help. We would request that the recommendation be changed so that the statement should read that "Care should be taken to provide these opportunities in ways that do not interfere with attorney-client relationships for those who are represented or are receiving legal advice from legal services or attorneys providing unbundled legal services. The self-help centers and the courts need places like the Harriett Buhai Center for Family Law just as we need them. All stakeholders providing assistance to litigants must value the importance of each. Expanding Services to Assist Litigants in Resolving their Cases Agree with the recommendation The Center would suggest to the Task Force that the Judicial Council	The task force is mindful and appreciative of the services of agencies such as the Harriett Buhai Center. Since the center is providing limited scope representation the task force believes that the language regarding non-interference is appropriate to its services as well. Expanding Services to Assist Litigants in Resolving their Cases Agree with suggestion.

Commentator	Comment	Committee Response
	be instructed to create more stipulation/settlement agreement forms for use on a statewide basis.' Streamlining Family Law Forms and Procedures Agree with the recommendation subject to the modifications as described below. We wholeheartedly support Recommendation 3 to simplify forms for motions. This change provides more clarity to both attorneys and self-represented litigants. Again, we support Recommendation 4 to simplify forms for discovery and declarations of disclosure. Service by posting The Center has been a leader in researching and implementing the posting procedure. The posting procedure is authorized by constitutional law. Yet more training needs to be provided to the judiciary and their law clerks. Every year, the Center has to "educate" the bench and its clerks as to constitutionality and the procedures of the posting practice. Having an example is the local stipulation form used in Los Angeles County. The Judicial Council creates forms and/or a website would bring more legitimacy to the practice and serve litigants who might not be able to obtain the relief needed. Clarification of service requirements on certain postjudgement motions We agree with the recommendation that Family Code 215 should be clarified. We question the last line which states "Parties must be required to keep the Court informed of their current addresses." We are	Streamlining Family Law Forms and Procedures. No response required. Service by posting No response required. Clarification of service requirements on certain postjudgement motions Agree with proposed change. This recommendation has been modified.

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	unsure of the practicality of this consideration. For how long should one keep the Court informed of their current address? We live in a very mobile society that has many demands. We are not certain that this recommendation of updating current address with the Court will be a realistic goal. Simplifying procedures fo establishing parentage We again remind the Task Force that the establishment of parentage has long term consequences and courts and litigants should have all information available to them to make correct decisions including whether a IV-D case from California or another jurisdiction exists. We would recommend a legislative change to Code of Civil Procedure Sections 583.160 and 583.161. Currently the law states that a matter must be brought to judgment within five years of the filing of the Petition. If the matter is not brought to judgment, the Code of Civil Procedure proscribes that the matter should be dismissed except if there is an order for child or spousal support. We would suggest that matters should not be dismissed if there are orders regarding custody and visitation. Many times parties do not proceed to Judgment because they are happy and living in accordance to orders made pendente lite. Further, they may not want to prosecute the action to judgment stage because of the different burden placed on modifying judgments. Recommendation Number 15, Page 54, Standardize Default and Uncontested Process Statewide Agree with the Recommendation Practice should be uniform throughout the State of California so that attorneys do not have to provide legal advice based upon the county the case is filed in.	Simplifying procedures fo establishing parentage Agree that it is vital for litigants to be able to determine of other parentage cases have been filed. Change to Code of Civil Procedure 583.160 and 583.161 The Task Force has not made recommendations regarding changes to these code sections, but recognizes that this is an area where additional research would be helpful. Most self-help centers report that litigants who come to their offices thought that they were already divorced. Not that they were concerned about a change in burden of proof on modifying judgments. Recommendation 15. Standardize Defaults No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

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	Interpreters Agree with the recommendation to modifications as described below. Although the Center is well-aware of the budget constrictions for the courts, we would recommend to the Task Force that litigants who are fee waiver eligible should be entitled to interpreters for free as well. Currently, litigants who are proceeding in forma pauperis must seek and apply for a Request to Waive Additional Court Fees (FW-002) in order to receive the services of the interpreter at court without charge. Evidence Code 755 permits those seeking protective orders or who have protective orders to receive the services of an interpreter for free. Providing interpreters will allow greater litigant access to the courts.	Interpreters Agree that providing interpreters for those litigants who are fee waiver eligible is helpful for both the litigants and the court. Unfortunately funding under the federal Violence Against Women Act referenced in Section (e) of Evidence Code 755 has never been made available. The Judicial Council has provided funding for interpreters in domestic violence cases for a number of years and this has been a very successful program.
	Judicial Branch Education Agree with the recommendation	Judicial Branch Education No response is required.
	Court Facilities Agree with the recommendation	Court Facilities No response required.
	In addition to the recommendations made by the Task Force, we would also suggest that litigants and attorneys have access to court files on line without a charge. In Los Angeles County, a litigant or attorney can only find a Case Summary with respect to a particular case. One cannot easily ascertain up to date judicial assignments or assigned departments for individual cases. In other counties, such as Riverside and San Bernardino, one can view Minute Orders on line but in Los Angeles	Access to court files Agree – this is part of the vision of the California Case Management System.

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	one cannot do so. All 58 counties should be consistent in information provided including up to date judicial assignments, department assignments, Minute Orders and filings.	
106. David Kuroda Division Chief, Mediation and Conciliation Service (Ret.) Family Court Services Superior Court of Los Angeles County California State Bar Association Committee on ADR/CDR South Torrance, CA	Contested Child Custody I support the confidential mediation. It is the most effective way of providing mediation services and results in the most agreements reached. Attorneys support it and there is less "positioning" and "lawyering" as there is when mediators make recommendations. Practically all other mediation guidelines provide for confidentiality. Allowing some counties to have recommending mediation was offered as a compromise to ensure that SB 961 would be passed. Many now regret making that concession. More resources should be allocated to mediation v. evaluations. The earlier the mediation sessions are offered, the more likely the agreements. Putting resources later in evaluations is less efficient. In LA County, the agreement rate was between 66 and 75% when there were adequate resources so mediators could see people for 2-3 hours and have them return. Since the reduction in mediation resources and the reallocation to evaluations, the agreement rate has fallen to less than 50%. Evaluations make take as much as 30 hours, 10x longer than a 3-hour mediation. I like "parenting time" much more than time share or custody and visitation. Other recommendations Set up pro bono mediation panels, offer internships as field placements for graduate mental health students. Expanding Legal Representation & Providing a Continuum of Legal Services. In addition, every litigant needs to be told about different ways of resolving their disputes, just as patients are provided all of the choices of treatment. Parties need to be told about litigation and court hearings;	Contested Child Custody The Task Force recommendations reflect the need for adequate and appropriate resources in this area and others. Parenting time No response required. Other recommendations The Task Force recommends that the specific recommendations (pro bono mediation panels and internships) be considered as part of implementation efforts. Expanding Legal Representation and Providing a Continuum of Legal Services The Task Force has recommended that information about CDR and other

Commentator	Comment	Committee Response
	they also need to be told about mediation, collaborative law, and private resources. If more parties are able to work in CDR (Consensual Dispute Resolution)/ADR, more cases would settle outside the courts, reducing the demand on the courts. Partnerships with law schools would provide opportunities for law students to have client contact and it would also be an important resource for clients who can't afford the high cost of most attorneys. Children's Voices I agree with all of the recommendations, but have professional reservations about the section on "Involving the child." I don't think children should be asked to be allowed to testify in open court. The way judges now gain input from the children, e.g. in-chambers informal conferences, is far better for the child. Other mental health professionals are far better qualified to gain the input from a child.	methods to resolve cases should be provided to litigants. Agree that law students may be very helpful volunteers. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly.
107. Gail Hahn, LDA Education Director Alliance of Legal Document Assistant Professionals, Inc.	The Alliance of Legal Document Assistant Professionals, Inc. (ALDAP) appreciates the invitation by the Elkins Family Law Task Force to comment on its Draft Recommendations. We thank you for the opportunity to familiarize each of you with the legal document assistant (LOA) profession and our association, and to voice our strong support of your efforts to simplify and standardize procedures in the family law courts of California. Commentator provided some information about the Alliance of Legal Document Assistant Professionals and their perspective.	

Commentator	Comment	Committee Response
	Expanding self-help services. California Assembly Bill 590 signed into legislation earlier this year, will (in a few years) create an expansion of the court clinic facilities which will include pro bono attorney representation for self-representing parties who meet certain income standards. These clinics are targeted for low-income litigants who will be selected on a case-by case basis. There has been a recent increase in legal aid Clinics and law library seminars/clinics and Services to help meet the needs of self-representing litigants. In the Statewide Action Plan for Serving Self-Represented Litigants, the Judicial Council of California identifies the court-based self-help centers as being the most helpful service offered to litigants. More than 450,000 litigants utilize the clinics and the numbers will increase. Even with increased funding, the needs of California's self-representing parties cannot be met. Over 4.3 million court users are self-represented in California. For family law cases 67% of petitioners at filing (72% for largest counties) are self-represented and 80% of petitioners at disposition for dissolution cases are self-represented. There are just too many people for the court clinics to serve. LDAs serve a primary role in the self-help arena and benefit the courts in a variety of ways. In addition to other resources, ALDAP's statewide LDA Directory should be a court referral resource for those who fall to meet the income threshold to qualify for legal aid services, Of for those who wish to self-represent and hire a legal document assistant to complete their legal documents. The high cost of family law litigation is a strong motivator creating a self-representation "movement' specific to the	Expanding self-help services Agree to reference AB 590.

Commentator	Comment	Committee Response
	family law courts. There are millions of people in our state who do not qualify as low-income, yet cannot afford to retain an attorney. These are the people who to hire LOAs to ensure that their paperwork is completed properly.	
	ALDAP recommends inclusion of California's LDAs as a consumer resource by the court clinics. This may be accomplished by the introduction into the court clinic lobby of materials pertaining to the role of legal document assistants and the consumer protections afforded by California Business & Professions Code sections 6400 et seq., as well as publication of a directory listing California's lawfully registered and bonded legal document assistants. Such informational materials could be placed near the attorney referral brochures offered in many courts.	ALDAP While the Task Force is mindful of the benefits that many LDA's provide to unrepresented litigants, it does not believe that a recommendations that the court refer to those services is appropriate. LDAs reported that the services they provide is the same as self-help centers. However, they charge for their services and do not operate under the supervision of an attorney. Based upon the testimony provided at the public hearings, it appears that there is currently no effective consumer protection oversight of LDAs.
	Limited Scope representation. Since 2001, limited scope representation (LSR) has the endorsement and support of the California State Bar and the Administrative Office of the Courts, which have adopted LSR as one remedy to the access to justice crisis. In 2009, the California State Bar released its statement In support of limited scope legal services. ALOAP supports LSR as a means for the self-represented to meet their self-help legal needs in a	Limited Scope Representation No response required.

Commentator	Comment	Committee Response
	manner that achieves their specific objectives while maximizing cost savings. LDAs play an important part in LSR. Many attorneys who perform LSR do not maintain staff for use by a self-representing party; LDAs assist consumers by producing the documents recommended to the client by the attorney, thereby reducing cost to the consumer and the burdens placed on the courts by improperly prepared documents. LDAs are often required to advise a consumer that their needs may fall outside the scope of a LDAs authority. Many LDAs - and their clients - enjoy a beneficial relationship with a lawyer offering unbundled services, which saves time and money, and alleviates concerns regarding the potential unauthorized practice of law. In addition to the recommendation that state and local bar associations encourage LSR. ALOAP urges the Task Force to also recommend that the courts inform consumers of the LSR option and the availability of attorney services for advice and consultation), in concert with the self-help serviced provided by the registered and bonded LOA. Caseflow Management. The Task Force concerns regarding case flow management are shared by ALDAP, ALDAP believes that case management can help alleviate stalled cases, and realizes the burden notices and failures to appear place on court personnel and upon the parties. ALDAP believes that including LDAs as a court referral resource would help move cases along to completion as an educated litigant is a successful litigant. ALDAP also believes that notices from the court to self-representing	LDAs When LDAs prepare documents under an attorney's supervision, the attorney is responsible for their accuracy. An attorney providing limited scope representation can become a member of a certified lawyer referral service program which has extensive consumer protections. The Task Force agrees that referring to certified lawyer referral service programs that offer limited scope service provides effective consumer protection. Caseflow Management See concerns set for above regarding referrals to LDAs. Notices from courts to self-representing parties –LDAs do not

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	parties are often ignored by the parties. This leads to additional court function and expense. We recommend that the courts employ a system to transmit a copy of the notice to the LDA identified on the self-represented parties' documents. In that instance, the LDA would send reminders and ensure that all documents were in proper form and that the party is ready to proceed. This would also help alleviate burdens placed on the court. Written orders after hearing Parties should be provided immediate legible Minute Orders and be directed to the court clinic or to a non-attorney legal document preparer to facilitate preparation and processing of the order in a timely manner. LDAs are quite capable of preparing appropriate court orders and in many instances, consumers are more than happy to pay for preparation of an important legal document. Since the inception of the court-based legal self-help clinics, LDAs have encountered situations where a judge or court staff has directed the LDA's client to the court clinic for preparation of documents that the Client has already paid the LDA to prepare and which, quite possibly, had already been prepared and were ready to be filed. ALDAP urges the Task Force to recommend that the courts direct an LDA's client to return to the LDA for completion of necessary paperwork. This will help ease the burden placed on the self· help clinic. Providing Clear Guidance Through Rules of Court. The ever evolving enhancement of technology is creating a smarter, more sophisticated litigant. Unfortunately, the current system allows	represent litigants and may not have been contracted to take on an entire case. This concern may best be addressed by LDAs encouraging litigants that they assist to contact them when they receive a document from the court. Written Orders After Hearing There are a variety of methods to accomplish this goal including automation of orders, and assistance from law students and other volunteers in the courtroom. This seems like an important issue for LDAs to review with their clients to ensure that they realize that a proposed order has already been drafted. A handout or checklist for a client might be helpful. If this is a regular practice, it might be appropriate for LDAs to consider not charging in advance for a service that they may not be providing. Providing Clear Guidance Through Rules of Court No response required.

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	each court to create and enforce its own local rules and forms, creating complicated processes and procedures resulting in confusion and diminishing much needed court and community resources. The courts should unify to create one process for administration of family law matters and reduce or eliminate local and department rules. Children's Voices The court should adopt strict guidelines concerning children's rights to be heard. LDAs work closely with families who generally expect the court to mediate custody disputes. This expectation is on the rise, While the parties argue, the children are in the middle of the parents and have no voice. As the Task Force struggles with this issue, ALDAP's members observe many cases where the children wish to be heard, but only by the judge. They do not want their parents or attorney present as many of them feel constrained while speaking in their presence. There are large numbers of children who wish to speak with the mediator and others who wish to write the judge a note. The efforts by the Task Force to limit parents from influencing their children's statements are supported by ALDAP. In our experience, these children would be best served by providing them the election to either speak directly with the judge or the court mediator. Children should have a choice in selecting a comfortable style of communication without fear of recrimination. We believe children should also be provided a court advocate so they can have unfettered input on custody and other child related issues which may arise in family court. ALDAP stresses the importance of allowing children independent contact with court personnel and, if	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. As part of implementation, the Task Force recommends consideration of court advocates for children in family law matters.

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	necessary, they should be given an opportunity to address the judge either in writing or in chambers, on an as-needed basis determined by the mediator, advocate or judge.	
	Litigant Education. Education is the key to success. ALDAP wholeheartedly supports the Task Force's position that additional educational resources should be provided to self-representing parties. As indicated in our comment to Recommendation 3, above, we believe that including legal document assistants as a referral resource would help alleviate this burden on the courts as many consumers are informed and educated about the family law process by an independent LDA.	Litigant Education Information regarding the variety of options for litigants to complete their cases including the role of LDAs should be considered as part of implementation.
	ALDAP's members strive to provide consumers with legal resources in the form of procedural guide information and rules of court so that self-representing parties may make informed decisions concerning their cases. Our members also offer consumers referrals to other no-cost or low-cost resources such as pro bono court/law library clinics, attorneys, court and law school clinics, and other various legal service providers.	LDAs are to be commended on providing information to consumers on legal resources.
	Streamlining Family Law Forms and Procedures Mandatory sole use of statewide forms specific to dissolution of marriage and other family law matters should be implemented and local forms should be abolished. The Judicial Council should review the required local forms of each court, and adopt for statewide use the forms which best suit the needs of the court and its users. ALDAP recommends statewide use of a form of declaration required to be filed by all parties stating the identity (name. address, telephone and	Streamlining Family Law Forms and Procedures The Task Force recognizes that local forms may be necessary in some jurisdictions for case assignment and other reasons. California Rule of Court 5. 70 provides that " In a family law

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	registration/license) of anyone who assisted the self-represented party with their legal matter. Institution of this practice by the Judicial Council and the courts would directly affect those who would cause harm to unwary consumers. This would be one more step toward combating consumer fraud and other illegal conduct by rogue document preparers end those who practice law without proper credentials and licensing. In the current economic climate, our state's budgetary crisis has resulted in a fraud-friendly environment, as policing is almost non-existent due to severe cutbacks of services customarily provided by government agencies. Requiring declaration from self-representing parties would help cure fraud at the gate - the clerk's counter. For your reference, a sample declaration, Nevada County local form FL3, Is attached as Exhibit A. ALDAP also recommends mandatory statewide use of a Family Law Certificate of Assignment to be filed with each new case, For your reference, a sample form, San Diego County local form SD-D490, is attached as Exhibit B. Uniform default line uncontested process Full review of documents.The Task Force recommends that documents be returned to the "attorneys or self-represented litigants" ALDAP strongly urges the Task Force to amend this recommendation to also include LDAs. When documents are returned to a self-represented party, the rejection communication from the court is often not	proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the document that he or she was involved in preparing the documents." The scope of a proposal to require all persons providing assistance to disclose their identity would have to be carefully reviewed to consider the impact upon unpaid friends or family, advocates in domestic violence programs and others. It should be considered as part of implementation. Certificate of Assignment – It is unclear that such a form would be of value to courts with only one location – and that developing a form without specific addresses would be useful. This is an issue that should be considered as part of implementation. Uniform Default Procedures Notices from courts to self-representing parties –LDAs do not represent litigants and may not have been contracted to take on an entire case. This concern may best be

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	forwarded on to the LDA. This causes unnecessary delays, default hearings, and a waste of the court's time, energy and resources to resolve a matter that can easily be handled by the LDA. The California Business & Professions Code requires that legal document assistants include identifiers and contact information on every document they prepare, so court personnel should have no trouble determining whether a legal document assistant is involved in the case, or where to send correspondence to the attention of the LDA. In some counties, such as San Diego, courts often return documents to the LDA. However this practice is not uniformly applied; in some Instances it is the clerk who determines where the paperwork will be sent. This practice should be streamlined and applied uniformly in all courts throughout the state. ALDAP further recommends that when a self-represented litigant appears for a Default hearing, the court should review the documents for the LDA identifier and if the party has received services from an LDA, the court should refer that party back to the LDA for further assistance, to avoid wasting the court's resources (see also our comment to Recommendation 3.13, above). Conclusion California's LDAs are a valuable resource to both the courts and consumers. LDAs save time in the courtroom, reduce inaccurate paperwork, diminish inappropriate filings, minimize unproductive court appearances, lower continuance rates, expedite case management and dispositions, promote settlement of issues, and assist the court to increase its overall ability to handle its caseload. ALDAP intends to continue with its efforts to educate and protect consumers by promoting professional integrity and absolute compliance	addressed by LDAs encouraging litigants that they assist to contact them when they receive a document from the court. This issue can be considered further in drafting implementing rules. ALDAP LDAs do not represent litigants and may not have been contracted to take on an entire case. This concern may best be addressed by LDAs encouraging litigants that they assist to contact them when they receive a document from the court. This issue can be considered further in drafting implementing rules.

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	with the laws governing non attorney legal document preparers. Your consideration of our recommendation to include ALDAP and California's LDAs into your mission is greatly appreciated. Please feel free to contact us should you have comments or wish additional information. Attached to this correspondence are a sample LDA declaration form (Exhibit A), a sample case assignment form (Exhibit B), and ALDAP's LDA Client's Bill of Rights and Responsibilities (Exhibit C) and Legal Document Assistant Code of Ethics and Professional Responsibilities (Exhibit D). We look forward to working with the courts and court personnel to develop a family court system which meets the needs of consumers and the courts with processes that increase efficiency, while at the same time, providing appropriate relief to the parties who place their trust and families into the judicial system. We appreciate the opportunity to work with the Elkins Family Law Task force and the Administrative Office of the Courts to resolve the current access to justice crisis and to serve California's consumers with dignity and respect. Ms. Hahn submitted 2 forms and LDA Client's Bill of Rights and Responsibilities.	
108. Janine Harty San Diego, CA	Children's Voices Children should not testify in court or be interviewed in chambers. Child interviews should take place at the discretion of the mediator/evaluator. Parents should under no circumstances be present during child interviews.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a

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		child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly.
	Contested Child Custody Do not require recommending counties to conduct a pilot program which includes confidential mediation. This would double the workload for already understaffed offices.	Contested Child Custody The Task Force recommendation is that pilot projects be established (not be mandated) and that all pilot courts be required to implement the same approach to providing child custody mediation.
109. Gina Haynes Sacramento, CA	*Commentator noted her experience as a police Lieutenant and Co-Chair on a Domestic Violence Prevention Collaboration as well as personnel experience with the family court and the following It was through the court system that I experienced the unwise decision-making mediators; in addition, I had the opportunity on one occasion to have a Court investigator appointed. On first impression, the investigator presented herself well, but her final report was so bad that the judge threw it out, had the judge not done this it would have had devastating consequences. So I do have some experience with Family Courts, from sending people there in the course of my work to my own personal experience, but I notice on your board there are no victims or police or community non-profits or anyone that deals with what is occurring outside of the court with these families. I obviously recognize the need to fix the ever-increasing demand on the courts, which the mediators are also supposed to assist with, but I really feel you should be looking at the broader picture. Fixing a lot of what is occurring outside the	The Task Force heard comment from a wide range of professionals and the public all of which helped shape its recommendations. The Task Force recommendations with respect to child custody mediation and evaluation and investigation seek to support improved access and information provision so that the court may assist families and where necessary make appropriate decisions and orders.

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	Court, will eliminate a lot of the people actually needing to go there in the first place, thereby reducing numbers. My recommendation is that you get an independent review team who are professionals, background them and have them review the information coming in to the mediators and make recommendations. This would save the Courts a lot of time and money and would provide better service for the families without any bias.	
110. Aaron Hicks Modesto, CA	Commentator provided details on specific case.	No response required
111. Sharlene Hinshaw Family Court Services Assistant Family Court Services Superior Court of Santa Barbara County	Commentator raises concerns about the family law facilitator program and seeks to ensure the program is available to the people who need it the most.	No response required
112. Hon. William S. Hochman Commissioner Superior Court of Marin County	During the recent AB 1058 Commissioner's conference in LA, there was some discussion that the Elkins Task Force was considering combining AB 1058 child support hearings with general Family Law matters, including property division in dissolution matters and custody matters. In my view, AB 1058 child support natters should remain a separate calendar because of the time requirements necessary for such hearings. Combination calendars would be burdensome and would tend to defeat the purpose of separate child support calendars.	AB 1058 child support hearings The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders. The Task Force is aware that additional time would be needed to hear the non-

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		support matters, and therefore additional commissioner resources will be needed. These issues will be dealt with in the implementation process.
113. Amanda Hodge Manager of Marketing and Membership Auburn Alumni Association	Commentator provided concerns related to particular case involving child custody litigation and appointment of minor's counsel.	No response required.
114. Cris Hodson, Ph.D. Lead Mediator Alameda County Custody Mediation Services, Oakland	I would like to add a suggestion regarding expanding mediation services The FCS offices could also provide mentoring/training for mental health graduate students or interns. Alameda County had an internship program for 20 years that provided training for new mediators and increased services/staff for mediation. The staff was energized with training and supervision opportunities. Many of our interns were later hired in Alameda & other counties. We were able to see more clients because of increased staff/intern availability.	As part of implementation efforts, the Task Force recommendations that support for internship programs in this area be considered.
115. John Hodson State Bar of California Family Law Section Executive Committee (Flexcom) San Francisco, CA	The members of the Elkins Family Law Task Force ("Elkins Task Force") are to be commended for the countless hours of labor that went into producing their recommendations. It is clear the Elkins Task Force members took their responsibilities seriously. They have provided a comprehensive report which sets forth very thoughtful recommendations to improve family law in California. Many of the recommendations of Elkins Task Force are broad concepts, and it is difficult to provide detailed and specific responses to recommendations that are lacking in details. Many of the concepts conveyed by the Elkins Task Force are excellent in theory; however, implementation may be difficult, if not impossible, in some	Overall recommendations Agree that these are designed to be in high level recommendations. Many cannot be implemented immediately due to budget concerns. Many will

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	circumstances. FLEXCOM is largely supportive of the Elkins Task Force recommendations and we applaud the majority of concepts contained in the report. It is clear, however, that many of the recommendations depend upon many more resources being allocated to the family law system in our state. Many of the recommendations, if implemented without the accompanying increase in resources, could actually cause harm to litigants and families in the system. We are grateful to the Elkins Task Force for this opportunity to comment. We hope the Elkins Task Force will find our input helpful, and we look forward to working cooperatively with the Elkins Task Force and all stakeholders for the improvement of family law practice and procedure in California. John D. Hodson, Chairman Executive Committee of the Family Law Section (FLEXCOM) State Bar of California DISCLAIMER This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and it is not to be construed as representing the position of the State Bar of California. Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.	receive rules of court that provide more specifics for implementation. When those rules of court are drafted they will be circulated for review and consideration.

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	Right to Present Live Testimony at Hearings Summary The Elkins Task Force contends the use of declarations in law and motion "deprives litigants of their day in court, increases workload for attorneys and judicial officers, and increases attorney fees." The Task Force recommends that live testimony must be allowed at every hearing. Analysis Flexcom does not agree. Rule of Court Flexcom does not support the recommendation that "...absent a stipulation of the parties or a finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing, and may ask questions of the witnesses." In an ideal court system with a plethora of family law judges with only a few motions and orders to show cause on calendar each day, these proposals would be workable. We are skeptical, however, that this will improve the current already overloaded system. The family courts simply do not have the infrastructure, i.e. enough courtrooms or resources, at the present time. We agree it is extremely important for judicial officers to get the information they need to make vital and important family law decisions, but we think these recommendations for changes in Rule of Court Rule 5.118(f) will only add to the burden of our already overburdened court system and, for cases with attorneys, will only increase attorney's fees and costs.	Rule of Court The Task Force recommendation does not mandate live testimony at every hearing, but only requires a finding of good cause not to allow live testimony. The parties are free to stipulate to decisions based on declarations. There are many procedural matters that are ancillary to the fundamental issues in the case that can be appropriately decided on the basis of declarations. There may be no material facts that are disputed. There are a number of factors set out in the recommendation that may constitute sufficient good cause to decide on the basis of declarations alone. Although many recommendations require and identify the need for

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		additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. With respect to live testimony, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessive declarations, and resulting motions to strike.
	The proposed rule mandates oral testimony. It says that absent a stipulation of the parties or a "finding of good cause," the judge must receive live competent testimony and may ask questions of the	Oral Testimony This has not been proven to be an issue in counties where live testimony

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	witnesses. As this proposal is written, a party could spend substantial time (even months) preparing for a motion prior to actually filing it, lining up witness and testimony, and then file and serve the motion and only give the responding party 16 days to prepare for the hearing. This would potentially permit one party to have a substantial advantage over the other. Instead of making oral testimony mandatory, there should be easy procedures to request oral testimony, if desired in an appropriate case. Our comments are as follows It is not clear whether there would continue to be written declarations for motions/ orders to show cause. Written declarations should continue to be used, and it should be made clear, if it is not already, that judges always have the power to ask questions at the hearing. Other than the time required for judicial officers to read declarations, it is not clear from these recommendations exactly what the objection is to written declarations. They are an efficient way to present information, subject to questioning by a judicial officer or the ability to cross-examine the witness, if requested by opposing counsel/party. That is what happens in most cases now. If a party wants oral testimony, there is already a procedure under California Rule of Court Rule 3.1306(a) to request it. We agree that the rule should be modified to create an easier way to request oral testimony, and provide more advance notice to the opposing counsel/party. Request for Order It appears that the distinction between motions and orders to show cause may be eliminated by the new "Request for Order" form. (Recommendation 13.3.A.) There should be a space on that new form	is routine, but steps to address the potential problem should be considered in any implementing rule. Written Declarations The Task Force recommendation does not eliminate declarations. See the recommendation on Simplifying Forms and Procedures for a discussion of declarations. The role of declarations should be further considered in developing implementing rules. The Task Force recognizes that many decisions may be appropriately made on the basis of declarations. Request for Order Currently, pursuant to CRC 3.1100, the civil rules related to law and motion are only applicable to

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	(and/or on the existing Notice of Motion/OSC form), or on a separate Judicial Council form, to request oral testimony at the time the Request (Notice of Motion/OSC/Request for Order) is filed, or at the time the Responsive Declaration is filed, with a place on the form (or an attachment) to state who the witness(es) will be, what issues the oral testimony will cover, and a time estimate for the hearing. This way, the opposing counsel/party is given notice of the oral testimony, its content, and the time estimate, sufficiently in advance to be able to prepare for the hearing. Currently, under California Rules of Court Rule 3.1306(a), a written request for oral testimony must be filed only three (3) court days before the hearing, and granting that request is discretionary with the judge. That is not sufficient notice. A request should be filed with the moving and/or responsive papers, and once a request for oral testimony is made, it should be granted, automatically. This would allow the court time to schedule the hearing date on a date that can accommodate the time estimate. California Rules of Court Rule 3.1306(a) could be modified into a new rule just for family law purposes, if the other civil courts and stakeholders want to retain the existing rule as currently written. When the court clerk receives the moving or responsive papers with the request for oral testimony and time estimate, the hearing can be set for a date and time when the time estimate can be accommodated by the court. If the request is in the responsive pleadings, the court clerk can move the hearing date after consulting with the parties/attorneys. This will avoid having everyone appear, with witnesses, only to learn the court will not have time that day for the hearing. If the request for oral testimony is made, witnesses named, and time	discovery matters in family law. Thus, CRC 3.1306 does not apply to most family law Orders To Show Cause or Motions. The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The decision about which, if any Judicial Council forms will be initiated or modified in this regard is an implementation issue which will be considered in developing the rule of court. The Task Force has concluded that the due process and basic fairness requires the ability to provide live testimony at

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	estimate given, there is no need for a "good cause" determination. The court should not be using valuable time to make such findings. If the recommendation to require findings stands, it should be made clear when in the process that determination is to be made. When moving papers or responsive pleadings are filed, must they state in advance that oral testimony is waived? Must there be a motion in advance not to have oral testimony? No one should have to wait until the hearing date to have that determination made. If a request were to be denied at the hearing, the parties/counsel would have been forced to prepare needlessly, and corroborating witnesses, perhaps including expert witnesses, will have to be subpoenaed to the hearing, "just in case" the oral testimony request is granted. Clearly, this would not be a good system.	hearings, particularly in certain types of matters such as substantive matters, and that the testimony of the parties is particularly critical. The Task Force has set out a framework of notice requirements should there be a request for witnesses in addition to the parties. The specific processes should be considered in developing implementing rules of court. Judges need only make finding in writing or on the record about the factors that actually affected their decision.
	The "default" process for a hearing on temporary orders should be that the hearing proceeds based on the written declarations, and the judge is free to ask questions. Should either party request oral testimony in advance, then the requested oral testimony should be allowed without any determination of good cause, as a matter of due process. The Request for Order form (or Notice of Motion or OSC, or Responsive Declaration form), or a separate Judicial Council form to be simultaneously filed, should include space for a request for oral testimony, specifying either direct or cross-examination, or both, and identifying witnesses, the substance of expected testimony, and a time estimate.	As discussed, specific operational issues with respect to the notice requirements and Judicial Council forms will be addressed as part of drafting implementing rules.
	Of course written declarations can be improved. Other sections of the Task Force's report recommend templates be designed for self-	The Task Force has concluded that the standard should be for live testimony

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	represented parties, new attorneys, etc. The practice can also be improved by instructing new attorneys and self-represented parties what good declarations are, the importance of distinguishing facts from opinions, etc. Judges should exercise discretion to control inappropriate pleadings. Attorneys and litigants should confine declarations to relevant, material facts. If declarations are appropriately prepared, it takes much less time to read a declaration than to obtain the same information by way of oral testimony. The average American reads at the rate of 250 to 300 words per minute. Books on tape are recorded at about 150-160 words per minute. The sheer physics of it show it probably takes less time for a judge (who likely reads faster than average) to read and comprehend a written declaration, than to take oral testimony, with direct and cross-examination, redirect, recross, and questions by the court. Rather than giving litigants their day in court, we fear this recommendation may work to destroy their ability to get their day in court. If there is a crowded calendar, it will be impossible for the court to take oral testimony in every case. Unless there is a system for setting cases by accurate time estimates, hearings will be delayed, and nowhere is "justice delayed is justice denied" a more accurate axiom than in child custody proceedings. It must be made clear that courts should be able to make interim orders when appropriate, pending any oral testimony, if a hearing is continued. Mandatory oral testimony will only increase attorney's fees. Unless	at hearings, particularly on substantive issues fundamental to the case, or where there are material facts in controversy. The Task Force agrees that declarations can and should be improved. The Task Force has not been provided with any evidence to support the assertion that reading declarations is less time-consuming for judges that taking testimony. Many courts have reported being able to take routine brief live testimony without any disruption of their calendar flow. Many judicial officers that conducting a brief hearing is far more effective and efficient than handling the often excessive, long and poorly drafted declarations, and ruling on the resulting motions to strike.

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	there is advance notice of the oral testimony, identification of witnesses and issues, and time estimates, attorneys will have to prepare for any contingency. They will have to prepare their client and any other witnesses to testify, which may take hours prior to the hearing. If judges limit the time allotted for the proceeding, it may well be that there is evidence a party cannot present orally, that could have been presented in the written declarations. No attorney is going to want his or her client questioned only by the judicial officer. That may be fine for some self-represented parties, but if there is no system for advance time estimates, identification of witnesses, and summary of issues, attorneys will need to conduct direct examination of their own clients as well as cross-examination of the opposing party and witnesses. Every hearing will become a trial. By reserving oral testimony to hearings where it has been requested in advance, parties can continue to submit issues for adjudication on their declarations, if they choose, subject to questioning by the judge. They will also have the option to submit declarations, request only limited oral testimony, such as to cross-examine the other party. And of course, they can make requests for both direct and cross-examination. By having these advance requests and time estimates, the courts can better manage their calendars, everyone who wants live testimony can have it, and the system can proceed without the unnecessary impediments of "good cause findings." We do not agree the proposed changes in California Rules of Court Rule 5.118(f) would "streamline" the process. In fact, such changes could easily be used to cause delay. If parties and counsel arrive for a hearing with no advance notice or time estimates, and the court determines there is not enough time, the hearing will have to be postponed, causing delay. This proposal could actually cause longer	The Task Force encourages courts to consider methods for prioritizing cases such as child custody. The Task Force has been provided with no evidence that allowing live testimony will increase attorneys' fees. According to the results of an attorney survey, the ability to present live testimony would work toward decreasing attorneys fees no spent for the preparation of lengthy declarations and objections. As discussed, the Task Force has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented

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	delays before parties can obtain urgently needed temporary orders. Rather than making oral testimony the default procedure, it would seem more manageable to improve written declarations (via templates and instructions), and then provide a simplified means to request oral testimony, if it is desired, by giving advance notice to the court and the opposing side as to the witnesses, issues, and time estimates. When oral testimony is requested, offers of proof should be encouraged, and guidance provided for that process. The same procedures should apply to post-judgment modification motions and orders to show cause.	litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. The goal of this recommendation is not to streamline the process, but to provide due process and basic procedural fairness in family courts. Nevertheless, there is no evidence to support the assertion that taking live testimony causes delays. As discussed, many courts are currently taking live testimony and maintaining a timely calendar.
	Expanding Legal Representation and Providing a Continuum of Legal Services Summary The Elkins Task Force asserts that more legal services should be available to litigants. Analysis Attorney Fees Flexcom supports the concepts stated in this recommendation; however, it is unclear what additional information would need to be provided to the court beyond what is required in the current forms. We suggest subparagraph C be changed to recommend that courts “must” (not just “should”) allow limited scope appearances for the purpose of obtaining early needs-based attorney fees. Referrals to private attorneys	Expanding Legal Representation and Providing a Continuum of Services Attorney fees Based upon the decision in *Alan S. v. Superior Court of Orange County*, (2009) 172 Cal.App. 4th 238 and comments made by attorneys regarding need to consider credit as well as liquid assets, there appears to be additional information needed beyond that provided in an Income and Expense Declaration. Referrals to private attorneys.

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	Flexcom supports this recommendation. We propose deleting the word "Local," because lawyer referral services at all levels (local, county, state) should be encouraged to develop modest-means/low-fee family law panels as well as panels of attorneys who offer unbundled legal services.	Agree with the proposed change.
	Funding for legal services	Funding for legal services.
	Flexcom supports the recommendation that increased resources should be provided for litigants unable to afford private attorneys.	Agree with the proposed change.
	Expanding self-help services	Expanding self-help services.
	Flexcom supports this recommendation. In addition, the courts should consider having books and videos available for viewing and/or purchase to describe the steps in the process.	Agree with the proposed change.
	Availability of attorneys. Flexcom supports the recommendation to increase the number of attorneys who practice family law in California; however, we perceive a need not only to increase the number of attorneys practicing family law, but to also encourage those who practice family law to increase the amount of family law in their practice, to diversify their family law practice, and to make efforts to make services available to individuals of more modest means.	Availability of attorneys. Agree with the proposed change.
	A. Mentoring programs. Flexcom is currently considering the feasibility of mentoring programs in family law.	
	Caseflow Management	Caseflow Management.
	Summary The Elkins Task Force proposes that the principles of mandatory case management and delay reduction be applied to family law.	Agree with concept that parties should be able to inform court that they do not want to proceed. Language has been modified to clarify this point.
	Analysis	
	Caseflow management established	
	Flexcom supports this recommendation, provided there is an opt-out	

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	provision. We agree with the concept of caseflow management; however, it is important to allow parties some control over the flow of their own case. It is very important in family law to permit parties to mutually agree to an "opt-out" provision for a period of time, in the event their particular case has special circumstances that would warrant it, e.g. possible reconciliation, illness of a party or family member, need to maintain health insurance, etc. The court should not pressure parties to move their case forward or dismiss it against their wishes, at least for a reasonable time period. Caseflow management beginning at case initiation Flexcom supports this recommendation as long as parties can opt out of the process. Checkpoints established Flexcom supports this recommendation to establish checkpoints to assist the court in monitoring cases; however, we suggest at the established checkpoints, there should be a procedure for reports or declarations to be submitted to the Court, instead of requiring further court appearances. Declarations or reports should be due a minimum of ten days prior to checkpoint hearings, so as to allow the Court to inform all counsel or parties, perhaps through some kind of tentative ruling, that the matter is continued to the next checkpoint, thus eliminating the time and expense of unnecessary appearances. Early interventions Flexcom supports this recommendation to provide the parties the opportunity to reach an early disposition of as many issues as possible.	Caseflow management Agree with concept that parties should be able to inform court that they do not want to proceed. Checkpoints established. Agree with deadlines and structure, should be considered when implementing rules are drafted. Early interventions. No response required.

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	Information for litigants Flexcom supports this recommendation to provide education and information for litigants about the court process.	Information for Litigants. No response required.
	Streamlined procedures for defaults and uncontested cases Flexcom supports this recommendation. In addition, there should be a process for attorneys and/or parties to expedite processing completed judgments, instead of having to file motions or wait months for completed judgments to be approved, processed, and filed with the Court.	Streamlined procedures. Revised recommendations to consider deadlines.
	Resources available for ADR Flexcom supports this recommendation to provide settlement assistance to parties, without limiting parties' litigation rights.	Resources available for ADR. No response required.
	Cases requiring hearings and trial Flexcom supports this recommendation to the extent that it proposes prompt resolution of contested matters. However, the example provided for "cases requiring hearings and trial" is confusing and appears not to adequately explain the intent of the recommendation. It is not clear how effective caseflow management practices would minimize the need for ancillary experts, nor is it clear why the court would want to minimize the need for ancillary experts. In cases of alleged child abuse, the court usually desires, and often relies to some extent, upon some expert testimony.	Cases requiring hearing and trial The intent of the recommendation is to emphasize that the goal of case management is to provide for judicial time for those matters that require judicial determinations, that judicial decision-making should not be delegated to experts, but rather than experts should be used for providing evidence to the court.
	Flexibility in design Flexcom supports this recommendation to give local courts flexibility	Flexibility in design. No response required.

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	to design procedures consistent with the court's resources, consistent with due process. Efficient use of time. Flexcom supports this recommendation, as mentioned elsewhere in this report, to minimize court appearances in appropriate instances. Courtroom management tools-legislation required Flexcom supports this recommendation to provide judicial officers the ability to control the manner and pace of litigation, with input from the litigants and counsel, consistent with the law. Sanctions against attorneys Flexcom does not support this recommendation. We do not oppose the recommendation that sanctions against attorneys should be available to a judicial officer; however, they should not be included under California Rules of Court Rule 2.30. Family Law was specifically excluded from this Rule, likely due to the nature of the family law proceedings, which require the attorney to rely extensively on his/her client for specific input and cooperation to file documents timely and correctly. This is quite unlike many aspects of civil practice, where motions are based primarily in law and not necessarily fact driven, or client-driven. Attorneys are ethically constrained from disclosing privileged matters (to the client's detriment), and thus, a family law attorney may not be able to properly respond to and defend against a sanction under Rule 2.30. If a rule or statute is proposed to sanction an attorney, it should specify that the conduct of the attorney must be the problem, as opposed to holding an attorney personally responsible for some underlying act or omission of a client.	Efficient use of time. No response required. Courtroom management tools. No response required. Sanctions against attorneys Agree that it will be important to clarify that the sanctions against attorneys are to be imposed for conduct of the attorney rather than an underlying act or omission of a client.

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	Written orders after hearing Flexcom supports this recommendation to include preparation of orders after hearing into the court process. Systems to finalize older cases Flexcom supports this recommendation to establish systems to examine files and determine those which have never been finalized. Time Standards Flexcom does not support this recommendation. Applying time standards to case resolution is problematic, as it will create an expectation that the judges need to complete and move their cases within certain specific timelines. Every family law case is unique, and time lines must vary with the circumstances and facts of each case. It is far more important that every party have an opportunity to be heard. Cases should not be unnecessarily rushed through the court system based on statistics. There needs to be flexibility, and even opt-out provisions, in any established schedule to allow for varying facts. Forcing parties through the legal process quickly may be contrary to the needs and emotional circumstances of the parties and their children; family law cases are very different than typical civil cases as we are dealing with emotional issues, including custody of children and the separation of families. Providing Clear Guidance Through Rules of Court Summary The Elkins Task Force recommends the implementation of	Written orders after hearing No response required. Systems to finalize older cases No response required. Time standards Agree that these standards will need to be developed more fully as part of implementation. They are designed to ensure that courts can provide adequate resources to allow those parties who want to conclude their case in a timely manner to do so. Automation of checkpoints and other methods to ensure effective use of the time of litigants, attorneys and the court will be critical. But without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet. Providing Clear Guidance Through Rules of Court

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	statewide family law rules and elimination of local rules. Analysis Statewide family law rules. Flexcom supports this recommendation to incorporate the best local rules statewide, logically organized and in plain language. Centralized Statewide Rules Flexcom supports this recommendation, assuming that in the unified family law rules section, the mentioned "reference" to all general rules of court, as well as civil rules and those pertaining to discovery, etc., will actually be a reference, and all the referenced materials will not actually be copied and made into duplicate Rules of Court for family law. Local rules Flexcom does not support this recommendation. There are many county-specific programs and procedures that work well for individual counties and should not be eliminated. Local courts should be able to determine which local rules should remain, provided they are not inconsistent with statewide rules and the Evidence Code. Flexcom does support, however, an effort to review local rules and adopt the best of these statewide (item above). "Local local" rules Flexcom supports this recommendation to eliminate courtroom-specific rules. Children's Voices Summary The Elkins Task Force notes the need to include the voice of	Statewide family law rules No response required. Centralized statewide rule s No response required. Local rules This recommendation has been modified to reflect this comment. Local, local rules No response required. Children's Voices

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	children in family law proceedings. Analysis The term "mediation" should be defined more specifically to differentiate between custody mediation and general dissolution mediation, which may address other issues. Input from children. Flexcom supports the recommendation that in appropriate cases, judicial officers should consider whether and how a child might meaningfully participate in a given family law matter. Providing for child safety and well-being in court proceedings. Flexcom supports these recommendations that judicial officers control the examination of child witnesses to protect the best interests of the child (Family Code §3042(b)) and that children's input should not necessarily need to be equated with testifying in a courtroom. Exercising discretion and finding the least traumatic method for child involvement. Flexcom supports these goals and recommendations. In subparagraph B, the language that provides, "Courts should encourage parents to allow children to participate in programs that provide information to families and children about the divorce/separation process" should be highlighted as particularly important. Indeed, we propose additional language "This step/process for children to be provided information should be recommended / ordered more often." It is also vital to understand that B must be a prerequisite to C. That is, courts should not consider having a child testify in court or in chambers, without first attempting to elicit the child's "voice" through the assistance / involvement of trained professionals (e.g. mediators/evaluators/minor's counsel). Courts should consider where the testimony of a child is	Input from children No response required. Providing for child safety and well-being in court proceedings. No response required. Exercising discretion and finding the least traumatic method for child involvement. No response required.

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	demanded or required, whether that fact is, in and of itself, sufficient indication of conflict to warrant appointment of minor's counsel. Flexcom is concerned that the Elkins Task Force recommendations do not fully account for some of the unique aspects of family law within the civil litigation arena. Although children's interests are frequently litigated, it has rarely been viewed to be in their best interest to put them in the courtroom. For that reason, children's testimony is permissible under current law, but judges have discretion to provide alternative means for children's testimony to be considered. Comparing family law to juvenile dependency is not always helpful, as the entire focus of each system differs completely from that of the other. While children in the dependency system may be present in court, they typically do not go home with either parent immediately following the proceeding. Likewise, they are not typically in either parent's home if there is a contested proceeding, so they are not transported to and from court by one parent, either. During the pendency of the proceedings, children in dependency court are usually placed either in a third party's residence, foster care, or in a local receiving home. Additional resources for children in dependency cases allow for various forms of advocacy, including, but not limited to, an attorney and a social worker for every child. In family law, that simply is not the case. Due process is an important right for parents, but the emotional health and well being of children should not, and need not, be disregarded to protect that due process right. Care should be taken so that children can be heard, but not harmed, by the process.	Unique aspects of family law Being given the same civil rights as in juvenile The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court

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		proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court.
	Domestic Violence Summary The Elkins Task Force endorses the recommendations of the Judicial Council's Domestic Violence Practice and Procedure Guide, dated January 2008. Analysis Survival of orders. Flexcom supports this recommendation. Support and custody orders should continue/survive even when a domestic violence restraining order expires.	Domestic Violence Survival of orders. No response required.
	Paternity & domestic violence cases. Flexcom supports the recommendation to permit stipulations regarding	Paternity & domestic violence cases. No response required.

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	paternity in domestic violence (DVPA) cases. Notice should be provided to the stipulating parents of their right to DNA testing. In addition we note that Uniform Parentage Act (UPA) actions are confidential, and DVPA actions are not. One way to reconcile the confidentiality in paternity cases with the public records in DVPA actions would be to repeal Family Code §7643, which Flexcom has also supported.	
	Family law court access to Paternity Opportunity Program (POP) declarations. Flexcom supports this recommendation to provide judicial officers with access to POP declarations, and training in protocols to protect confidentiality.	Family law court access to Paternity Opportunity Program (POP) declarations. No response required.
	Procedural changes. Flexcom supports this recommendation that any procedural changes preserve the parties' rights to a fair hearing, including the right to call witnesses, subject to the court's ability to properly control the process.	Procedural changes. No response required.
	Children's participation. Flexcom does not support this recommendation. This paragraph is problematic and overly vague. There is no reason for the first part of the first sentence, "Just as in cases involving abuse and neglect," and that language should be stricken. Any time the court considers a child's point of view appropriate, protections should be undertaken to protect and shield the child. As such, prior to making a determination as to whether a child's point of view is shared, the court must first ensure all other means of eliciting the child's point of view and information have been completely exhausted, such as obtaining the child's point of view and information through mediators, Evidence Code 730 evaluators and minor's counsel. Please refer to our comments on Recommendation 5, above on this subject.	Children's participation. This recommendation does not preclude children's participation in the ways listed in the comment.

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	Settlement Process. Flexcom supports this recommendation that the court consider whether domestic violence is an issue in each case when referring or ordering the parties to settlement processes, and include provisions for meeting separately with litigants so as to provide safe and appropriate services. Form Changes. Flexcom supports the recommendation that the Judicial Council should make appropriate changes in the relevant existing forms to accommodate these changes. Statewide consistency. Flexcom supports these recommendations that local domestic violence procedures must conform to statewide rules of court and current statutory requirements. Enhancing Safety Summary The Elkins Task Force recommends appropriate procedures should be implemented regarding children's participation in legal proceedings. Analysis Appropriate procedures. Flexcom does not support this recommendation that in cases of child abuse in which a child is called upon to testify, juvenile court procedures should govern. Please see our comments on Recommendation 5, above. Related procedures Recommendation discusses Welfare and Institutions Code (W&I) §350, and recommends that procedure be followed with respect to the	Settlement Process. No response required. Form Changes. No response required. Statewide consistency. No response required. Enhancing Safety Appropriate procedures This section has been redrafted and the Task Force recommends pilot projects to implement promising practices for handling family law cases involving these allegations. Related procedures This section has been deleted in the current version of the

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	testimony of a child. W&I §350(a)(1), however, says the child's testimony should be in an informal, nonadversary atmosphere, "except where there is a contested issue of fact or law." When a child is compelled to testify in a family law child custody proceeding, there is always a contested issue of fact or law. There is no alternative method set forth for testimony under W&I §350(a)(1) if the testimony is in a contested matter, and thus we are left to conclude that this statute requires the testimony to be taken in a formal, adversarial manner in contested cases. Although W & I §350(a) indicates that the proceeding should be "informal, nonadversarial," it does not indicate where the proceedings are to take place. W & I §350 (a)(2) mentions mediation, but it is unclear if that is what is meant in the Task Force's recommendation. W & I §350 (b) indicates testimony of a child may be taken in the judge's chambers and without the parents, if the parents have counsel. In dependency cases, counsel are appointed for parents if they don't have private attorneys, so again, it is not clear where the "informal, nonadversarial" proceedings would take place in a family law case. If a child's testimony is taken in chambers, and if the parents are self-represented, will the parents be present? If one parent is represented and the other is not, may both parents still be present in chambers? Hearing from children in chambers The current research by social scientists does seem to indicate the need for the child's voice to be heard in some way in child custody proceedings. However, there are better ways to do this than having the child testify in court or even in the judge's chambers. In our view, all other methods should be exhausted before a child is asked to testify in	recommendations. Hearing from children in chambers Children's participation is addressed in the section on Children's Participation and Minor's Counsel; these sections provide a variety of ways for children to participate. The Task Force does not

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	court, i.e. through custody evaluations, interview with the child by Family Court Services, through minor's counsel, or through mediation. If a child must testify, then it should usually be in as informal, non-adversarial a manner as possible, regardless of the level of conflict. Family Code §7892 has problematic requirements. Under subsection (c), a finding made pursuant to Family Code §7892 that in-chambers testimony is necessary to ensure truthful testimony, the child is likely to be intimidated by a formal courtroom setting, or the child is afraid to testify in front of the child's parent(s) "shall be supported by clear and convincing evidence." It is unclear how the court is to make that determination without somehow eliciting testimony from the child. Under Family Code §7891(a), it would appear that a child should be 10 years of age or older to testify in chambers. Because we think the courtroom testimony of a child should be an absolute last resort, we do not think a child - or anyone else - should have to prove by clear and convincing evidence that it is necessary for the child to testify in chambers. Testifying in chambers should be the default, and the child should be forced to testify in the courtroom only for some compelling reason. Family Code §7892 applies to termination of parental rights proceedings, so the loss of a constitutional fundamental right is involved. It seems that a preponderance of evidence standard would suffice in a family law proceeding. Expedited handling. Flexcom supports the concepts contained in this recommendation, that there should be expedited handling of cases involving serious allegations of physical or sexual child abuse; however, there are no	recommend that in every case all options need to be exhausted before a child testifies as there are many instances in which hearing directly from the child is warranted and the Task Force supports retention of judicial discretion on this area rather than creating a blanket rule. Expedited handling. Specific implementation issues should be considered during implementation of this and related recommendations.

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	specifics in this recommendation, which makes a more detailed analysis impossible at this time. Child welfare services. Flexcom does not support the concepts contained in this recommendation. Family court is designed to make child custody determinations between parents. Dependency court deals with children who are victims of child abuse and neglect. If there is an existing family law case and child abuse or neglect are reported to CPS, then the case may be taken out of the family court and jurisdiction assigned to the dependency court. Dependency judges have greater powers than do family law judges to extricate children from an unsafe environment and even to award child custody to strangers (in the foster care system). It also would not seem fiscally possible for all these various agencies to be available to family court as well as to dependency court. The state's budgetary problems are today's reality. Funds for the courts have been cut. It is not likely that dependency court will want to further dilute its resources by sharing its funding or personnel with the family court, and it is not clear that it would be in the best interests of children to do so, given that the "more serious" abuse cases are more often handled in dependency court. We agree that in an ideal world, in contentious family law cases, both parents should have counsel, and there should be counsel for the child, especially where there are allegations of child abuse or neglect. It is not clear why county social workers or child welfare services would be better than Family Court Services in providing private evaluators to the family court system, other than being able to provide "free" services. In family court, a child's parents, or sometimes other parties all want custody of children. In dependency court, sadly, children are often cast	Child Welfare Services The recommendation is this section is designed to address those situations where a matter may not usually be handled by child welfare because the parents are in family court and the expectation may be that family court and its services will address the matter. However, there are cases in family court that may benefit from the services provided by child welfare and the Task Force recommendations support pilot projects and changes in existing law or regulations so that children in cases involving allegations of child abuse and neglect are afforded similar access to protection and services regardless of which court their case is filed in. The Task Force recommends child welfare services involvement in cases involving allegations of child abuse so that children whose parents happen to be seeking relief in family court are not denied access to the resources providing by the child protection

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	adrift with no parents, and sometimes no family at all, and they are assigned to the foster care system. These children are at the highest risk and generally have the greater need. There is nothing to prevent forming volunteer groups like Court Appointed Special Advocates (CASA) in family court. In dependency court, the CASA volunteer is often the only adult who provides stability for a child. Family court should not take CASA volunteers away from dependency court; but certainly similar volunteer organizations could be created to provide for children in family court. Realistically, while it would be ideal to have all of these services available for free in the family court, it is not likely to happen. Dependency court has the most egregious cases, and this is why these resources have been provided by the Legislature. The Task Force Recommendation does not address why, if a family court case has serious allegations of child physical and/or sexual abuse, the case would be better off in family court than in being referred to dependency court where these resources are currently available. Family court judges can, should, and do make those referrals. Contested Child Custody Summary The Elkins Task Force notes that resources for custody mediation services are limited and greater access to these services must be provided. In addition, custody mediation is done differently throughout the state and greater consistency is a goal. Analysis Information provision. Flexcom supports this recommendation, with the following additional comments Methods to obtain information. Although relevant, useful information must be provided to judicial	system. Contested Child Custody Information provision. No response required. Methods to obtain information. Recommendations regarding child custody are required to be filed in the

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	officers who make custody decisions, we do not believe that this type of information should always be contained in a public court file, for safety reasons. If required, this information should be sealed and litigants should be aware of the option to have appropriate records sealed.	confidential portion of the family law file under existing law; the Task Force agrees that protection of confidential or sensitive information in this area is important.
	Investigators and evaluators. The distinction between investigator and evaluator is unclear in this subparagraph. These two terms are interchangeable under Family Code Section 3110 and the Rules of Court and it is unclear if the Elkins Task Force intends to define them differently. Opportunity to Response. Flexcom agrees parties must receive any information provided by investigators and evaluators to the court, and must have an appropriate opportunity to respond. Opportunity for cross-examination. Flexcom agrees that those providing information to the court must be made available to testify and for cross-examination.	Investigators and evaluators. The section has been redrafted to further clarify investigations and evaluations and to recommend additional clarification. Opportunity to Response. No response required. Opportunity for cross-examination. No response required.
	Child custody mediation services. Flexcom cannot support this recommendation outright, as it lacks specifics. Despite differing practice perspectives (confidential vs. recommending) throughout the state, we agree that a compromise solution is in order. Flexcom supports, specifically, longer initial mediation appointments, and an opportunity for meaningful confidential mediation without parties being required to file a motion (i.e., when parties just want help). We support the concept of "pilot programs," so that alternate methods of mediation can be reviewed. A concept not addressed in this recommendation is the need for	Child custody mediation service. Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. Specific implementation issues are recommended to be addressed during implementation.

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	timeliness. It would be important for any pilot program to have very specific provisions requiring timely procedures. For instance, at 3 on page 35 of the report, it is recommended parties be able to schedule follow-up mediation sessions. There is a real need for any subsequent sessions to follow quickly - say, within 10-14 days - to maintain the "momentum" of mediation, and not to delay two (2) to three (3) months and start over again, as sometimes happens now. Timing is critical if there is ever to be some kind of compromise mediation/evaluation program statewide. The last/partial paragraph on page 34 of the Report (referencing the pilot programs) is unclear. It states that absent an agreement, the pilot program court could, "under specific conditions, order additional processes...." If the parties do not reach agreement in confidential mediation, the next step should almost always include a process which includes recommendations. Flexcom notes with approval that the Association of Certified Family Law Specialists (ACFLS) has submitted a specific pilot program proposal to the Task Force. That proposal contains many of the kinds of specifics that would be required to implement a successful pilot program. Resources for child custody mediation services. Flexcom supports this recommendation to allocate appropriate time in mediation as needed in each case, provided the issue of timeliness is addressed as stated above. Appropriate number of mediators.	Absent An Agreement The task force heard from many commentators that believed that in many instances, when parties are unable to reach an agreement, they believe their case would benefit from being heard by a judicial officer rather than being referred to another service. Such specifics should be considered during implementation. Resources for child custody mediation services. No response required. Appropriate number of mediators.

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	Flexcom supports this recommendation that each county should have an appropriate number of mediators. Access to family court services. Flexcom supports this recommendation that parties be permitted to request mediation services prior to filing a motion, as referenced in paragraph 2 above. Information from family court services and evaluators. Flexcom supports this recommendation that parties be provided information the court receives from family court services and evaluators, that recommendations should be filed in a confidential file, and that parties should have an opportunity to be heard. We also agree recommendations should not be presented as "orders" unless and until they are adopted by the court and incorporated into an order or judgment. Child custody language. Flexcom supports this recommendation as it applies to the term "visitation;" however, Flexcom does not support substituting the phrase "parenting time" for the term "custody," as the term "custody" has legal significance under both statute and case law, for which no generic substitution would appear to be adequate. Culturally competent mediation services. Flexcom supports this recommendation that culturally competent mediation services should be made available to all litigants, and that mediators and evaluators should be trained to provide it. Minor's Counsel Summary The Elkins Task Force recommends the role and responsibilities of Minor's Counsel need to be more clearly delineated, and there needs to be greater transparency and clarity regarding how	No response required. Access to family court services. No response required. Information from family court services and evaluators. No response required. Child custody language. Agree; the recommendation has been modified to refer to "visitation." Culturally competent mediation services. No response required. Minor's Counsel No response required.

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	appointments are made. Analysis Minor's counsel are sometimes appointed by the court to a small percentage of family law cases which are deemed "high-conflict." Minor's counsel must be well-trained, experienced family law attorneys who are willing to serve in this role. Minor's counsel's role. Role definition. Flexcom agrees with the portion of the recommendation contained in subparagraph A, that the role of minor's counsel should be clearly defined. Flexcom opposes any use of minor's counsel that would have minor's counsel stepping into the role of an evaluator or therapist. Acting within the scope of that role. Flexcom does not agree with all the recommendations contained in subparagraph 1B. Although Flexcom agrees minor's counsel should not make recommendations to the court, Flexcom does not agree with the recommendation to eliminate the Statements of Issues and Contentions. Minor's counsel should request orders from the court, just as would counsel for any party. However, minor's counsel is in a unique role, representing a non-party to the action. Minor's counsel is not a witness and cannot submit declarations under penalty of perjury to the court. If the Statement of Issues and Contentions is eliminated, presenting evidence via declaration for a motion would be extremely difficult, if not impossible, in most circumstances. Children's therapists are generally unwilling or unable to provide testimony as witnesses. Children certainly should not submit declarations to the court, even assuming the children are competent. It is difficult to ascertain how minor's counsel would present evidence or even seek relief on behalf of a minor child client if these recommendations were adopted. A	Minor's counsel's role. Role definition. No response required. Acting within the scope of that role. The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. However, the Task Force recommendation does support the idea that the results of counsel's investigation or fact gathering should only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately

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	Statement of Issues and Contentions is a "proper pleading," as it is served on all parties and everyone's due process rights are observed. Eliminating the Statement of Issues and Contentions could exclude a great deal of pertinent information that judicial officers historically want and need when they decide these very difficult, high-conflict matters. Eliminating the Statement of Issues and Contentions would increase costs, as investigators and/or guardians ad litem would need to be hired to provide the same information that is now typically provided by minor's counsel. Minor's counsel will themselves be forced to charge increased fees to represent children, because they will have to draft declarations for every witness and secure witness signatures in lieu of submitting a summarizing Statement of Issues and Contentions. Given that much of this work is done by committed lawyers at county compensation rates, as a matter of public service, these changes could further drive competent minor's counsel from the system. If adopted, this proposal will reduce the amount of information provided to the fact finder, increase litigation, and probably force more children into courtroom testimony. As we see it, without the ability to submit a Statement of Issues and Contention, there may be little need for minor's counsel as they serve the courts today. Statements of Issues and Contentions are used in many instances as settlement tools, thus effectively minimizing litigation. Parents and their lawyers are often (certainly not always) persuaded by these Statements of Issues and Contentions to resolve their conflicts. Eliminating the Statement of Issues and Contentions would only reduce the ability of minor's counsel to advocate on behalf of the minor child client.	protected and that any position minor's counsel will be taking also be presented in writing to the parties prior to any hearing on the matter.

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	In addition, minor's counsel in family law cases, charged with advocating in the child's best interest, must sometimes advocate opposite the wishes of a child/client. Absent that vehicle (Statement of Issues and Contentions), it would appear minor's counsel could well be cross-examining his/her own client on this issue in some cases - clearly an unacceptable result.	
	Counsel's responsibilities in representing the minor child's interests. Providing Information. Flexcom agrees with the premise that minor's counsel should not make "recommendations" to the court. Beyond that, please see our comments in the preceding section, above.	Counsel's responsibilities in representing the minor child's interests. Providing Information. No response required.
	Providing information on child's wishes. Flexcom agrees that minor's counsel should have a mandatory duty to express the desires of the child to the court, if the child wants them expressed. However, we fail to understand how minor's counsel will present evidence so that the court can determine whether the child/client is "of sufficient age and capacity to reason so as to form an intelligent preference in the custody issues before the court," unless minor's counsel is permitted to address that issue in a Statement of Issues and Contentions. If there is a contest as to that issue, then appropriate evidence must be taken; however, there often is no contest. There would seem to be no good reason to require evidence on an uncontested issue.	Providing information on child's wishes The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. However, the Task Force recommendation does support the idea that the results of counsel's investigation or fact gathering should

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		only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected and that any position minor's counsel will be taking also be presented in writing to the parties prior to any hearing on the matter.
	Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel. Flexcom supports the concept of this recommendation. As to complaint procedures, it should be considered that minor's counsel often serve either with no compensation, or for substantially reduced compensation. There is usually at least one parent (sometimes both) dissatisfied with minor's counsel. Allegations concerning competency may have very little to do with the complaint. Parties already have several avenues available to file complaints against attorneys representing children, including filing a complaint with the State Bar, filing a motion to remove minor's counsel, and, effective January 1, 2010, filing a complaint under procedures all local courts are required to have in place. Responding to complaints takes valuable time away from an attorney who is already providing under-compensated time to represent children. We must consider how much we want - or need - to add to that burden given all the remedies already available. 4. Education on the appropriate use of minor's counsel. Flexcom supports this recommendation that all judicial officers be educated on the appropriate use of minor's counsel.	Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel. This recommendation has been redrafted to recommend statewide approaches to handling complaints. Specific details should be considered as part of implementation.
	Scheduling of Trials and Long-Cause Hearings	Scheduling of Trials and Long-Cause

Commentator	Comment	Committee Response
	Summary The Elkins Task Force asserts that trial proceedings that are broken up over periods of weeks or months are ineffective and inefficient, and can cause undue financial hardship as well. Analysis Day-to-Day Trials and Long-Cause Hearings. Flexcom supports the concept of this recommendation. "Trial days" needs to be defined. Some courts, for example, have "trial days" on Thursday and Friday afternoons. Thus, if a matter is not completed on Friday, then it is unclear whether this proposal would continue that trial to the next Thursday, or the very next court day (Monday), even though that is not a "trial day" on the court calendar. There are concerns that either scenario can cause further backlog or delay of other matters pending given current resources, and some of those cases impacted by the potential "domino effect" could be cases entitled to priority. Thus, this recommendation necessarily requires allocation of additional resources to family law, which we support. We further suggest the following, some of which are addressed elsewhere in this position paper a. Courts should obtain accurate time estimates for trial; however, mistrials should not be routine if time is underestimated. b. More trial judges should be assigned to family law, and courts should consider using judges from other civil departments if they are available for long cause trials and have recent family law experience. c. There should be mechanisms in place to address the same concerns detailed in paragraph 1, above. d. Courts should consider having assigned trial judges who only conduct trials.	Hearings The Task Force agrees and has modified the recommendation to clarify that the expectation is that long-cause hearings and trials be complete without undue interruption in consecutive days and times the court routinely schedules such hearings and trials. These suggestions should be considered in drafting implementing rules for this recommendation.

Commentator	Comment	Committee Response
	e. Trials not completed should only be continued to dates within a reasonable period of time. f. Family law matters should be heard by judges with family law experience.	
	Litigant Education Summary The Elkins Task Force recommends litigants be provided more information regarding the court process and basic legal principles. Analysis	Litigant Education
	Orientation and ongoing information and education on the family law court process. Flexcom supports this recommendation; however, we suggest that on page 42, the words “county bar” be deleted from the second sentence of the last full paragraph. All lawyer referral services, at every level, should be involved in providing information and education on the family court process. We also suggest litigant education include basic information/education on the law in common situations, such as the defining community and separate property, listing spousal support factors, and instructing on child support calculations.	Orientation and ongoing information and education on the family law court process. Agree to remove the reference to the “county bar” and that information should be provided regarding the law in common situations.
	Orientation to child custody mediation. Flexcom supports this recommendation to comply with California Rules of Court Rules 5.210(e)(2) and (e)(2)(A)-(D), and all the subsections of the recommendation.	Orientation to child custody mediation. No response required.
	Enhanced parent education prior to mediation. Flexcom supports this recommendation that the court develop referrals to parenting education classes.	Enhanced parent education No response required.

Commentator	Comment	Committee Response
	Settlement opportunities Flexcom supports this recommendation to provide settlement opportunities to litigants. Enforcement of orders Flexcom supports this recommendation to provide litigants with information regarding enforcement of orders. Expanding Services to Assist Litigants in Resolving Their Cases Summary The Elkins Task Force recommends the opportunity to resolve cases should be provided to all litigants at all stages of their case. Those individuals who mediate or provide settlement services should be well trained and be cognizant of power imbalances. Analysis Services to help parties with settling cases. Flexcom supports this recommendation to make financial and property settlement opportunities with qualified attorney settlement officers available to both represented and self-represented litigants at all stages of a case. All forms of ADR available. Flexcom supports this recommendation to make all forms of Alternate Dispute Resolution/Consensual Dispute Resolution (ADR/CDR) available to litigants for all, or any part of, their cases. Available ADR/CDR methods need to be clearly defined. It is unclear whether the Elkins Task Force recommendation intends that courts could order these services without the parties' agreement, and if so, how the ADR/CDR providers would be paid.	Settlement opportunities No response required. Enforcement of Orders No response required. Expanding Services to Assist Litigants in Resolving Their Cases - Services to help parties with settling cases No response required. All forms of ADR available Agree to modify language to reflect term CDR where appropriate. Definitions of ADR/CDR and methods of payment should be considered as part of implementation. The standard letter regarding

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	Flexcom further notes with approval a standard letter provided to family law litigants such as that utilized by the Supervising Family Court Judge of Los Angeles County. Flexcom also encourages all family law attorneys to consider their ethical obligations to similarly inform clients and potential clients about ADR/CDR opportunities.	ADR/CDR options is one that should be considered as part of implementation.
	Appropriate family law training for ADR providers. Flexcom supports this recommendation to develop clear rules and required training for ADR/CDR providers and mediators who address issues other than child custody.	Appropriate family law training for ADR providers No response required.
	Streamlining Family Law Forms and Procedures Summary The Elkins Task Force states that family law forms and procedures should not be unduly burdensome. Procedures should be uniform throughout the state. Analysis	Streamlining Family Law Forms and Procedures
	General Form review. Flexcom supports this recommendation to review family law forms with the goal of making them clear and easy to complete. We note this is an ongoing process already.	General Form review No response required.
	Simplifying forms for litigants who are in agreement. Simplified stipulated judgment process. Flexcom supports this portion of the recommendation in concept; however, the last two sentences of this subparagraph should be eliminated. (“The parties would not be allowed to file a motion until the divorce or legal separation was final except in case of emergency. A party could file a notice revoking the joint agreement prior to its being finalized.”) Precluding the parties from filing a motion until the divorce or legal separation is final except in emergencies, or allowing	Simplifying forms for litigants who are in agreement Agree to eliminate the last two sentences in the proposed recommendation.

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	revocation notices to be filed, would not streamline the process, but more likely would cause confusion and add a layer of complexity. Simply allowing the parties to file a joint petition/response, and all of their pleadings at that time, while preserving all their rights under the law to set aside or modify, would more than adequately streamline the process. Summary dissolution process We support this portion of the recommendation to modify the current summary dissolution process to permit filing of a stipulated judgment simultaneously with a joint petition, to go into effect six (6) months later without additional pleadings or appearances, and to extend the five (5)-year limitation on summary judgments to commence from the date of separation. We recommend adding a subparagraph "C" to this section related to simplifying forms for litigants who are in agreement. We propose that all parties have the option to file a joint petition/response, even if they do not qualify or choose not to utilize the summary dissolution process, or to file all of their documents at one time, or even if they have no agreement other than to file the joint petition/response. This would further streamline the process and eliminate the need for service of process for those who choose this option. Simplify forms for motions. Flexcom supports the concept of this recommendation to replace Notice of Motion and Order to Show Cause forms and procedures with a comprehensive "Request for Order" form; however, the current applicable statutory provisions of the Code of Civil Procedure and Civil Code seem to warrant caution, because the differences can be	Summary dissolution process The suggestion that all parties could file a joint petition should be considered as part of implementation. Simplify forms for motions Agree that current applicable statutory provisions will have to be carefully reviewed. However, it became clear to the Task Force that there are remarkably different requirements and

Commentator	Comment	Committee Response
	substantial. It might be simpler to maintain the current forms and provide an instruction sheet for filling them out, referencing the code sections that apply to each. Another suggestion might be to create the "Request for Order" form, but reference the Notice of Motion and Order to Show Cause requirements in an instruction booklet. 22	understandings of Notice of Motion and Order to Show Cause throughout the state.
	Simplified forms for discovery. Declaration of disclosure forms. Flexcom supports this portion of the recommendation, to simplify and streamline disclosure documents.	Simplified forms for discovery. Declaration of disclosure forms No response required.
	Expanded discovery forms. Flexcom supports this portion of the recommendation in concept. We encourage more thought as to the specific discovery devices to be utilized, and caution to avoid inconsistencies with existing statutes. For example, the idea of having a template for family law production of documents or special interrogatories is a good one.	Expanded discovery forms Agree that much thought will have to be put into implementation of this recommendation.
	Simplified procedures for service of process. Flexcom supports this recommendation for clearer, more effective service of process.	Simplified procedures for service of process No response required.
	Simplifying procedures for establishing parentage. Uniform Parentage cases. Flexcom supports this portion of the recommendation to request entry of a judgment establishing parental relationship on FL-310 (Application for Order and Supporting Declaration) forms.	Simplifying procedures for establishing parentage Uniform parentage cases No response required.
	Dissolution cases. Flexcom supports the concept of this portion of the recommendation to make it a presumption paternity will be established for children born prior to the marriage, and permitting the parties to request parentage	Dissolution cases The distinction between the recommendation and the current form is that parentage will be presumed

Commentator	Comment	Committee Response
	testing. The addition of the presumption of parentage is somewhat redundant to the current form, so we do not perceive this would simplify the process; however, providing a check box on the Petition/Response to request paternity testing might simplify the procedure. The Petition/Response already contains a space to list all children of the relationship and marriage. These would be the presumed children of the parties unless a party requested testing. Adding a box to request testing should be all that is necessary to simplify the process. Declarations. Flexcom supports this recommendation to provide declaration templates, except for the suggestion of a page limitation. A page limitation could result in excluding information that is relevant for the court's consideration of the issues. Agreement templates. Flexcom supports this recommendation to provide templates for "standard" parenting plans and other agreements. Enhancing Mechanisms to Handle Perjury Summary The Elkins Task Force recommends there should be more effective methods to penalize individuals for committing perjury. Analysis New civil sanctions. Flexcom cannot support this recommendation. We agree there is currently no adequate mechanism to address the problem of perjury in the family courts. Flexcom would support a specific remedy that the family law court can administer when warranted; however, this recommendation is not the right remedy. Parties can already move to set aside orders that were granted based on perjury or fraud, and can already seek sanctions, all without showing "clear and convincing	rather than requiring the parties to check the box. The idea of a box for parentage testing is one that should certainly be considered as part of implementation. Declarations The concept of a page limit for declarations is one that will certainly be thoroughly considered as part of any proposed rules. Agreement templates No response required. Enhancing Mechanisms to Handle Perjury The proposed recommendations have been modified significantly based upon these comments.

Commentator	Comment	Committee Response
	evidence." It would appear this recommendation would make the remedies harder, not easier, to achieve. Standardize Default and Uncontested Process Statewide Summary The Elkins Task Force recommends a consistent statewide procedure for submitting and filing default and uncontested judgments. Analysis Uniform Default and Uncontested Process. Flexcom supports this recommendation and we further propose that time lines be instituted for court processing of judgments. Flexcom recommends the task force add language similar to the following provision "All courts should ensure judgments are processed within a reasonable period of time, such as within 30 to 60 days of the date the judgment is submitted without error or omission. Courts should ensure if there are errors or omissions in a submitted judgment, the judgment must be rejected and returned within a reasonable period of time." Interpreters Summary The Elkins Task Force recommends interpreters be provided to litigants to promote greater access to justice. Analysis Expansion of availability of interpreters. Flexcom generally supports the recommendation to expand availability of interpreters to litigants; however, the mechanics, depth and breadth of the recommendation have not been fully addressed. How many languages will be interpreted, whether the use of interpreters will cause backlogs or delay for other litigants, and if so, how that would be remedied, are just a few of the issues raised. These and other details	Standardize Default and Uncontested Process Statewide Agree that timelines for review of documents should be considered in implementing rules. Interpreters Interpreters are generally made available in other case types such as criminal and juvenile law in whichever language is required. Courts will need to manage interpreter resources wisely and this is an implementation issue that courts must currently address in

Commentator	Comment	Committee Response
	need to be thoroughly considered before implementing any recommendations.	other case types.
	Out-of-courtroom services. Flexcom supports this concept; however, there should be more specifics addressing how these services will be facilitated and utilized, and how broadly they will be applied. Settlement Conferences, Family Court Services, and Facilitator's Office - these are all "out of courtroom services," as are private custody evaluators, private mediators, substance abuse assessments, parenting and co-parenting classes, etc. Are interpreters to be made available for all these family law specific out-of-courtroom services?	Out-of-courtroom services Implementation is likely dependent on the population of limited English speaking litigants and interpreter resources available.
	Grant funding. Flexcom supports the recommendation to seek additional grant funding to provide interpreters in family law proceedings.	Grant funding No response required.
	Protocols. Flexcom supports the recommendation to develop protocols to best utilize interpreters from other courts. Protocols should address the court's review in every case of the parties' ability to pay for interpreters, even if it is on a sliding scale. Protocols should also address compiling statistics regarding the use of interpreters to help identify specific future needs.	Protocols No response required.
	Early identification of need. Flexcom supports this recommendation, and further suggests a box be added to the Petition, Response and Request for Order (NOM/OSC) forms to enable litigants to identify their need for interpreters early on, to help streamline scheduling and calendaring the use of interpreters.	Early identification of need Adding a box to any request for hearing to identify the need for an interpreter should certainly be considered as part of implementation.
	Shared interpreter pool. Flexcom supports the recommendation that AOC identify and publicize	Shared interpreter pool No response required.

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	to the courts, best practices of courts already implementing a "shared interpreter pool."	
	Scheduling. Flexcom supports the recommendation to consolidate and schedule calendars to optimize use of limited interpreter resources. We suggest this recommendation be examined in greater detail to avoid delays and backlogs for other litigants.	Scheduling This is an important implementation issue to be considered by the courts.
	Allocation of Resources. Flexcom supports the recommendation that the Judicial Council should develop a rule of court, vesting court administration with the ability to allocate interpreter resources.	Allocation of resources No response required.
	Public Information and Outreach Summary The Elkins Task Force proposes that the court enhance public information and outreach to litigants. Analysis	Public Information and Outreach
	Public information program. Flexcom supports this recommendation that the AOC develop a public information program.	Public information program. No response required
	Community outreach. Flexcom supports this recommendation that courts should give community presentations on available court services, and train community partners so they can also effectively disseminate informational materials.	Community outreach No response required
	Informational materials. Flexcom supports this recommendation to make informational materials available in various formats, including text and visual.	Informational materials No response required.
	Resources. Flexcom supports this recommendation to increase family court resources.	Resources No response required.

Commentator	Comment	Committee Response
	Judicial Branch Education Summary The Elkins Task Force recommends the statewide Judicial Branch and its leaders should be educated as to family law content, processes, and procedures, so that all professionals involved in the system have a high level of expertise and experience. Analysis Educational Content. Flexcom supports this recommendation that the education and training of the judicial branch and its leaders should include information regarding children's needs, the role of the family courts and the impact and significance of family court decisions, interpreters, enforceable orders, issues regarding self-represented litigants, procedural justice, attorney fee awards, limited scope representation, minor's counsel, leadership and collaborative courts, fairness, awareness of bias, and elimination of bias. Children's needs. It would be helpful for judicial officers to be trained how to interview children, a very difficult task to do properly, and to give judicial officers insight into reliability issues regarding information obtained from children. This training should occur prior to a family law assignment. Training should also include the variety of alternative methods the court may employ to assess the needs and obtain the input of children short of interviewing them and/or putting them in the courtroom. Judicial interviews and courtroom testimony of children should be a last resort. Putting children in a courtroom setting is generally considered detrimental to their emotional well-being. General family law education. Flexcom supports these recommendations. Ideally, judicial education	Judicial Branch Education Educational Content No response required. Children's needs Agree. The recommendations on educational content specify that judicial officers "should receive training on how to receive testimony from children to best assess their needs." General family law education The Task Force made

Commentator	Comment	Committee Response
	for family law judicial officers should include the 45 hour class (or something approximating it) currently provided for practitioners preparing to take the examination to become family law specialists certified by the State Bar of California Board of Legal Specialization. Ongoing education should include requirements similar to those required for re-certification as a Certified Family Law Specialist, including mandatory hours of education in specific areas of family law. Family Law Research Agenda Summary The Elkins Task Force reports the court system has not maintained statistics regarding family law, except for numbers of proceedings filed and dispositions. It would be beneficial to the statewide system to have more information and data. Analysis Research Agenda for Family Law. Basic statewide statistical reporting. Flexcom supports the concepts of the recommendation; however, once again more specifics are needed, with respect to the mechanics of the fact gathering. For example, subparagraph a. seeks to determine the number and percentage of cases in which one side, both sides, or neither side is represented by counsel, but that information will be difficult to ascertain, because all three scenarios occur during the course of many cases. The data could be recorded as of the entry of the Judgment, or upon the filing of initial pleadings; however, the representation status often varies during the pendency of the case. Thus, defining the time in each case when information was to be gathered would be necessary, as would be some recognition that the data only reflects a snapshot for that point in time. Similar clarifications are needed on many of the listed categories of data to be compiled. For example, subparagraph f. addresses “methods	recommendations about a variety of issues that should be addressed through education. This comment provides a specific suggestion about educational requirements and length of programs, and it will be referred to the implementation process. Family law research agenda Research Agenda for Family Law. Basic statewide statistical reporting Agree that the concepts need to be operationalized, but those are details best left to implementation. There needs to be an opportunity to explore and pilot test different definitions before committing to the use of a particular measure or data definition.

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	by which judgments were reached." It is unclear what is meant by "a method." Perhaps the intention is to track whether judgments are contested, or involve personal appearances, or include some combination of processes. Subparagraph I. is another example "the number of cases with trials or lengthy hearings." Obviously, "lengthy hearings" must be defined. Perhaps tracking "hearings longer than three (3) hours" or "hearings longer than one (1) day" would be more helpful. Subparagraph j. seeks "the number of cases that return to court and the frequency with which they return." That will certainly require further definition, i.e., over what time frame this would be tracked, and whether the reason for the return is important (i.e., when litigants return to update a wage order, as opposed to any renewed litigation). Subparagraph k. purports to track "the number of and reasons for continuances," yet unless a general term were accepted, this would be very difficult data to collect, as the courts typically are not aware of the reasons for a stipulated continuance. Obviously, more details and mechanics are needed - as well as the resources to do track and interpret all this data.	
	Workload studies. Flexcom supports the recommendation to assess judicial and staff resource allocation.	Workload studies No response required.
	Performance measures. Flexcom supports the recommendation to develop, pilot, and test a streamlined trial court performance standard model.	Performance measures No response required.
	Litigant surveys. Flexcom supports the concept of customer satisfaction surveys, but end	Litigant surveys Agree. Issues related to the timing of

Commentator	Comment	Committee Response
	users must recognize the population we are dealing with. In light of the uniqueness of the family law system, any effective surveys must be appropriately timed in the family law process. Obviously, surveying two family law litigants after a hearing will likely result in one satisfied and one dissatisfied, even if the question is designed to be neutral, such as whether they perceived their judge was "fair." People going through such emotional stressors may not be the best source for objective input. Information gleaned from such surveys must be carefully timed, and the weight accorded them must be carefully considered.	surveys and proper interpretation of the data is best handled in implementation.
	Studies to evaluate the effectiveness and replicability of court-connected programs or services. Flexcom supports the recommendation to study and evaluate court-connected programs and services.	Studies to evaluate the effectiveness and replicability of court-connected programs or services No response required
	Evaluation of family law forms. We support the recommendation to assess the readability and utility of family law forms. We note this is already an ongoing process.	Evaluation of family law forms No response required
	Monitoring evolving issues in family law. Minor's counsel. Flexcom does not support the recommendation as written, because it provides no hint as to how empirical data could be collected to determine a positive or negative consequence to children's greater participation in family law proceedings. It is unclear from whom this information would be ascertained, and it would be near impossible to obtain neutral, non-privileged information. More reliable data might include statistics on the number of complaints regarding minor's counsel and the outcome of those, or statistics indicating the number of motions filed to remove minor's counsel, and the results. The	Minor's counsel The recommendation was intended to be general because possible data sources and measures are not known at this time, but could be further explored in implementation.

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	way that the data request is worded in the recommendation is completely subjective, and any results would be susceptible to misinterpretation or misuse. If the idea is to obtain the subject views of judicial officers, parties, attorneys for parties, and minor's counsel themselves (and perhaps, with age-appropriate children), Flexcom would have no objection, but would likely question the utility of such anecdotal information. Crossover between family law and other case types. Flexcom supports this portion of the recommendation and proposes that probate guardianships be handled completely in the family law courts. Coordination between family and juvenile dependency courts. Flexcom supports this recommendation to explore the feasibility of employing a shared or multijurisdictional approach between family courts and juvenile dependency courts in cases involving allegations of serious child abuse, bearing in mind our comments on Recommendation 5, above. Expedited appeals in custody cases. Flexcom supports the recommendation to study whether expedited appellate processes, similar to those in juvenile dependency appeals (California Rules of Court 8.416) should be available in family court child custody cases. Review of research and best practices from other jurisdictions. Flexcom supports the recommendation for ongoing review of research and best practices from other jurisdictions.	Crossover between family law and other case types No response required Coordination between family and juvenile courts No response required Expedited appeals in custody cases No response required Review of research and best practices from other jurisdictions No response required

Commentator	Comment	Committee Response
	Court Facilities Summary The Elkins Task Force recommends court facilities be improved to address the specific and unique needs of family law litigants. Analysis Trial court facilities standards. Flexcom supports this recommendation that family court facilities should adhere to the California Trial Court Facilities Standards published in 2006. Courtrooms. Flexcom supports the recommendation for adequate family law courtrooms in size and number. Private space for consultation and settlement. Flexcom supports this recommendation that court space should be provided for litigants and attorneys to have reasonably private discussions. Self-help services. Flexcom supports this recommendation to provide adequate space for self-help centers and Family Law Facilitators and their functions. Family court services. Flexcom supports this recommendation to provide safe and private meeting rooms for mediation and child interviews. Children's waiting rooms. Flexcom supports this recommendation for adequate children's waiting rooms for litigants who attend court hearings or mediation sessions, or are involved in any other case-relevant court services. Co-location of services. Flexcom supports this recommendation that family law courtrooms, clerks, and facilities should be reasonably co-located.	Court Facilities Trial court facilities standards No response required Courtrooms No response required Private space No response required Self-help services No response required Family court services No response required Children's waiting rooms No response required Co-location of services No response required

Commentator	Comment	Committee Response
	Safety. Flexcom supports this recommendation for adequate courtroom staffing (bailiffs), and particularly for the steps recommended in domestic violence cases. Flexcom further proposes that video (not audio) monitoring of all non-courtroom areas be provided for the safety of staff, litigants and counsel. Accessibility. Flexcom supports this recommendation to assure courthouses and off-site facilities are accessible to all. Hours of operation. Flexcom supports this recommendation to explore offering court services and hearings during evening and weekend hours, if the resources can be made available to do so. Equipment and technology. Flexcom supports this recommendation to provide appropriate equipment and technology, and to enable e-filing and fax filing to the extent resources will permit. Leadership, Accountability, and Resources Summary The Elkins Task Force notes that family law has considerably less resources than other courts, and recommends more resources be provided to family law, including more judicial officers and staff. Experienced judges with a temperament for family law should be appointed and family law judges should have a greater role in the court system. Analysis Promoting the work of the family court by enhancing judicial leadership. Standard 5.30.	Safety Video monitoring of non-courtroom areas is consistent with the existing *California Trial Court Facilities Standards*. Accessibility No response required. Hours of operation No response required. Equipment and technology – no response required. Leadership, Accountability, and Resources Standard 5.30

Commentator	Comment	Committee Response
	Flexcom supports the recommendation to elevate standard 5.30(c)(2) of the California Standards of Judicial Administration, to a California Rule of Court, and to include it as a duty of the Presiding Judge under California Rules of Court Rule 10.603(c)(1). Status of supervising judges. Flexcom supports the recommendation to elevate the Family Law Supervising Judge to a Presiding Judge of Family Court. Leadership of family and juvenile court. We support assessing the viability of coordination between family and juvenile court and a Presiding Judge of family and juvenile court, provided there is a balance of resources allocated between family law and juvenile law, as both areas are important. Moreover, Flexcom supports coordination of Family and Juvenile Courts so long as it does not eliminate a supervising judge in either court. Perhaps having the Family Law Supervising Judge and Juvenile Supervising Judge alternate terms as Presiding Judge of Family/Juvenile would help to maintain a proper balance of resources. Please see our comments on Recommendation 5, above. Family and juvenile court role within trial court governance structure. Flexcom supports this recommendation that supervising family and juvenile court judges are standing members of internal executive committees or other court leadership structures, as appropriate. Family court management and resource allocation. Flexcom supports this recommendation to promote more informed resource allocation and adopt best practices in family court administration. Self-assessment to inform resource allocation. Flexcom supports this recommendation that the AOC develop and implement a program for self-assessment and diagnosis of the court's	No response required. Status of supervising judges No response required. Leadership of family and juvenile court No response required. Family and juvenile court role within trial court governance structure. No response required. Family court management and resource allocation – no response required. Self assessment No response required.

Commentator	Comment	Committee Response
	overall workload and resource allocation. Judicial appointments and assignments. Flexcom supports this recommendation to increase the experience and depth of family law knowledge on the bench. 32 With regard to recommendations below, Flexcom also offers and agrees to lend its expertise to facilitate implementation, and provide input on any proposed new questions on judicial applications and/or forms. Judicial appointment process. Flexcom supports this recommendation to encourage family law attorneys to apply for appointment to the bench. Provide information to State Bar and JNE. Flexcom supports this recommendation to provide the JNE Commission and the governor's judicial appointments secretary, information about the qualifications, characteristics, and experience that are important for family law judges. Judicial experience prior to family law assignment. Flexcom supports the proposal for new judicial officers to serve their first two years outside of family law; however, we propose an exception for judicial officers who are (or come from the ranks of) certified family law specialists, as removing them from their specialty may have a chilling effect on family law practitioners applying for the bench. We further propose (as previously stated) that all judicial officers assigned to family law take a course similar to the 45-hour training offered for candidates sitting for the certified family law specialist examination. This training should be completed prior to working in a family law assignment. Judicial officers should be mandated to attend several MCLE courses offered each year in family law while they are on the family law bench.	Judicial appointments and assignments No response required. Judicial appointment process No response required. Provide information to the State Bar and JNE No response required.

Commentator	Comment	Committee Response
	Assignment of judicial officers to family law. Flexcom supports this recommendation, and suggest the language be changed from "should" to "shall" so that appropriate numbers of judicial officers are assigned to family law, consistent with the caseload.	Leadership, Accountability, and Resources Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including for example the expertise of the judge. The Task Force made numerous recommendations to enhance judicial education, but did not specify the number of hours to be required. The Task Force based its recommendation to allocate judicial resources based on workload in family law is based on the evidence that family law cases are under-resourced throughout the state. The Task Force also recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions.

Commentator	Comment	Committee Response
		The recommendation also states a clear policy that in family law there is a critical need to increase resources.
	Court resources. Flexcom supports this recommendation to increase family law ancillary and supporting resources and staff.	Court Resources. Agree. No response required.
	Ensuring access to the record. Flexcom supports this recommendation that all family law courtrooms should have court reporters, and all litigants should have access to transcripts at low cost. This will not only improve due process for litigants, but will minimize disputes, sometimes expensive, over the wording of court orders, should litigants and counsel continue to prepare them.	Ensuring access to the record The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
	Ensuring access to a recording for preparation of orders. Flexcom supports this recommendation to assist parties and counsel in preparing orders. If the preceding item above is adopted, this recommendation might be duplicative.	Ensuring access to recording No response required.
	Calendaring approaches.	Calendaring approaches No response required.

Commentator	Comment	Committee Response
	Flexcom supports this recommendation to consider various dedicated calendars in appropriate settings. Inclusiveness and collaboration. Flexcom supports these recommendations to promote an inclusive and collaborative approach to addressing the needs of family court and the community as a whole. Transparency and accountability. Flexcom supports the general concept of a complaint process for complaints about the courts and judges; however, we foresee problems with backlogs, with using valuable financial resources to now provide an ombudsman, and with providing yet another (redundant) mechanism for parties to complain, when there are already established avenues for complaints. The positive aspects may include resolution of litigant complaints at a lower, local level. We also note this recommendation is somewhat vague, in that it provides no mechanism for this process or system to be implemented. Consistency between local and statewide rules. This recommendation is likewise vague; however, Flexcom supports the concept of self-assessment tools to ensure local rules and procedures comply with state law and rules. Family and juvenile court assignments.	Inclusiveness and collaboration No response required. Transparency and accountability. In response to extensive public input about the need for greater accountability, the Task Force is recommending the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position. The details of the process and the evaluation of the ombudsman concept will be addressed in the implementation process. Consistency between local and statewide rules. The details will be addressed in the implementation process. Family and juvenile court assignments

Commentator	Comment	Committee Response
	Flexcom supports this recommendation to encourage family and juvenile court matters to be heard by judges, and not subordinate judicial officers. Enhanced use of IV-D commissioners in family law. Flexcom supports this recommendation to have Title IV-D commissioners hear all parts of family law cases before them, provided, of course, that parties must be able to decline to stipulate to a commissioner in such cases where issues other than aid-based support are being heard.	No response required. Enhanced use of IV-D commissioners in family law No response required.
116. Robert Hovey Shasta County	Commentator provided comments on specific case.	No response required.
117. Fang Huang Victim and Individual Advocate Baldwin Park, CA	According to my court hearing experiences in Family Law Court and Bankruptcy Court, my comments are as follows (comments are summarized) 1. Only the hearing judge can sign the court order to prevent from changing the judge's rulings without knowing by the judge. 2. The hearing judge's signature on the court orders, instead of the judge's stamps, for preventing from change of original rulings. 3. Sanction fees should be paid only by the party who is sanctioned. The Cashier Dept should notice the appropriate dept for investigation if paid by other party.	1. This is generally the practice, but if a hearing judge is unavailable, another judge can review the transcript of the hearing to determine what orders were made. 2. The judge signs the original order and then conforming copies are stamped. 3. The Task Force has not made recommendations regarding who must pay sanctions and it is unclear what problem this comment is trying to

Commentator	Comment	Committee Response
		correct.
	4. Though represented by attorney, plaintiff or defendant can directly speak to the judge in the open court to prevent from misunderstanding the facts and misruling accordingly.	4. A judge currently has the discretion to allow the plaintiff or defendant to speak directly if it appears necessary.
	5. Enforcement of TRO or restraining order is a must for protecting the victim's safety.	5. The Task Force supports the recommendations from the Domestic Violence Practice and Procedure Task Force which include addressing the issue of enforcement of court orders.
	6. The restraining order should be permanent in order to protect the victims and to minimize the court caseloads and victim's unnecessary legal expenses. The TRO or restraining order should be used nationally for safety of victims. For instance, when the victims moved to other states or counties, they need to reapply for a new TRO or restraining order but unable to locate the abuser's address for serving the court paper.	6. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations
	I will submit more comments later about other issues. According to my bitter experiences in leaving the abusive marriage and in court hearings, further issues of my comments include 1. Life insurance prior to divorce (safety issue)	1. The purchase of life insurance prior to an action for dissolution is a private financial decision of one or both parties. The Task Force has not made recommendations regarding such decisions.
	2. Accommodations to people with disabilities (e.g., funding for	2. The Task Force agrees that

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	accommodation services, electronic recording in courtrooms, etc.)	accommodations for people with disabilities is fundamental to a fair process and points to CRC 1.100 which requires courts to comply with the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); or other applicable state and federal laws.
	3. Hidden properties (e.g., real properties and bank accounts in other state or other country, etc.) 4. Fraudulent "evidence or proof" (e.g., payments for supports, reimbursements, or expenses for repairs, etc.) 5. Sanctions for omitted real property in the dissolution (e.g., attorney's omitting his/her client's properties in the divorce procedure that creates complication of the case and damages to the opposite party.)	3 - 5Married couples have a fiduciary responsibility to each other which includes the duty not to hide assets. There are currently in place serious sanctions for failure to disclose the identity, nature and value of assets within a dissolution proceeding. Statutory disclosure requirements allow judgments to be set aside when assets are not disclosed (Family Code sections 2120-2129), and heavy penalties can result for breach of a spouse's fiduciary duty to the other spouse, even though they are separated (Family Code section 1101).
	6. Creating network of computer records (e.g., cases filed in different courts with the involved party's social security number and date of birth, to prevent from fraudulent statements to mislead the judge's rulings)	6. The Task Force agrees that a statewide electronic case management system is necessary for California Courts and support the ongoing work to develop the California Courts Case Management System (CCMS).
	7. Sanctions for missing documents in the court files in order to prevent	7. Removing records or documents

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	from removing important evidence or exhibit-documents (for obstructions of justice and fairness and for prevention from misruling) 8. Automatic report to Bar of Association for attorney's misconduct after sanctions for it (for issues about obstructions of justice and fairness and enforcement) If you have any question about my comments, please contact me immediately.	from a court file carries criminal penalties. 8. Additionally, if an attorney is judicially sanctioned above $1000, reporting to the State Bar is currently mandatory (Business and Professions Code section 6068(o)).
118. Janette M. Isaacs Pro Per and Volunteer Paralegal Resource for Low Income and Indigent Family Law Litigants Chatsworth, CA	Judicial appointments and assignments We should not have attorneys licensed to practice law while serving in their judicial capacity. Judicial Appointments I agree with the task force's recommendations and suggest that they be amended to include No Commissioner or Judge shall be able to practice law in the State of California while serving as a judicial officer on the bench. Justification Commissioners and Judges should not be "at peer" with their attorney colleagues. If they are serving on the bench and simultaneously practicing law, the judiciary becomes a mockery of attorneys running the show, not judges. I think that litigants and civilians believe that their cases will be heard by a Judge or a Judicial officer who is not a licensed practicing attorney with collegial peer relationships. When Commissioners or Judges are still licensed to practice law, there	Judicial appointments and assignments Judges are not permitted to practice law. The issue of attorneys practicing as temporary judges has been addressed in the California statewide rules of court. In addition, the Task Force makes numerous recommendations that are intended to ensure that family courts receive additional judicial resources to better handle the workload. The concerns and suggestions that are raised in this comment will be referred to the implementation process.

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	is no prevailing for any pro per caught in a "ring" or a cluster such is what happened in my case. I cannot begin to express my gratitude to you for embarking on such a major and necessary project. I will work with you in any way that I can to accomplish Family Law Reform in a constructive and public friendly manner. Litigant Education The recommendations of the Elkins Task Force are outstanding and could be expanded upon. Information on evaluation Add another sentence. Courts should provide information about local resources for low cost limited and full custody evaluations conducted by experienced, well trained professionals who have not had their professional licenses revoked in the state of California or any other state and who place a high commitment on neutrality and accuracy in reporting as set forth in AFCC guidelines. If the Court is going to provide people with resources and lists of specific individuals, the Court should at least make sure the individual has never had his or her professional license revoked, especially when the individual was found guilty on several counts of sexual misconduct. The Elkins Committee should take this opportunity to recommend that a Court Referred Evaluators meet the minimum standards of having a professional license which has never been revoked in the state of California or any other state.	Litigant Education Agree that courts will need to be mindful in developing any referral list of a variety of factors including licensing. Court Referred Evaluators Current statutory law and statewide rules of court require, where applicable, a license in good standing.

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		Changes to either would require amending these existing requirements and should be referred to the legislature or to the appropriate Judicial Council advisory group for review.
	Enhancing Mechanism to Handle Perjury The last sentence on page 53 should be modified to read Costs would include but not be limited to time off work. Justification Other costs should include reimbursement of trial court fees paid by the injured party, witness fees incurred to defend the truth, parking and other hard dollar out of pocket costs such as office supplies and gasoline. Judicial Branch Education The recommendations of the Elkins Task Force are outstanding and could be expanded upon. Proposed Recommendation 1 Court Clerks There should be a requirement that court clerks conduct random quarterly audits of five (or any percent) of its most high volume cases. The certification of the completed audit should be a part of the legal record and entered in the case file. Currently, court records are not being properly maintained by our Clerks. The clerks should be held accountable for maintaining the integrity of our case records, if they are unable to maintain our case records with accuracy, they should be terminated.	Enhancing Mechanisms to Handle Perjury This recommendation has been modified significantly in response to comment. These suggestions should be considered as part of implementation. Court Clerks This suggestion re audits of case records will be referred to the implementation process.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

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	Research Agenda The recommendations of the Elkins Task Force are outstanding and could be expanded upon. Proposed Recommendation 1 The Research Agenda should be expanded to include a) The number of Ex Parte's filed and heard by parties represented by counsel, b) The number of Ex Parte's filed and heard by pro pers c) Total number of Ex Parte's filed and heard versus total number of OSC's filed and heard in one case during a six month period. d) The relief granted on an Ex Parte basis (develop check list) to determine if exigent circumstances existed. Justification Many attorneys such as my opposing counsel are infamous for filing Ex Parte's and achieving orders ex parte on a weekly basis when there are no exigent circumstances to justify such a hearing. On the contrary, pro per's are denied the very same ex parte hearings and told no exigent circumstances exist. Not only is this unfair, it demonstrates bias against pro per's and favoritism towards attorneys. The constant barrage of attorney initiated ex parte's disrupts a pro per's life, gives them an unfair advantage to prepare, and disrupts the court's calendar as well. This should be included in the study so that we will have a basis for achieving due process in the future. Court Facilities The recommendations of the Elkins Task Force are outstanding and could be expanded upon. This one of my favorite task force recommendations.	Research agenda The recommendation was modified to broaden the categories of basic statewide statistical reporting to general areas of inquiry rather than specific data elements. The recommended additional data elements are captured under the broader categories and would need to be more carefully considered in implementation. Court Facilities Recommendation was expanded to include the availability of forms preparation software and templates in

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	Proposed Recommendation 1 4 and 11 Regarding Court Facilities. Self Help Services and Equipment and technology Please consider including the following Computers should be available with Legal Solutions and Microsoft Word installed with pleadings templates and the templates mention on pages 51 and 52 of the recommendations. There should be time limits such as are imposed at the Law Library. Please visualize if you will, one of our EDD Work Source self help centers. You will notice rows and rows of computers installed with software. Photocopy machines, telephones laser printers, paper. Pencils, staplers, etc. There is always a floor monitor patrolling the area and watching to make sure the facility is being used for the purposes intended (job searching and interviewing). Picture this same surrounding being patrolled by a family law paralegal paid by the county just as the Work Source monitor. I think we should also consider adding these services at our Law Libraries. Our Law Libraries already have the desks and computers. It would be very simple to expand the services to add word perfect. Legal solutions and printers. Think of how much easier it will be for our Judges to read what's in front of them. There would be no more pro per excuses for not filling out and filing the necessary paperwork. Leadership and Accountability The recommendations of the Elkins Task Force are outstanding and could be expanded upon. Ensuring Access to the Record	courthouses and public and law libraries where feasible, as well as to explore partnerships with public and law libraries to make technological resources available to court users. Leadership and Accountability The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost

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	Despite the fact that I paid $1,500.00 to have all eight days worth of trial transcripts duplicated and formally lodged with the trial court for my appeal purposes directly following eight days of trial, I was denied the right to have them included free of cost with my fee waiver. I still do not understand why it was necessary for me to have been mandated to incur an additional $1,500 some 9 months later in order to include the very same transcripts which were already lodged by both parties (two sets of eight days) with the court and were already available to the appellate clerks to include with the appeal. I did not have the money nine months later to duplicate this expense. After being denied the option of including these transcripts, I returned back to the CSR and asked her how much it would cost to duplicate them again so that they conformed to Appellate Court standards of pagination. I was given the same amount, $1,500.00. I was further advised that pursuant to City of Rohnert Park v. Superior Court, (1983) 146 CA 3id, 4201, Court transcripts are not included in the fee waiver.	effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders. The issue of access to the fee waiver for court transcripts should be referred to the implementation process.
119. David Ito Monterey , CA	I have reviewed your draft and am making the enclosed recommendations for change. *Comments are summarized; information provided on specific case. Concerns What in your proposed changes addresses the practice of the Judge hiring his own experts and then signing off without debate on his findings? When you control the expert witnesses, you control the outcome of the case and it alleviates the liability of the Judge as he merely signed off on an expert opinion.	Concerns The recommendation to evaluate the creation of an ombudsman will be addressed in the implementation process. The role, authority, and duties of the ombudsman will need to be

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	What prevents the Judge to allow fee gouging by his appointed experts? It seems to me that decisions are relationship based. How are you addressing this concern? How do you keep autonomy with the Ombudsman you propose to hire? Will this Ombudsman have any real power to change the Court decisions or intervene? How are we making the Judges accountable for their decisions? I believe the Absolute Immunity protection they have is an issue. I am being victimized by this System. How are your proposals going to ensure this does not happen to anyone else in the future? Are your proposals strong enough? I do not believe they address the real issues here. Victims of this courtroom have been complaining for over 20 years. Why hasn't anything been done? Will your proposals make any significant change to this system?	developed. However, the Task Force does not anticipate that the ombudsman would be involved in court decisions. Part of the goal of having an improved complaint process and ombudsman are to provide more convenient and accessible options for litigants who have complaints and concerns, and to improve procedural fairness at the local level. The Task Force notes that judges are held accountable for their decisions primarily through the appellate process.
120. jalenaf@aol.com No further information provided	Can a section be added on how court orders are enforced?	Information how court orders are enforced is included in the California Courts' On-Line Self-Help Center at www.courtinfo.ca.gov/selfhelp.
121. Gregory P. Johnson Attorney at law Joshua Tree, CA	Courtroom Management Tools Sanctions Against Attorneys. Do not agree with the recommendation. It seems extraordinarily incongruous to ask litigants at their trial if there is anything that the court could do or whether the passage of time could help save the marriage while the court pressures the litigants to a prompt litigation conclusion. For about a two year period, I saw such pressure applied via sanctions and case dismissals when San Bernardino County utilized a	Courtroom Management Tools Sanctions Against Attorneys. The experience of the San Bernardino court and other courts should be carefully examined in developing rules to implement case management.

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	case management system in its family courts. I saw so many pro pers standing before the court completely confused and angry because they were being fined and did not know why. Another negative result of the case management policy in San Bernardino County was to double the average number of appearances and hence attorney fees and costs for represented litigants. It also sent many pro per litigants scurrying to find representation because of the fines and threats of dismissals. Most attorneys loved the case management system and its effect on their bottom lines. Eventually, with court approval. I began sitting in on as many case management hearings as I could and volunteered to assist pro bono, any pro pers who wanted it because I couldn't stand seeing the effect on people of the court's need to speed their cases along and reduce the court's number of open cases. There are a number of factors which warrant allowing parties to keep cases unresolved for longer periods than is permitted under current statutes and rules. First, it should be taken into consideration that filing fees are approaching prohibitive levels. Early dismissals may mean parties won't be able to afford to come back again. Second, the economy and the drop in housing prices have made it uneconomical and impractical to divide the family residence. Many cases are now sitting on a side rail awaiting the imminent rise in the stock market and a rebound in home prices. A main assumption behind these Caseflow Management recommendations is that most family law litigants want their matters concluded in a timely fashion" and that they won't be promptly concluded without case management. I don't accept that assumption because my experience has shown me that the principal impediment to	Cases The Task Force has not recommended that cases be dismissed prior to the current statutory timeframes. The point that parties may have very reasonable reasons to wait to finish cases is a good one and should be considered by judges at checkpoints. Caseflow Management Caseflow management is one tool to help litigants appropriately resolve their cases along with increased resources to allow more judges as

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	speedy conclusions for those who desire it is the lack of courtrooms. Nothing could be worse than to give the court the unfettered sanction power over attorneys and litigants for mere rule violations. This power is not necessary and will be abused. If family courts are now considered one of the most hostile litigating environments to practice in, it is nothing compared to what it will be like if the court begins applying sanctions to the open wounds instead of acting as a calming salve. Family Court is different than most other courts. These cases go on as long as there are minor children and support issues. Measures should be applied which lessen the pain and anguish, not increase it. Live Testimony Do not agree with the recommendation. This recommendation appears to assume that live testimony at all hearings will be the norm and not the exception. I say this because it places the burden on the court to justify the exception and I don't think this would have been recommended if it was anticipated that the court would be having to make the required findings very frequently. That would be too laborious a task. The result of this change will likely be an enormous growth in court time expended on pretrial and post trial hearings by a factor at least as high as twice as much. There will never be enough court resources to meet the demand and judges will necessarily have to spend much time trying to justify denials that may or may not he justifiable. The recommendation does not limit live testimony to just the litigants. The litigants will pressure their attorneys to present live testimony at all hearings from all of their witnesses and there will be malpractice and	described in the chapter on Leadership and Accountability. The intention of this section is to allow the court to award sanctions against attorneys who are acting in a matter warranting it – rather than charging the client for that behavior. Caseflow management is intended to help parties resolve cases rather than have those cases continue as long as there are minor children and support issues. Live Testimony The Task Force has been provided with no evidence to support the assertion that taking live testimony will increase the burden on judges beyond that of reading lengthy declarations and ruling on the resulting motions to strike. The recommendation has been modified to include the requirement of adequate notice when witnesses other

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	larger fee incentives resulting in most attorneys yielding to that pressure. Every hearing will become a mini-trial/evidentiary hearing. The better practice would be to adopt a rule allowing live testimony at another date and time set aside for long cause-evidentiary hearings when requested and justified by the requesting party. This would put the burden to justify the exception on the litigants and not the judge. This has been the practice- in all family law courts I have practiced in San Bernardino County in the last 20 years and it has worked reasonably well. I have rarely seen a request for such a hearing denied, and usually with ample justification and the delays in getting to these hearings have been acceptable to me and most family law attorneys I know. Paternity & Domestic Violence. Agree subject to modification. Survival of Orders. This recommendation is much needed but there are two fundamental problems that have given rise to this need. The first problem is the high filing fees for dissolution and paternity cases. Litigants are acutely aware that they can save $355 by filing a DVPA case alleging violence. The courts are aware that parties know this and in San Bernardino and Riverside Counties they are doing everything they can to avoid permitting long term custody and/or support orders in DVPA actions. The second problem is that many if not most. DVP A litigants are	than the parties are involved, and time to prepare. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. The Task Force has concluded that the right to present testimony on certain matters is so fundamental to basic fairness in family law that it must only be denied for good cause. Paternity and Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	unmarried and while DVPA case files are open to public viewing paternity actions are not(except for judgments and I defy anyone to show me a court in San Bernardino or Riverside Counties that makes them public). There is a tremendous inconsistency in making public the custody and support orders in DVPA cases for unmarried litigants and not in paternity cases. And that is another reason as to why litigants are discouraged from getting such orders in DVPA actions. Possible Solutions 1. Make DVPA litigants seeking custody and/or support orders pay the same filing fee they would pay in a dissolution or paternity action. (I disfavor this because I generally dislike high filing fees). 2. Keep the custody portions of DVPA actions confidential for unmarried parties. 3. Eliminate the confidentiality requirement or paternity cases. I strongly favor the last solution because the confidentiality requirement no longer makes any sense in our society. The social stigma that used to attach to being born out of wedlock is no longer present. Much time and effort would be saved by being able to view paternity cases online as we can now do in other actions in San Bernardino and Riverside Counties. Child Custody Mediation. Do not agree with the recommendation. I agree with the efficacy of initial confidential mediations. However, I strongly disagree with the pilot project which would provide an initial confidential mediation but	Child Custody Mediation Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to

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	no report and recommendation from a professional evaluator until after a court hearing. There is no greater saver of court time than the reports and recommendations that come from the Family Court Service professionals in San Bernardino County. The licensed mental health practitioners spend 60 to 90 minutes with the parties and probably another hour writing their reports. Judges don't have the luxury of spending that much time with the parties at their initial hearing. In the 5 minutes it takes a judge to read these reports, they have received as much information as they might elicit in an hour of hearing time. If nothing else, the reports frame the major issues or the court to contend with and explore in greater depth if needed. The reports also give the parties their first insight as to how they are being perceived and can alert them if they may need to be represented by counsel. I have saved more than one prospective client a large investment in attorney fees by advising them to wait until they get the FCS report and recommendation. The pilot project seems to be geared toward weaning the counties which currently authorize recommendations off their reporting system. This appears to be in keeping with the Task Force's strong emphasis on litigants' due process rights. I strongly disagree with this emphasis in the family court arena. I just completed a 2-day training course for minor's counsel and a panel consisting of three family law judges were unanimous in stating that the thing they need most, and the thing that was in shortest supply, in their decision-making process, was accurate and relevant information. Some of the most valuable sources of that information come from reports submitted by mediators, minor's counsels and §730 evaluators. The parties more often than not, are happy to have these reports because they greatly help accomplish the critical function of getting their stories	provide a range of services. Information The Task Force recognizes the need the family court has for information on which to base decisions. The recommendations in Contested Child Custody, Children's Participation and Minor's Counsel, and in several other places support identifying effective

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	told to the Court. If there is one fundamental truth I have discovered in 20 years of practicing family law it is that parties are much more accepting of decisions, even negative ones, if they feel that their side of the story got fully and fairly told. If the recommendations of this Task Force are implemented, only the very expensive §730 reports will survive. And those will become even much more expensive and scarcer if the evaluators must always be available for cross- examination. Another valuable source of information, drug testing, has already been all but eliminated by case law and statute due to due process and Fourth Amendment concerns). That will be a sad day for justice in the family courts. Of course most of my criticisms will be mostly moot if the state provides funding for professional evaluations in all of the very complex and highly conflicted cases, but that is to say the least, unlikely. Minor's Counsel Role. Do not agree with the recommendation. Minor's Counsel's Role If minor's counsel is not going to be able to provide a report and recommendation, my experiences as minor's counsel in over 200 cases in San Bernardino County lead me to the following conclusions and predictions 1. Where both parents are represented by counsel, minor's counsel will not be needed at the counsel's table because the attorneys for the parties should be expected to produce whatever evidence minor's counsel might produce. Minor's counsel will not want to duplicate the work of private counsel for the litigants who will be well paid to produce the relevant evidence for their clients. It can be expected that minor's	ways of providing that information to judicial officers while protective parties rights. The Task Force seeks to improve accessibility (not increase costs) and to support efforts to identify more promising practices (such as through pilot projects and other innovations). Minor's Counsel The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. However, the Task Force recommendation does support the idea that the results of counsel's

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	counsel will do little more at the trial than take a seat at the table and take a position. 2. Where only one parent is represented, a motivated minor's counsel will effectively become counsel for the unrepresented party and produce the evidence that party should have produced if represented by competent counsel Minor's counsel will do this in order to present a complete and balanced set of facts. 3. If neither party is represented by counsel, a diligent minor's counsel will have the unenviable task of presenting evidence the unrepresented parties each should have produced if represented by competent counsel in order to present a complete and balanced set of facts. Some minor's counsels may not be up to the daunting task, and the quality of evidence presented will be no greater than if minor's counsel had not been appointed all. 4. Minor's counsel will use a trial brief in place of a report and will make requests instead of recommendations. 5. Although minor's counsel will not be able testify or report regarding acts observed, home conditions seen, parenting skills observed, or statements made by the parties or the minor children, the judge will consciously or subconsciously assume that those things were considered by minor's counsel before counsel took a position or made a request of the court, But there will be no record to indicate what minor's counsel actually saw, heard, read and considered. That would be a far more egregious denial of due process to the litigants than allowing minor's counsel to report what facts he or she considered. And the judge's assumption that minor's counsel did all of the expected investigation will be untested because minor's counsel won't be able to report what they did to provide a basis for their position and requests. The only way to prevent this phenomenon from	investigation or fact gathering should only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected and that any position minor's counsel will be taking also be presented in writing to the parties prior to any hearing on the matter.

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	happening would be to prohibit minor's counsel from taking a position or making any request of the court whatsoever and that would be absurd. 6. The courts will not provide funds to minor's counsel to hire investigators to perform and testify as to investigations which are currently performed and reported on by minor's counsels themselves. I must add that in my experience as minor's counsel, I can point to many cases when the need for a trial was completely eliminated by the submission of a comprehensive report that presented the parties' contentions. The parties' personal histories, and the facts uncovered by minor's counsel. Just as mediation reports often times lead to settlements, many a complex and high conflict case has been resolved by a report from minor's counsel.	
122. Ken Johnston LCSW/MFT, Mediator Citrus Heights, CA	A collaboration between minor's counsel and mediator can help substitute for an evaluation in regards to the minor's voice. It's not as thorough as a great eval, but quick and dirty, and better than nothing. I recommend that City of Rohnert Park v. Superior Court, (1983) 146 CA 3td, 4201 be repealed so that going forward, the county will be charged subject to reallocation by the Appellate Court with the expense of oral trial transcripts just as they are now when they are ordered by Minor's Counsel's and Judges at the trial court level. Otherwise, justice cannot be served and the poor will continue to be deprived of due process when transcripts necessary for appeal cannot be afforded because of an abuse of discretion which occurred and preceded the appeal such as in my case where I was denied a Gavron warning which was an abuse of discretion.	

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	Litigant Education I recommend that if trial transcripts are lodged with the court as evidenced by a parties conformed copy of that lodging, that the Court be mandated to include those transcripts at no additional cost to litigant's who are already on a fee waiver. Commentator provided additional information to support this recommendation.	Litigant Education The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
123. Dee Kotla No further information provided	Nothing works well in family court. A woman can put a restraining order on a man just to get him out of the house so she can move another man in. The court fails the man in discovery if a woman can lie good. *Commentator provided additional case specific information.	No response required.
124. Robert N. Jacobs Attorney at Law Pasadena	*Commentator submitted information on minor's counsel and the following comments Unstated assumptions and loose language in Section 9 of your Recommendations would disserve [the goals in Elkins] goal by minimizing the participation of children, the persons with the fewest resources and the most at stake in custody decisions. I write to express my strong objections. The recommendations in Section 9 propose to prohibit children's lawyers from filing written "reports" without ever defining that term. Commentator provided information from cases	Minor's Counsel The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a

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	where he has served as minor's counsel that in his view benefitted from written reports. Commentator further notes The Task Force also maintains that minor's counsel "should not make recommendations." My recommendations are based on the facts and the law, and some of them have produced dramatic improvements in children's lives. It's hard to believe that the Task Force is really opposed to "recommendations" when virtually every pleading submitted by every party in every case recommends some sort of a remedy. And it's hard to believe that the Task Force would be opposed to written "reports" if that term were defined to include trial briefs and memoranda of points and authorities. There are many ways short of eliminating them to ensure that all judges handle minor's counsel's reports in an appropriate manner. The Task Force might recommend, for example, that the Legislature or the Judicial Council adopt a suitably modified version of Welfare & Institutions Code § 355(b) and (c). These subdivisions require Juvenile Court judges to consider "social studies," which are closely analogous to minor's counsel's reports, but create due-process safeguards when a party disputes a social study's contents or conclusions. Many cases hold that these safeguards pass constitutional muster. Experience shows that these safeguards also are almost never necessary; juvenile courts consider most social studies without objection.	child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Recommendations regarding minor's counsel do not preclude submitting written information reflecting the results of fact-gathering and investigation, but recommends doing so in an evidentiary appropriate manner.
125. Hon. Jack M. Jacobson Presiding/Supervising Judge Superior Court of Stanislaus County	On behalf of the Stanislaus County Superior Court Family Law judges and staff, I submit these comments and objections to the Commission's proposed amendment to Rule 5.118. For the following reasons, we believe that promulgation of such a rule would have significant adverse consequences in the case management of our family law matters. As a	Live Testimony The Task Force has concluded that the right of the parties to provide live testimony during family law hearings is critical to the due process rights of

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	general comment, this rule would reverse existing case law and conflict with the civil rules of court regarding law and motion matters. The Supreme Court in Elkins was careful to distinguish its holding pertaining to procedural due process in dissolution trials versus Notices of Motion and Orders to Show Cause. This rule would reverse the holding in the case of In re Marriage of Reifler (1974) 39 Cal.App.3d 479 and subsequent cases following this decision. As mentioned above, said proposed rule would be contrary California Rules of Court Rule 3.1306 whereby oral testimony is the exception to the rule in law and motion matters. The proposed rule is overbroad and places a significant burden on the family law judge and staff by requiring a written record if the Court declines to accept oral testimony. This is especially true in courts such as Stanislaus County where there are no court reporters. Therefore, the courtroom clerks would have to make written findings in every case where the Court determines to exclude oral testimony. The proposed rule does not distinguish between typical law and motion and matters regarding support or other substantive issues in the dissolution proceeding. The family law courts handle on a daily basis motions to set aside defaults and default judgments, motions to change venue, discovery motions, motions for reconsideration, and motions to enforce judgments, to name a few. These are motions common to all civil actions and should be governed by existing statutes, in particular rule 3.1306. The proposed amendment would require a judge to receive oral testimony unless good cause is found. Again, the judge would have to make a record in virtually all law and motion matters resulting in an	the litigants, and basic fairness. The Task Force recognizes that there may be a necessary period of adjustment in some courts; however, many courts have provided information that they take live testimony routinely without any adverse effects on their ability to timely calendar matters. The Task Force also recognizes that there may be many hearings in which live testimony should be excluded. The recommendation has set out some factors that must be considered in making the decision about live testimony, but has not eliminated the judge's discretion. For example, there may be no material facts in controversy, or the issue may be procedural and ancillary to the fundamental issues in the case. In pointing out situations in which it is not appropriate to make decision based on declarations alone. The Elkins case cites Lacrabere v. Wise(141 Cal. 554) as follows [CCP 2009] "has no application to the

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	undue consumption of time and a further strain and burden on the courtroom clerks. Our Court believes that the old adage "If it ain't broke, don't fix it" applies to this situation. Each judge has set anywhere from 5-10 short cause matters each day where these Notices of Motion and Orders to Show Cause are heard. The Court sets a limitation of 15 minutes for such hearings. If requested by an attorney or party, the Court may set the matter for long cause where the parties will be allowed to submit oral testimony. The proposed amendment will seriously hamper the proper case management and work flow of family law files. Hearings will inevitably be longer especially where both sides are without legal counsel. A greater burden will be placed on the trial judge to elicit relevant evidence from the parties. More matters will have to be continued for several months on the long cause calendars because the judge will not have enough time to hear the matter on the morning calendar. Our economic/short cause hearings commence at 900 a.m. Our trials and long cause hearings commence at 1030 a.m. Monday through Thursday. On Friday, we hold our Case Management and Settlement Conferences. Our Court is unaware of any abuses by other family law judges in other counties in this state regarding implementation of the current procedures and discretion bestowed upon them in these types of proceeding. Our Court provides parties with due process and allows testimony when deemed appropriate. The proposed amendment will disrupt our otherwise well organized and conceived calendar where we	proof of facts which are directly in controversy in an action. It was not intended to have the effect of changing the general rules of evidence by substituting voluntary *ex parte* affidavits for the testimony of witnesses. The section only applies to matters of procedure-matters collateral, ancillary, or incidental to an action or proceeding-and has no relation to proof of facts the existence of which are made issues in the case, and which it is *necessary to establish to sustain a cause of action."* *In re Marriage of Reifler* requires judges to make decisions about when to allow live testimony on a case-by-case basis. This recommendation seeks to set reviewable factors that judges must use in making this analysis. The recommendation requires consideration of specified good cause factors to exclude live testimony; however judges need not make findings about the factors. Judges only need to state in writing or on the record those factors considered in their exercise of their discretion.

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	hear a multitude of cases with a minimum number of judges. There was nothing in the Elkins decision that would indicate that the present rules and practices regarding Notice of Motions and Orders to Show Cause need to revised or changed in any particular respect. In reading carefully between the lines in Elkins, the Supreme Court believes that different principles of due process are required when the hearing is a trial on the substantive issues resulting in a final decision versus when the hearing is an interim order, usually temporary in nature. If other courts or family judges are not in opposition to the proposed amendment, then our Court strongly urges the Commission to redraft the rule. Clearly, a distinction needs to be made for pure law and motion matters. Further, there should be some consideration to the judge having discretion to limit oral testimony during the short cause hearing. Requiring oral testimony at these hearings should be more directive than mandatory.	The fact that an event does not concern a substantive matter in the case may well be a reason for a judge not to take live testimony, and is one of the factors to consider. The Task Force agrees that there are many family law motions and matters that are more like civil motions, or in which there are no material facts in controversy, such as in default hearings. Pursuant to CRC 3. 3.1100, the civil rules related to law and motion are only applicable to discovery matters in family law. Thus, CRC 3.1306 does not apply to most family law Orders To Show Cause or Motions. The Task Force encourages judges to use their discretion to limit the scope of testimony in a manner appropriate to the proceeding. The recommendation has been modified to allow for continuance onto another calendar should the parties want to call any witnesses in addition to themselves. The Task Force does not believe there is any evidence to support the assertion that courts calendars will be more burdened by

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		allowing the parties to testify at their hearings, particularly when the issues are substantive or there are material facts in controversy. Taking relevant testimony from the parties need not be that time consuming. There is no evidence that allowing self-represented litigants to testify at their hearings will take any longer than a represented party. Most calendars are include hearings in which the parties fail to appear and are dropped, cases that can proceed by way of default, cases that must be continued for lack of service or mediation, and cases where there are two parties present and there are contested substantive matters at issue. Although the content of calendars varies from day to day, these contested matters do not make up the majority of hearing-types on most OSC/Motion calendars. Creative caseflow management and calendaring strategies can be of assistance in maximizing the time judges have to hear testimony.

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		The Task Force received numerous reports from the public requesting to be able to testify at their hearings. Further, the Task Force implemented an attorney survey in which the majority of attorneys responding asked that the right to live testimony be required in most, if not all hearings. The Task Force has also received many comments to this recommendation asking that judicial discretion to exclude live testimony be eliminated altogether. As noted, the Elkins decision was limited to trials. However, the decision did indicate that the subject matter of a motion must be considered when making a decision about whether or not to allow live testimony. The Task Force agrees that there should be a distinction between substantive matters and those that are purely procedural law and motion matters. This difference is addressed in the factors to be considered.
126. Liliana Jaquez Glendale, CA	I will attend to this hearing that will bring some confidence that finally we will prevail and our children will finally see the light at the end of	No response required.

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	the tunnel.	
127. Karen King Oxnard, CA	I believe as a Legal Document Assistant that we are one of the answers to self-represented family law litigants. We are able to ensure that the documents are prepared completely and correctly, we are also able to provide Pro Per litigants with current written materials that ease them through the whole process, written in such a way as to be understandable at almost any level of education. Please take some time to consider us, the Legal Document Assistants, in your recommendations.	The Task Force is mindful of the benefits that many Legal Document Assistants provide to unrepresented parties.
128. Jo La Salle West Sacramento, CA	I have personally witnessed several friends who have faced the complexity of dealing with the Family Courts and their discouragements thereof. My professional career has been in administration in several medical facilities. I appreciate the effort that has been put forth to come up with appropriate recommendations streamlining and making the court system more effective and I support the Elkins Family Law Task Force recommendations.	No response required,
129. Hon. James R. Lambden Associate Justice of the Court of Appeal First Appellate District Division Two Chairman Access and Fairness Committee	Agree with proposed changes if modified. I concur with the comments of the Access and Fairness Committee and add these personal comments The recommendation for cultural competency training should be both broadened and made mandatory for all judges; and	Cultural Competency This suggestion will be forwarded to the implementation process.

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	The general inadequacy of court resources devoted to Family Law may not be easily measured or universal, but it is undeniable. It is unreasonable to conclude that new judge positions will be funded in sufficient numbers to redress this imbalance, even assuming that the trial courts devoted 100% of their new judges to family court. Accordingly, other means must be found to encourage trial courts to evaluate their customary priorities in the allocation of resources in light of the needs of court users.	Court Resources The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law.
130. Jamie Lamborn No county information provided	Please, again, PLEASE, when you consider changes to improve Family Court, include the Probate division as well. Much elder abuse, fraud, conspiracy, theft and perjury is occurring in the Probate Court daily. I can show you cases where the most prominent Probate attorneys, with the help of their chosen conservator, are committing these crimes. The victims have no recourse available. It seems the duty of the attorney is to keep the truth from in front of the judge to protect the judge from having to rule on these crimes. Many of the court appointed conservators and their representing attorneys are reaping much wealth from the abuses directed at these helpless victims. Please stop this abuse!	The scope of the Elkins Family Law Task Force was limited to family law matters. The concerns raised in this comment should be referred to the Judicial Council's Probate and Mental Health Advisory Committee.
131. Hon. Terry Lee Title IV-D Commissioner Superior Court Mono County	Leadership, Accountability and Resources Enhanced use of IV-D commissioners in family law, page 74-75 I strongly disagree with the recommendation that IV-D commissioners hear all aspects of a family's case. The essential reason for setting up the IV-D commissioner system to	Leadership, Accountability and Resources Enhanced use of IV-D commissioners in family law The Task Force acknowledges that the recommendation to permit the IV-D

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	hear government child support matters separately from other family law matters was to ensure that these child support cases got priority treatment. (I was a member of Governor Wilson's original Child Support Task Force in the early 1990's.) The IV-D commissioners were to receive continuing specialized training and were to be dedicated solely to the government child support cases. Over the last twelve years that I have been a IV-D commissioner I have seen this concept eroded. Commissioners in many courts are rotated through the assignment and at least some do not appear to be interested in it. Others currently do handle all family law matters. I have heard from other commissioners that "time studies" may often not accurately reflect the time spent on non IV-D matters. I am concerned that IV-D funds are being misused and worse, that IV-D cases are not getting priority treatment. The idea is to get child support established as fairly and rapidly as possible. That support must then be enforced--fairly and rapidly. This process should not be diluted with other family law concerns. Please feel free to contact me for further discussion of this issue.	commissioner to hear all aspects of a family's case is a departure from the current practice and structure. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders. The recommendation suggests that IV-D commissioners "time study" the parts of the case that are non-support, to ensure that federal funds are appropriately used for support matters only.
132. John Lehman No county information provided	*Commentator recommends tape recording of open court hearings in large part as a result of experiences indicating that transcripts have been false. Additionally, with respect to this issue, he commented "access to a recording" Why not just allow us to make our own recordings? Then the court wouldn't have to do anything at all about recordings (except be honest about what transpired during proceedings). He additionally commented that government should be controlling the recording.	Tape Recording Of Open Court Hearings The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. Recording The Task Force agrees that access to the record in family law is a serious

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		access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings.
	Additionally, he noted also in the same paragraph from your recommendation "parties should receive written orders before leaving the courtroom whenever possible" Oh, and why? Is it to stop judges from backtracking on what they said? But openness to public recording would address that problem better. What sort of written orders would those be? Might they have some lasting effects? Judges should not have to commit themselves to judgment until having a chance to reflect, and I don't mean for 10 seconds (which is the caliber of judicial "reflection" we have typically seen in family court "hearings"), but rather overnight, or perhaps allowing the judge a number of days in order to check up on facts before rendering judgment. One of the problems with courts today is that judges make	Written Orders The Task Force recommends that parties receive written orders before leaving the courtroom wherever possible to ensure that they are completed in a timely manner. When parties or attorneys are ordered to prepare the orders, all too often they are not completed. The effects of the order are likely based upon the facts of the case. Judges may well need additional time to make rulings, but often they have reviewed materials before the hearing

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	quick judgments, and this means we are assured that many of those judgments will be stupid. Commentator provided additional information on his view of family court.	and are comfortable making a decision based upon the evidence before them.
133. Alexandra Leichter Certified Family Law Specialist Certified Family Law Arbitrator Family Law Litigation & Consultation, Private Judging & Arbitration Beverly Hills, CA	Right to Present Live Testimony at Hearings. Do not agree with the recommendation Comments The recommendations do not take into consideration the basic problem with Reifler-ization of testimony. A) The cost of preparing testimony of the parties, witnesses, and especially expert witnesses, has become prohibitive. I estimate that it takes at least 5-10 times as long to prepare declarations than it does to offer oral testimony in court. Thus, the recommendations of the Elkins Task force would not only continue to validate such a huge waste of time and money (for litigants who cannot afford the fees to do this), but have added another layer of cost--the oral testimony that the court may or may not consider. Keep in mind, as well, that there is nothing in the recommendations that indicates advance notice to be given by the court as to whether it will, or wants, additional oral testimony. Thus, after having spent innumerable hours writing Reifler-ized declarations, the parties and attorneys must traipse down to the courthouse to await the judge's determination on whether or not there will be oral testimony allowed. B) In order to prevent the court from considering irrelevant, hearsay, unfounded, or other evidentiary incompetent testimony, the court of appeal has instructed that objections must be filed with the court, and	Right to Present Live Testimony at Hearings. With respect to live testimony, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The recommendation has been modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions. The Task Force is hopeful that the recommendation can help minimize the need for and use of the type of declarations described by this commentator. The Task Force is aware of the types of problems with respect to cost and delays associated with the use of

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	rulings must be requested. The result in family law matters is a hodgepodge, cumbersome, and highly expensive procedure. Take for example, the court rules in Los Angeles. Objections to initial pleadings must be filed with the court at least 9 court days before the hearing, objections to the response must be filed at least 5 court days before the hearing, and objections to the reply must be filed at least 2 court days before the hearing. The court usually has not had an opportunity to rule on the objections and notify the parties as to which portions of the declarations were stricken, by the time of the hearing. Thus, most often, the parties and counsel are forced to wait for the court to rule on the objections, have their matter continued to another date so the court can review only the admissible portions of the declarations, or else be stuck not knowing what portions the court considered during the hearing. This is a huge waste of time--and no consideration was given by Elkins as to any means of remedying this problem. C) Reiflerized declarations are pure excuses for fiction writing by counsel. Undoing the damage done by these "works of art" at a "short" oral hearing is nearly impossible. The recommendations of the Task force to add another layer of work to both the judges' role and the attorneys' role has failed to solve the problem of eliminating counsel's version of events rather than those of witnesses and parties. D) The problem with Reifler-ized written declarations are magnified exponentially with expert financial declarations. Instead of simply presenting graphs, charts, and reports of forensic accountants and other financial experts, the Task Force Recommendations simply continues to expect that responsive declarations critiquing opposition experts be done in writing.	declarations involved in some location such as those that the commentator describes. In courts that routinely take live testimony, these problems appear to be significantly reduced. As the commentator notes, the Task Force has not recommended the elimination of declarations. (See the recommendation on Simplifying Forms and Procedures). The specific role of declarations, however, should be considered in drafting implementing rules. The Task Force has concluded that the solution to the problems with "Reflierized" declaration does not require the exclusion on the parties' right to testify at their hearings. On the contrary, courts that have employed taking routine brief testimony do not report the same the same problems with respect to the use of declarations. In fact, the problems set out by the commentator tend to support the ways in which making decisions on the basis of declarations alone is ineffective for attorneys, litigants and the court.

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	This is a daunting task in most cases, and often requires hundreds of hours not only in the analysis, but writing down in a fashion that is comprehensible to most judges, the financial analysis and critique of the oppositions reports. For example, there may be scores of figures on any one of these financial reports which would require analysis and critique. Writing the critique out in a comprehensive declaration format is absolutely ludicrous--it make both the writer's and the reader's task monumental. The Task Force fails to provide guidance other than to add an additional layer of work, such as oral testimony if the judge so desires, but fails to eliminate the problem of writing out critiques and declarations by such experts. Minor's Counsel Agree with the recommendation. The analysis and solutions of the Task Force are excellent. The overuse of Minor's Counsel to substitute for a psychological evaluation or the judge's own ascertaining of minor children's viewpoint is inexcusable. A short in-chambers conference with children often reveals a whole host of information that Minor's Counsel often fail to divulge. Judicial Branch Education Agree with the recommendation subject to modifications as described below The Task Force should place much more emphasis on a "program for observing experienced family law judicial officers". Because family law is so complex (often involving possibly every other area of the law, plus the emotional issues of children and interpersonal family relations), it is virtually impossible for new judges with no family law	The Task Force is aware of the issues related to expert testimony in family law and has modified its recommendation on Case Management to include a "meet and confer' requirement for the experts where there are conflicting reports. Minor's Counsel The role of declarations, including expert declarations, should be considered in more detail during the process of drafting implementing rules.

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	experience to learn it from a 3-day or one-week judges' college seminar. In fact, the complexity of family law is so mind-boggling that it is highly likely that new judges will simply shut down from information overload at these intensive one-week seminars that are intended to inform and educate them at the outset of their family law service. While training programs are very important, emphasis on observing other seasoned family law judges in action in their courtrooms for a period of at least one month should be mandatory before family law service is commenced.	
	Leadership, Accountability & Resources Do not agree (in part) Re Paragraph 5C--Judicial Appointments and assignments—Judicial experience prior to family law assignment Family Law attorneys who have been appointed as judges should not be required to have a minimum of two years of judicial experience prior to assuming a family law assignment. If that would be the case, it defeats the purpose of encouraging family law attorneys to apply, the JNE Commission to approve, and the governor to appoint family law attorneys to the judiciary.	Leadership, Accountability & Resources Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including for example the expertise of the judge.
	Ensuring Access to the Record There should be electronic recording in lieu of court reporters, so that access should be available immediately to at least a tape of the proceeding, which can then be transcribed for personal use (not legal use). Too often, court reporters are too busy to transcribe proceedings, even if the request to transcribe is limited to the orders themselves.	Ensuring Access to the Record The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be

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	Some orders made by family law judicial officers can be quite extensive (such as custodial timeshare orders), and may need to be prepared as orders immediately. Parties are often confused (as are lawyers), in what the judge has ordered because they are under such emotional pressure. They need the orders in writing, or at least the opportunity to hear the orders over and over again. These cases cannot await weeks and even months of delay in the transcription when such orders need to be made, and when the parties need to know quickly and precisely what the orders are. Furthermore, the cost of obtaining the tapes are considerably less than having a court reporter transcribe his/her notes formally. In these financially ruinous times, the Task Force should recommend whatever it can to minimize the financial burden on the courts and on the parties in these family law situations.	available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
	Calendaring approaches The Task Force should make a strong recommendation to change CCP §1005(b) to return to "calendar"-based, rather than "court-day" based, system of filing and service of motions, responses & replies. Especially in family law cases, where the self-represented parties now approximate 80-90% (at least in L.A. County), trying to make these self-represented parties (or even attorneys) become aware when their documents are due is a virtual nightmare. It is also highly offensive to have judges reject pleadings, and have them re-file, or continue the hearings, because the parties (and often attorneys), failed to take into consideration that the "third-Wednesday of the month" furlough day just became a "court holiday", making their pleadings late if they failed to consider it. CCP §1005(b) is a nightmare. If the idea of the judicial system is to bring fairness and resolve very thorny issues for parties, these court-day, and court-holiday counting procedures are nothing but impediments to a fair	Calendaring approaches The Task Force has not considered modifications to CCP 1005(b). Any changes would need to be discussed with civil practitioners. This is a topic that can be considered as part of implementation.

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	resolution of issues that are of vital importance, at least to family law litigants. The Elkins Task Force should weigh heavily against the retention of that current code section. Additional Comments to the Taskforce on an area I don't believe was covered Confidentiality of evidence and declarations involving issues of custody. a) Parenting actions (as opposed to divorce actions) are automatically sealed by law, as a result of the legislature's recognition that children may be hurt by public knowledge of their birth out of wedlock. The impetus behind sealing all parenting filings was the protection of the children from the public disdain and embarrassment they would suffer if the "sins" of the parents were to become open information. Although "illegitimacy" no longer carries the stigma the "Scarlet Letter" so ably depicted, we continue to shield children born to unwed parents from the public scrutiny devolving around their birth, and their parents' custodial wranglings. b) Incredibly, no such privacy is accorded children who were born "legitimate" to married parents. Thus, Reiflerization affects such "legitimately born" children disproportionately and inappropriately. Reiflerization, provides the public the opportunity to view, with prurient interest, accusations of pornography, philandering, unusual sexual proclivities, habits of gambling, drug addiction, alcoholism, and a whole host of other accusations one spouse may make against the other in a custody battle, in an effort to hurt, embarrass, humiliate, and	Confidentiality of evidence and declarations involving issues of custody. The Task Force did not choose to make recommendations regarding sealing family law proceedings and files.

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	gain undue advantage in the court of public opinion against the other party. Despite much of these Reiflerized declarations being subject to valid evidentiary objections, these accusations, true or false, relevant or irrelevant, remain public fodder for the media and anyone willing to obtain electronic copies–-including friends and schoolmates of those children whose lives are being permanently altered by such accusations. It doesn't take great imagination to envision children "Googling" a schoolmate on line, obtaining the declarations containing a host of accusations made by one parent against the other in the parents' divorce case, uploading it on Facebook or MySpace, and voilá, we now have virtual bullying–-all engendered and encouraged by Reiflerization, coupled with "open files" in divorce cases. c) There exists no legitimate reason for such accusations (true or false) being made readily available for public consumption. To the contrary, The Elkins Task Force should strongly urge legislation and court rules ordering all pleadings and declarations having to do with custody issues to be automatically sealed. (Incidentally, because we have no-fault divorce in California, the only arena where such prurient accusations could be permitted, or may have any legitimate interest in a divorce case would be in issues of child custody/visitation). d) We actually already have legislation that allows the court to seal the courtroom and keep testimony out of the public eye, pursuant to F.C. §214; and this code section has been used in countless cases to exclude witnesses in testimony regarding child custody issues. Yet, Reiflerization actually lets the "cat out of the bag", by allowing parties to hurl vicious accusations against each other via "written testimony", and thus subject the accused to a public record of testimony that would not have been allowed if the testimony had been made orally in a	

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	courtroom that was sealed pursuant to F.C. §214.	
134. Nicholas A. Leto, Jr. Veltmann, Leto, LLP San Diego, CA	Caseflow Management Requires case management. It appears there is no opportunity to opt out of the system. The parties should be permitted to opt out to arrange for mediation or private judging. There are many reasons for this. The parties can arrange for times to meet with the mediator at various dates or multiple dates that are convenient to the parties. Thus, they can arrange whatever is necessary to conclude the case. When the case is settled this provides for one less case the public court has to manage. Some high conflict custody, high asset or high income cases require significant and continuing judicial time to address at pretrial hearings and at trial. When such a case is in private judging, the private judge handles the issues. Again, this provides time for the public court to handle other cases. Also, when such a case is in public court, in addition to monopolizing the judicial officer's time, the actual hearings can become spread out so that same are not concluded the day of the hearing but over a period of days and months sometimes resulting in a very bad situation for the children or the parties' economic situation. I understand there is a proposal at Page 40 that long cause hearings and trials not completed in one day, absent good cause, must be continued on consecutive days until completed thus bumping other calendared matters. This is not an answer either as the other calendared matters need to be heard also. Private judges provide more time for the public judge to complete the calendar. Time standards Time goals would be established to get cases through the system. This	Caseflow Management If parties agree to mediation or private judging, they can report this to the court and keep the court informed of the progress of the case through brief written reports at checkpoints if settlement has not yet been reached. Parties can continue to use private judges. Time standards These standards are designed to ensure

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	is very puzzling to me. The State of California should not rush a spouse and his/her children through a dissolution. There are many valid reasons for this. For example, some married couples wish to pursue mediation/therapy to see if they can repair their marriage. This can take time to explore. Also, sometimes the children have emotional or behavior problems attendant to the dissolution and the child's therapist's recommendation may be that it is in the child's best interest to place the dissolution on hold while treatment for the child is explored. Another common situation arises when the case has complex and substantial assets or difficult and novel income issues. Such cases generally take much longer to address because of the volume of information, the complex issues at stake and the involvement of other financial experts from other fields. There are many more examples. The parties and their children should not be forced to complete the dissolution process to their detriment based on a time schedule that has no relevance to them and may hurt them or their children. Certainly, if one side believes the other side is stalling, that party can come to court under existing rules and have a hearing or case management conference to address a perceived problem.	that courts can provide adequate resources to allow those parties who want to conclude their case in a timely manner to do so. While specific time frames should be considered more thoroughly as part of implementation, they provide that at least 10% of the cases would anticipate lasting more than 2 years. Without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet.
	Judicial appointments and assignments Requires judges to have two years judicial experience prior to assuming a family law assignment I believe this is a good requirement for a judicial officer who has little or no family law experience perhaps spending years in criminal or corporate law or some other field unrelated to family law. The State of California has a program for qualifying Board Certified Family Law Specialists (hereafter CFLS). An exception should be provided for a qualified CFLS. The CLFS has to satisfy many requirements to be certified (pass a bar exam type	Judicial appointments and assignments Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment,

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	certification test, complete a certain number and type of hearings and be in practice for a number of years). Usually, the CFLS has also served as a Judge Pro Tem or Settlement Conference Judge in his/her county for many years or has also provided such services privately for compensation. Such a two year requirement is unnecessary for an already qualified judicial officer who is a CFLS.	including the expertise of the judge.
135. Justyn Lezin Attorney Bay Area Legal Aid Oakland, CA	Child Custody Mediation Services This provision should be modified to require that Courts are required to either 1) gain mutual consent from the parties to consider any report from family court services or 2) provide the author of any family court services report for in-court examination by one or both parties at the same time that the Court first considers the report. As family law practitioners serving low-income survivors of domestic violence, we see first-hand the actual (vs. intended) role of family court services mediation for family law litigants. The majority of our cases involve custody disputes between parties where domestic violence has occurred, and our comments refer to those cases. We are concerned that the draft recommendations do not address the fundamental issue of the function of family court services in recommending counties that is, counties which require and independent recommendation from family court services to the Court if the parties fail to reach a mediated agreement on custody. In essence, and particularly in domestic violence cases, mediators often serve a de facto (if unintended) role as fact-finders. Bench officers often assume that family court services mediators possess far greater time and clinical skill than they have, they rely heavily on the impressions and recommendations made by those mediators. Where parties are seeking	Child Custody Mediation Services The recommendations in this and related sections support requiring that any professional who submits information or recommendations to the court be available for testimony and cross-examination. During implementation, the pilot projects should consider issues related to domestic violence. Family Court Services Current law allows for recommendations by family court services, if local rules permit such recommendations.

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	custody orders, they are sent to mediation via family court services before they appear in court. In Alameda County, for example, the parties' appearance in court is preceded by a confidential report with recommendations from Family Court Services, which is reviewed by the bench officer before s/he meets the parties in open court. These confidential reports include a summary of the parties' out-of-court statements to the mediator, other relevant statements from third parties (including, at times, the minors in the case), and significantly, the observations, impressions, and factual conclusions of the recommending mediator. In domestic violence restraining order cases, the recommendations of the mediator often signal to the bench officer (before meeting the parties) the mediator's conclusions regarding the existence of DV. That is, where a party alleges domestic violence, the mediator's recommendation for ample visitation or joint custody signals her/his disbelief that the DV occurred. Conversely, a recommendation for sole custody may broadcast to the bench the mediator's conclusion that the DV has, in fact, taken place. Often, in a recommending county, the report from family court services functions practically as ex parte communication, as parties are not asked for prior consent in order for the bench to consider the reports. Even where parties object to the court's consideration of a report without an opportunity to cross-examine, the objection is sustained far too late to be meaningful Alameda courts routinely adopt recommendations from mediators as an interim step before providing a hearing to cross-examine the recommending mediator. Such a hearing, if granted, can come many months (if not years) after the report has	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	already been adopted by the Court. Because of the contents of the report, (and because litigants are not permitted to bring attorneys with them in mediation sessions) ex parte communication via family court services reports occurs not just between mediator and bench officer, but often, among the bench and the parties, their children, related therapists, witnesses, etc, without the benefit of the process otherwise afforded to the same litigants. This places all parties at a distinct disadvantage, and we strenuously urge the Elkins task force to consider an examination of the practical function of mediation in recommending counties.	
136. Stephen Lillis Production Executive Shlentertainment Sherman Oaks, CA	A party should be allowed 2 changes of Judges in Family court. One without cause and one with cause. This second request should not go to the Judge but to a Civilian group not controlled by the Family Law Industry. Joint Custody agreements should not be altered. Children should not be punished by taking away visitation on the whim of a Judge.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This comment, which suggests allowing two changes of judges, is a substantive policy area in which the Task Force did not choose to make recommendations. Joint Custody Agreements The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. The issue of on what basis judicial officers accept agreements or make custody decisions is a substantive policy area in which the Task Force did not choose to make

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		recommendations.
137. Adam Lindenmier No further information provided	We need to fix the system, its killing dads and destroying children.	No response required.
138. Thanayi Lindsey Attorney One World Trade Center Long Beach, CA	Self Help Section for Pro-Per Litigants I proposed the task force to look into establishing a model for "pro per court" (several departments designated for unrepresented litigants) to ease issues pro per cases present. All rights are afforded just heard in a separate dept.	Self Help Section for Pro Per Litigants Agree that coordinating services for self-represented litigants into certain calendars are often a very efficient way to provide services. This should be considered further as part of implementation.
139. Lynne LoPresto San Rafael, CA	Commentator indicated she's been a self-represented litigant and provide some case specific information and the following comments Clear Guidance through Rules of Court Streamlining Family Law Forms and Procedures As a self-represented litigant these are essential and I hope these recommendations will address situations such as a.) the challenge of being self-represented and finding someone to serve your Responsive Declaration to the other party. I cannot afford to pay a professional service and the self-help organizations said they could not serve papers. I finally found the sheriff's office for a low fee and was told that they don't normally serve things like Responsive Declarations, but would make an exception this time since they weren't busy. So what is a person to do??? Especially when you work and don't have time to go everywhere looking for help.	Streamlining Family Law Forms and Procedures Informational materials regarding service options, including serving responsive declarations by mail should be considered as part of implementation.

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	b.) When our case started in 2002 everyone stipulated to a custody evaluation since our case became "highly contested." The evaluation was done and paid for and then our County decided it would no longer use custody evaluations. It is crazy that a new judge can come in and change local rules!	Local Rules The Task Force has made recommendations regarding processes for local rules.
	c.) I hope that court clerk's will be able to do more of the simple filing such as filing the official "Order After Hearing." Commentator noted concerns that when opposing counsel is responsible for writing up orders, there may be delay or inaccuracies that could be avoided and concerns about not getting copies for enforcement purposes and the following	Order After Hearing Statewide rules regarding submission of court orders as well as preparation of orders by courts whenever possible should help to alleviate this problem.
	Enhanced Mechanisms to Handle Perjury In addition it is crucial that there are ways to hold parents accountable to make false claims about the other parent otherwise it just keeps on happening over and over and the child suffers.	Enhancing Mechanisms to Handle Perjury This recommendation has been modified in response to comment.
	Children's Voices Contested Child Custody It is vital that children's voices be heard! The court keeps saying it works in the child's interest, but I don't believe the court officers are well trained in mental illness or family abuse issues. There are many more kinds of abuse than physical violence and they need to be addressed. If evidence was allowed to be presented at hearings and if live testimony and questioning of therapists and other witnesses were allowed at hearings that supported the child's voice would help as well distinguish what the child actually says versus what a parent falsely claims the child says. Forcing a child to be with a parent against their	Children's Voices Contested Child Custody The Task Force recommendations address various forms of violence and abuse and include requiring that professionals providing reports or recommendations in this area be available to testify and be cross-examined.

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	will does not lead to a happy relationship with that parent.	
140. Superior Court of Los Angeles County	These comments are from the Los Angeles Superior Court and not from any one person in particular. The Los Angeles Superior Court ("LASC") congratulates the Elkins Task Force on its excellent set of draft recommendations concerning family law. We are pleased that many of the practices of our Court are included in the descriptions of recommendations for wider adoption and particularly impressed with the immense amount of work and considered thought that went into these proposals. Our comments are set forth below. We have limited our comments to those recommendations that we find particularly critical to achieving improvement in courts or those with which we have significant concerns. We are mindful - as we know the Task Force is - of the current and anticipated budgetary constraints which will likely delay implementation of many of the recommendations. As an overall comment, we are concerned that some of the recommendations do not take into account the unique or special characteristics of courts of widely varying sizes and circumstances. Those differences should be acknowledged as the work of this Task Force and of any implementing body moves forward. Further, while we applaud almost all of the recommendations, we urge the Task Force to give highest priority to seeking implementation of its recommendations concerning caseflow management and case management and to allow our courts to function for at least two years in that new environment so that the viability of implementing other	

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	provisions can be adequately assessed. Further, we have serious concerns about changes in governance proposed in Section 21. Our comments as to individual recommendations follow. Right to Present Live Testimony at Hearings Agree with the recommendations subject to modifications as described below The proposed rule requiring the Court to accept live testimony at order to show cause or motion hearings raises three concerns. First, because order to show cause proceedings and motions are frequently filed on relatively short notice with little opportunity for discovery or investigation of the factual basis for the requested orders, due process requires such proceedings to include declarations setting forth the factual basis for the relief requested. Otherwise, a vague or unsupported declaration prevents the opportunity to prepare a meaningful response and avoid hearing by ambush. The proposed rule does not address this important due process consideration. A rule calling for live testimony hearings should preserve the Court's right to limit hearings to cross examination or appropriate corroboration of properly served declarations in order to ensure that declarations giving notice of the facts on which a party relies is served on the other side.	Right to Present Live Testimony at Hearings The Task Force has not recommended the elimination of declarations, and agrees that the issue of notice is an important one. The recommendation has been modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force would anticipate that judges would limit the scope of testimony to matters relevant to the issues raised in the pleadings. Judges who are routinely allowing live testimony also limit it by use of various evidentiary means, such as declining cumulative testimony, or testimony based on hearsay. The Task

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	Second, we are concerned about the additional burden on courts such a rule would impose. Under existing law (Reifler v. Superior Court) courts are obliged to exercise discretion before deciding the matter solely on declarations. Adding the layers of findings articulated for a good cause exception (Proposal 1B) requires the court to make eight specific findings which must be stated on the record in every proceeding. By way of example, if the typical department has 10 matters on its order to show cause or motion calendar that actually go forward to a hearing, the Court determines a hearing is not appropriate in any of them, and it takes even a minute to consider each of these 8 factors, this translates into 80 minutes of additional Court time spent stating why a hearing is not going to be held. Thus, while the Court should make an appropriate statement concerning the exercise of its discretion, unless appropriately tailored, this proposal stimulates not only counterproductive consequences and but imposes burdensome duties on already overburdened trial Courts. Finally, one unintended consequence of any mandate for evidentiary hearings is the potential for mischief where a party uses delay tactics to wear down an adversary. Insisting on a hearing may delay making necessary child custody orders to protect a child, delay the entry of a child support or spousal support order for a parent or spouse in need of support or deny restraining orders for victims or continue the constraints of a restraining order against a wrongfully accused party. Ultimately, the Reifler process of hearing matters on declaration should not be a substitute for the due process rights of the parties. Equally so,	Force anticipates that judges will be willing to grant reasonable continuances for preparation should one or the other party testify to unexpected material facts during the hearing. While a judge may be required to consider the factors, the reasoning he or she must state in writing or on the record need only address the factors that are relevant to the decision that was made. Good cause factors should be further considered as part of drafting implementing rules. The Task Force agrees that the importance of obtaining timely orders from the court is of critical importance. The Task Force expects that courts will continue to use creative calendaring strategies to prioritize cases that need the most immediate attention. Further, the Task Force would expect that continuances

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	the right to a hearing should not become a weapon in the hands of a party who is using the court process to impede the rights of children and of victims of domestic violence.	would only be granted for good cause, and that when a continuance is necessary, judges should make temporary orders on the critical types of matters set out by the commentator.
	Expanding Legal Representation and Providing a Continuum of Legal Services Agree with the recommendations subject to modifications as described below The LASC agrees that Self-Help Centers should provide information concerning motions for fees to hire an attorney but does not support the recommendation that such centers would provide assistance in the preparation of such requests. Such work is the responsibility of the private attorneys who would benefit from the court orders; our Court's experience is that attorneys do perform that role.	Expanding Legal Representation and Providing a Continuum of Legal Services The Task Force agrees that if private attorneys are willing to prepare applications for attorney fee requests, it is most appropriate for them to do so. The self-help center can then just provide information on motions for fees.
	Caseflow Management Agree with the recommendations subject to modifications as described below As noted above, the LASC strongly supports the recommendations in this section and views them as critical to the task of improving our courts. Managing cases in a fashion that directs appropriate resources to cases and assists litigants in completing their cases in a timely fashion is a goal the LASC is already working toward. We have found that the application of appropriate resources outside the courtroom, including early intervention to assure service of the petition and referral to self	Caseflow Management No response required.

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	help or mediation, can reduce the time that parties must spend in court as well as the workload of the judicial officers. We agree that early evaluation of family law cases through differential case management can assist in helping a family court redirect and better manage its caseflow and bring cases to completion more efficiently. We are gratified that the Task Force recognizes the need for flexibility in any statewide rules so that the needs of the many diverse situations presented in the different courts and communities of our state can be addressed. In that regard, we would urge the Task Force to include in its recommendations a proposal that the AOC make available to all courts regular information and training concerning effective methods of case management and technical assistance upon request.	Agree that information and training concerning effective methods of case management should be provided.
	The LASC supports the recommendation that family court judges be given the same formal case management authority that general civil court judges have. Currently, case management may only be implemented in family court by stipulation of the parties. Having the same statutory authority as civil judges will provide family court judicial officers with the ability to require all parties to attend initial case management conferences and to meet early to set early discovery cut-off dates. Formal case management authority can dramatically assist in making our family courts more effective and efficient. We urge the Task Force to give high priority to seeking implementation of this recommendation.	Legislative authorization for case management No response required.
	We endorse also the recommendation that time standards be adopted; but only when courts have been given the caseflow management tools and case management tools that will allow us to meet them.	Time standards Agree that implementation should be tied to case management tools.

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	Providing Clear Guidance Through Rules of Court Agree with the recommendations subject to modifications as described below The LASC strongly agrees with the recommendation that there should be revised and unified statewide court rules specific to Family Law and that these rules should be implemented by legislation. It is particularly important that statewide rules provide authority for the judicial officer to enforce the rules and to sanction noncompliance on a consistent basis.	Providing Clear Guidance Through Rules of Court Revised and unified statewide rules specific to family law No response required.
	We concur that any statewide rules should be written in plain language, organized logically and govern "best practices" for the mandatory procedures that apply in all family law proceedings, such as requirements for pleadings, declarations and evidentiary objections, and financial disclosures; case management; discovery; pre-trial preparation; trial; preparation of orders and judgments; meet-and-confer requirements; continuances; and attorney's fees and costs. Local rules should not duplicate or be inconsistent with accepted statewide rules of procedure and evidence.	Statewide rules be written in plain language No response required.
	However, the LASC also urges the Task Force to acknowledge the important role local rules play in providing structure and guidance unique to the size and character of the particular county. For example, in Los Angeles County, there are 46 family law judicial officers assigned to courtrooms in one (1) central and twelve (12) district or branch courthouses. Accordingly, the LASC has implemented local rules to govern policies, practices, and procedures that are not applicable on a statewide basis, for example how departments and session hours are organized in the central and district courts; session	Local Rules The Task Force has amended its recommendations regarding local rules based upon this and similar comments.

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	hours for ex parte applications; how cases from multiple disciplines (e.g., family, probate, juvenile, domestic violence, Title IV child support) are identified, related, consolidated, or transferred within the county; how cases are set for settlement conferences or long cause hearings in dedicated courtrooms in the central district; how stipulated or default judgments are processed in the central and district courts; identification of Family Court Services and Court Facilitator programs, locations, hours of operation and scheduling; and how collaborative law cases are received and managed. There should not be statewide rules in these instances. Contested Child Custody Agree with the recommendations subject to modifications as described below We note that paragraph 1(a) in this section describes strategies that are similar to those in place and/or developing in our Family Law Department, all of which we support. The LASC is also in support of recommendations described in paragraphs 1, 3 and 4. The expansion of resources available to the Court with regard to child custody cases is critical. In many cases, especially those involving self-represented litigants, judicial officers have few sources for independent, objective and verifiable information. The expansion of such resources would be welcomed with the dedication of ongoing funding to support these expanded services and efforts. At the same time, we also believe that exploring approaches to more effective use of the resources we do have might well achieve many of the benefits we expect from simply expanding resources. We urge the AOC and courts to re-examine how we approach these issues.	Contested Child Custody No response required.

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	The LASC is in support of the recommendation in paragraph 2 as well. Increased funding for mediation could result in fewer orders to show cause (relieving the burden on the courts) and more litigants satisfied with their experiences with the Court. Our experience with confidential mediation has been positive and we believe it better serves the interests of the parents. Pilot projects in the area of expanded and confidential mediation services would be a very positive step toward finding new methods for resolving conflicts over custody. These pilot projects should be deployed in smaller and larger counties which face different challenges.	
	The LASC is concerned that the recommendation in paragraph 7 with regard to a change in child custody language not be adopted until such time that training for law enforcement with regard to this change is in place as many family law orders are enforced and interpreted by law enforcement officers in the field when they are called to disputes by litigants.	Child Custody Language The Task Force recommends that where appropriate, “parenting time” be considered instead of “visitation” but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.
	Minor’s Counsel Agree with the recommendations subject to modifications as described below The role of minor’s counsel in family law proceeding is highly controversial; these recommendations do much to address the most problematic aspects of minor’s counsel in family law cases. However,	Minor’s Counsel In implementing the recommendation for statewide approaches, it will be important to take into consideration existing local approaches that work for courts and find ways to support those processes

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	the LASC does not endorse the suggestion that the Judicial Council promulgate statewide approaches to complaints about minor's counsel. The diversity of our courts makes local approaches to this issue appropriate. For example, in some counties the bar association maintains minor's counsel panels and are responsible for complaints, other counties have no panels. We concur that education concerning the use of minor's counsel should be required of family law judicial officers, but believe that it should be made part of the Family Law Overview course rather than by way of separate training which would take judicial officers out of the courtroom. Scheduling of Trials and Long-Cause Hearings Agree with the recommendations subject to modifications as described below The LASC supports in principle that day to day trials and long cause hearings will improve court efficiency and may reduce costs to litigants. In the abstract, it benefits the Court to hear the evidence in a steady-paced stream, then either rule from the bench or take the matter under submission and then render its ruling. Nevertheless, frequently when Judges adopt the policy of conducting hearings from day to day, attorneys complain that their calendars cannot accommodate such hearings. More importantly, given the current workloads in family law courtrooms, it may be unrealistic to adopt a rule of day to day hearings and trials unless case management tools are put into effect and given a period to operate before other reforms are attempted. If rules fixing the day to day hearings and trials are pressed into service without first assuring that bench officers have case management tools, the	while developing consistent approaches through the state. Education No response required. Scheduling of Trials and Long-Cause Hearings The Task Force agrees that the implementation of effective caseflow forms the infrastructure that supports reasonable scheduling, including conducting long-case hearing and trials without undue interruption. Support for judicial officers, assistance to self-represented litigants, as well as accurate time estimation, case status with respect to settlement, and calendar management are all critical issues to be addressed during drafting implementing rules or best practice guidelines.

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	unintended consequence of such a policy will result in even higher job dissatisfaction than already exists in family law. The Administrative Office of the Court statistics demonstrates that many bench officers burn out and seek other assignments. That is the experience in Los Angeles in too many cases. The LASC recommends that the Elkins Task Force consider a procedure that triages the implementation of the various strategies outlined in its Report. The case management tools should be put into place for a reasonable period of time to see how those tools improve daily court operations in family law. After a period of review to determine how those case management tools are improving the delivery of services to the public, this longer term goal of day-to-day trials and long cause hearings may be feasible. At a minimum, there should be a two year hiatus on implementing any rule for day-to-day trials and long cause hearings after the case management tools are pressed into service. And at that time, there should be a statistical analysis comparing year over year the number of cases that are measured by the twin grids of efficiency and fairness. Launching both the day-to-day trial and long cause hearing rule without the staging the implementation described here will only create greater frustration and defeat the stated goals. Litigant Education Agree with the recommendations subject to modifications as described below The LASC agrees with the findings and recommendations in this section. At the same time, we are mindful of that there are different schools of thought as to the role of the Court. As an independent branch of government and a neutral finder of fact and law, the Court's	Implementation The Task Force appreciates the commentator's thoughtful approach to implementation, and the need to prioritize which recommendations are dependent on others. Implementation planning will occur subsequent to Judicial Council adoption of this recommendation, and the commentator's specific suggestions for a strategic approach to this task will be considered during this process. Litigant Education California Rule of Court 5.210 currently provides that the court is required to provide "oral or written orientation or parent education" on a range of issues, principally involving education about the process of

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	involvement in providing litigation education and assistance, which may be viewed as an administrative function of a different branch of government, is open to debate. Any proposals for rules or legislation should take this concern into account. The recommendations set forth in Paragraphs 2(B) and 3(B) of this Section should be limited to education of parents about the impact of divorce or separation on children; the courts should not assume responsibility for other kinds of parent education. Expanding Services to Assist Litigants in Resolving Their Cases Agree with the recommendations subject to modifications as described below The LASC makes settlement officers available every day to assist litigants at its Central location and has a robust Family Law Mediation program. To the extent this recommendation would require hiring and training of additional specialized staff, we oppose it as unnecessary and unduly intrusive into individual court's discretion. Streamlining Family Law Forms And Procedures Agree with the recommendations subject to modifications as described below The LASC strongly agrees with the principles stated in this section of the report. We observe that not only self-represented litigants, but also attorneys, have difficulty in understanding and completing existing forms and procedures. Accordingly any review of the forms should	mediation and developmental needs of children. The perspective set out in this comment should certainly be considered in implementing this recommendation. Expanding Services to Assist Litigants in Resolving Their Cases Who would perform these tasks should be considered as part of implementation. Presumably, if the court is happy with the services of the volunteers, it would not be required to hire additional staff. The volunteer resources in Los Angeles may not be available in the rest of the state. Streamlining Family Law Forms and Procedures Principles No response required.

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	include input from attorneys, court staff, judicial officers, and self-represented litigants/citizens who can then judge how well the forms communicate to their intended audiences.	
	We also strongly agree with the proposal that forms assist litigants in providing ongoing adequate, complete, and or admissible information (whether they are prepared by attorneys or the litigants themselves).	Value of forms No response required.
	The LASC agrees with the goals and recommendations that seek to simplify the process for stipulated judgments, summary dissolutions, and default proceedings, as this will greatly reduce the need for many cases to be heard before a judicial officer. However, we are concerned that procedures used in other counties may be less efficient than those we have already adopted here and urge the Task Force to acknowledge the need for local approaches consistent with efficiency and transparency to the public.	Procedures The tension between statewide consistency and valued local practices is one that will have to be worked through as part of implementing the recommendations and developing proposed guidelines which will be circulated for comment statewide.
	We support the development of more simplified forms for motions and orders to show cause which would "track" the development and implementation of case management procedures in each courtroom as well. For example, a comprehensive "Request For Order" form can be used by the judicial officer at an early case management conference to identify which issues are complex and which are not in the case, schedule discovery and disclosures, and set temporary orders and future case management conferences or "checkpoints" as the case progresses.	Simplified forms for motions and orders to show cause This connection between the request for order and case management is an interesting one which should be considered as part of implementation.
	The proposal for legislation that may allow a judicial officer to "excuse" the disclosure process should be considered very carefully. Declarations that exempt litigants from the disclosure process should be made under penalty of perjury, as in many cases there are later-	Declarations of Disclosure Agree that any change to allow a judicial officer to excuse a declaration

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	disclosed or undisclosed assets or debts that become the subject of extensive and costly litigation at a future date. This comment applies with respect to the recommendations in Section 15 as well.	of disclosure will have to be carefully limited.
	Implementation of simplified forms, processes, and procedures should include the authority for judicial oversight and management, with sanctions or consequences for failure to comply or disclose. The LASC recognizes that in many cases there are power imbalances or other factors that permit one party to take advantage of the other party. Therefore forms, processes, and procedures that seek to streamline the family law case, should also contain "checks and balances" against abuses.	Implementation of simplified forms, processes, and procedures Agree that any processes to simplify procedures or encourage agreement must be carefully balanced against factors that permit one party to take advantage of the other. This is an important caution for implementation.
	The LASC agrees with the recommendations regarding declarations, at page 51, paragraph 7. Provisions for page limits for declarations and guidance for attorneys and self-represented litigants on what proper declarations should include, with judicial authority to enforce these rules, would all be constructive and useful changes to the rules.	Declarations No response required.
	Judicial Branch Education Customer service training for court staff Agree with the recommendations subject to modifications as described below While more training for staff is desirable, the terms "must" and "on-going" are too stringent. Many employees work in multiple litigation areas, limiting how much training time can be devoted to any one litigation area.	Judicial Branch Education The Task Force acknowledges that additional training requirements have an impact on staff and court operations. These suggestions will be referred to the implementation process.

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	Leadership, Accountability and Resources A major argument for the unification of Municipal and Superior courts was to create efficiencies through the pooling of staff and judicial resources. Many of the recommendations within Section 21 would undo these gains, balkanizing the courts, establishing quotas, and reducing the ability of the court's Presiding Judge to deploy resources as needed. A result of recommendations modifying governance would be to reduce the authority of the Presiding Judge and the Court Executive Officer in allocating judicial and staff resources, and also in creating committees and other local governing bodies. Discretion is moved to statewide Rules of Court, contravening the principle of local management of trial courts. However, recommendations regarding the judicial appointment process are appropriate and necessary.	Leadership, Accountability and Resources The recommendations on leadership are intended to ensure that the needs of the family court are appropriately considered and prioritized in each superior court's decision-making process, and that the judges responsible for the family court are appropriately included in leadership. However, the Task Force recognizes the concern about establishing a statewide rule. The recommendation has been modified in response to comments to provide instead "to ensure that family and juvenile law bench officers are regularly consulted on policy issues, resource allocation, and facility needs."
	Standard 5.30 Do not agree with the recommendations A rule of court mandating the allocation of resources solely and specifically for family law cases is not appropriate. This recommendation appears to conflict with California Rule of Court 10.603(c)(1) which states that the presiding judge has ultimate authority to make judicial assignments, and is responsible for ensuring adequate resources for all areas of the court.	Standard 5.30 The Task Force recommends that Standard 5.30 - which directs the supervising family law judge, in consultation with the presiding judge, to work to ensure that the family court has adequate resources – be elevated to a Rule of Court. The Task Force believes that the Presiding Judge can

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		still appropriately exercise his or her authority with this change.
	Status of Supervising Judges Do not agree with the recommendations The job description and responsibilities of a supervising judge should not conflict or be confused with the job description and responsibilities of a court's presiding judge. It is the presiding judge, with the assistance of the executive officer, who is responsible for ensuring the effective management and administration of the court.	Status of Supervising Judges The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.
	While family law matters represent a significant share of the work performed in self-help centers, self represented litigants also use self-help resources for small claims, landlord-tenant disputes, civil harassment petitions, conservatorships and, to a lesser degree, other case types. By creating and emphasizing a supervisory role for a supervising family law judge in self-help centers, this might have the unintended consequence of signaling to staff that family law is more worthy of their efforts and attention than other case types. Fractionalizing supervision of self-help centers must be avoided because the centers provide diverse legal services. If supervising or presiding judges are assigned responsibility for self-help center staff or programs related to their specific areas of expertise, services could become less integrated and less efficient. Family and juvenile court role within trial court governance structure Do not agree with the recommendations	Family and juvenile court role within the trial court governance structure. This recommendation has been modified to provide that the Supervising Family Law Judge be regularly consulted on issues of policies, resources, and facilities. The primary purpose of this recommendation is to ensure that the needs of the family court are adequately addressed at the highest level of leadership in the court.

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	While it is advisable that family and juvenile supervising or presiding judges be members of a court's executive committee, the composition of a court's executive committee is a local decision and should not be mandated statewide. California Rule of Court 10.605 states that "In accordance with the internal policies of the court, an executive committee may be established by the court to advise the presiding judge or to establish policies and procedures for the internal management of the court." This recommendation may be set forth as a best practice to ensure family law interests are represented while still recognizing court autonomy and local governance structures. Judicial appointment process Agree with the recommendations subject to modifications as described below The recommendation concerning the judicial appointment process is of critical importance and should be implemented as soon as possible. It is generally difficult to recruit talented judges to a family law assignment because of the very steep learning curve that this complex area of the law presents to anyone unfamiliar with it. Consistent with this recommendation would be a further recommendation that the State Bar, the members of the Commission on Judicial Nominees Evaluation and the Governor's office be provided with information about the functions of commissioners in family law courtrooms so that they can appreciate the unique qualifications such individuals may have for appointment. Assignment of judicial officers to family law Do not agree with the recommendation A statewide policy to allocate court resources to specific litigation	Judicial appointment process The suggestion to provide information about the functions of commissioners should be addressed in the implementation process. Assignment of judicial officers to family law The recommendation to allocate

Commentator	Comment	Committee Response
	types, conflicts with the presiding judge's duty to "apportion the business of the court" and allocate court resources in a manner that will enable the court to achieve its goals. It is the role of the Presiding Judge to manage tensions among competing interests within each trial court. Rules of court are inflexible and establish one-size-fits-all solutions. They are therefore inappropriate mechanisms for the complex task of distributing scarce resources. Such a change would exacerbate, rather than reduce, those tensions. If the California Rules of Court mandate the level of resources for family law cases, they should do so for all other types of cases; otherwise the Rules show favoritism toward one type of action and will result in unbalanced courts. Doing so, however, leads to the absurd result that the Rule would claim that all types of cases are especially important. This would lead back to the current situation it is the job of the Presiding Judge to balance the needs of the court's community against the scarce resources at his or her disposal.	judicial resources based on workload in family law is based on the evidence that family law cases are under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources.
141. Helen Lynn Safe Child Coalition Los Angeles County	*I DO NOT AGREE WITH THE PROPOSED CHANGES BECAUSE "IN THE BEST INTEREST OF THE CHILD" CHILDREN ARE NOT BEING PROTECTED FROM ABUSE. A 1996 study in the Family Law Quarterly found custody evaluators and minors attorneys do not consider child sexual abuse as a factor-instead cite parental alienation as a major determination in recommending custody to the abusive parent. Fifty eight thousand children a year are placed in the custody of abusive parents based on parental alienation. Parental alienation is used as a legal defense for accused child molesters and abusers. Parental alienation is used to attack child abuse victim's credibility.	The Task Force recommendations seek to address children's safety and domestic violence, and recommend pilot projects to address these and related issues.

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	In fact parental alienation does not exist-instead-divorce is perceived as alienating. Additionally, commentator provided information on concerns about use of parental alienation syndrome in courts and in training and related materials.	
142. James R. Madison Chair, 2009-2010 The State Bar of California Committee on Alternative Dispute Resolution	The State Bar of California's Committee on Alternative Dispute Resolution (ADR Committee) has reviewed and discussed those portions of the Elkins Family Law Task Force Draft Recommendations that relate directly to ADR. The ADR Committee limits its comments to Section 12 - Expanding Services to Assist Litigants in Resolving Their Cases. The ADR Committee agrees with the recommendations in Section 12 in general. With respect to the recommendation that rules and training be developed for providers of different ADR services, the ADR Committee urges that care be taken to clearly distinguish between the various forms of ADR, and ensure that any new rules and training are appropriately tailored to the specific context of each individual ADR process. The litigants in family law proceedings can move in and out of various processes that involve facilitators, evaluators, mediators, arbitrators, settlement officers, "private judges," and others. There is great potential for confusing the nature of the various processes, particularly with self-represented litigants. The potential for confusion is compounded in the family law context where a child custody "mediation" may or may not be confidential – depending upon the county – but a "mediation" of property and support issues, for example, would presumably be subject to mediation confidentiality, just as a	Expanding Services Agree that training for ADR providers should be appropriate based on the type of service provided. Information should be provided to litigants about their rights under different processes.

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	mediation in a general civil case would be. Although confidentiality is one of the more significant issues, other clear distinctions will need to be made between the various ADR processes. The ADR Committee appreciates the opportunity to submit these comments, and is available to work with the Elkins Family Law Task Force on the development of any new rules or training for ADR providers that go beyond child custody mediations. Disclaimer This position is only that of the State Bar of California's Committee on Alternative Dispute Resolution. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.	
143. Donna Mallen Attorney and Certified Family Law Specialist San Diego, CA	My comments are caveats to agreements on the following recommendations Right to Present Live Testimony It should be clear within the proposed rule that notice is to be given to the opposing party of the witnesses that are intended to be called, so the other party will have an adequate opportunity to prepare for cross-examination. If notice is not given, the hearing could be continued to allow the other party to prepare.	Right to Present Live Testimony The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask

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		questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy.
	Increase Availability of Family Law Attorneys Efficient Use of Time Streamlining/ Recommendation Standardize Default and Uncontested Process To increase availability of attorneys in Family Law, the impact of excessive paperwork and court appearances and excess time consumption where the opposing party is Self-Represented Litigants needs to be controlled. Attorneys are being repelled from the field of Family Law by the low income per actual hours spent on cases where the court processes are not streamlined and the opposing party cannot understand the process, complete the paperwork, or follow the rules. Attorneys become less available economically as their overall fees increase due to increased volume of paperwork to process, time-consuming court appearances for case management hearings, and the added burden of writing the orders, settlement agreements and other case work when the opposing side is a Self-Represented litigant and is not capable of equitably sharing the attorney work, or is resistant to the court process. Additionally, the represented clients' attorney fees are wasted while the attorney stands in line at the court house waiting for the court clerks to	Increase Availability of Family Law Attorneys, Efficient Use of Time and Streamlining Procedures The Task Force recognizes that streamlining the process will make it work better for both attorneys and self-represented litigants. Ideally, case management will assist those cases where one side is represented and the other is not by facilitating discussion and identifying areas where the self-represented litigant can be encouraged to obtain assistance from an attorney or self-help center.

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	explain the forms to the self-represented litigants. Accessible self-help Services could reduce the time and attorney fees spent by paying clients. The goal of providing access to the courts and observing due process can be accomplished without disregarding the goal of holding the Self-Represented litigants responsible for their own paperwork and procedures, to ensure availability of attorneys to the opposing parties and avoid obstruction of the court process. Both goals should be considered. Time Standards (Caseflow Management) Speed should not be the overriding concern. The parties to the low-conflict, unemotional cases will most likely be self motivated to process their papers in a timely manner, and holding them to the case management rules is appropriate It is the traumatized or emotionally overwhelmed parties that should not be rigidly regimented. Divorce is a devastating event in most people's lives. While their world is crashing emotionally and financially, the parties are often clinically depressed and unable to think or take actions that normally could be expected of them, yet the court system is demanding them to make decisions that are probably the most important financial and parenting choices they will make in their entire lives. Leeway must be allowed to some degree to give them time to recover enough to make the decisions logically, rather than because they are	Accessible self-help No response required. Time Standards The Task Force has tried to suggest time standards that allow for many litigants to take more time to finish their cases if necessary. The standards are intended to ensure that the court is accessible to those who want to finish their cases.

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	being shoved through the system by a court deadline. The added pressure from the court can turn an anxious, depressed client into an emotionally explosive client, who is either unable to settle and then requires a contested trial, or who loses hope and becomes physically dangerous.	
144. William L. Malloy Chief Attorney Department of Child Support Services Kern County	*On behalf of the Department of Child Support Services in Kern County. We are writing to submit comments with regard to : Enhanced Use of IV-D Commissioners In Family Law, Leadership, Accountability, and Resources. We support the general theory of the recommendation, as we believe it makes sense to avoid bifurcated hearings where custody I visitation issues are before the court together with a request to modify support being enforced by a IV -D agency. However, based on the experiences in Kern County, in which the IV -D commissioner/subordinate judicial officer (SJO) has been overburdened with additional judicial duties since the inception of the AB 1058 program, there are numerous considerations with the reality of how this will impact the actual resolution of IV-D cases, I it is not appropriately financed, managed, and limited. By statute, IV -D cases are required to be the primary responsibility of the IV-D commissioners, and have priority over resolution of all other cases. The reality in Kern County is much different. In its May 1997 Report On Child Support Commissioners Required By Family Code § 4252, the Judicial Council determined that Kern County should have been allotted 1.9 child support commissioners to handle the	Enhanced Use of IV-D Commissioners Leadership, Accountability, and Resources. In Family Law The Task Force recommendation contemplates that IV-D commissioners would “time study” the non-IV-D issues, so that the resources that are dedicated to the IV-D support issues would continue to be used only for support matters. The other aspects of the case such as custody, visitation, restraining orders, etc., would have to be funded separately by the court, as the IV-D funds are not permitted to be used for non-support matters. The issues that are identified in this comment will be referred to the implementation process to ensure that the necessary resources are identified and addressed. It is the intent of the Task Force that the commissioner resources be increased to ensure that

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	active caseload being managed then by the District Attorney -Family Support Division (DAFSD). Based largely on the manner by which the DAFSD engaged in a meet and confer process before actually bringing matters to the IV-D court for hearing (a practice that continues and is recognized statewide as a "best practice"), the Kern County Superior Court hired one SJO, but allocated that SJO to hear IV-D cases only five afternoons per week, for an effective allocation of Y or .5 of a SJO. The SJO was assigned duties involving non-IV-D cases for the remainder of his time, including domestic violence cases, ex parte requests for restraining orders, the default calendar for dissolution of marriage cases, custody I visitation disputes from a variety of cases (dissolution of marriage, civil paternity, domestic violence, and even IV -D cases in which such issues were raised). Contrary to the statutory mandate, the resolution of non-IV-D cases assigned to the SJO was given priority over IV -0 cases. This has resulted in unnecessary continuances, due to insufficient court time, of20 to 40 IV-D cases per month. Over the past couple of years, we have been able to add a mid-morning calendar for the SJO to hear brief short cause matters limited to requests to modify wage assignments, health care assignments, and the release of holds on driver and professional licenses. However, this slight gain was offset by the number of non-IV-D cases assigned to the SJO having been maintained and / or increased, with the result being that non-IV-D cases now spill over to the afternoon calendar that was previously reserved for contested IV-D matters, and are heard or otherwise resolved by the commissioner prior to the commencement of the IV-D calendar.	parties who have IV-D support matters will have the benefit of having all aspects of their case heard by the same judicial officer.

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	Make no mistake, we have no complaints with regard to our SJO who is a fine judicial officer and who probably hears and resolves more cases than any other judge or commissioner hearing family law matters in Kern County. The problems we encounter are not of the commissioner's making. Rather, they are the result of too many non-IV-D matters being assigned to the SJO by the court with regard to the statutory requirements set forth in Family Code § 4252, and the priority to be given to IV –D cases. Contested custody and / or visitation matters consume an inordinate amount of court time. If this recommendation is implemented in Kern County and the SJO is actually allocated on a full -time basis to handle custody and / or visitation matters for which this agency provides enforcement services, this will result in less time to hear IV -0 matters with or without a custody and / or visitation component. Thus, while this recommendation is commendable, in order for it to be effectively implemented, there must be a corresponding financial commitment to provide the necessary number of SJOs to hear custody and visitation and support establishment and / or enforcement matters. Any implementation of this recommendation to authorize the expansion of SJO duties must include assurances that the increased level of service the SJOs will be required to expend will not diminish the ability of the SJO to resolve support issues in IV -D cases, and assure that those cases are not continued for lack of sufficient court time.	
145. Karen Manalisay No county information provided	* Commentator provided specific comments related to her case. I recommend as a mother who has lost everything to terrible injustice that the Laws are set so that in Family law a person is not treated like a	The Task Force recommendations for establishing pilot projects to implement promising practices in the area of child abuse and neglect and the

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	criminal and is innocent until proven guilty. I also ask that the laws take it seriously that if there are claims of abuse that the courts do not assume they are false. I think when a mother is spending thousands of dollars to keep her baby safe then there must be something wrong. Reasonable people don't spend as I had to over 100k unless there is a serious problem. Education Critical...best place to get it! Mothers who have been abused. Children who have been abused. I would speak for any engagement on this issue and demonstrate the power of abuse and the destruction left in the homes and suffering that the judges will never know or ever live!	recommendations in Enhancing Safety, Domestic Violence, Contested Child Custody, and Children's Participation, are designed to provide increased opportunities to address children's safety.
146. John E. Manoogian Owner Law Offices of J.E.M.	Judicial Appointments and Assignments All the training available to an appointee who has never dealt with clients in a marital dissolution or child custody matter isn't going to help the smooth flow of cases through a family law department putting an experienced family law specialist through two years of non-family law departments before she is assigned back to the department of her specialty is a waste of that appointee's skill and training. This is one of the rare improvements that carry no fiscal impact. Please just make a simple recommendation that the family law bench be manned with competent, experienced family law practitioners with some mention of family law specialists, if not a specific requirement that the larger counties have at least one certified family law specialist on the bench at any given time.	Judicial Appointments and Assignments Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including the expertise of the judge. The Task Force recommends changes to the judicial appointment process to encourage family law attorneys to apply for judgeships. The Task Force

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	Additionally, I wish to point out that nothing addressed in this report will reduce the number of broken marriages or relationships that our over-burdened courts must address. perhaps a simple paragraph in the introduction suggesting a pre-marital check list or a consultation with an experienced family law attorney in addition to the checklist as a prerequisite for a marriage license would have greater impact than all the effort to deal with the messes that result from a broken family...maybe that's a different task force, but why wait when the opportunity is available. Thank you for your attention and all the work that's gone into this report.	does not suggest specific numbers of family law specialists based on county size, as those considerations are within the ambit of the Governor's appointing authority.
147. Robert E. Marmor Attorney and Certified Family Law Specialist Santa Rosa, CA	Live Testimony. As worded, the proposed rule would require courts, absent good cause, to take live testimony at the hearing. These hearings are often on "twenty-minute" calendars. I suggest changing the wording of the proposed rule to make clear that the issues before the court at the OSC or Notice of Motion hearing may be set for an evidentiary hearing. Minor's Counsel. I agree that Minor's Counsel should not make custody/visitation recommendations. However, the proposal would preclude submitting a written report. Information from teachers and therapists could only be presented by subpoenaing those important witnesses to testify at trial. Declarations from witnesses, if witnesses are willing to sign declarations, would still be inadmissible hearsay. As Minor's Counsel, I would not want to have to jeopardize my client's relationship with his/her therapist or to antagonize my client's teacher, by subpoenaing	Live Testimony. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their "twenty-minute" type of calendars Minor's Counsel The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and that any position counsel will be taking be presented in writing to the

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	them to trial to testify. I think that the proposed rule would often result in court's being deprived of information from important witnesses. I suggest a rule that Minor's Counsel submit a written factual report far enough in advance of trial for counsel for the parents to conduct a meaningful investigation/discovery regarding the statements in the report.	parties prior to a hearing on the matter.
148. Mary J. Martinelli (On behalf of Downey Brand LLP) Partner Downey Brand LLP Sacramento, CA	Right to Present Live Testimony at Hearings. The Task Force's proposal regarding live testimony is impractical. While the Reifler decision may have diluted the sanctity of live testimony under penalty of perjury—declarations are often filled with hyperbola, exaggeration, and misrepresentations—it is unrealistic to respond to this problem by requiring family courts to, generally, receive any live competent and relevant testimony during short-cause hearings. If adopted, the impact that this recommendation will have upon the courts' already over-burdened calendars is staggering. Litigants will, no doubt, be required to wait longer for their matters to be heard, and numerous logistical and administrative problems are likely to ensue (for example, the need for significantly more court reporters, court personnel, and stringent procedures) that would render the system nonfunctional. Moreover, allowing parties the opportunity to offer verbal testimony will only magnify the already emotional, frequently unstable, atmosphere of the family court. In addition to practical problems, Recommendation 1A will also compromise litigants' substantive and legal rights. By shifting the family law system more towards the administrative model (such as in Traffic Court), parties in family law matters will be deprived of their entitlement to an adversarial proceeding. This is the very result admonished by the Elkins Court and cited by the Task Force. By permitting family court judges broader authority to question witnesses	Right to Present Live Testimony at Hearings. The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. Currently, there are many courts that routinely take live testimony from litigants on their short-cause calendars and do not report delays or other problems that might disrupt their caseflow. These courts do not report that the emotional level in their courtrooms is particularly high.

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	than they already possess under the Evidence Code, the delicate balance in the court room will be disturbed. Parties will, most likely, be hesitant to object to a judge's question, and they may prejudice their position by answering live questions from the bench, as opposed to preparing written pleadings. There is also no guarantee that live testimony will produce more credible testimony than written declarations. While we recognize the tremendous workload carried by the courts, there are currently rules and procedures in place to address many of the current problems. Procedural tools such as evidentiary objections, motions to compel, and contempt proceedings exist to protect the integrity of written pleadings. Having practiced civil and family law, it appears there is some differential in counties' enforcement of these proceedings. Adherence to these rules would go a long ways to protect litigants more efficiently than the proposed recommendation.	The Task Force is unaware of any evidence that would support the assertion that allowing parties to testify at their hearings causes any negative emotional impact on them. There are situation in which there is express statutory authority allowing judges to ask questions at hearings. For example, CCP 526 (d) is expressly allows judges to ask questions during hearings on civil harassment restraining orders. Perhaps more importantly, as long as a judge does not become an advocate for one side of the case, there is no ethical prohibition to asking questions of litigants. For example, in commentary discussing cases involving self-represented litigants, American Bar Association Standards Relating to Trial Courts, standard 2.23 states "Where litigants represent themselves, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be necessary to supplement or clarify the litigants' presentation of the case."

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		The procedural tools legally available to challenge declarations do not provide a judge the ability to assess credibility of witnesses who are providing testimony on substantive issues in the case.
	Scheduling of Trials and Long-Cause Hearings. Simplify Forms for Discovery/Expanded Discovery Forms. While we agree that certain discovery forms and procedures may need revision, it is unlikely that any changes will improve the system if they are not enforced by the courts. Because family courts are reluctant to sanction parties for misuse of the discovery process, few attorneys or litigants take the process seriously. Accordingly, discovery frequently becomes the most costly aspect of litigating family law cases. This is especially frustrating considering the fact that, in addition to the Rules of Civil Procedure, specific rules and penalties exist in the Family Code that apply only to family law matters. (See Fam. Code §§ 2100-2107, 1101, 721, 271; see also In re Marriage of Feldman (2007) 153 Cal.App.4th 1470.) If such rules were followed under the current system, it is likely that there would be much less need to revise the discovery process. Accordingly, in addition to simplifying or expanding discovery forms, we propose that the Judicial Council also adopt rules and procedures to ensure a full and accurate exchange of information between family law litigants.	Scheduling of Trials and Long Cause Hearings/ Simplify Forms for Discovery Agree that the Judicial Council should consider rules and procedures to ensure a full and accurate exchange of information between family law litigants as part of the proposed statewide family law rules. The Task Force agrees that problems discovery matters can cause a case to be unduly delayed. The section on Case Management (see Case Management) has set out several techniques to address this issue during the court process. The Task Force in hopeful that effective case management can facilitate compliance with existing discovery rules.

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		The section on Simplifying Forms and procedures addresses the topic of the discovery forms. The specific language of any new form will be considered as part of implementation.
149. Deborah J. Marx (on behalf of the Alameda County Family Law Association (ACFLA)) Attorney at Law President, Alameda County Family Law Association (ACFLA) Oakland, CA	Right to Present Live testimony We agree with the principle underlying the recommendation, which is that live testimony is preferable to written testimony. However, we disagree with the recommendation in that we believe it is critical to preserve the court's power to manage the courtroom, which includes balancing efficiency and due process as appropriate given the time and resources available in a given case. We agree that local rules disallowing live testimony are not appropriate, but we also believe that local or state rules requiring live testimony, absent a showing, are not appropriate. It would be helpful to have guidelines for how and when limiting live testimony is appropriate so that attorneys and litigants across the state would have a common understanding of the way that the competing interests of efficiency and due process should be balanced. Expanding Legal Representation Agree with the recommendation. We strongly support early needs-based fee awards, uniformity around the state regarding the award of	Right to Present Live testimony The Task Force agrees that the court must have the ability to manage the courtroom. The recommendation allows judges discretion to exclude live testimony for good cause, and the Task Force encourages judges to limit the scope of testimony within the rules of evidence. Further, the recommendation has been modified to provide for continuances should the parties request the court hear from any non-party witnesses. If the testimony of the parties is estimated to take substantial time, a continuance to a date the court hears longer matters could certainly be appropriate. The issue of statewide guidelines should be considered as part of drafting implementing rules. Expanding Legal Representation No response required.

Commentator	Comment	Committee Response
	attorney fees, as reflected by statewide rules addressing this issue, and increased funding of legal services and self-help services. Caseflow Management Sanctions. Agree with the recommendation. We support rules that allow the court to impose sanctions against attorneys for egregious conduct. Providing Clear Guidance. Agree with the recommendation. We support statewide family law rules and the abolition of family law local rules. Contested Child Custody. Agree with the recommendation. We support expanded funding for mediation services in contested custody eases. In Alameda County we have had a very positive experience with having a "recommending" mediation system for many years. Minor's Counsel. Agree with the recommendation. We agree with the recommendation that minor's counsel should not issue reports that include custody recommendations because minor's counsel cannot be cross-examined regarding the basis for his or her opinion. Scheduling of Trials. Agree with the recommendation. We support the idea that trials should be conducted on consecutive days but we do not agree that this should be accomplished by allowing trials to pre-empt previously scheduled court hearings or to force subsequent trials to trail.	Caseflow Management No response required. Providing Clear Guidance No response required. Contested Child Custody No response required. Minor's Counsel No response required. Scheduling of Trials. The recommendation may require courts to make a shift in calendaring strategy, but is not expected to create any quantitative increase in caseload, in the time it takes to access hearing

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		and trial dates or to extend the length of these proceedings. Time estimation by attorneys, litigants and judges, case status with respect to settlement, calendar management and cases entitled to priority are all critical issues to be addressed during implementation of this recommendation. The Task Force anticipates that implementation of effective caseflow management will provide significant help to the ability of a court to conduct trials and long-cause hearings without interruption, while allowing all matters to proceed as scheduled.
	Streamlining Family Law Forms. Do not agree with the recommendation. We do not agree with the idea that Orders to Show Cause and Motions should be replaced by "Requests for Orders," We want to continue to use Orders to Show Cause when the court needs to establish jurisdiction over the responding party (i.e. at the initiation of a case or tor a post-judgment modification) and to use Motions at other times. While some legal procedures can be simplified to make them easier for self-represented parties to lose, there is a danger of losing the due process protections that the historical rules represent We urge the committee to be mindful of this danger. Perjury.	Streamlining Family Law Forms The Task Force understands this concern, but it has become clear that these forms are used differently in different parts of the state – thus it is apparently confusing for attorneys and courts as well as self-represented litigants. Perjury

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	Agree with the recommendation. We would like to see a rule that allows the family court to enforce perjury laws and to order fines for perjury that would go to family law services in the court, in addition to sanctions that compensate for the fees incurred to address the perjury. Leadership, Accountability, and Resources. Do not agree with the recommendation. We strongly support the use of commissioners in family court. It is our experience that the commissioners stay in the family court assignment far longer than the judges and therefore they provide very much needed consistency over time. They are more often prior family law practitioners and therefore very highly qualified to hear family law cases and committed to the long-term improvement of the family court.	This recommendation has been significantly amended in response to comments. This suggestion can be considered as part of any proposed rule or legislation. Leadership, Accountability, and Resources. While the Task Force acknowledges the expertise and experience of family court commissioners, the Task Force generally supports the existing Judicial Council policy that states that family and juvenile matters should be heard by judges rather than SJOs. And, as an exception to this general rule, where possible, IV-D commissioners should be permitted to hear all aspects of a family's case, not just the support issues. The Task Force also encourages family law commissioners to apply for judgeships.
150. Evelyn Mason Supervising Counselor Family Court Services San Diego, CA	I believe that almost all the recommendations are good ones but this is definitely not the time to implement them because many call for additional resources and expanding services which would not be possible at this time due to the budget problems with the state. Our	The Task Force is very mindful of these concerns. Although many recommendations require and identify the need for additional funding, many

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	waiting lists are going out longer and longer and we are not filling positions when people retire or leave service. We have a monthly furlough day which places us further behind. We cannot expand and provide more services, increased caseflow management, or early interventions. I find myself unable to even discuss these recommendations with co-workers in an intelligent manner without even knowing if there will be further cuts to our budget with layoffs and additional furlough days in the next year. My suggestion is to wait a few years to see if we will be in better shape and then these recommendations could be reviewed in a meaningful manner for implementation.	others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. As part of the implementation of all recommendations, funding issues will have to be addressed.
151. Hon. Laura Masunaga Presiding Judge Superior Court of Siskiyou County	Right to Live Testimony That court "must" receive believes system where FL judges receive training and exercise discretion better practice and not mandated Rule of Court. Contested Child Custody	1 Right to Live Testimony The Task Force is aware that there are many family law judicial officers throughout the state that are currently doing an excellent job of evaluating when live testimony is necessary. The goal of the Task Force is to extend this standard of excellence to all family law litigants, regardless of where their case is filed. While the Task Force agrees with the commentator that this is an issue for judicial education, it was decided that a rule was necessary to accomplish this goal statewide. Contested Child Custody

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	1. Information Provision D. The recommendation that person who provides information to mediator for court has to be available to testify or for XE (mediator who obtains information is available under current rules) 2. Child Custody Mediation Services 1st mediation confidential and second, if no agreement, with different mediator, do not make recommendations that will be unfunded mandates, this is huge FTE resource issue for most courts and in particular smaller courts 21 Leadership, Accountability and Resources 1. A. recommendation that administrative standard 5.40 be made rule of court, do not agree with this ...leave as administrative as other responsibilities for PJ . 6. pg 72 requiring assignment of judicial officers by % of caseload numbers is problematic....how do we compare a family law case (not high conflict case) with a life top criminal case or complex construction defect case based on absolute numbers we are comparing cases that are just too different see this will be opposed by most PJ limiting what they need to do under administration of justice guidelines	Information Provision The Task Force agrees and the recommendation reflects the need to ensure these professionals are available to testify and be cross-examined. Contested Child Custody Mediation Services – The recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. 21 Leadership, Accountability and Resources The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family, and based on data that accounts for the different weights in case types. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics. The Task Force believes that the Presiding Judge can appropriately exercise his or her

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		authority consistent with this recommendation.
152. Suma Mathai Supervising Family Law Attorney Los Angeles Center for Law and Justice	*On behalf of the Los Angeles Center for Law and Justice, I would like to thank you for your work on behalf of self-represented litigants in California, and for the recommendations presented to improve services statewide. We are in agreement with the recommendations presented, and offer our comments and suggestions below. In addition to the specific comments below, we support the following recommendations of the Task Force • Increased funding and resources, particularly for interpreters and court staff; • Expanded use of technology to facilitate communication between courts and self-represented litigants; • Revision of Judicial Council forms to simplify processes for litigants and increase data collection; • Increased collaboration between courts and other partners, including legal services providers; and • Increased collaboration between family courts, dependency courts and child protective services. Right to Present Live Testimony While we are not opposed to the recommended revision to Rule of Court 5.118(f), we recommend that the revision also include a requirement that the parties provide notice to the other side of the live testimony to be presented, so as to provide the other party with an adequate opportunity to prepare for cross-examination. Specifically, we recommend that the parties, either in the moving papers or in the	No response required. Right to Present Live Testimony The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice and time to prepare when witnesses other than the parties are involved. The decision about

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	responsive pleadings, be required to give notice of any live witnesses (other than the parties themselves) that will be presented at the hearing, along with a time estimate for the hearing. We also recommend that the Judicial Council forms for Orders to Show Cause and Responsive Declarations be amended accordingly so that this information is listed on the face of each form.	which, if any Judicial Council forms that will need to be developed or modified should be considered as part of implementation.
	Caseflow Management Item 2 We agree with the Task Force that caseflow management should begin at case initiation, and specifically that cases should be assessed for special factors, including allegations of domestic violence or child abuse, whether one or both parties is self-represented, and whether one or more parties has limited English proficiency or literacy. Currently, we know of no formalized system for collecting this information. We recommend that, in keeping with the Task Force's recommendations regarding research (under Recommendation 19), that a statewide statistical data collection form be developed and that each party involved in a family law case be required to submit the form with their first filed pleading.	Caseflow Management Methods to collect information to determine language needs and other factors impacting on case management should be developed as part of the implementation process.
	Domestic Violence Item 2 Allowing family courts that hear domestic violence restraining order cases to enter paternity judgments without requiring the parties to file independent paternity actions makes the best use of available resources, and also avoids putting protected parties in more danger due to repeated exposure. We recommend that he Request for Order form (DV-100) be changed to allow the party to request that the court determine parentage, and that the form, along with the Uniform Parentage forms, be changed to allow parties to request genetic testing	Domestic Violence Item 2 No response required.

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	and hearing without having to file an additional motion. Item 5 We recommend that additional resources and funding be devoted to court professionals who could conduct child interviews in domestic violence cases where appropriate. Minor's Counsel We agree that the role of Minor's Counsel in family law cases must be further defined, and that the scope of information provided by Minor's Counsel should adhere to general rules of evidence and due process. We also recommend that there be clarification as to whether Minor's Counsel in the capacity of a Guardian Ad Litem or an attorney for the child, and what their duties to the minor are. Litigant Education We agree with the Task Force's recommendations that expanded information should be available to litigants regarding the judicial process from various sources, and recommend that courts look to innovative approaches and technologies, including • Streaming videos on court websites; • "Opt-in" informational emails for litigants who provide the court with a valid address; • Partnering with community based organizations, including legal services providers, to become court-certified trainers to present curriculums on parenting, the court process and available resources Streamlining Family Law Forms We agree with all the Task Force's recommendations to simplify the	Item 5 The Task Force agrees that resources need to be allocated to support the services needed in family court. Minor's Counsel The Task Force recommendations reflect support for clarifying minor's counsel role. Litigant Education – Agree that all these creative methods should be explored to provide education in an effective and efficient manner. Streamlining Family Law Forms No response required.

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	suggested forms. Leadership, Accountability and Resources We suggest that courts consider calendars that are dedicated to specific issues rather than specific types of cases or litigants, so as to ensure uniform handling of family law issues across courts. For example, calendars that involve primarily domestic violence case, or complex custody cases, or complex property issues, are preferable to those that separate self-represented litigants from others, or limited English speakers from others. We appreciate the opportunity to comment on these recommendations.	Leadership, Accountability and Resources The Task Force recommends that court consider dedicated calendars based on issues as well as case types. The recommendation is broadly stated, with the goal being improving services to litigants.
153. Kathy McAnany Los Angeles, CA	The public should have access to Judicial Administrative records. This way they can be held accountable for any wrong doing. They should be held accountable like everyone else. If everyone else is expected to follow the law, then those in law themselves should be subjected to the same scrutiny. They cannot expect the public to follow the law when they themselves are not. If we really have a just legal system in this country, then public records should not be a problem.	The Elkins Family Law Task Force heard significant input on the need for improved accountability in family law, and recommends the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position. New California Rule of Court 10.500 addresses access to judicial administrative records.
154. Sandra McCarthy A People's Choice	The Elkins Family Law Task force was to address making the process of family law cases more effective while addressing barriers to justice.	While the Task Force is mindful of the benefits that many Legal Document

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	There are 21 draft recommendations that DO NOT list LEGAL DOCUMENT ASSISTANTS as a solution to part of the problems they are addressing. The LDA statute was implemented to provide consumers with a low cost alternative the legal divorce process as well as other legal processes. This task force should incorporate information regarding Legal Document Assistants as these types of services have a huge impact on consumers as they are a low cost alternative to using attorney and in most instances, using these services usually enable a typical divorce proceeding to be completed in an expeditious manner, freeing up the court's congested systems.	Assistants provide to unrepresented litigants, it does not believe that a recommendation that the court refer to those services is appropriate. LDAs reported that the services they provide are the same as self-help centers. However, they charge for the service and do not operate under an attorney's supervision. Based upon testimony provided, the Task Force is concerned that there does not appear to be sufficient consumer protection oversight of LDAs at this time.
155. Hon. James C. McGuire Presiding Judge Superior Court of San Bernardino County	The recommendations of the Elkins Task Force would require a significant reallocation of judicial resources that would impair our court's ability to handle other types of cases. Requiring "live testimony" for all OSC and Motion matters, unless the court makes a finding of good cause on the record, would overload an already overburdened system. I find the current practice of permitting live testimony for good cause to be the better approach. I frequently schedule short cause evidentiary hearings in these matters and will continue to do so. Trials dates are set approximately six months or more from the date of the MSC or Trial Setting Conference. On numerous occasions I have had to reschedule family law trials regarding property and/or support matters to accommodate the mandated evidentiary hearings in DVPA matters and give priority to custody and visitation disputes.	The Task Force received many comments requesting that there be no good cause factors to exclude live testimony, and that judicial discretion in this regard should be eliminated completely. The Task Force recommendation retains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without

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		creating any disruptions to the flow of their calendars. While a judge may be required to consider the factors, the reasoning he or she must state in writing or on the record need only address the factors that are relevant to the decision that was made.
	Case Management The recommendations regarding Case Management are very interesting. Last year, our county eliminated a case management system similar to the one proposed by the Task Force, because it didn't work and caused unnecessary court appearances and costs to family law litigants. I would like to see an operational plan for implementing the "checkpoint" system and sending "reminder alerts" to parties. Our clerk's office is struggling to comply with the new requirements regarding the processing of fee waivers. I don't see how we can add to their incredible work load without dramatically increasing staff, which is not possible in these challenging economic times. There are already adequate procedures in place to process defaults and uncontested matters.	Case Management Agree that an operational plan will be critical to the implementation of Case Management. It will be valuable to look at a court which has eliminated case management as well as those where it has been successful to identify best practices and potential county differences.
	I definitely agree that the current practice of conducting long cause hearings in multiple shorter sessions is ineffective and inefficient. I have no disagreement with the recommendation to give in-progress trials preference over other matters not otherwise entitled to preference and would certainly support a change in the Rules of Court to that end. The problem that frequently arises is that other family law matters that are entitled to preference, such as DV and custody matters cannot be	Current Practice Of Conducting Long Cause Hearings. The Task Force agrees that the issues of time estimation, case status with respect to settlement, and calendar management and cases entitled to priority are all critical issues to be

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	preempted, even if they are scheduled in other departments, which results in attorney scheduling conflicts. I also wholeheartedly agree that family law is a historically underserved area of court operations and that the resource allocation has not been proportionate to the family law workload and case volume. Unfortunately, with budget cuts and court closures, we are further diluting the effectiveness of the resources currently allocated. I also strongly support the recommendation that family court services staff be increased and would like to see legal research staff assigned to family law. Just one full time equivalent research attorney assigned to family law would be a godsend to the family law bench. I also agree that it would be more efficient if IV-D commissioners could hear custody and other collateral issues that arise in IV-D cases, unfortunately, as long as the federal funding is tied to time spent on child support issues only and funding is reduced by time spent on non IV-D matters, I don't see any upside to implementing a more efficient approach that will result in a funding reduction.	addressed during implementation of this recommendation. The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these issues. The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law, including such important areas as family court services and research attorneys will be addressed in the implementation process. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters

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		such as custody, visitation, and requests for restraining orders. The Task Force is aware that additional time would be needed to hear the non-support matters, and therefore additional commissioner resources will be needed. These issues will be dealt with in the implementation process. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders. The Task Force is aware that additional time would be needed to hear the non-support matters, and therefore additional commissioner resources will be needed. These issues will be dealt with in the implementation process.
	Resources In a perfect world with no staffing, funding, resource, time or case load issues, the implementation of a majority of the recommendations of the Elkins Task Force would improve access and fairness. In the real world, as we are currently experiencing it, implementation of the	Resources The Task Force recognizes the current budgetary and resource challenges. The recommendations will need to be implemented over time, and the Task

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	recommendations would not be feasible.	Force believes that some of the changes can be put in place with positive results with minimal new resource requirements.
	Introduction Agree with Recommendation subject to modification <u>Comment</u> "The task force understands that California is facing unprecedented fiscal challenges and that it is unlikely that the courts will soon be receiving significant additional resources given current budget cuts. Therefore many of our recommendations call for using existing resources differently, implementing policies that are already in place, or phasing in proposals over time in order to reduce reliance on new funds. Some recommendations have little fiscal impact, focusing on structural issues within the courts."	
	The Task Force's Report is amazingly comprehensive and on-target regarding practical solutions to reform the family law system and culture. But our current fiscal situation prohibits many of these recommendations from becoming a reality at this time. The Task Force should take the next step and identify those recommendations which truly have little fiscal impact. Almost every recommendation will require expenditure of additional funds for each superior court; the true cost might not be obvious at first glance. For example, Item Number 1 regarding live testimony doesn't sound like it will require additional money because the judge would simply be listening to a few more witnesses each day. But consider how that extra 10 to 20 minutes per case would affect an OSC calendar with 50 matters on it. The absolute	Introduction Agree that identification of resource needs and impact is a critical step for implementation. Additional research regarding current practices and costs is currently being conducted to identify potential impacts. The impact will also vary county-to-county. In those courts which currently routinely hear testimony, this recommendation will have little or no impact. In other counties, such as San Bernardino, that

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	volume of people wishing to present testimony will mean that not all cases will be heard that day and the crucial custody decision is delayed. Due process for a few families turns into a lack of due process for a larger number of other families, unless you expend more resources. By assigning some type of fiscal value or category to each recommendation at this time, the process of transformation can be grounded upon prudent economic policy. This categorization may also assist the Judicial Council and Legislature with prioritizing the recommendations, and lead to a better over-all plan regarding long-term implementation. Live Testimony Don't agree with Recommendation <u>Live Testimony</u> See discussion above regarding fiscal impact and the tremendous burden it could place on the existing family law calendars. In order to better provide judicial officers with flexibility to manage their calendars, the Recommendation should encourage the option of live testimony rather than oblige it absent a finding of "good cause" stated on the record. The family law calendars are quite heavy. With the high number of self represented litigants, more OSCs may be filed than would occur if the parties were represented. The self represented parties generally lack complex legal knowledge regarding modifications of custody. That person may not appreciate that their witness testifying about why that party is a "great parent" may not have relevant information regarding the authority of the court to modify the custody judgment. Frustration	impact is likely to be great. Categorization Agree that this prioritization will be essential for all implementation efforts. Live Testimony The family law calendars are indeed extremely heavy. The input that the Task Force received from the public in writing, during periods of public comment at the Task Force meetings, and at the public forums held in San Francisco and Los Angeles, as well as from family law attorneys in an attorney survey, strongly supported the right to present live testimony. The information provided to the Task Force supports the public perception of the hearing process as unfair if they are not allowed to present their case to the judge during the hearing. The Task Force concluded that the right to

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	with the judicial process would naturally increase. That litigant may think something like this "That witness would have told the judge how much I love my child and what good care I take of him/her. I would have gotten my custody order. This system is not fair." A self represented litigant could easily interpret the "right" to live witness testimony to mean that all witnesses should testify, no matter what. But if the use of witnesses was more clearly defined as determined by judicial discretion, it may be less confusing to the litigant and allow the bench officer to better to manage a heavy calendar.	present live testimony, particularly on substantive issues or where there are material facts in controversy is critical to due process and basic fairness. The recommendation has been modified to help clarify this issue. Currently, the recommendation requires appropriate notice be provided, and time allowed preparing any response, in cases where a request is made to hear witnesses other than the parties. The Task Force encourages judges to use their discretion to limit the scope of testimony in a manner appropriate to the proceeding.
	Caseflow Management Written Orders After Hearing Don't agree with Recommendation Whenever possible, the orders should be incorporated into the court's processes, such as being completed by the court or self help staff. Shifting the burden to the court for the preparation of orders after hearing would mean a significant increase in the workload of court staff. At the current time, the computerized case management system is not able to print out orders. Additional labor will be required to create the orders.	Caseflow Management Written Orders After Hearing The Task Force recognizes that this is a recommendation that is likely to require additional resources in many courts. However, one court which now generally prepares orders after hearing for self-represented litigants compared a sample of litigants for whom orders had been prepared against those for whom orders had not been prepared. They found that those whose orders

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	In order to minimize this extra workload, then changes would need to be made to the court's culture regarding what is an acceptable order after hearing. If the Rules of Court were revised to allow for a system-generated minute order to be signed by the judicial officer following the language "It is so ordered", then the work of the staff would be reduced. However, in the current culture, an order after hearing must either be on the Judicial Council form (Findings & Order After Hearing) or be typed on pleading paper, with identification of the submitting party, conformance to pleading rules regarding the caption, etc., and submitted to the opposing party/attorney prior to judicial execution. Work that lawyers and their staff is used to doing, but not so for court staff and self represented litigants. In San Bernardino County, self help program staff easily spend at least 30 to 40 hours per month in the preparation of orders and judgments for self represented litigants who request that service. At our Resource Centers, a request for preparation of Orders After Hearing is usually made when there has been some problem with enforcement of the order. To now require the staff to prepare orders in every case would double the work load and cause a shift in service priorities. Leadership, Accountability & Resources, Judicial Experience	had not been prepared were twice as likely to return to court for the same issues as in their initial hearing. This may be an area where the costs of not preparing an order are greater than in preparing one. The current design of the California Case Management System (CCMS) should allow many orders to be generated onto Judicial Council forms. This also may be an area where additional consideration should be given to simplification as part of statewide rules of court. If attorneys are indeed submitting orders after hearing, it certainly seems reasonable to encourage them to continue doing so. Agree that additional resources would be required. Some counties use law students to prepare orders in cases with self-represented litigants and have found that an excellent internship opportunity. Leadership, Accountability &

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	Don't agree with Recommendation Judicial Experience An important indicator of success for any judicial assignment is knowledge of the relevant law. Other important attributes for a family law judge include an outlook suited for resolving personal family issues along with the ability to handle a high volume calendar of self represented litigants. The requirement that all family law judges be sitting as a judge for 2 years does not speak to any of those qualities. This Recommendation of a two year judgeship contradicts the earlier point made in this section regarding the recruitment of experienced family law attorneys as judges. If a family law attorney was appointed to the bench, then that person couldn't be assigned a family law calendar for 2 years? It may be more helpful to place some minimum time limits when handling a family law assignment, to allow for sufficient education and expertise to develop in the arena. Additionally, to require only "judges" to hear family law cases undervalues the contributions of commissioners who most likely have a background in actual family law practice and are directly responsible to the Presiding Judge for performance. Assignment of Judicial Officers to Family Law Don't agree with Recommendation The rhythm of matters before the court varies from county to county, and even varies from court district to court district. A state-wide requirement would hamper the ability of each Court to provide a balanced service to all users of the courthouse. There can be no doubt	Resources, Judicial Experience Judicial Experience Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including for example the expertise of the judge. Assignment of Judicial Officers to Family Law The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on

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	that redistribution of the existing judicial resources will unfairly affect the other case types. Consequences for such distribution would be felt by all court consumers and long delays for civil trials and hearings would most likely result due to the statutorily imposed time frames for criminal cases.	the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics. The Task Force believes that the Presiding Judge can appropriately exercise his or her authority consistent with this recommendation.
	Procedural Document Review Agree with Recommendation <u>Family Law Examiner</u> Funding for this position should be given high priority, as the installation of this worker may help achieve the goals of streamlined case management and take some of the burden from judicial officers.	Procedural Document Review No response required.
	Simplify procedures – service by posting Agree with Recommendation The establishment of a state-wide website for virtual postings of court documents will be an important step in opening up the court system in the 21st Century. On-line posting may provide a uniform method of notifying an individual that he or she may be a party to a family law case, while minimizing the concern regarding public removal of posted notices and staff time to maintain the notices. Although on-line posting may be a novel consideration for the California courts, other agencies and states have drafted rules regarding posting legal notices on a public website.	Simplify Procedure – Service by posting The suggestion for models by other public agencies for virtual posting is one that will be very helpful as part of implementation efforts.

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	For example, the California Public Utilities Commission issued an approving opinion in 1998 regarding San Diego Gas & Electric's plan to post notices of discounts on their internet site. (1998 Cal. PUC LEXIS 1079) "If SDG&E makes a good faith attempt to inform in a timely manner its affiliates' competitors of the opportunity to engage in transactions with the utility using, for instance, the methods outlined here, the Rules' requirement for contemporaneous offerings will be satisfied." Also, the Environmental Protection Agency created a federal rule allowing for providing notice via the internet of Proposed Penalties under the Clean Water Act and Safe Drinking Water Act. In support of that change from paper publication to internet notice, the EPA relied upon a federal case which allowed for service of a summons via email – "Courts have recognized that the Internet may be one method reasonably calculated to provide public notice. Thus, for example in discussing service of process by e-mail, the United States Court of Appeals for the Ninth Circuit has recently described in broad language a court's authority to adapt its procedures to meet technological advances as follows "In proper circumstances, this broad constitutional principle [i.e., that the selected method of service must be reasonably calculated to provide notice and an opportunity to respond] unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance." Rio Properties, Inc. v. Rio International Interlink. 284 F.3d 1007, 1017 (9th Cir. 2002)." No matter the situation, the heart of the legal issue for publication/posting is due process – will the internet posting be reasonably calculated to provide notice and an opportunity to be heard?	

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	The traditional paper courthouse posting procedure has already been approved the U.S. Supreme Court in 1971. Virtual posting offers the following advantages over this traditional procedure (1) eliminates the need for those members of the public who are unable to physically access the courthouses to find publicly posted notices; (2) access to the notices is open indefinitely during all hours of the day and every day of the week; (3) notices can be read by an interested party and the public across the country and across the globe, and it provides an archive to store all the posted notices; (4) improves efficiency of courthouse personnel by reducing paperwork; (5) improves the integrity of notices posted (more difficult to tamper with and/or alter) Virtual posting is also consistent with California Rules of Court, Rule 2.500 regarding Electronic Trial Court Records "(b) Benefits of electronic access Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to trial court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to trial court records may also foster in the public a more comprehensive understanding of the trial court system." These enumerated advantages hold true in the typical posting situation in a divorce. In many of those cases, the Respondent has left the	

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	country or is transient, and the Petitioner has not had any contact with that person for several years. In those situations, the potential for that person to walk into a specific courthouse is already quite low, and the on-line posting may provide a greater opportunity for knowledge of the proceeding. In addition to creating this website, there should also be some well-defined method for transmitting documents to the website for posting. As well, new Judicial Council forms will need to be prepared to allow a person to apply for an order to post documents. At a minimum, preparation of additional Judicial Council forms and standards for alternative service (i.e., publication) should be initiated, since no such form currently exists. Local communities to improve process Don't agree with Recommendation Mandating standing committees to converse about procedures has not been fruitful in improving access to justice on a large scale. When the budgets are tight and the number of work days has been diminished, creating a committee, soliciting members, and holding meetings is not the most productive use of limited time. While the utilization of committees is helpful, it should not become a mandatory duty for the Courts. Transparency & Accountability Don't agree with Recommendation <u>Ombudsman Position</u> Currently, the courts have a complaint procedure for various types of complaints, including contacting the Court's Executive Officer or	Forms Agree that new Judicial Council forms will need to be developed as well as a clear procedure set forth to allow a person to apply for an order to propose documents. Local communities to improve process The Task Force believes that a local committee will promote an inclusive and collaborative approach to addressing the needs of family court and the community as a whole Transparency & Accountability The recommendation to evaluate the creation of an ombudsman will be addressed in the implementation process. The role, authority, and duties

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	Presiding Judge. To add another employment position in each County would not be cost-effective, as it presumes that the there are so many complaints that a full-time ombudsman is necessary. Perhaps in the largest court systems, such a person might be useful. But in the medium to small counties, such a position drains resources from other court functions. Even in a booming economy, the money spent on that position could be better spent on employees with a wider range of duties.	of the ombudsman will need to be developed. Part of the goal of having an improved complaint process and ombudsman are to provide more convenient and accessible options for litigants who have complaints and concerns, and to improve procedural fairness at the local level. The concerns about efficiency in different court sizes and ensuring that the ombudsman position does not drain resources from other court functions will be forwarded to the implementation process.
	Self Help Services Agree with Recommendation subject to modification Enhanced Self Help Services The recommendations regarding the types of activities which should be performed by self help personnel are well-taken. However, in order to expand services, current services may need to be cut in order to meet the new goals, as our centers are already at a maximum capacity. The demand for services outpaces what any program can provide, even with additional staff. The more services are available, the more the need rises.	Enhanced Self-Help Services - Agree that additional funding will be required to carry out many of these recommendations. As the commenter points out, most self-help centers are already over maximum capacity.
	Mandating certain types of services – instead of simply encouraging those services be available -- makes a single policy-making body the determiner of community need. Currently, there is a wide disparity of	Mandating certain types of services Agree that any recommendations for services must recognize the

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	existing resources for each community. Where the court has taken on the lion's share of meeting the needs of the self represented litigant due to the paucity of community resources, setting forth additional requirements state-wide may be overly burdensome. It assumes the existence of a world with resources I do not believe exists. The issues begin with mandating testimony at all OSC's unless you make findings that would I suspect take longer than to hear the testimony. Our family law courts can barely get through the call now, more mandated testimony will only make it worse. The idea of case management on a differentiated basis sounds nice but would clearly require staff to implement, monitor and work with the judge, again where would this come from? And are these cases we really want to set time standards on? Do we want in this climate to dictate how calendars must be run and matters set. I think the courts should maintain the maximum flexibility. The whole idea of elevating the status of the supervising family law judge to a PJ like position is unnecessary and counterproductive. All this person could do can already be done. It is the lack of monetary and judicial resources that are at fault. Mandating further training for everyone does not address the problem the legislative neglect has caused. The idea that a specific percent of judges must be assigned to a family law court only makes sense if there are sufficient judges for all other calendars. I could go on and on but most of my objections come down to this simple fact, the next few years will see a reduction in money and services of all types, it is not appropriate to demand more and expanded	differences in resources in the county – not just in the court, but in the legal services and social services community. Time Standards Agree that time standards may well need to be phased in with additional resources – both financial and case management. However, if time standards are not set, it seems likely that family law will be one of the first items that is cut because there are no internal deadlines by which a court can measure itself. The Task Force believes that improving the leadership in the family court and possibly enhancing the status of the supervising judge will provide the necessary focus and priority on the needs of the family court. The Task Force acknowledges the extreme budgetary challenges the courts face

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	programs without addressing the financial and resource related effects of those programs. Further imposing limits and strictures on how the courts handled the resources they do have is irresponsible.	across the board, and the recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law.
	On behalf of the Superior Court of California, County of San Bernardino, Family Court Services Supervisors and Mediation Staff, the following feedback regarding the Elkins Family Law Task Force recommendations is respectfully submitted for your consideration. We had regional think tank sessions in our three largest offices (San Bernardino, Rancho Cucamonga and Victorville). We've compiled our thoughts and suggestions to improve the existing system as it relates to Family Court Services. We recognize that due to the economic challenges the State of California is dealing with, some of the suggestions we made might not be feasible given the limited availability of resources at this time. The focus of our feedback is on areas of the Elkins Family Law Task Force report that are related to our work with families receiving mediation services at Family Court Services. Task Force Recommendations 5 - 9 will be the focal point of our response.	
	Children's Voices Our practice and philosophy in San Bernardino County is to keep children out of the middle of parental disputes if at all possible. However, if the mediator assesses a child interview to be appropriate or necessary, or if the judicial officer orders a child interview, we will schedule a child interview appointment. The Elkins Family Law Task Force report does a fine job of outlining the various issues that should	Children's Voices The Task Force recommendations recognize that in some instances, children might participate in a family law case by meeting with a mediator or evaluator and not testifying. The Task Force recommends against

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	always be assessed when making a decision to interview a child and weighing the need for input from the child versus the need to protect the child from the unnecessary anxiety and/or trauma. It is suggested that mental health professionals (mediators) conduct the children interviews because of their training and understanding of child development, family dynamics, and interviewing techniques. It is also suggested that interviews occur in the mediator's private office and not in court chambers which can be intimidating for children. It is thought to be in children's best interest to not have to testify in court and that utilization a family court services mediator is the preferred mode of obtaining children's input. It is also suggested that confidential children's interviews be considered on a limited basis if it is assessed that disclosure of the content of the interview might lead to retaliation against the child or further abuse of a child. There are many instances when children express resistance to information being put into a report for fear of the parental response to the information they share. The confidential option would occur only with the authorization of the parents and/or their attorneys when offered by the judicial officer at the recommendation of a family court mediator. A brief orientation for children is also suggested that gives children some information about the court process and information about being interviewed. It is thought that by providing some limited, age appropriate information, children may feel less anxious about being interviewed. An in-person orientation or video orientation is recommended.	adopting a blanket approach to children's participation given the various cases that come before the court and the differing needs of children in these matters. The Task Force recommends that those providing information to the court be available to testify and to be cross-examined, which includes those providing recommendations and information about children's interviews. Confidential interviews raise concerns about due process and the ability of the court to benefit from the testimony in a way that would allow the parties to respond. Orientation The Task Force recommendations in this area include support for these programs and services.

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	Domestic Violence We concur with the recommendations that emphasize providing a safe and comfortable environment for victims of domestic violence. This cannot be reiterated enough. Separate sessions at different times and/or different days are arrangements we make at Family Court Services that support this goal as well as keeping the victim's appointment time confidential so that the alleged perpetrator does not have knowledge of when the victim will be at their mediation appointment. This is especially important for children as well when they are involved in the assessment of domestic violence through children interviews. Every effort is made to create an environment where they feel safe and comfortable so that the interview process is the least anxiety-producing or traumatic for the child. Enhancing Safety The recommendations in this section support the idea of collaboration between Family Court Services and Child Welfare Services. When cases involve allegations of child abuse, it is imperative that the family court and child welfare services have protocols in place to work together to ensure children's safety. In San Bernardino County, there has been a concerted effort to develop and foster a collaborative relationship between FCS and child welfare services. The establishment of standing orders to exchange information between the agencies is one example of this collaboration along with having designated liaisons with child welfare that assist in obtaining referral histories on families as well as information about pending open referrals. Some suggestions to further enhance collaboration with child	Domestic violence No response required. Enhancing Safety No response required.

Commentator	Comment	Committee Response
	welfare services would be to Develop protocols to have joint home assessments when cases involve multiple, recurring allegations of the same nature that appear to be entrenched in the child custody disputes of the parents. Proposing the accessibility of the child welfare information system in a read-only mode to Family Court Services mediators and allowing access to child welfare services to the court information system so that both agencies can access necessary information in a timely manner. Assign a child welfare services social worker at a family court services office to expedite the sharing of information or assign a duty worker to be available to Family Court Services on a daily basis. Permit access to child welfare services reports to assist in the assessment of the child's safety, health and welfare. We have also developed protocols to handle cases involving serious safety concerns or child abuse such as Triage assessments are utilized to filter safety issues that might be present within the family system. Same day emergency mediation is offered when ordered by the judicial officer. The ability to obtain information from child welfare services immediately when the judicial officer refers the case strictly for that purpose. Contested Child Custody It is our strong belief that a shift in language away from custody or visitation may have a beneficial impact on parents who remain rooted	Develop protocols As part of implementation of pilot projects in this area, consideration should be given to these suggestions. Contested Child Custody Parenting Time The Task Force recommends that where appropriate,

Commentator	Comment	Committee Response
	in a dispute because they interpret the word custody as ownership and visitation as being somewhere temporarily, not having established roots. Language like parenting time may be less threatening to a parent and is more indicative of their time and responsibilities to their child.	"parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.
	Uniformity and consistency across the State of California would be beneficial with regard to how mediation is conducted. Whether it is confidential or recommending, having consistent protocols and requirements for mediators is thought to be a good concept.	Uniformity No response required.
	We agree with the statement in the Elkin's report that "The severe under-resourcing of family court services and family law courts over many years has resulted in the need for innovative responses to effectively handle a wide variety of contested child custody cases". The need for more family law judicial officers and family court mediators exists. The Elkins report suggests that the number of family court services mediators should be based on population of the county and number of child custody mediations in the county. It is suggested that additional factors be considered such as the type of child custody mediation being provided (confidential versus recommending). The amount of time spent on each case will differ depending on if you simply provide a confidential mediation versus if you provide mediation and also have to produce a report with recommendations that may involve obtaining collateral information from several sources and interviewing children. The work load demands will look very different	Resources These suggestions for additional measurements should be considered during implementation of planned workload studies.

Commentator	Comment	Committee Response
	depending on the type of mediation provided.	
	Many of the Elkins recommendations would require additional resources and in the perfect court scenario, all of the recommendations would be implemented and the resources would exist to provide all of the services outlined in the report. However, until that time comes, the recommendation for voluntary mediation does not seem feasible as all of our available current resources are being utilized for cases that have already begun the litigation process. Therefore, this recommendation is not supported at this time although the benefit of that particular service is acknowledged if the resources were available.	Additional Resources Resource issues should be considered during implementation.
	The benefit of a mediation model that allows for a confidential mediation before an evaluation or other adjunct services is also acknowledged. It would be beneficial for the parties and the mediator as the mediation session could be completely focused on the negotiation process whereas in our current system, we function in dual roles as mediator and then evaluator if the parties are not able to reach an agreement. The drawback to the confidential model however may be delaying the court process with additional court hearings or delayed court hearings because the family will need to be referred for an evaluation if they were unable to reach an agreement in the confidential mediation session. It might be argued that our current recommending model is more efficient in that we are able to conduct the mediation in order to attempt to settle the matter but if unsuccessful, we are able to provide the court an assessment without additional hearings or continued hearings.	Confidential mediation No response required.
	Minor's Counsel	Minor's Counsel

Commentator	Comment	Committee Response
	We agree with the recommendation for mandatory education and training for attorney's interested in serving as minor's counsel including some education about child development and children interviewing techniques. Role clarification is important as well and the Elkin's task force recommendation that attorney's should not make recommendations about custody and visitation seems appropriate. However, it is suggested that minor's counsel be allowed to collaborate with the Family Court Services mediator, as the child's representative, which would be information from another collateral contact that the mediator could consider in developing their recommendation to the court. It is also thought to be in children's best interest that minor's counsel be available to represent children when assessed to be necessary and not based on fiscal decisions. Thank you for allowing us the opportunity to provide feedback about the recommendations in the Elkin's Family Law Task Force report that may positively impact our work with the families that come to Family Court Services for mediation.	No response required. Current law allows minor's counsel to talk with family court services staff. Family court services mediators have access to the family law file which should contain reports and information provided to the court and the parties from minor's counsel.
156. Hugh McIsaac Former Secretary The Oregon Taskforce on Family Law 1995-98	A thoughtful and comprehensive document I would recommend including three and five year follow-ups to track the effectiveness of the recommendations and to fine-tune these reforms. Divorce is a process- not an event. Divorce is a reorganization of a family, not the end of a family The dissolution occurs over time and has several stages. It requires a balancing between the distributive (property, support, etc.) and the integrative issues (parenting, child development, and achieving respectful post divorce relationships,	

Commentator	Comment	Committee Response
	making family law one of the most complex and important of all the matters coming before the court. I would also add commentary regarding the need for the on-going training and interdisciplinary coordination between the professions the judiciary, legal and mental health. Annual conferences need to be held. On-going research and studies need to be conducted by the Center for Families and the Court exploring the effectiveness of programs and making recommendations for the future. The Center for Families, Children & the Courts has provided extremely useful and invaluable support for the family law process in California. This effort needs to be continued and fully supported. Congratulations on your work!!!	Interdisciplinary Coordination The suggestions comment about interdisciplinary coordination and training will be forwarded to the implementation process. Also, the Task Force makes recommendations about the development of a research agenda, and has added a new recommendation to establish a family law innovation project, which includes an evaluation component.
157. Mirissa McMurray Brown & McMurray Redwood City, CA	Thank you for such a thorough well-thought out report and list of recommendations. My perspective comes from San Mateo County where families are facing more financial and economic stress, while a reduced Court staff faces an unprecedented and ever increasing workload. It is the epitome of trying to "do more with less." Therefore, though I believe almost every recommendation would be of benefit to litigants and the Court process, I believe they need to be approached thoughtfully in order to be prioritized. I include my comments and concerns in a few areas Right to Present Live Testimony I agree that allowing live testimony would be a great benefit to many pro per litigants. What impact would allowing such testimony have on getting into Court in a timely matter? Some Court dates are already set	Right to Present Live Testimony The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time

Commentator	Comment	Committee Response
	months out due to crowded Court calendars. Overall, more bench officers would be required in order to allow for the time required for live testimony to be permitted according to the proposed change to Rule of Court 5.118. Also, measures would need to be in place to address the issue of notice to the other party for impromptu offers of live testimony.	of the hearing without creating any disruptions to the flow of their calendars.
	Expanding Legal Representation and Providing a Continuum of Legal Services I whole heartedly agree with these recommendations. Many of us in the legal profession, including myself, would agree with these proposals based on issues of fairness and access to justice. We will need to convince those who pay more attention to finances. I believe appropriate study of the effects of access to the "continuum of legal services" would show what we know intuitively- litigants with access to information and advice file fewer filings and take up less Court with motions which have no legal basis, requests for remedies not provided for within the law, and even requests for hearings where the litigant already has what he/she request, but merely needs help in obtaining enforcement of a valid order.	Expanding Legal Representation and Providing a Continuum of Legal Services The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy
	Caseflow Management I respect the point of this section, but it is not where I would put the first priority. I believe, with more support in the continuum of legal services, case management might become less needed. Specifically, I would caution the use of "checkpoints," in particular because of the	Caseflow Management In many counties which have implemented caseflow management, the self-help center is a key participant

Commentator	Comment	Committee Response
	possibility of domestic violence. There are a lot of reasons why litigants choose not to serve the other party. It could be anywhere from awkward to dangerous to send out reminders to people who have filed when the address provided may in fact be the home where the litigant and his/her batterer and/or newly reconciled spouse reside, for example. Point 4 within this section, for early intervention for disposition seems the most efficient use of time and cost. Many litigants, especially in dissolution cases, start cases in full agreement, needing the Courts only to put their agreements into a final order. Early intervention would help these litigants resolve their cases. Access to affordable ADR programs serves the same purpose for the litigants who start their cases without a full agreement, but for whom the opportunity to access ADR would lead to resolution. Further, Item 13 regarding written orders is essential. Many times, in my experience in self-help services, litigants would come to Court asking for the paperwork to get a hearing for issues that had already been adjudicated, but were not documented because the order had not been submitted. I agree that time standards (item 15) could be helpful, however difficult to implement as family law cases are so personal; the timelines might be quite varied. Though not perfect, the current rules for getting to Judgment (5 years) and serving a Summons (3 years) do serve as some, albeit lengthy, limits. Providing Clear Guidance Through Rules of Court I agree with this recommendation. Not only would it help self-represented litigants, but it would make collaboration among family law attorneys (especially for those providing pro bono services in new practice areas) more efficient across County lines. Domestic Violence	in those cases involving self-represented litigants. Courts will certainly have to consider issues to ensure protection of litigants in domestic violence cases who have chosen not to serve. Those litigants who are able to resolve their case through ADR or self-help programs will likely never need to come to court for a checkpoint visit. Providing Clear Guidance Through Rules of Court No response required. Domestic Violence

Commentator	Comment	Committee Response
	I agree with these recommendations but urge Courts to understand that these measures need to be in place not just for handling, "domestic violence matter(s)," but when handling and case where there is an allegation of domestic violence between the parties and/or their children. Many cases in family law include litigants who are survivors of domestic violence, even when the litigant has never sought a specific remedy for the domestic violence, such as a restraining order. Courts need to find a way to identify these high risk cases by something other than looking for a restraining order in the file. Contested Child Custody In reference to Recommendation 2 I do understand the purpose of keeping mediation confidential (as it would be kept in traditional mediation outside of child custody and visitation) but have the concern that parents might not make use of the time with the mediator if they know going into it that staying out of agreement will mean no recommendation will come from the mediator. I would be interested to see the results of a pilot project. In addition to "culturally competent" mediators, the Courts also need interpreters who are bilingual in the languages spoken by litigants. Although interpreters are also useful, it is much more efficient and comfortable for a litigant to receive service in his/her first language. Scheduling of Trials and Long-Cause Hearings I believe the recommendations in this section might work in counties where a Master Calendar sends trials out and where the judge who first gets the case would keep it. However, where Family Law works on a direct calendaring system (such as in San Mateo County for hearings	No response required. Contested Child Custody Agree that pilot projects should consider this issue and that interpreters need to be available as recommended in the section addressing interpreters. Scheduling of Trials and Long-Cause Hearings The Task Force agrees that time estimation is a fundamental part of the ability to schedule long-cause hearings

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	and trials set for less than two days), I believe giving first priority to unfinished trials would bump equally important hearings and potentially disrupt the lives of even more litigants. Perhaps it would be better to find a way to make better estimates for how long hearings and trials will take and to further assign more judicial officers to handle family law cases so the Bench has more opportunity to schedule matters for the time they require.	and trials so that they are completed without undue interruption, particularly in a direct calendaring system. It is critical that judges also have sufficient time to conduct appropriate hearings on law and motion matters which can be substantive and orders long-lasting. Also important are case status information for judges with respect to settlement, calendar management and cases entitled to priority The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these issues. (See Case Management).
	Streamlining Family Law Forms and Procedures In particular, recommendation number 5 would be particularly helpful in a number of cases I have seen where litigants hit a “brick wall” trying to serve the other party and would never be able to afford service by publication.	Streamlining Family Law Forms and Procedures No response required.
	Interpreters I agree we need an increase in the availability and efficient use of interpreters. A further efficiency would be to find a way for litigants to note their preferred language on filings so the Court has notice of what interpreters might be required in advance.	Interpreters Agree that a notation regarding need for interpreters would be very helpful.

Commentator	Comment	Committee Response
158. Erin M. McRaith, CFP, CH Breakthrough Hypnotherapy No county information provided	The part about the child's attorney should be changed. The attorney in most cases DOES NOT work for the best interest of the child. Commentator provided information specific to a case. Children over the age of 13 should NEVER be assigned an attorney. The child can speak for themselves and do an in camera interview.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children.
159. Cheryl K. McSparin Chief Attorney Department of Child Support Services Stanislaus County	Enhanced Use of IV-D Commissioners in Family Law Leadership, Accountability and Resources. The Stanislaus County Department of Child Support Services respectfully disagrees with the proposed "Enhanced use of IV-D commissioners in family law." Stanislaus County Courts utilize a direct calendaring system in the family law matters. The only exception to the direct calendaring system is when the Department of Child Support attorneys and the IV-D Commissioner are involved in the determination of support in their assigned cases. The IV-D	Enhanced Use of IV-D Commissioners in Family Law Leadership, Accountability and Resources. The Task Force recommendation contemplates that IV-D commissioners would "time study" the non-IV-D issues, so that the resources that are dedicated to the IV-D support issues

Commentator	Comment	Committee Response
	Commissioner is not located within the main courthouse and is viewed as a separate department from the Family Law Court departments. The IV-D Commissioner has an extremely large calendar which would be negatively impacted by the additional recommendations to hear all aspects of the family's case. Also, from a practical standpoint, it would create a logistical problem for the court mediators to be required to be available in two different courthouse locations. Finally, the IV-D Commissioner has an excellent understanding of the law as to the IV-D cases; however, to become proficient in child custody, visitation, property division and related matters, would be difficult for the commissioner to quickly obtain. The overriding reason for this Department's opposition to the proposal is due to the fact that there is only one IV-D Commissioner in this county; and his court calendar each day is extremely full with only the IV-D matters. Currently it is a challenge to keep pace with the IV-D cases that are set in the IV-D commissioner's courtroom.	would continue to be used only for support matters. The other aspects of the case such as custody, visitation, restraining orders, etc., would have to be funded separately by the court, as the IV-D funds are not permitted to be used for non-support matters. It is the intent of the Task Force that the commissioner resources be increased to ensure that parties who have IV-D support matters will have the benefit of having all aspects of their case heard by the same judicial officer.
160. Donald M. Medeiros Family Law Attorney Medeiros & Associates Victorville, CA	Minor's Counsel The Family Bar and the Elkins committee are in concert on the critical need to have a child's voice heard in highly conflicted family law matters. The unequal treatment provided for a child in the juvenile system versus the family law system is addressed by a child having Minor's Counsel in Family Law. The committee does not address funding. The life blood of government program is funding. Without it, the patient arrives dead on arrival. The Court's currently have no funding. The following two (2) prong approach will provide funding and an incentive to provide the critical need of Minor's Counsel.	Minor's counsel The Task Force recommendations include the need to allocate resources to services families in family court need. The Elkins Family Law Task Force focused primarily on procedural

Commentator	Comment	Committee Response
	I. The family law filing fees would include a special assessment of $3 to $5 that would be a reserve, used exclusively for Minor's Counsel A. The fee for Minor's Counsel appointment would be a flat fee of $300 to $500 per case. B. A Court hearing is set pre or post appointment to determine fee reimbursement by the parties of the action. These fees are placed in the reserve fund for Minor's Counsel. The amount assessed the parties are up to $500 per each party based on their ability to pay. C. The Court may determine in pre-appointment hearings that parties have ability to pay without reserve fund. The Court would appoint from a panel of certified Minor's Counsel, who arranges the fee and payments privately. II. The MCLE would allow for every 10 hours of representation by Minor's Counsel by flat fee attorneys, one (1) MCLE unit with a maximum of 10 units per reporting period. The revenue is first reserved to the county by the increased fees. This revenue is increased with the pre/post hearings of the parties' ability to reimburse the fund. The certified Minor's Counsel attorneys may place themselves on the Court appointment list and receive the flat fee. And receive MCLE credits. The private panel will allow for those parties with the greatest ability to pay to opt out of the flat fee panel and pay the market rate. This allows competition in the market place and an incentive to bring in the best to serve our children. Recommendations are like a blood transfusion during surgery to correct a critical concern; the surgery fails if there is no blood for the transfusion.	changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
161. Sonia Melara	Leadership, Accountability, Resources.	Leadership, Accountability,

Commentator	Comment	Committee Response
Executive Director Rally Family Visitation Services of Saint Francis Memorial Hospital San Francisco, CA	There are other related recommendations and sections that I will site in these comments. However, I selected this one first as it is the only section that mentions Supervised Visitation Services. While not directly connected to the legal representation of litigants, visitation services is an integral part of Parenting plans, case management, safety plans (in DV and child abuse cases) and the overall continuum of services to families in the Family Law System that could -depending on qualifications and relationship with the court- help or hinder the time families stay in the Court process. Visitation Services are severely under-resourced, which one of the reasons they are disappearing from local communities. Therefore, they should be incorporated into the services provided to families who need them. The present Uniformed Standards of Practice required for those programs working through the AOC's Access Grant should be standardized for all programs through the State providing such services. These standards are very inclusive of Court, family and training needs. All Courts, should use consistent standards to ensure that they can be assured that the services being provided can be used by the Court in the same manner as other professional (evaluators, attorneys etc) are used by providing input to make decisions on Family Law Cases. At a recent hearing by the State Select Committee on Domestic Violence, several of those who testified from several counties, in addition to reporting lack of funds for representation, they also reported that in their counties there are no standards for Supervised Visitation providers, as well as the cost associated with these providers. The Courts in these counties usually provide a list of providers without any idea of their qualifications. A change in this area may require additional	Resources. The Task Force recognizes the lack of available resources for supervised visitation, and recommends that the courts "seek creative partnerships with community organizations to address the significant unmet need for affordable, convenient supervised/monitored visitation and exchange services." The Task Force did not address standards of practice for supervised visitation providers, and this suggestion will be forwarded to the implementation process.

Commentator	Comment	Committee Response
	legislation. However, these services are essential, especially where the safety of one or more family members is a concern, as well as providing a voice and a safe place for children (recommendation 5 & 7). Other than through a Child's Counsel, often, qualified supervised visitation centers are the only neutral environment where children can feel free to freely communicate with one of their parents and protect them from additional conflict and trauma. Legislation that includes visitation services would provide "judicial officers the authority to manage family law cases from initial filing through post-judgment."(Recommendation 3). This would contribute as well to the centralization of rules as recommended in recommendation 4 The Caseflow Management This recommendation cannot effectively be implemented without taking into consideration visitation needs, which for some counties represent about one third of the cases in Family Court. Lastly, I applaud the taskforce's emphasis on looking for ways to develop approaches that use minimum resources as well as looking at present best practices. I would suggest you look at the San Francisco court model for how the court partners with their supervised visitation provider. I would also recommend that resources be allocated, along with other family court services, throughout the state to ensure these services are available.	Caseflow Management Agree that supervised visitation is a critical resource to help many families and that partnerships to allow services to those in need should be developed.
162. Claudia Mercellin Stanislaus County, CA	*Commentator provided specific concerns related to her case.	No response required.
163. Hon. Douglas V. Mewhinney Presiding Judge	These Comments are submitted unanimously by the Judges and Court Executive Officer of the Superior Court of California, County of	

Commentator	Comment	Committee Response
Hon. John E. Martin, Judge Hon. Grant V. Barrett, Commissioner Ms. M.B. Todd, Court Executive Officer Superior Court of Calaveras County	Calaveras. Comments applicable to all of the Draft Recommendations While the Elkins Family Law Task Force had a limited case type on which to focus, we in the trial courts have to consider these recommendations as they would affect the court as a whole. In a system of competing resources, this is often a difficult balance. Many of the recommendations contained in the task force recommendations will require significant resources to implement and where the court indicates agreement with a recommendation it is with the understanding that adequate resources will be provided. Comments on specific Draft Recommendations Live Testimony at Hearings Agree if modified. The Elkins charge – "The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings." Further, Guiding Principle 2 of the Elkins Family Law Task Force provides "Statutes, rules, procedures, and practices will protect procedural fairness and the due process rights of parties as well as seek to increase efficiency, effectiveness, consistency, and understandability. Simplification must not diminish due process rights. Task force recommendations will be evaluated for their potential impact on due process, fairness, and effective and timely access." Civil litigants are generally not permitted to introduce live testimony at law-and motion hearings. Preliminary injunctions and summary judgment motions, while critical to the outcome of the case are restricted to the evidence found in the	Comments applicable to all of the Draft Recommendations Agree that the trial courts have great challenges in balancing case types. The Task Force recognizes that additional resources will be required to implement many of its recommendations. However, it is mindful that progress cannot be made without setting forth goals. Live Testimony at Hearings The Task Force recognizes that law and motion type hearings may not require oral testimony. However, many issues heard as part of motions in family law are very substantive. Preliminary injunctions and summary judgment motions The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed

Commentator	Comment	Committee Response
	pleadings. This is necessarily so because of the due process concerns regarding adequate notice and opportunity to be heard. This recommendation raises due process concerns. The recommendation does not address whether live testimony will be taken on the facts asserted in the pleadings or whether new or different facts may be introduced at the hearing without prior notice to the opposing party. Additionally, while the recommendation limits the judicial officer's discretion whether to take testimony it assumes the judicial officer can thereafter appropriately control the testimony "within the scope of the hearing." May the responding party simply deny all factual allegations and demand to cross-examine the moving party? May the responding party offer impeachment witnesses? What if one party is represented by counsel and chooses to appear though counsel, who testifies for that party? Agree if modified as follows - Live testimony at law-and-motion hearings shall be required to address the facts in the moving and responding pleadings which the judicial officer needs clarification in order to make the appropriate orders. Expanding Legal Representation	to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. Although the scope of testimony should be limited to the issues raised in the pleadings, The Task Force hesitates to require the parties to present their proposed testimony in their moving papers or risk having it excluded altogether. It is important that family law matters be decided on their merits. The Task Force anticipates the use of reasonable continuances when necessary to provide adequate notice and opportunity to prepare a response to facts arising in the testimony of the parties at the hearing. These issues should be carefully discussed in the drafting of implementing rules. Expanding Legal Representation

Commentator	Comment	Committee Response
	Agree. Emphasis on early attorney fee awards and expansion of self help resources are valuable improvements for family law litigants. Caseflow Management Agree. This is the single most important recommendation for improving and maintaining equitable outcomes for families. Many of the arguments for the other recommendations, such as mandating live testimony at law-and-motion hearings, are based upon the fact that currently courts are not actively managing family law cases to prompt disposition. Calaveras Superior Court has been conducting family law caseflow management conferences since July of 2002. The positive benefits of caseflow management to the litigants, family law bar, and court are numerous and wide ranging. Calaveras Superior Court has experienced a reduction in contested motions and trials, as well as significantly shorter case disposition times. Caseflow management works like a "safety net" for families in the court system. The common complaint against caseflow management is the potential for additional court appearances generated by the program. This issue has been addressed satisfactorily in Calaveras by instituting tentative rulings allowing parties and counsel confident in the handling of their case to avoid the hearing. We would be pleased to share our experiences and processes upon request. Clear Guidance Through Rules of Court Agree if modified. Uniformity in family law practices and procedures statewide will benefit families, the bar, and the court. The term "best procedural	No response required. Caseflow Management The experience of Calaveras will be very helpful in implementation efforts. Clear Guidance Through Rules of Court Agree with this recommended change in language to recognize the value of

Commentator	Comment	Committee Response
	practices" suggests that there is one best way to approach a process when in fact there may be several "effective" methods and those methods may change over time. Further, blanket uniformity and a ban on local rules may stifle creativity in addressing the needs of California's families. "Best practices" serve as worthy goals but may not be suitable for incorporation into the Rules of Court which have the force and effect of law and absent adequate resources may not be achievable. Agree if modified as follows – The California Rules of Court should be revised to be more comprehensive in order to provide greater statewide uniformity. Local courts should be encouraged to continue to pilot innovative family law programs and practices by use of local rules which are not inconsistent with the California Rules of Court.	pilot innovative family law programs.
	Children's Voices Agree. Although Family Code §§ 3042 and 3150 address the issues raised, statewide training of the bench and bar on child involvement in contested custody disputes and developing effective practices are worthy endeavors.	Children's Voice No response required.
	Domestic Violence Agree if modified. Personal conduct restraining orders are important tools to protect the parties and their children from harm. The ancillary court powers to make orders of custody and support are sometimes necessary to ensure the protective orders are truly effective. The legal processes involved with these orders focus on protection from harm and automatically include firearms prohibitions as well as presumptions on custody and support. The domestic violence case should not become the	Domestic violence The Task Force recommendations for survival of orders and parentage orders in Domestic Violence Prevention Act matters reflects an interest in promoting access and increasing court efficiency while protecting due process.

Commentator	Comment	Committee Response
	catch-all forum for parentage, custody, and support determinations. Agree if modified as follows - Expiring domestic violence orders containing parentage, custody, and support orders should be treated similarly to juvenile exit orders. Thus, where there is no other family law case to receive the parentage, custody, and support orders, the order shall be the sole basis to open a file. See California Rules of Court, Rule 5.700.	Treating custody orders like juvenile exit orders The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Enhancing Safety Agree if modified. This issue should be addressed within Recommendation 5 “Children’s Voices.” Uniformity and adoption of effective practices protecting children when faced with abuse allegations are important issues to address.	Enhancing Safety Agree; recommendations for children’s participation are contained in the Children’s Participation and Minor’s Counsel section.
	Contested Child Custody Agree. Resolving child custody disputes is a core function of the family law court. “Recommending mediation” can be confusing to the parties who may not understand where the confidential mediation session ends and the information gathering for making a recommendation begins. Dedicated resources for court appointed counsel for children (Fam § 3150) and trained custody investigators and evaluators (Fam. § 3110) are essential for contested custody disputes where the children are suffering in the tug of-war between parents.	Contested Child Custody No response required.
	Minor’s Counsel Agree. Appointment of an attorney to represent the interests of the child in a contested custody proceeding is an important matter. Further	Minor’s Counsel No response required.

Commentator	Comment	Committee Response
	efforts to clarify counsel's role, responsibilities and qualifications will benefit the child, parents, appointed counsel, and the court. Scheduling of Trial and Long Cause Hearings Agree if modified. As noted previously, implementing caseflow management will facilitate better calendaring practices in family law by identifying the triable issues, important witnesses or other evidence, and providing more accurate estimates of trial time. The likelihood of cases getting "lost in the system" without resolution is greatly reduced by ongoing caseflow management. Comment on Draft Recommendation 1. B. In smaller counties where the judges may preside over multiple case types and proceedings, there may be a limited number of days per week in which they have to hear all trials. If this recommendation is implemented, courts in these circumstances may more often than not have to make the good cause finding to continue the proceeding to a date where there is not a conflict with a higher priority case type (i.e. juvenile or criminal). Agree if modified as follows – (Remove requirement for good cause finding in 1.B. as follows) "Unless there are matters scheduled that take precedence, courts should conduct such trials and hearings on consecutive trial days."	Scheduling of Trial and Long Cause Hearings. The Task Force agrees that effective caseflow management should provide significant help in addressing many of the issues related to scheduling of hearings and trials. The goal of the Task Force is to ensure to the greatest extent possible that long-cause hearings and trials be completed once they have started, without undue interruption. The recommendation has been modified to clarify the language to mean that these hearings and trials once started should be continued to the next time the court routinely sets these matters. The recommendation also expressly recognizes that there are other calendar matters that may have preference, but recommends that the interruption of an ongoing hearing or trial must be an exception rather than the standard practice. Other commentators have suggested that the Task Force make a list of good

Commentator	Comment	Committee Response
		cause factors a judge should consider if deciding to interrupt it prior to completion. The suggestion of making one of those factors the existence of a matter entitled to preference should be considered as part of implementation.
	Litigant Education Agree. Early education and orientation on family court processes, mediation, evaluation, and settlement options are essential to reduce the fear and anxiety experienced by self-represented litigants so they may make more informed and reasoned decisions on the viability of the marriage, parenting plans for their children, division of property, and support obligations. Participation in caseflow management will provide consistent direction to the litigants throughout the process.	Litigant Education No response required.
	Expanding Services to Resolve Cases Agree. Additional emphasis and resources devoted to alternative dispute resolution are essential to handling the family court case load. Non-custody mediation, arbitration, and settlement conferences are important elements for consideration in every civil case and should likewise be available to family law litigants. Appropriate funding for community property arbitration services (Fam § 2554) and court-monitored settlement conferences would provide substantial benefits and reduce the need for court trials.	Expanding Services to Resolve Cases No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Streamlining Family Law Forms and Procedures Agree. Many of the issues addressed in this recommendation will assist self represented litigants through the process. Specifically, the authority for service by posting for indigent petitioners where the other party's whereabouts are unknown will provide significant relief. The Task Force should consider whether modification of the notice time periods for motions codified at CCP § 1005 should be extended for child custody motions where no temporary orders have issued. A modest extension to the notice time would allow the parties to attend orientation and mediation services prior to the hearing on the motion. It has been this court's experience that pre-hearing orientation and mediation greatly reduces the need for contested hearings and/or continuances. Enhanced Perjury Sanction Agree Standardize Default and Uncontested Processes Statewide Agree. Interpreters Agree Public Information and Outreach Agree. Judicial Branch Information	Streamlining Family Law Forms and Procedures No response required. Modification of CCP 1005 The issue of modifying time periods for motions for child custody to allow parties to attend orientation and mediation should be considered as part of implementation. Enhanced Perjury No response required. Standardize Default and Uncontested Processes No response required. Interpreters No response required. Public Information and Outreach No response required. Judicial Branch Information

Commentator	Comment	Committee Response
	Agree Family Law Research Agenda Agree Court Facilities Agree Leadership, Accountability, and Resources Do Not Agree. It is the duty of the presiding judge to work to ensure adequate resources for all case type services and to determine how best to allocate scarce resources. It would not be appropriate to give greater visibility or weight to family law services. Status of Supervising Judges Do not agree. This would give an inappropriate weight of importance to family law services over all other case type services and would diminish the ability and authority of the presiding judge to effectively manage the court.	No response required Family Law Research Agenda No response required Court Facilities No response required Leadership, Accountability, and Resources Standard 5.30 The Task Force recommends that Standard 5.30 - which directs the supervising family law judge, in consultation with the presiding judge, to work to ensure that the family court has adequate resources – be elevated to a Rule of Court. The Task Force believes that the Presiding Judge can still appropriately exercise his or her authority with this change. Status of Supervising Judges The recommendation on the status of the supervising judge is intended to ensure that the needs of the family court are given appropriate priority and focus at the leadership level. The Task Force believes that the Presiding

Commentator	Comment	Committee Response
		Judge can still appropriately exercise his or her authority to manage the court with this change.
	Family and juvenile court role within trial court governance structure Do Not Agree. This would serve to give greater importance to one case type over another. The presiding judge must have the flexibility to staff internal committees to best represent the court as a whole.	Family and juvenile court role within trial court governance structure The recommendation has been modified in response to comments to provide instead "to ensure that family and juvenile law bench officers are regularly consulted on policy issues, resource allocation, and facility needs."
	Ensuring access to the record Agree If Modified. Change reference to "court reporter" to "verbatim record in accordance with the law."	Ensuring access to the record The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
164. Barry W. Meyer Law Offices	The time, effort and consideration in preparing the recommendations and report are obvious. The task force is to be commended. Generally, I	

Commentator	Comment	Committee Response
Santa Rosa, CA	support the report and its recommendations. There are a few items on which I wanted to express an opinion. Right to present live testimony at hearings. Statewide rules are important. Live testimony is often the best evidence. It has been my experience over the last several years that the trial courts have the parties sworn in as witnesses. Thus the parties have the relative comfort of sitting at counsel table and yet their statements can be considered as evidence. Most frequently each of the parties knows the allegations and testimony that will be presented. They are found in the pleadings. Live testimony can be detrimental to due process and the interests of justice if the allegations and/or evidence presented by a party at a hearing is not contained in the pleadings or otherwise disclosed. When this does occur, the opposing party is prevented from being prepared to address the allegations. Testimony outside the scope of the pleadings before the court should not be permitted, unless the matter is continued for a reasonable time to permit disclosure and preparation for hearing. Live third party testimony, unless identified in the pleadings or by a disclosure identifying witnesses and the general nature of their testimony, deprives a party of the right and opportunity to prepare and defend themselves. Live testimony should only be taken after disclosure of witnesses and the nature of the proffered testimony. The party against whom such testimony may be offered must be accorded due process and allowed to prepare for such evidence. At a continued hearing the trial court can then exercise its discretion in control of the hearing.	Right to present live testimony at hearings. The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. The scope of testimony should be limited to the issues raised in the pleadings. It is important that family law matters be decided on their merits. The Task Force anticipates the use of reasonable

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		continuances when necessary to provide adequate notice and opportunity to prepare a response to facts arising in the testimony of the parties at the hearing. These issues should be considered as part of drafting implementing rules.
	Expanding legal representation and providing a continuum of legal services. Statewide rules are important. A uniform method of determining early fee awards could be helpful. With a few exceptions, it is better for the parties, the court and opposing counsel that all parties be represented. Legal representation assists in moving the case to resolution. All too often I have seen and experienced the abuse of a demand for early payment of attorney fees and 'churning' of matters. It creates a disparate bargaining power and a potent psychological weapon. In the end we must depend upon the experience, expertise and wisdom of the trial judge.	Expanding representation and providing a continuum of legal services Statewide rules regarding attorney fees should be considered as part of implementation.
	Caseflow Management. Statewide rules are important and will help with dealing with the issues presented in any case. In my opinion, time standards are not appropriate to family law cases. It is my observation that parties are rarely emotionally ready for serious decision making after separation. It is usually at least three months, and often substantially more, before they are in a state of mind to make rational decisions. Frequently emotional and financial issues require time, not time standards, to work through to the best result. I have found the trial courts open to exercising their	Caseflow Management The time frame suggested by the comment would be entirely appropriate for the time standards suggested. These standards are designed to reflect those parties who have already agreed upon all matters in their case prior to filing (such as with a summary dissolution) as well as

Commentator	Comment	Committee Response
	discretion and taking control of a case where such action is merited. Providing Clear Guidance Through Rules Of Court. The practice of family law is much more about procedure in 2009 than it was when the Family Law Act was enacted. Family law matters are 'civil' cases. As such all of the Rules of Court and procedural requirements of the Code of Civil Procedure should apply, as they do in other civil cases. Uniform application of the Rules and Code provisions will simplify matters for the trial court and clarify the requirements for counsel and the parties. Children's Voices & Minor's Counsel. The task force sees the impact on children, of all ages, that arises from a family law case between their parents. You recognize and address the challenges to the children. Despite knowing the current law, I have a problem with the concept that 'the decisions of fit parents are presumed to be in the best interest of a child'. Often parents in a family law case are focused primarily on themselves, not the children. Parents who try to focus on the children can lose sight of their best interests and enter into agreements for the sake of a resolution alone. In an ideal world, in every family law case, contested or uncontested, counsel would be appointed for minor children. The children would then have a voice in circumstances they did not cause but which significantly impact their lives. Trial courts can make appointments, but faced constraints that weigh against its frequent use. Requirements for qualification of counsel for a minor result in a limitation of representation. Qualifications create a limited pool of	those cases where much more time will be needed. Providing Clear Guidance Through Rules of Court Agree that the Rules of Court and procedural requirements should apply, however on the face of many of the civil rules, they do not currently. Clarifying which rules apply and which do not should help simplify matters. Children's Voices & Minor's Counsel The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The court in contested child custody cases must strike a balance and consider children's participation on a case-by-case basis.

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	attorneys for children, and often that pool represents only those attorneys who share the same societal values and a common view of the law.	
	Litigant Education. The parties can never receive enough information, education or advice. We are fighting the parties' emotions and often the failure of our education system, in the process of educating parties and assisting them in making informed decisions. Parties (litigants) seem to be visual. Their communications come from the internet, emails, twitter, DVDs, televisions, etc. The court already provides an extraordinary level of informative and educational written material. Litigant education needs to be visual and audio.	Litigant Education Agree that education is very important and should be provided in a variety of formats.
	Statewide rules could be considered requiring parties to be present and in the courtroom before the scheduled hearing. A professionally prepared video can cover the issues presently provided (normally live) by trial judges. Included in the video could be a reference to a mediator and/or facilitator who is readily available that day.	Prehearing videos can certainly be considered. These might also be offered on-line so parties could be prepared prior to their hearing.
	Enhancing Mechanisms To Handle Perjury. Rules and Code provisions have been in place for years that empower the trial courts to handle this. We need enforcement of what we have. It is also my best information that trial judges have been and are being encouraged not to make orders and grant sanctions against attorneys and litigants for this behavior.	Enhancing Mechanisms to Handle Perjury – This recommendation has been significantly modified based on this and other comments.
	Summary You folks have done a Herculean job. Whether I agree with your	

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	recommendations or not, I am supportive of the effort to improve the California family law system.	
165. Howard B. Miller President State Bar of California	On behalf of the State Bar of California, I am writing to thank you and the entire Elkins Family Law Task Force for producing a superb set of draft recommendations to improve the administration of family law in California, and to thank Justice Zelon personally for speaking with us at our November Board of Governors meeting. The State Bar is committed to helping in the implementation of your report. We are on record as already supporting many of your recommendations, such as increasing interpreters in civil cases, making access to transcripts easier and cheaper, supporting self help centers, and increasing limited scope representation and expanding representation for all. We appreciate and support your other recommendations on simplifying and standardizing many procedures state wide, and improving the training and knowledge of both counsel and litigants in family law proceedings. I personally want to recommend you emphasize one other thing - changing the culture and practice in the California legal profession which seem to undervalue family law proceedings, that, after all, for many of California residents are their single most important contact with the justice system - dealing with child custody, spousal support, domestic violence and other matters that dramatically affect their personal and daily lives. It is simply unacceptable that we are part of a legal profession in which it is the norm that today, statewide in California, close to 80 percent of all cases in family law courts involve self represented litigants at those critical stages of decision.	The Task Force appreciates the support of the State Bar. The Task Force agrees that it is critical to change the culture and practice in the California legal profession which seems to undervalue family law.

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	It all starts with the law schools. Though it affects more lives than almost any other area of the law, Family Law is not considered one of the more exciting areas in legal education. It is not on the Bar Exam, except for the limited community property area. And there are very few law school Family Law Clinics, which if properly done could play a major role in dealing with the representation deficit in our Family Law Courts. And I noticed, consistent with those facts, on the roster of the Task Force there appeared to be no Deans or other representatives of any law school. The curricula, clinical experiences, and culture of legal education should more accurately reflect the area of law that directly affects more Californians than any other. The legal profession exists for the sake of our clients and the public interest. We do not exist for ourselves. And we have an obligation to see that the culture of our profession, its values and the services it provides, mirror the needs of those clients and the public. In the Family Law area we have failed. It is recognizing that and changing our culture that is important as anything else the Task Force recommends.	The Task Force concurs that changing the legal culture will also be critical to making the many positive improvements suggested in this report. The suggestion here to seek more attention being paid to family law in law schools should be considered as part of implementation. Perhaps the Bar can begin a dialogue with the law schools and invite the courts to participate.
166. Kenita Mitchell Cypress, CA	Expanding Legal Representation Those who suddenly find themselves in dissolution proceedings and who do not fall within the low income bracket, be it that they are low middle class to middle class are unable to secure legal representation as they do not have the financial means to do so. Yes, Legal Aid assists many low income individuals, but low middle class to middle class are not able to obtain their services. My recommendations are to create a database of attorneys who will work pro bono or with low fees, as well as establish another organization which can assist low middle class to middle class who are willing to pay what they can to secure and maintain legal representation throughout the family proceedings.	Expanding Legal Representation Many lawyer referral services operate modest means panels to help address the needs of persons who are not eligible for legal services, but cannot afford the full cost of a private attorney. The Task Force has encouraged the development of these panels.

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	Domestic Violence Victims of Domestic Violence are not always able to understand the judicial procedures to take the necessary means of protecting themselves and their families. A victim may be in a current dissolution proceeding and fear that bringing the issue of domestic violence may further put this individual and his/her family in jeopardy. Courts should take a closer look at when domestic violence arise in the proceedings and further inform and educate on the process to protect himself/herself. In one case, the judicial officer had screamed at the victim, who was representing herself in pro per, that if he/she is a victim of domestic violence to file in the DV court. The judicial officer already had an unfavorable opinion of the victim. Not understanding the system and concerned that if she filed in DV court, this may also be looked upon unfavorably by the court. Thus, she endured the domestic violence. Domestic violence goes beyond physical violence and into other realms of financial, emotional, and verbal abuse and consists of control and manipulation. Judicial officers overseeing a dissolution matter may not have the training on how to recognize the domestic violence and penalize the victim, who may be view as being uncooperative and uncommunicative based on the fear of retaliation or loss of one's rights and family. My recommendation is to a have list of domestic violence agencies available for the victim; more legal services provided by these domestic violence agencies who could partner with the court in the provision of services; and providing training to judicial offices on domestic violence. Contested Child Custody In a contested child custody case, there is a lot of information at the	Domestic violence The Task Force agrees that litigant education and access to legal services are vital to the improving the family court process for litigants. Contested Child Custody The Task Force did not make

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	court's disposal. One is the use of Family Wizard website. Courts orders parents to use this website, but do not monitor the communication interchange which can provide the court with a wealth of information into the issues of the case. Additionally, evidence that is submitted is often ignored. Minor's Counsel The use of minor's counsel is widely ineffective, especially when it is the sole resource that is used in determining what is in the best interest of the child. Minor's counsel does not have the necessary training as a child evaluator and should not be regarded as one when one should have been provided. Minor's counsel is an attorney who meets briefly with parents and has been known to take the side of one parent over the other without thoroughly investigating and communicating with both parents. In the case when the child is too young, minor's counsel cannot speak with the child directly. Minor's counsel communication with people in the child's life results in the use of hearsay and lack of evidence. His recommendations, often unfounded and without merit and substantiated evidence, is believed by the judicial officer and taken strongly into consideration leading to a judgment based on these recommendations. A child evaluator should be appointed to a case, not minor's counsel. Additionally, minor's counsel is an attorney, and is human. Minor's counsel can harbor biases, use the law to intimated a parent, and manipulate as well as sabotage not only the outcome of a dissolution and child custody case, but also the lives of all involved. Biases that minor's counsel allow him/her to support an abuser, or the wrong party and make decisions based on these biases. For the parties involved, the role of minor's counsel should be explained. Additionally, instead of ordering minor's counsel, parties should have a choice as to	recommendations regarding specific computer programs or service providers. Minor's Counsel Current law allows for appointment of minor's counsel and statewide rules of court provide additional guidance as to the types of cases or situations that might merit such appointment. The Task Force recommendations in this section include a variety of ways children might participate in the process, including, among others, with the assistance of minor's counsel. The recommendations provide further clarification of the role and changes in existing law designed to further protect due process and prevent recommendations from being made inappropriately.

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	if they want minor's counsel or a child evaluator. Minor's counsel has been shown to be an expensive implementation to the court system. If a party feels that minor's counsel has been unfair or bias, there should be resources available to file a complete. Also, he should have the right to have another representative appointment for the child without fear of losing his rights. The use of minor's counsel should be done away with. Too many conflicts of interests exist, judicial officers unfairly agreeing with minor's counsel, and this is a broken part of the system. Parties should not have to pay for the services of minor's counsel, nor should they be intimated by minor's counsel because he yields much power on their circumstance. There should be an oversight committee involved in such proceedings. Interpreters Interpreters---for Deaf and hard of hearing who are under the Americans with Disabilities Act, the use of providing interpreters in the courtroom should not be limited to the individuals case, but if they want an interpreter for a public hearing, they should be provided with one. Also, judges should be trained on clients with disabilities and well as how to use an interpreter in the courtroom. Interpreters should be readily available for individuals who use American Sign Language in the Self Help services. Deaf and hard of hearing often have a difficult time finding adequate representation because their communication needs or misunderstood and often not considered.	Interpreters Agree that sign language interpreters should be specifically mentioned.
167. Philip Monahan, Esq. Minyard Morris LLP	As family law attorney, I would like to express my appreciation for the efforts of the members of the Elkins Family Law Task force. I know	

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Practice Limited to Family Law Litigation, Collaborative Law & Mediation Newport Beach, CA	that every member of the Task Force has devoted a significant amount of time and energy towards the improvement of the services provided by the family courts, and towards improving family law in general. Your efforts will benefit me personally for years to come. More importantly, the efforts of the Elkins Family Law Task Force will improve the family law experience for the people who need it the most, the litigants, most of whom are citizens of California, who look to the courts of California for resolution of some of the most important conflicts in their lives. Like the members of the Task Force, I agree that Mr. Elkins' experience in the family law system of this state was unacceptable. It was unacceptable to have rules so complex that non-attorneys could not follow them, either because they could not comprehend the rules or they were too burdensome to be followed. The family law system should strive to accommodate those not fortunate enough to be able to afford attorneys. The rules Mr. Elkins faced penalized these people. Likewise, I do not believe it is a good idea to have significantly different rules in every county and every courtroom. These rules make the accurate transfer of information about family law throughout the state difficult. I commend the Task Force for addressing this issue. Perhaps most importantly, I appreciate the Task Force's efforts to increase the amount of live testimony in family law courts. For some family law litigants, the opportunity to have their voice heard and their story told is an important part of the process of resolving their conflict. Sometimes being able to tell their story in court is as important to parties as obtaining a particular result. I know that increasing the	Local Rules No response required. Agreed – No response required. Live Testimony No response required.

Commentator	Comment	Committee Response
	amount of live testimony is about more than letting litigants tell their side of the story, though. It's about upholding the fundamental belief in the importance of due process in the judicial system. As a citizen of California and the United States, I appreciate the efforts of the Task Force to uphold and strengthen this principle. Meanwhile, I am glad the Task Force recognized that in order to increase live testimony in family law courts other changes in family law were necessary. Judges need to have their burdens eased to accommodate the increased court time that will be used to allow more testimony. Also, measures are needed to ensure that those litigants who can afford attorneys are able to retain them. And measures are needed to protect the rights of self-represented litigants. It is apparent the Draft Recommendations addressed each of these areas. Again, I would like to express my gratitude to the member of the Elkins Family Law Task Force for your efforts at improving family law in California. Thank you for your time and efforts.	Leadership and Accountability and Expanding Legal Representation No response required.
168. Enrique Monteagudo, J.D., Family Advócate San Diego	In general, I believe that there are major, overarching and/or reoccurring problems in family law. In particular, (1) there an imbalance in the Family Court of too much discretion and too little accountability, (2) there is too direct of a tie between child support and parenting (thereby increasing litigation), (3) there an imbalance in the Family Court between the high volume of cases (having high stakes for all involved) and the attention and/or funding allotted, and (4) the discretion assumed by the Family Court has been expanded so broadly that it permits ignoring Legislative policy without remedy. One recommendation that should be added is CA Rules of Court should	

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	be amended to state that, in proceedings where no witnesses are examined (i.e., Reiflerized proceedings), and all factfinding is based on the pleadings, a Reviewing Court should not defer to a lower court. This is because the basis for deference no longer exists, and the Reviewing Court sits in as good or better a position to make the same determination in the first instance. With regard to the Draft Recommendations, please consider the following comments Rules of Court Agree with the recommendation subject to modifications as described below. The Rules should at least attempt to provide a working definition and objective guidelines for the following widely used terms "Child's Best interests", "Joint physical custody", "Frequent and continuous contact", "Safety, health, and welfare", and "Domestic violence". Currently these terms have been interpreted so broadly that they hardly mean anything. Children's Voices Agree with the recommendation subject to modifications as described below. There should be a new Rule authorizing one or both parents to make rebuttable declarations as the child's parent "based on information and belief" to avoid having to call the child as a witness.	Rules of Court Rules of Court are procedural in nature, and are not designed to provide working definitions and objective guidelines for terms which have been used by the legislature. Guidance regarding substantive law is provided by the legislature and court decisions interpreting statutes. Children's Voices The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	Contested Child Custody Agree with the recommendation subject to modifications as described below. Specifically include a check box on the court Minutes form requiring the judge to identify "which parent is more likely to allow the child frequent and continuing contact with the other parent." This alone will reduce much of the adversarial posturing that plagues the family court. Investigators and evaluators Agree with the recommendation subject to modifications as described below. Evaluators and investigators should be paid for by the Court. Also, courts should not rely health specialists (e.g., MFTs, LCSWs, PhDs) as mere (often expensive) fact-finders, but should make use their therapeutically training (e.g., suggesting long term healing solutions) to encourage parents to reduce conflict and to learn to share the rights and responsibilities of child rearing. Child custody mediation services Agree with the recommendation subject to modifications as described below. Where no agreement is reached, there should be no record of the mediation, other than it took place. At that point the parties would either advance to court, barring any introduction of mediated matters, or the parties would schedule a non-confidential "recommending" mediation in the normal course.	Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Investigators and evaluators The Task Force recommends that evaluators and investigators be made available for those cases that would benefit from those appointments. Child custody mediation services The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Those details related to implementation of the pilot projects in this section should be considered as part of future

Commentator	Comment	Committee Response
		implementation efforts.
	Child custody language Agree with the recommendation subject to modifications as described below. Where there is "joint physical custody" each parent shall be referred to as a "custodial parent" regardless of parenting time and regardless of whether he or she is a child support obligor or obligee. For example DCSS currently uses the terms NCP and CP as synonymous with obligor and obligee.	Child custody language This recommendation was redrafted to recommend that "parenting time" be used instead of "visitation" but not instead of "custody."
	Enhancing Mechanism to Handle Perjury Agree with the recommendation subject to modifications as described below. The court must act on perjury where there is "clear and convincing evidence". The court must presume that parent proven to be willfully making a false allegation of DV or child abuse is an unfit parent.	Enhancing Mechanisms to Handle Perjury This recommendation has been significantly modified in response to comments.
	Judicial Branch Education Agree with the recommendation subject to modifications as described below. Add that judicial educational courses must emphasize the importance of long term effects on children, with special emphasis on protecting and fostering the lifelong parent-child relationships with both parents.	Judicial Branch Education The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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
	Procedural justice Agree with the recommendation subject to modifications as described below. Also include an entry on substantive justice or substantive due process,	

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	which would include constitutional protections of the parents' fundamental rights to raise their children and the child's fundamental right to have both parents. A recurring theme at all public hearing was that judges frequently do not follow the substantive law and policies of the state. This must be addressed and should not be ignored. Family Law Research Agenda Agree with the recommendation subject to modifications as described below. This must include a broad cross-section of community stakeholders and family/juvenile justice system partners. Performance measures Agree with the recommendation subject to modifications as described below. This must include a broad cross-section of community stakeholders and family/juvenile justice system partners. Litigant Surveys Agree with the recommendation subject to modifications as described below. Also incorporate questions related to substantive fairness. Also, where applicable, performance evaluations should include feedback from customer performance surveys, with all feedback information being transparent and readily available to the public.	adjudicated in family court." This comment provides specific suggestions about educational content, and it will be referred to the implementation process. Family law research agenda Recommendation has been modified to include key stakeholders as partners in the development and implementation of the research agenda. Performance measures Recommendation has been modified to include key stakeholders as partners in the development and implementation of the research agenda. Litigant Surveys The recommendation was not intended to exclude questions related to substantive fairness, but to place emphasis on procedural fairness because research has shown that procedural fairness is a much more important determinant of confidence in the courts. The Task Force believes that research and statistical projects should be conducted separately from

Commentator	Comment	Committee Response
		any quality control processes or performance monitoring. Methods of ensuring accountability are addressed in other sections of the recommendations.
	Best practices on self-assessment Agree with the recommendation subject to modifications as described below. "Best Practices" should include substantive best practices such as which approaches lead to the parties being more satisfied, which approached reduce conflict, and which approaches lead to increased parental sharing.	Best practices on self-assessment The suggestion about best practices will be referred to the implementation process.
	Supervised/monitored visitation Agree with the recommendation subject to modifications as described below. Add, since an order of parenting time is, by definition, in the child's best interest (otherwise, it would have not been ordered), allow child support to be diverted to pay for supervised visitation.	Supervised/monitored visitation This suggestion addresses a substantive policy issue – allowing child support to be ordered for supervised visitation – that the Task Force did not address.
	Local communities to improve family and juvenile justice Agree with the recommendation.	Local communities to improve family and juvenile justice No response required.
	Duties of presiding judge Agree with the recommendation.	Duties of presiding judge No response required.
	Complaint mechanism	Complaint mechanism

Commentator	Comment	Committee Response
	Agree with the recommendation subject to modifications as described below. Include substantive fairness as well. Court ombudsman Agree with the recommendation.	This comment suggests that the recommended self-assessment tool to ensure that local rules and procedures are in compliance with state law and rules should include substantive fairness. This suggestion will be forwarded to the implementation process. Court ombudsman No response required.
169. George G Montgomery Hillsborough, CA	* Commentator provided information on particular case and the following comments Overall, I was very impressed with the thoughtful scope of the draft recommendations. Caseflow management There need be clear deadlines -especially for custody and especially where the default position of 50/50 is not the result. Sanctions against attorneys There must be sanctions on attorneys for misconduct and aiding or suborning perjury. Lawyers cannot get a free pass by claiming the "zealous advocate defense". There must be financial consequences (loss of fees) and referral to the State Bar (repeat offenders must have their licenses at risk for suspension or worse). In the cottage industry of family law, lawyers hesitate to impose these types of sanctions. Judicial	Caseflow Management Agree that deadlines are helpful. Sanctions against attorneys This recommendation would allow an order that sanctions be paid by the attorney – not the client in appropriate situations.

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	officers must have this authority and not be afraid to apply it. Children's voices There is too much ambiguity of how old children need to be to have their voices heard. Domestic Violence There is no mention in this section of penalties or consequences for litigants and their attorneys who bring false allegations. A father can be thrown out of his home and cut off from the children on the mere allegation of "abuse" and expanding definition of what constitutes abuse. Unlike other areas of law, there is a guilty until proven innocent element to this. False allegations and perjury put real victims at risk by adding to the cynicism in the system and creating "noise" that puts real at-risk victims at risk. If allegations prove true, all steps should be taken to protect the person(s) at risk. If the allegations are proved to be false and/or there is no real evidence (no mandatory reporters, no CPS findings, no health care issues, etc), the Court should have the ability to impose fines for 100% of the fees incurred in defending against the false DV action - applied to the attorneys and any others with direct knowledge and participation in the fraud. Data should be monitored to determine the percentage of these cases that are false - for tactical advantage in a divorce/custody proceeding. Enhancing Safety The report contains no mention of a major challenge in custody cases	Children's Voices This section has been redrafted as Children's Participation and Minor's Counsel and seeks to provide greater clarification regarding how and when children might participate in the family court process. Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Enhancing Safety The Elkins Family Law Task Force

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	related to child safety Monitoring the chemically dependent parent in cases of alcohol and substance abuse. Commentator noted use of STAT testing and drug testing where children may be at risk. If abused or false charges are made (with no history), the parties bringing false charges should be sanctioned - with financial and other penalties. If correct and testing is used, the children are protected. Enhancing mechanisms to handle perjury This is one of the most important areas to fix in Family Courts. This brief paragraph is woefully inadequate. Where there is material perjury on financial or custody-related issues, there must be serious consequences to the litigants AND the attorneys. The officers of the Court (lawyers) must be held accountable by the State Bar's code of ethics - a duty of candor to the Court. These guidelines are routinely ignored. Until lawyers are sanctioned (financial penalties - including fees and lost time at work; and license suspensions), this issue will persist and will continue to undermine the basic foundation of the Family Court system in California. The State Bar must be more active on this issue - fees can be paid by the litigants making the allegations to fund the State Bar's resources to address this. To me, perjury in the courts is the number issue to address in reform. Leadership, Accountability, and Resources Leadership there must be a clear vehicle to give feedback - for example to the Supervising Judge for an area. Commissioners there should be better oversight of commissioners acting as Judges. Transparency Chambers should not be abused. Conferences should for the most part be on the record - otherwise, how can you appeal decisions made in chambers? How can you pursue perjury by attorneys?	focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Enhancing Mechanisms to handle perjury This recommendation has been modified based upon comments. Leadership, Accountability, and Resources There are existing mechanisms to give feedback to the Supervising Judge. The Task Force recommends the creation of a complaint mechanism, complaints, and the evaluation of the

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	Overall, my family and I have been through hell over the past 13 years. The system has nearly bankrupted my family. The task force recommendations are an excellent step towards reform. I appreciate your taking the time to listen.	creation of a court ombudsman position. The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
170. Vince Morda Mediator Ventura County , CA	Child Custody Mediation Services Comments on Pilot Project Confidential Mediation I have been employed as a mediator in Ventura County since 1995, going back to a time when we went to a non recommending model in 1997-1998 (recommending mediations only by agreement). During the period when we performed non recommending mediations, it was this mediator's overall impression that the parties, in cases where an agreement was not reached, were displeased that they were forced to go through the mediation process without any findings, recommendations or results because of the confidentiality of the process. I can recall parents telling me during mediation after I explained to them, that if an agreement was not reached that nothing would be communicated to the court and all would be confidential, they would state "then why are we doing this?" They appeared to be frustrated and concerned that that	Child Custody Mediation Services Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. The Task Force has not recommended that the approach used in the pilot projects be mandated.

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	would mean more appearances, more appointments, with more time being lost at work and possibly more money being spent for attorney time. There is an argument that in a non recommending model, that the parties will be more open to sharing information and relaxed in the process and reaching an agreement as a result. This mediator does not recall any discernable difference in the agreement rate between recommending mediations and non recommending mediations during this period when we went "non recommending." It is also my belief that when mediators are trained properly, they can elicit the information needed to make a recommendation with little discomfort to the parties. I can recall that many of the local Ventura County attorneys (although not all) being not pleased at the change from recommending to non-recommending. Another impression was that as a result of the change from recommending to non-recommending that our family courts became severely backlogged because matters did not get resolved due to the lack of the mediator's testimony, resulting in more hearings / trials. A pilot program in our county would not appear to be beneficial or make sense as we have enough time to spend with the parties in mediation (between 2-4 hours for each mediation) or more if necessary. We are available, through subpoena, or at the courts or parents request to be called as a witness on our recommendation. If parties do not agree, in a confidential process, they will need to come back for a recommending mediation anyways, why cause them to come back again costing them time, money and the emotional pain of going	

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	through the process again when it can be resolved in one mediation? It does not make sense from my perspective. It is my belief that in our county, (Ventura) most are satisfied with the process that we already have in place.	
171. Sasha Morgan Managing Attorney Superior Court of Santa Cruz County	1) Worry about unfunded mandates. I support all of the Elkins Recommendations but worry about uniformity if adopted without funding to support implementation. 2) If anything could be adopted first I would hope form changes would be adopted. Form changes and supporting new law to simplify dissolutions and combining the NOM and OSC into one court form will go a long way to simplify the process.	Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Forms modifications are indeed one area where costs for implementation are potentially lower and may save costs.
172. Lorinda Morreste Mediator Victorville, CA	Children's Voices Concerns with interviewing children being parental alienated. Interviewing these children enhance the alienator's point of view and placing children at further risk. Children being multiple interviewed are not protected from being dragged into the conflicts over and over again. After it's awhile it is not about the children and what they say but about the constant arguments between the parents.	Children's Voices Recommendations in Children's Participation and Minor's Counsel emphasize the need to consider children's wishes, consider hearing directly from a child of sufficient age and capacity, and providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate. Additionally, the Task Force recommendations include

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		piloting projects designed to develop improved ways of handling cases involving allegations of abuse or neglect and minimizing the number of interviews of children in those cases.
173. Deborah K. Mullin Family Law Facilitator Superior Court of Santa Barbara County	Contested Child Custody There is a typo. The sentence at the end of para. 2 should end in a comma and then incorporate "[t]he Elkins FL Task Force recommends...." Contested Child Custody Para. 2 CC Mediation Services. Re pilot projects What is the purpose of the pilots? What results are you looking at? How will this be evaluated? There are already counties that do confidential mediation from the onset. Are you looking to see if there will be a difference in the rate of agreement in those counties currently doing recommending mediation from the onset? Or to see if one process over the other has a greater degree of parent "buy-in" and resolution (so the parties are NOT returning to court in the future)? This could be better clarified. Simplify forms for discovery Declaration of Disclosure I do not agree that a court should be able to waive the required Prelim. DOD. It's my experience that folks CLAIM they have nothing to divide, and then with probing, we discover a pension plan, a car, debts, a bank account, etc. I do not think the disclosure requirements should be changed. It would be a disservice to SRLs to waive this requirement since many don't understand enough at the onset of the case. Valuable legal rights and determinations could be lost in the drive to make things	Contested Child Custody Correction made. Contested Child Custody p. 34. The recommendation has been redrafted. The purpose of the projects is to identify promising practices and to provide litigants with access to a range of services, including confidential mediation akin to mediation in other civil matters. Simplify forms for discovery Declaration of Disclosure The circumstances under which judges might be able to waive disclosures should be carefully considered as part of implementation.

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	easier. Streamlining FL Forms and Procedures Add para. 9 CS cases initiated by DCSS are the only FL cases that still use the nomenclature of complaint, Plaintiff, Defendant (NCP), and Other Parent (CP). This approach is archaic and confusing. The Defendant may later become the CP and the payee. The Other Parent may turn into the NCP and the Payor. Parents with joint custody still experience the names of Defendant and Other Parent. It would be better to do away with these designations and instead have a Petition and two Responding Parties (the parents). That way, if the "payor" status flips from one parent to the other over the course of the case, the nomenclature is still accurate and perceived as unbiased and non-pejorative. Contested Child Custody Resources for Child Custody Mediation Services; p. 35. Re pre-scheduled appts, the following has worked well in Santa Barbara As a FLF, I set the mediation appt (for one week before the scheduled hearing date) at the time of the issuance of the OSC so that there's a court order to attend mediation on a particular date and time in advance of the hearing. The mediator then has access to the court file. If the parents can stipulate re a parenting plan, the matter can easily be taken off calendar well before the time that the judicial officer begins reviewing the file for the hearing. Streamlining FL Forms and Procedures Other Sample Agreement Templates As a FLF, I would like to see standardized MSA's and QDRO's.	Streamlining Family Law Forms and Procedures. This proposal regarding a change in nomenclature should be discussed with DCSS as part of implantation. Contested Child Custody No response required. Streamlining FL Forms and Procedures Other Sample Agreement Templates These agreements should also be

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		considered as part of implementation.
	Standardize Default and Uncontested Process Statewide I would add one other point The Legislature needs to clarify whether or not the Respondent needs to comply with the preliminary disclosure requirement in an uncontested default case. FC section 2110 states that the FDOD is NOT required from either party, and that Petitioner's PDOD IS required. The section is silent regarding Respondent's PDOD. I believe it SHOULD be required in uncontested cases, but of course not in true default cases.	Standardize Default and Uncontested Process The issue regarding clarification of the duty to comply with the preliminary declaration of disclosure should be considered as part of implementation.
174. Myrna B. Murdoch CEO Children's Rights Council Honolulu, HI	The task force made a heroic job of detailing all the woes of Family Court and suggesting practical, cost free solutions. Congratulations to the task force. On behalf of children across the country I thank you.	No response required.
175. Joyce A. Murphy UCSD – Biology La Jolla, CA	Individual raises concerns about the use of Parental Alienation Syndrome in the courts and notes the following. One hopes that despite the current budgetary constraints, there can be adequate funding for appropriate research on this topic. Unfortunately, as it now exists, the use of PAS in custody cases causes so much unnecessary harm to the real victims that it must be eliminated. Minor's Counsel Minor's counsel appointments are often not in the best interest of the child. Commentator raised concerns related to use of minor's counsel in specific case.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel Recommendations in this section are designed to address a variety of issues related to minor's counsel.

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176. Kathleen Murphy Senior Assistant Family Law Facilitator Martinez, CA	Written Orders after Hearing Agree, subject to modifications We already have judicial council forms that are very detailed, that should be used for Orders after hearing. Use of the forms by the bench officer would result in clear, enforceable Orders. For example, rather than an Order for visitation on Alternating weekends, the form prompts the user for a start date. The Supervised Visitation form would result in an Order with specifics for who would supervise, when, where, and who pays. New Judges would not overlook what are necessary components to particular Order. It would take some effort by Judges and their clerks to get familiar enough with the forms to use them efficiently at first, but I believe the time savings would be substantial after a few weeks, and litigants would not be back in court every few months because they could not agree on whose weekend it was supposed to be, where and when the kids were to be exchanged, etc. Time Standards Do not agree For all the reasons stated in the Introduction to the Caseflow Management Section on Page 17, time standards should not be established. If we set time standards, the unfortunate reality is that the system will take over and the reasons behind it will be forgotten. Cases will be pushed through, ready or not, and if not ready, dismissed. The legislature has recognized that family, juvenile and probate cases require different handling, and specifically exempted them from the Trial Court Delay Reduction Act. This proposal would effectively put family law cases on the fast track approach. As long as we can find a way to make the initial filing process clearer	Written Orders after Hearing Agree that Judicial Council forms can be helpful in crafting orders after hearing. The difficulties with orders identified by the commenter are indeed why the Task Force is making this recommendation. Time Standards This very reasonable concern about forgetting the reason for the standards should be considered as part of implementation. It may be appropriate to provide more background in any implementing rule, as well as scheduling regular reviews to determine if the timelines are appropriate. Based on research done by courts that

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	and less complicated, so that folks cannot walk away after filing the Petition thinking they are done, and we offer plenty of workshops and other assistance in getting judgments finalized, then we should stop trying to micromanage every single case and spend more time hearing the matters that actually need hearings. In my experience, when folks first file for divorce, their emotions are running high. If we push them into finishing their case quickly (and 6 months to a year can be too soon for many) we end up divorcing folks who want to reconcile, or they fight over things that, given a bit more time, would get resolved by agreement. I think we will clog the system by trying to corral every single case. Instead, the Courts should focus on getting those cases that need/want Orders heard early so that small issues don't grow into huge problems due to long waits, and leave the others to their own time frames. Children's Waiting Rooms Do Not Agree Children should not be brought to the Courthouse, period. The reality is that the Family Law Courthouse is not a happy place. Folks who come here are angry, frightened, confused etc. They cannot pay attention to instructions given by court staff when their children are running around or crying. Those of us who work with litigants cannot (or should not) discuss their case while their children are within earshot. Who will staff the waiting room? Who will ensure that there are not too many kids at any given time? How can we make sure a toddler does not get hurt by a bigger kid? Unless the plan is for the Courts to go into the drop-in day care business, I think this proposal is going to	provide case management services, a relatively small number of parties are trying to reconcile. Their cases can easily be calendared for a much later checkpoint to give full opportunity for reconciliation. Certainly, those people who need and want to move their cases should have priority for assistance. This should be considered in any implementing rules. Children's Waiting Rooms The Task Force recognizes that there are some children who come to court to testify, be interviewed, or accompanying their parents who have business at the court. Children's waiting rooms have been established in some courts with staffing being provided by volunteers or paid employees; in other instances, courts have provided space for children to wait with adult supervision.

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	result in huge liability problems if implemented. Family and juvenile court assignments and IV-D Commissioners Do not agree The very reasons that are stated in the recommendation to enhance the use of IV-D Commissioners can be used to support the continued use of SJOs in Family Law matters. Since many of the litigants are pro-pers, it is critical that the bench officer have a real knowledge (up to date) of Family Law. Property, custody, Paternity, jurisdiction, support issues can get very complex. I think the policy of ensuring that judges hear family cases is based on the faulty assumption that justice will be better served when there is a Judge hearing the case, or that the SJO is perceived as a second-class service. Let's face it, Family Law is not a popular assignment, and not all Judges are equipped with the temperament and ability to get up to speed with the necessary law and procedures in the brief time allotted for training. Many make no secret of the fact that they are counting the days until their next assignment. The SJO on the other hand, has usually come from private Family Law practice, and knows what he/she is getting into.	Family and juvenile court assignments and IV-D Commissioners While the Task Force is aware of the expertise and experience of many family law commissioners, the Task Force generally supports the existing Judicial Council policy that states that family and juvenile matters should be heard by judges rather than SJOs. And, as an exception to this general rule, where possible, IV-D commissioners should be permitted to hear all aspects of a family's case, not just the support issues. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders.
177. Darby Mangen National Organization for Women – San Gabriel Valley Whittier Chapter	*Right to Present Live Testimony at Hearings Agree. Recommendations meet stated Guiding Principles. Expanding Legal Representation and Providing a Continuum of Legal	Right to Present Live Testimony No response required. Expanding Legal Representation

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	Services Agree. Recommendations meet stated Guiding Principles. (Family Code section 2030(a) already provides for attorney fees, but self-represented litigants report that courts ignore their requests.)	No response required.
	Providing Clear Guidance Through Rules of Court Agree. Recommendations meet stated Guiding Principles.	Providing Clear Guidance Through Rules of Court No response required.
	Scheduling of Trials and Long-Cause Hearings Agree. Recommendations meet stated Guiding Principles.	Scheduling of Trials and Long-Cause Hearings No response required.
	Litigant Education Agree. Recommendations meet stated Guiding Principles.	Litigant Education No response required.
	Streamlining Family Law Forms and Procedures Agree. Recommendations meet stated Guiding Principles.	Streamlining Family Law Forms and Procedures No response required.
	Standardize Default and Uncontested Process Statewide Agree. Recommendations meet stated Guiding Principles.	Standardize Default and Uncontested Process Statewide No response required.
	Interpreters Agree. Recommendations meet stated Guiding Principles.	Interpreters No response required.
	Public Information and Outreach Agree. Recommendations meet stated Guiding Principles.	Public Information and Outreach No response required.

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	Judicial Branch Education See attached comments and proposed modifications Court Facilities Agree Recommendations meet stated Guiding Principles. Additional comments in row 273 (Connie Valentine Row).	Judicial Branch Education Please see response to Ms. Connie Valentine. Court Facilities No response required.
178. Hon. William J. Murray, Jr. Presiding Judge Superior Court of San Joaquin County	On behalf of the San Joaquin Superior Court Assignment of judicial officers to family law The report indicates that 20% of the total judicial workload for the state is family law cases. If this is a reference to weighted case filings, then the report should be clear on that point. If the percentage is not based on weighted case filings, then the statistic may not accurately reflect the true percentage of judicial workload. The Task Force suggests that trial courts could shift their judicial resources to devote 20% of their judicial resources to family law matters. Their recommendation implies that courts actually have the ability to shift their judicial resources to achieve this goal. Courts simply do not have that flexibility, and we should not leave the Legislature and other readers of this report with the impression that courts do. When my court received three of the 50 judgeships under SB56, we created another family law department and added 1/2 judicial position to our dependency caseload. However, my court and others still await the other 100 new judgeships requested by the Judicial Council. The Judicial Council's judicial needs study actually shows the need for 327	Leadership, Accountability, and Resources Assignment of judicial officers to family law The Task Force has clarified that the approximately 20% workload estimate is based on weighted filings. The Task Force also suggests that courts develop workload estimates using available assessment instruments, and taking in to consideration local issues. The Task Force does not believe that courts can address the family law needs solely through reallocation of resources, and it notes Meaningful access to justice requires adequate judicial resources, and family courts must receive additional resources through reallocation in the near term, and through the dedication of new resources to family law when the

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	judgeships statewide. The first 150 were to go to courts with the most critical need. To suggest courts can simply shift resources to better accommodate our family law caseload ignores the reality of the rest of our caseload and statutory mandates. Recommendation 21 sends the wrong message to the Legislature and other readers of the report. Indeed, the findings in the Elkins report provide yet another argument for the additional judgeships, and we should make that argument to the Legislature. It would be preferable if 21 were changed to include the following 1) Encourage the Legislature to authorize and fund new judgeships and 2) The courts that receive new judgeships should give consideration to creating new family law departments.	budget climate improves. The Task Force does believe, however, that some reallocation at the local level is possible. The recommendation to allocate judicial resources based on workload in family law is based on the evidence that family law cases are under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources. In severely under-resourced courts, there may be limited reallocation possible. This comment appropriately points out that there is still a severe shortage in judicial resources statewide, and that the approved new judgeships must be funded and implemented as soon as possible. This message will continue to be emphasized to the Legislature.

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179. Hon. Michael J. Naughton, Supervising Judge of the Family Law Panel Superior Court of Orange County	These comments are from the Orange County Family Law Panel. We are the third largest Family Law Panel in the State, and the majority of bench officers on our bench have considerable experience in the judiciary. The majority have been in Family Law in excess of five years. The Panel has read the Draft Report of the Elkins Commission and we believe that a few comments are in order. Before commenting, we believe that a bit of background is appropriate at this point. Our Family Law Panel consists of 17 bench officers. Three commissioners are tasked with DCSS cases. One bench officer does domestic violence cases where there are no other filings. Eleven are full time inventory courts. I carry a one-half calendar in addition to the administrative duties. We all do domestic violence cases for those litigants who have other cases in our individual inventories. During the period July 1, 2008 through June 30, 2009, we had 33,000 new filings for Dissolution, Paternity, Domestic Violence, Elder Abuse, DCSS and Misc Family Law matter. In addition, we had 27,000 filings for setting non-trial hearings which includes 13,000 orders to show cause in non-DCSS cases, 8,000 OSC's in DCSS cases. We also had 3,500 motions and 8,400 ex-parte hearings. We processed 16,000 judgments and 8,300 fee waiver applications Speaking for the Panel, we are most appreciative of the time and hard work of the Commission. It is heartening to see that the recognition of the difficulty of the assignment and the complexity of the cases are being recognized at last. It is obvious that a lot of effort and thought went into its formulation. The comments we have are in the nature of fine-tuning rather than a suggestion to change the basic recommendations. Now to the comments	

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	Right to have live testimony at hearings Page 12 contains recommendations concerning the right to have live testimony at hearings. Generally speaking, this is an excellent idea which comports with basic notions of fairness and ensures that the evidence presented is from the parties or witnesses rather than the creative writing skills of the attorneys. It is distressing to see declarations of the attorneys setting forth the facts as though they were percipient witnesses. Having said that, there are a large number of cases at the initial OSC level which could be handled fairly and efficiently by declaration. For example, two wage earners with pay stubs and no argument about time share who simply want the court to make a temporary order. Some discretion should be left to trial courts to handle simple cases through declarations. However, it is inconceivable that a trial or post judgment modification could be held on declarations. Recent case law in spousal support and attorney fees requires trial courts to make the findings pursuant to Family Code 4320 not only in the trial and resulting judgment, but also for any post judgment modification of spousal support. Additionally, cases require that an award of attorney fees should be based in part on a consideration of the Family Code Section 4320 factors. We do not believe that such requirements can be met with declarations. In fact, a recent case has ordered live testimony in an attorney fee case. Alan T.S. v. Superior Court Ct. (Mary T.) (2009) 172 Cal.App.4th 238. Caseflow Management Page 17 suggests a system of case flow management which we feel is an excellent idea. Establishing control check points will ensure that cases will be processed efficiently from start to finish and lessen the chances of the cases "falling through the cracks." We suggest that an	Right to have live testimony at hearings The Task Force agrees that there are many family law OSC/Motions, such as those involving ancillary procedural matters or when there are no facts in controversy, on which decision can be appropriately made on the basis of declarations alone. The Task Force recommendation on the right to live testimony does not eliminate judicial discretion to made decisions based on declarations. It simply sets out reviewable factors judges must consider in exercising their discretion. Caseflow Management Agree that the first checkpoint would be well-used to triage cases and identify a plan that works best for that family.

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	initial check point be established for the purpose of triaging the cases. At such a hearing, the self represented litigants would be assigned to a court specifically designated to help self-represented parties though the system whether the case settles or not. Other cases would then put on a fast track for relatively simple cases with attorneys. Complicated economic issues or child custody cases could be placed in still another level of case flow management for more supervision by the court to ensure timely and efficient case handling of complex cases. Time Standards Page 22 of the Report suggests fast track type periods of completion. We believe that they could be a little less restrictive. Our court did a two-year pilot project with the inventory of one of our judges in order to obtain a basis for the kind of information which would give a statistical foundation for case flow-type standards. For case flow management, we used a status conference as the procedural tool to do a de facto case management to which there were no objections. About 74% of the cases on average for the two year study period were completed within 18 months. 82% were completed in 24 months. The rest stretched out in spite of our efforts. In order for these standards to work, it is absolutely imperative that there be statutory authority for a trial judge to do case management over the objection of one or both of the parties. Additionally, there really isn't much a trial judge can do at the present when the parties indicate that they want to take a time out to attempt a reconciliation. We believe that public policy and our ethics mandate that we encourage parties to reconcile. This is one of the differences between us and our civil colleagues. On the other hand, we are equally convinced that the vast majority of the parties would simply like to get their cases over. The idea that litigants need to be	Time Standards The time standards have been modified based on this information.

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	emotionally ready is not supported by any empirical data of which we are aware; and we believe that the state of mind of the litigants has no more relevance in Family Law than in any part of our court system. To that end we recommend the implementation of slightly longer time frames for the periods of completion. We also suggest that it is critical that we be statutorily authorized to order case management over the objections of the litigants. Lastly we recommend a mandatory status conference 18 months from the filing of the petition for those cases where there has been no activity, and if the parties do not appear after having been given notice of the hearing that an Order to Show Cause re Dismissal for failure to diligently pursue the case be set with a resulting dismissal of inactive cases.	
	Confidential mediation Page 34 suggests confidential mediation of custody disputes. We are a non-reporting county, and we couldn't be more in favor of this recommendation. A one hour session or less with a mediator should not be the basis for a temporary custody arrangement which then becomes "a done deal" when the time for trial rolls up one year later. Too often, the most intelligent, articulate, or best liar carries the day. None of these attributes means that they are better able to parent than the other.	Confidential mediation No response required.
	Scheduling of Trials and Long Cause Hearings Page 40 which recommends continuous trials is absolutely a terrific idea. It is efficient from the standpoint of judicial economy, lawyers, experts, and litigants. At the present manning levels of our court, it is not feasible to have trials in excess of two days heard by most of our inventory judges notwithstanding Family Code Section 2330.3. As an experiment, we kept some long trials in individual inventories. The	Scheduling of Trials and Long Cause Hearings Courts have different limits on the length of trial an inventory department can handle without interruption once started. There are several reasons for this variance having to do with

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	judicial officers involved have tried cases from 4 to 14 days continuously. It is possible to do this once in a while, but it is simply not possible as a steady diet for our bench officers at the present manning levels. Most of them are barely keeping up with cases involving two-day trials. In short we need more bench officers. Since it is so difficult to get a long cause trial off the ground, the result is that we have fostered a two-tiered system. One part is for the have-nots who are stuck with an overloaded court and the long delays, and the other is for the haves who opt out and go to private judges to have their cases heard. This happens either because of convenience or the perceived lack of judicial talent to hear their cases. The irony of this situation is that the haves are the people whose taxes are supporting the whole system. We don't believe that this situation is a calendar issue. It is workload issue.	resources and planning. The Task Force appreciates the commentator's concern about the judicial resources that this recommendation may require. The expectation is that implementation of an effective caseflow management system in any court can serve as an infrastructure that facilitates that court's ability to comply with this recommendation. The issues of time estimation, case status with respect to settlement, and calendar management and cases entitled to priority are all critical caseflow issues to be addressed during implementation of this recommendation.
	Expanding Services to Assist Litigants Page 46 insofar as it suggests arbitration for Family Law Cases should be approached with caution. Family Code Section 2554 allows arbitration for estates of $50,000 or less. We have not implemented that section because it appears to set up another two-tiered system of justice in Family Law. There is a quantum difference between a tort case which will not result in a judgment in excess of $50,000 and a Family Law case where the community does not exceed $50,000. One is being excluded based on the quality of his case while the other is excluded based on his economic status. We are not willing to go there.	Expanding Services to Assist Litigants The Task Force recognizes the rationale of the commentator in expressing concern about two-tiers of justice in family law. The Task Force anticipates that participation in an arbitration process pursuant to this recommendation would be voluntary. The goal of the Task Force is to save the parties a great deal of time and frustration in a property only case by allowing them to go to an arbitrator

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		and get the case addressed easily and simply.
	Judicial Branch Education Page 58 The section on judicial education and training makes perfect sense. You should be aware that there seems to be no money for education of judges on a state level. The Family Law Institute has been cancelled for 2010. Overview courses are now limited to those mandated by California Rules of Court. We believe skimping on judicial education is really being penny wise and pound foolish.	Judicial Branch Education Page 58 The severe budgetary challenges make the delivery of judicial education programs challenging. The Task Force believes that judicial branch education is critical, and the funding issues will have to be addressed in the implementation process.
	Family Law Research Agenda Page 62 As to statistical reporting, Orange County is presently doing this. Our reports contain most, if not all of the items in the recommendation. We would be happy to share.	Family Law Research Agenda No response required
	Court Facilities Page 66 Most of our courtrooms are inadequate. The worst ones are the court rooms which seat 10 to 16 people. Conducting a calendar call with 20 cases under those conditions is reminiscent of the Black Hole of Calcutta. The Elkins draft recommendations do not adequately address security in Family Law courts. There have been more incidents of courthouse violence including homicides in and around the courthouse than in any other area of the court system. In addition, in our county, Family Law is single largest source of cases for the Judicial Protection Unit of the	Court Facilities The recommendation was expanded to propose court security for family law being commensurate with that of the felony trial courts.

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	Orange County Sheriff. We are usually dealing with cases of high emotions with people who are frequently at their worst. We disagree with the notion that the AOC should target court security as a part of budget cutting. It is our strong recommendation that court security in Family Law be commensurate with that of the Felony trial courts. Further that the requirement be implemented by statute or rule of court. If the goal is to protect families from harm, then the first order of business is to protect them and the court staff in the Court House Leadership, Accountability, And Resources We are not familiar with how the study was conducted which led to the conclusion that Family Law is only 20% of the judicial workload. On September 30, 2009, the Judicial Council in a press release, announced Family filings totaling 443,531 which if our arithmetic is correct amounts to 22% of the filings. The problem is that we don't believe that anyone has ever reported OSC filings to the Judicial Council or the AOC. Anyone who has ever been in Family Law will tell you that the real workload is the OSC calendar. In fairness to our civil brethren, numbers merely based on filings are over simplified and do not consider complicated cases either in civil or Family Law. Absent appropriate case weighting, it would seem that the filings are as good a basis as any as long as they include OSC's and DV filings. The reader can tell from the introduction that we are loaded with work over and above new filings. The bottom line in this area is that we need more bench officers and support staff. Enhanced use of IV-D commissioners in family law Page 74. We are not in favor of using our Title IV-D bench officers for anything other than DCSS cases. In our view, they are already over	Leadership, Accountability, And Resources The study showing that family law represents 20% of the judicial workload is based on the weighted caseload analysis from the last AOC judicial need study, not on case filings. Both this section and the family law research agenda acknowledge the need for better reporting and measurement of caseload and workload related data in family law. Enhanced use of IV-D commissioners in family law Page 74. The Task Force based its

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	loaded as one can see from the introduction to these remarks. Secondly, we are already having a problem with forum shopping with the DCSS commissioners. Using them across the board would exacerbate the problem. Lastly, and probably most importantly we are mandated by federal funding requirements to use these bench officers for DCSS cases. In our court that means out of 3 commissioners 2.7 of them are federally funded. Thus to the extent that they are federally funded we don't believe that can be used for other matters.	recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders. The Task Force is aware that additional time would be needed to hear the non-support matters, and therefore additional commissioner resources will be needed. These issues will be dealt with in the implementation process.
180. Michael Newdow Sacramento, California	(1) I think that the recommendations ought to consider the option of doing with family law as we do with most other legal systems where basic liberties are involved - i.e., simply treating people with equal respect. Where neglect and/or abuse is concerned, the state definitely has a role to play in PROTECTING children. But to contend that there is a role for the state to play in making a child's life "better" by divvying up parental time is folly. The vast majority of parents in family court are fit parents, and there is no "better" between them. The animosity that is engendered by the state's involvement is the cause of untold harm to parents and children alike. Family Law Research Agenda (2) Following the above, it is encouraging to see that there is a "Family	Children The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Family Law Research Agenda Whether family courts are hurting or

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	Law Research Agenda." However, there seems to be nothing in the agenda that indicates that the basic question (i.e., Are the family courts helping or hurting children and families?) is being investigated. Those in this field need to step back and ask themselves if they are doing anything positive by their involvement (where neglect and abuse are not issues). It may well be that simply granting both parents equal rights - and then butting out - is the best solution. For those who immediately scoff at this suggestion, I submit that there is already evidence to support it. Under prior law, the Family Court judge used to decide what were the best religious interests for the children when the separated parents wished to raise them in different ways. Then came Murga, Mentry and Weiss, where the parents were simply shown equal respect. What happened as a result? The battles over religious upbringing disappeared. Why? Because there was no benefit in spending a fortune in time, money and angst, trying to convince a judge that your religious ideology was better than your ex's. Has no one considered that the battles over the rest of the custody issues would largely disappear as well if the state stopped providing an incentive to fight?	helping families are addressed through multiple recommendations in this section, including litigant surveys and surveys to assess the effectiveness of court programs and services.
181. Leslee J. Newman Chair, Public Education, Southern California Collaborative Practice California Orange County, CA	On behalf of the Collaborative Practice California Caseflow Management Agree With Proposed Changes In Part 3 If Modified. COMMENT The concern in the collaborative process, or any other out-of-court alternatives, is that petitioners do not want to go to court or have the court intervene at all. Thus, it is proposed that a statewide form be drafted by the judicial council which would permit any	Caseflow Management Many courts have adopted local rules that allow parties to stipulate to longer timelines for collaborative law cases or other mechanisms to avoid additional expenses. However, it does not seem

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	petitioner in an out-of-court process such as collaborative practice or mediation to opt out of the court intervention or checkpoint program. It is further proposed that the Elkins Recommendations include a suggestion that a statewide information sheet be drafted which is given to all petitioners at the time of filing the petition. This form would not only describe courtroom processes, but also alternatives such as private mediation, and collaborative practice. It is suggested that judicial officers have the ability to change the status or track of one of their cases to a "no intervention/opt out" if the parties decide that they wish to resolve the case by ADR, mediation or collaborative practice some time after the case has begun. Children's Voices Agree With Proposed Changes In Part 5 If Modified. Comment The Elkins Recommendations in Part 5 focuses on when and how children should testify in court, providing judicial guidelines for such testimony, while protecting them from psychological damage. The Elkins Recommendations mention that "Studies have recognized the importance of hearing from children in matters that affect their lives and have shown that children do better when they are aware of the process and how decisions will be made." In other words, children should not be ignored, or used in the process of their parents' divorce. They should have the right to have a voice, and understand why their parents are getting a divorce. Otherwise the children could be psychologically damaged, especially if they think they are to blame. This need is satisfied in out-of- court processes such as collaborative practice by having a child specialist as part of the	helpful to litigants to eliminate checkpoints as parties are not always able to reach agreement, and may not know how to proceed, particularly if they no longer have counsel. A checkpoint would protect them from "falling through the cracks." The Task Force has recommended that information be provided to litigants about the dissolution process and resources to assist them including consensual dispute resolution. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly.

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	collaborative team, and in the litigation process by court mediators, evaluators, and sometimes, minor's attorneys. In out-of-court processes, however, the intervention of mental health professionals is not for the purpose of preparing the children/or custody issues for litigation. Without the fear of litigation or having to go to court, children can speak more freely and have a voice in their parents' divorce without the fear of recrimination. Contested Child Custody. Agree with proposed changes in part 8. Comment Superior Courts in California have provided mandatory custody mediation services to family law parents since the early '80s, but each county has been permitted to develop its own method of providing these services which are generally divided into "confidential" and nonconfidential/recommendation" counties. The Elkins Recommendations recognize that these mandatory mediation services are good for parents in helping them to create their own parenting plans for their children, that such services should be expanded, and is money well spent. Those legal and mental health professionals who engage privately in out-of-court resolution through mediation and collaborative practice support these recommendations as they know from experience that confidential, court mediation and counseling is a highly successful system that not only assists and teaches parents to make their own parenting plans, but helps to keep them from returning to court by teaching them to resolve their parenting differences peacefully. Litigant Education Agree With Proposed Changes In Part 11. Comment This section is arguably the most important in the Elkins	Contested Child Custody No response required. Litigant Education The Task Force recognizes the importance of providing information

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	Recommendations. Without providing the means to inform and educate each and every couple who files a family law petition about options available to them in out-of-court as well as in-court resolution, and services to help them complete their case with the focus on the needs of their children, the family law courts do not live up to their ability and expectation to help California families in the transition of divorce and separation. A wide range of services and options exists for transitioning families. Since couples must use the court system to end marriages, domestic partnerships, and other relationships, the court system must serve as the central directory furnishing information about the resources that are available to families in transition. Expanding Services to Assist Litigants in Resolving Their Cases Agree With This Provision With Modification. In the introductory paragraphs to this section, the following is stated in the Elkins draft recommendations "Many litigants involved in family law cases would prefer not to be "litigants." They would prefer to be able to sit down with the other party and resolve the issues in their case without the necessity of appearing before a judicial officer. They prefer to avoid the stress of hearings, want more control over the decisions made regarding their family, want to discuss issues that may not be legally relevant but which are important to them, and want to maintain a more peaceful relationship with the other party." "When parties are able to resolve their matters outside of the courtroom, not only can they obtain a more positive outcome but it also means that more court time will be available in those instances where one or both parties have requested that a judicial officer decide their case."	to litigants about resources. Courts must necessarily be very cautious about referrals to outside resources. Expanding Services to Assist Litigants in Resolving Their Cases Agree that out of court resources should certainly be encouraged, and is likely to be the primary method of meeting this objective given current fiscal realities. However, the Task Force is also mindful that many litigants who cannot afford private assistance could benefit from ADR as well and that this often the preferable strategy for litigants and the court.

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	Expanding Services COMMENT Part 12 of the Elkins Recommendations gives full recognition to the merits and preferences of many couples in the family law court system to utilize settlement, and ADR options. Although the emphasis in Part 12 is on the expansion and improvement of court mediation and settlement services to include support and property issues, the Elkins Recommendations describe the use of ADR, "both court-based and non-court based options", at any time during the activity of the case, Not only would these options lead to "happier litigants" as mentioned above, but more court time would become available for those that need to adjudicate issues in front of a judicial officer. It is suggested that a better alternative for settlement would be out of court alternatives rather than a large expansion of court mediation and settlement services into the areas of support and property.	
	Streamlining Family Law Forms and Procedures Agree With Proposed Changes In Part 13. Comment Particularly in less complex family law cases, the option to submit all paperwork at one time to the court, including a joint Petition, Declarations Regarding Service of the Declarations of Disclosure, and the Stipulated Judgment, would be attractive to those couples who have reached agreement prior to filing their family law case, and who wish to complete their case simply and expeditiously.	Streamlining Family Law Forms and Procedures No response required.
	Standardize Default And Uncontested Process Statewide Agree With Proposed Changes In Part 15. No matter how many uncontested judgments a legal professional has previously submitted to the court for filing, it always is unpredictable as	Standardize Default and Uncontested Process Statewide No response required.

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	to whether or not the next judgment will be rejected, and how many times it might bounce back. How wonderful if the first review of the uncontested judgment was thorough enough to reveal all flaws in the submitted paperwork so that the second attempt would guarantee success. It is inequitable for those who use no courtroom time to have such difficulty getting the courts help the one time when it is needed to file their judgment. Public Information and Outreach Agree With Proposed Changes In Part 17. Comment Public information about family law court services and out-of-court options would be invaluable to transitioning families. Judicial Branch Education Agree With Proposed Changes In Part 18. New judges who never worked in the family law field might be unfamiliar with the daunting task of making orders to transition families and the impact that the judge's orders could have on the children and parents whose lives are affected. Additionally, judges might not be familiar with the alternatives to court-based resolution, limited scope options, and the unbundling of services in family law. Arbitrators and ADR providers should understand issues of confidentiality, neutrality, and power imbalances, where applicable, as vital to their work. Such education is essential to judges, and other legal professionals working in and out of the court system. Family Law Research Agenda Agree With Proposed Changes In Part 19. Comment. The gathering of statistical data will enable the family law	Public Information and Outreach Agree that information about out-of-court options should also be provided. Judicial Branch Education - No response required. Family Law Research Agenda No response required.

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	court system to evaluate what works and what doesn't, as well as the evaluation and monitoring of new types of cases statewide. Court Facilities Agree With Proposed Changes If Modified In Part 20. Comment. Often, family law courthouses are not the best places to settle cases. The anxiety begins with the line-up to get into the courthouse, being greeted by a plethora of deputy sheriffs, and going through security just like at the airport. Add to that crowded courtrooms and hallways, screaming children, angry parents, and few places to have a quiet discussion with clients. These conditions often make settlement discussion difficult or even impossible. The best place to settle cases is usually a location away from the courthouse where some quiet and tranquility prevails. In this time of economic crisis, a critical question raised by the Elkins Recommendations is how can traditional courthouses be retrofitted to provide a safe and conducive environment for families in transition to respectfully resolve their cases? This is a serious topic that begs further discussion and action to encourage settlement outside the courthouse. Leadership, Accountability, and Resources Agree With Proposed Changes In Part 21. Comment. Most of the proposals of the Elkins Recommendations may be doomed to failure unless resources are available to implement them. The education of the public about available family law services, both court-based, and non-court-based is vital. Private services and resolution of cases out of court, will free up more space at the courthouse for those who need it. The encouragement of feedback and the resolution of public complaints should help to better the delivery of	Court Facilities While the Task Force acknowledges that there are aspects courthouse environment that may not be conducive to privacy or settlement, the focus has been on improving conditions within the courthouse due to concerns about litigant safety in offsite locations that may not have adequate security screening. Leadership, Accountability, and Resources The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and

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	family law services. Strong judicial leadership is necessary to call attention to the plight of the family law courts, which appear to be the most under-staffed courts in the state, and to have the courage to make beneficial changes in the family law courts.	medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law will be addressed in the implementation process. The Task Force agrees that strong judicial leadership is critical to ensure positive change in family law.
182. No Name Provided (Comment from FCS training in Anaheim/San Francisco)	Co-parenting education prior to litigation. Recommending counties becoming confidential to eliminate lengthy reports of he said, she said. Fewer cases for recommending counties who in essence conduct evaluations. FCS to interview children at their discretion and to determine if on-going therapy is needed, with therapists able to report back to the court. Need more high conflict intervention groups. Place limits on re-litigating on minor issues or "shopping" for a different recommendations/judgment. No interviews of children under a certain age based on research of reliability (7 years old not reliable) Children not in courtroom or interviewed by judge, attorneys – no attorneys/parent present fewer cases currently manageable.	Co-parenting education prior to litigation. The Task Force agrees that co-parenting education prior to litigation can be useful in assisting parties in the court process. Mediation Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. Interviewing children Current law allows mediators to interview children; orders for ongoing services are within the purview of the judicial officer overseeing the matter.

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		The Task Force recommends there be no blanket rule on children's participation – either requiring or prohibiting it or placing a specific age limit on such participation given the range of cases in family court.
183. No Name Provided (Comment from FCS training in Anaheim/San Francisco)	Children's Voices Do not agree that having children interviewed by judicial officers and even excessive use of minor's counsel is in best interest of children. Belief that children should be included in mediation/investigation only when there is an issue of safety, risk, alienation. Children should be strategically included especially in recommending counties to appear as needed vs. waiting all day in children's chambers in cases of mediation where the minor may or may not even qualify for safety risk.	Children's Voices Recommendations in Children's Participation and Minor's Counsel reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly; they also emphasize the need to consider children's wishes, and providing additional ways for children who do not wish to testify to participate in the family law process as may be appropriate. The Task Force agrees that there should be no blanket rule requiring all children participate in court processes or proceedings.

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184. No Name Provided	I recommend that explanation of using minor's evaluation/evaluator (10 + years) be used as "special masters" for pro per litigation. Who files, file, file and use court time and resources for minor, non-monetary issues.	The Task Force anticipates that the increased attention to case management will enable judges to assist parties where multiple motions are filed.
185. No Name Provided San Francisco, CA	I submit the following comments regarding the Elkins Family Law Task Force Draft Recommendations ("Draft Recommendations"). Checkpoints established 1) I agree with Recommendation Number 3, entitled "Checkpoints established," (Draft Recommendations, p. 18), subject to the following modification. A complicated motion or order to show cause and its response may raise several issues. Although parties, counsel and the Court may intend these issues to be heard at the hearing on the motion, issues may go unheard because of time constraints or because they were inadvertently "lost in the shuffle." Subsequent orders may omit mention of relief related to some issues, leaving it unclear- whether the court intended to deny relief related to the issues. The Elkins Task Force should remedy this problem by requiring that for all family law motions, courts will use and provide to attorneys of record and/or pro per litigants an issue checklist. Using such a list as a management tool would have several benefits Before a substantive hearing, an issue checklist would help a Court to manage its calendar so that it could allot sufficient time to discovery and the hearing(s) on the motion. The issue checklist would also help to focus litigants and their attorneys on an objectively described set of	Checkpoints established - Agree that time needs to be available to hear complicated motions. The Application for Order would appear to already be an issues checklist. It seems inappropriate for a court to determine the amount of discovery time necessary prior to a motion.

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	issue for settlement and hearing preparation. . During the hearing, an issue checklist would help the court manage time so that time constraints do not cause issues to go undecided. At the end of a hearing an issue checklist would help a court avoid inadvertently leaving ted issues undecided. Additionally, knowing precisely which issues were decided would facilitate the preparation of post-hearing orders by court or counsel. After a hearing, the issue checklist would help prevent the ambiguity and uncertainty that now arises when a court order leaves raised issues undecided. Parties, counsel and reviewing courts would no longer have to guess whether a court intended its order to be final or whether the court intended its silence as a denial. Court administrators could analyze issue checklists to help streamline court procedures for more efficient resource allocation. Written orders after hearing 2) I agree with recommendation Number 13, entitled "'Written orders after hearing," (Draft Recommendations. p. 21), subject to the following modification. If the Elkins Task Force does not recommend that judicial officers discontinue the practice of ordering either of the parties' attorneys to create post-hearing orders, it should recommend that the rules clarify whether an attorney who is ordered to prepare an order after hearing does so as an advocate or as a neutral agent of the court. For. under current practice, an attorney ordered to prepare a post-hearing order may do so as an advocate, including in his order an order the judge did not actually make, or rephrasing the judge's announced order to extend it well beyond its apparent scope. This unfairly burdens the opposing	Again, it seems as if the application should set out the appropriate issues. Judges report that often issues are identified in the course of a hearing. It is unclear whether an issues checklist would be able to address this concern. Written orders after hearing Agree that procedures for written orders after hearing should be addressed as part of statewide rules to clarify timelines and responsibilities of the attorney or party assigned to draft the order.

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	counselor party, who must convince the ordered attorney to change the order, or convince a busy judge to reject the ordered attorney's order, despite the judge's prior decision to trust the ordered attorney to create the order. Moreover, allowing an attorney who is ordered to prepare an order after hearing to act as an advocate when preparing that order risks making it appear that the judge is also at1 advocate, and not a neutral adjudicator. This creates a potential appearance of impropriety, which undermines the Task Force goals of transparency and fairness. Thus, the Elkins Task Force should recommend rules and standards to clarify whether an attorney who is ordered to prepare an order after hearing does so as an advocate or as a neutral agent of the court.	
	Statewide family law rules 3). I agree with Recommendation Number 1, entitled "Statewide family law rules," (Draft Recommendations, p. 23), and Recommendation Number 2(D), entitled "Court clerks," (Draft Recommendations, p. 60), subject to the following four modifications.	Statewide family law rules
	A) The Task Force should recommend that statewide family law rules prescribe procedures to reduce the potential negative effects of procedural ex parte contacts between attorneys and judicial officers' clerks. Such procedural safeguards are necessary to prevent procedural discussions from indirectly influencing the court or giving one side a strategic advantage. For example, because a judge may rely on her court clerk's brief when deciding the case, or may discuss her cases with her clerks, an attorney' s ex parte procedural discussion with a clerk may subtly influence the clerk's opinion of the case, which may ultimately influence the judge's opinion of the case. Or, during an ex parte discussion ostensibly about a procedural matter, an attorney may	Ex-parte Procedures regarding ex parte contacts should be reviewed as part of a statewide rule drafting process. These issues may also be addressed through on-going education for clerks.

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	obtain information about the judge's feelings about the case, gaining an unfair strategic advantage. Because neither of these types of sanctions is procedurally fair, some courts restrict ex parte discussions of procedural matters, for instance, by requiring that procedural requests be left on a court answering machine or communicated in writing. The Elkins task force should recommend that statewide family law rules be created to reduce the potential negative effects of procedural ex parte contacts between attorneys and judicial officers' clerks. For the same reasons, recommendation 2(D) regarding court clerks, (Draft Recommendations, p. 60), should provide that clerks will receive training in relevant elements of procedural fairness. B) Task Force recommendations for statewide family law rules should limit the judicial practice of conducting hearings in unreported chambers discussions that occur between the attorneys and judicial officers, without the parties present. For, "when lawyers and the judge disappear into chambers and emerge with an order to confer on the parents, the impression created is not one of a 'fair a reasonable process. Rather, the impression is one of a decision that has been predetermined without a hearing. (In re Marriage of Hall (2000) 81 Clal.App.4th 313, at 319-320.) Additionally such chambers discussions hamper judicial review, may function as an implied waiver of the litigant's implied right to hear her case, and may effectively waive her right to judicial review. If the Task Force decides against limiting the	Court Clerks The Task Force believes that enhanced procedural fairness is vitally important in improving services in family court. This suggestion with respect to court clerks will be forwarded to the implementation process. Chambers conferences The Task Force recognizes that family law litigants want and need to have a meaningful voice in their cases. The Task Force has recommended that the parties have the right to present live testimony at the time of their hearings, and anticipates implementation of this recommendation may address some of the concerns about chamber's conferences set out by the commentator. It is the responsibility of

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	judicial practice of conducting hearings in unreported chambers conferences, it should at least require that the record show that a litigant whose case is "heard" if chambers has knowingly and willingly consented to that form of hearing, without the implied threat of later sanctions for not being settlement oriented.	attorneys to keep their clients informed of the events occurring in their cases, including the content of communications in chamber's conferences. Chambers conferences are frequently informative to attorneys about how a case may move forward should a hearing or trial occur, and this can be highly beneficial to the interest of their clients; therefore, the Task Force concludes it is not appropriate to make a rule barring them entirely. However, during the implementation phase, the Task Force will consider this concern in drafting the rule of Caseflow Management.
	C) To promote confidence in the integrity of the family law judicial system, and to avoid forum shopping land the appearance of favoritism, the Task Force should recommend statewide family law rules that specify a random method for assigning cases to judges, and monitor and give the public access to statistical information about which judges preside over which attorneys' cases. Although some counties now assign family law cases to judges depending on whether the case number is odd or even, there have been allegations that such systems are manipulable, so that an attorney may forum shop to obtain a judge whom he or she thinks will provide a better result. The Elkins Task Force should recommend a transparent, fair method of assigning cases	Assigning Cases The issue of random assignment is one that can be considered as part of developing implementing rules.

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	to judges, and monitor the resulting distributions to insure that the distribution is random and the assignment system is un-manipulated. D) The Task Force should recommend that statewide family law rules limit a judicial officer's assignment to a long-term family law case to two-years, unless all parties to the case otherwise agree. A family law case in which children are involved may be in the judicial system or up to eighteen years. Although most judges diligently avoid favoritism or the appearance of favoritism, some do not. (See e.g., opinions of the State of California Commission on Judicial Performance.) In cases in which the judge favors a party or attorney, the disfavored party's time under that judge may be akin to an undeserved penal sentence served under the weight of bad rulings and arbitrary decisions. Even a well-meaning judicial officer whose opinions are colored by favoritism runs the risk of acting against a child's best interest or interfering with settlement. The appearance of favoritism sullies the court's reputation. Thus, some counties rotate judges off a case after two years. The Elkins Task Force should recommend that such rotations be made part of/the statewide family law rules.	Assigning Judges D) The Task Force supports judges serving in family for at least three years. The suggestion in this comment is to require judges to rotate off a long-term family law case after two years, based on a concern about favoritism. The Task Force believes that there are significant benefits to family law parties if judges serve longer than two years. Concerns about favoritism should be addressed on a case-by-case basis.
186. No Name Submitted	*I am a former spouse, currently in divorce litigation in the California courts, Because my case is currently in the courts, I am commenting on an anonymous basis. I hope that will not dissuade you from considering my points. Expanding Legal Representation Early Needs-Based Fee Awards I agree with the recommendation, subject to one significant modification described below. Commentator provided specific details on fees related to a specific case	Expanding Legal Representation – Fees Awards The Task Force recognizes that substantially equal access to representation for both parties in a

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	and the following I relate this information because it is an unfortunate example of how the approach to legal fees encourages the lower income litigant to take extreme positions, and to drag out and increase the cost of litigation. They assume they are not playing on their own nickel. While there is a need to assure that each litigant will have reasonable access to representation, that can be assured by allowing the higher income spouse to advance money to the lower income spouse, for use for attorneys' fees, but with a reservation by the court to make a later determination as to whether the advance will be treated as payment of attorneys fees or an advance against the recipient's community property share. When the court does ultimately determine whether and how much legal fees to award, if both parties have sufficient resources to cover the legal fees from the division of community assets, then fees should not be awarded, unless one party has substantially and unreasonably increased the costs of the litigation for the other party by using excessive delaying tactics, refusing to make good faith efforts to resolve the case, using unduly burdensome discovery, and/or has been evasive in living up to disclosure obligations; in that case, fees should be awarded to the party so harmed by such tactics, based on the Section 271 sanctions. When both spouses know that they are likely litigating away their own income and/or share of the community assets, they will be more prudent in the use of legal resources; this approach will reduce unreasonable litigation tactics, thus reducing delay as well as burden on the courts, and is also fairer to the litigant who may start with more funds, but who risks having them drained by an unreasonably contentious former	family law case can be challenging, particularly when there is significant income discrepancy between them. When making a pendente lite order for attorneys' fees, the court is currently required to look at the whole financial picture of the parties, not just their income. Currently, there are a variety of ways in which a judge might address the concerns of the commentator. For example, there may be sufficient community cash or assets available to be liquidated without negative impact on the parties. A temporary order for the distribution of this property might be made that would allow both parties access to representation while reserving the issue of attorneys' fees until the time of trial. Alternatively, in a high income case a temporary spousal support order might be sufficient to allow the dependant or lower earning spouse to access representation, while reserving the issue of attorneys' fees until the time of trial. However, regardless of when the attorneys' fee issue is addressed by the court, absent fees as sanctions pursuant to FC section 271,

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	spouse. At the same time, the approach would assure that each spouse has access to representation.	the sufficiency of each party's share of the community property to pay legal fees should not be the sole criteria for the decision to award attorneys' fees. A dependant, or lower earning spouse, should not be forced to deplete his or her share of the community property to access representation, while the opposing party is able to pay legal fees from income alone. This would have a chilling effect on the dependant or lower earning spouse from pursuing his or her meritorious issues just as easily as it would deter frivolous or unnecessary litigation.
	Caseflow Management I agree with your recommendations Right now, a litigant who seeks to stall is able to easily accomplish that goal. There are many reasons that litigants might seek to stall a case - such as to continue an overly high temporary spousal support order, or to extend their time in a house that is at issue in the case. Case management can be used to move cases along. You might consider more effective means to push non-controversial issues along to resolution. Right now, a litigant can refuse to settle anything at all, just to keep the clutter factor high so that he can prolong the litigation in regard to the matters that he wants to stall Where a litigant has refused to take patently non-controversial issues off the table, and ultimately provides no actual contest against the resolution of those issues, courts should be encouraged to more freely impose sanctions against that party	Caseflow Management Sanctions are considered as part of this recommendation.

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	for causing unnecessary delay and expense. Similarly, for those litigants who withhold material information without colorable reason to do so, sanctions are appropriate. I particularly endorse your recommendation that judges be afforded tools to be able to place reasonable limits on discovery. Overly burdensome discovery is yet another tactic that a litigant can currently use to stall and harass. Scheduling of Trials and Long Cause Hearings I agree with your recommendations Trials that are split up into single or partial days with months in between are very costly, inefficient, and frustrating, and may at times lead to bad results due to the greater difficultly for parties, lawyers and judges in keeping the information straight. I would add that scheduling dates for Trials should take place early on, at the reasonable request of either party, if the judge agrees that the matter is likely to require trial. It should not be the case that the parties must go through a settlement conference and only after that is a trial date then set. For a party who wants to stall, they just keep pretending that they want to try to settle and they can achieve a substantial amount of delay that way. Because of the tendency to "settle on the courthouse steps", having a trial date that is already scheduled at the time the settlement conference is being held may encourage one or both parties to actually settle. General Comment As a child of a single mother, then a homemaker, who was divorced	Scheduling of Trials and Long Cause Hearings The Task Force agrees that the settlement process should not be misused in order to delay the disposition of a case. The Task Force anticipates that implementation of effective case management can address some of the problems with attorneys and self-represented litigants being unprepared to proceed at the time scheduled for their hearings and trials, or settlement conferences. The goal of the Task Force is to provide opportunities throughout the process for attorneys and litigants to settle, but that those settlement opportunities should never become an obstacle to a full and timely hearing or trial and that the event should be completed once

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	under a fault system, I fully understand the origin of the current divorce statutes. Nonetheless, I'm sure I am not the first person to observe that the California divorce laws now seem to enshrine an assumption that the individual with lower income, be that the husband or the wife, is somehow the better or more deserving person. As with most absolute assumptions, this one is not always correct. We seem to have moved from "fault" to "no fault" to "assumed fault". I realize this is something that requires attention from the legislature, as the courts must live within the statutes. However, please be careful that the recommendations you make do not create unintended consequences that reinforce this bias in the current law. Thank you for your dedicated efforts to improve the California divorce courts, and for your thoughtful consideration.	started without interruption.
187. Hon. Kathleen E. O'Leary Associate Justice of the Court of Appeal, Fourth Appellate District, Division Three Chair, Judicial Council Task Force on Self-Represented Litigants	The Task Force on Self-Represented Litigants supports the recommendations of the Elkins Family Law Task Force relating to self-represented litigants and commends the attention given to this issue. Self-represented litigants make up the majority of those coming to most family law courts, so their needs are critical to any consideration of a family law plan. Increased Funding of Self-Help Centers The Task Force on Self-Represented Litigants is particularly pleased with the recommendation (No. 2) that funding for the court self-help centers be increased, and that services be expanded. The self-help centers are a core court function that provides valuable assistance to the public while making the flow of cases more efficient. Caseflow Management	Increased Funding of Self-Help Centers No response required. Caseflow Management

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	We also support the recommendation on caseflow management (No. 3) and expect that the self-help centers will play a significant role in implementation of its goals. Facilitating the ability of the public to access timely and effective family law hearings and trials, participate in settlement discussions, obtain the decisions they seek, and complete their cases are central to the work of the self-help centers and family law caseflow management. The recommendations that pertain to simplifying and standardizing procedures will work to benefit the public and the court, and the right to present testimony will ensure litigants are allowed a meaningful voice on the most important issues in their cases. Interpreters Many litigants will need interpreters in order to have a meaningful voice and we strongly support recommendation 16 regarding providing interpreters and other services to increase language access for family law litigants. We congratulate the Elkins Family Law Task Force on this remarkable set of recommendations.	No response required. Interpreters No response required.
188. David G. Oppenheim Executive Director Child Support Directors Association	*On behalf of the Child Support Directors Association of California (CSDA) let me thank you for the opportunity to provide comments on the draft recommendations of the Elkins Family Law Task Force. As background, CSDA is the professional organization that represents each of California's 52 local child support agencies (LCSA). In that capacity, CSDA brings together local program professionals for the purpose of advancing the program for the benefit of California's	

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	children and families. The attached comments, which are keyed to specific topic areas from the Elkins Family Task Force Draft Recommendations, are respectfully submitted for the purpose of making the LCSA engagement with the court system more efficient, accessible and cost effective. Again, thank you for the opportunity to provide CSDA's comments to the Elkins Family Law Task Force Draft Recommendations.	
	General Comments Many individuals (hereinafter "participants") involved in child support enforcement cases (IV-D cases) must interact with courts numerous times over the life of their child support case. The judicial processes they experience are often confusing and frustrating to them. Ideally, litigants are informed and knowledgeable. Litigants need to understand their legal rights and procedural steps required to assert those rights and to have a clear description of the issue being litigated and the evidence they must provide to prove their legal position. There are numerous barriers preventing participants from being informed and knowledgeable. Most participants are not represented by counsel and have no access to legal advice. Most participants rely on various sources to get explanations of legal procedures including local child support agencies, family law facilitators and publications provided by the State. Many participants have language barriers which diminish their ability to understand information made available to them. Ideally, hearings and trials are heard in locations convenient to the parties so that litigants may attend.	General Comments Agree that litigants need to understand their legal rights and procedural steps required to assert those rights. Litigants face a wide variety of challenges with the legal system.
	In IV-D cases, legal proceedings may take place in a county remote from one of the participants' homes preventing attendance. Ideally, local county procedures to gain access to court proceedings are uniform	IV-D Cases Agree that uniformity of practice is very important, especially for litigants

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	so that a litigant will get equal treatment regardless of the county in which the litigation occurs. IV-D cases are subject to a unique set of statutes that require some unique pleadings. Local court rules and local court practices often are established for the local court system as a whole and are applied inappropriately in IV-D cases. Some local court procedures diminish access to court proceedings. The comments below are keyed to specific Topic Areas from the Elkins Family Task Force Draft Recommendations and detail some of the issues associated with IV-D legal proceedings. Right to Present Live Testimony at Hearings • Live testimony should be expanded to specifically include appearances by telephone and by video-conferencing. Eliminating or restricting limitations for such electronic appearances would allow litigants to participate fully and would save litigants time and expense by not having to bear the costs of a physical appearance in the courtroom. There should be statewide guidelines that identify when a party is qualified to appear electronically, and all IV-D courtrooms should be required to permit any party meeting the guidelines to so appear. Expanding Legal Representation and Providing a Continuum of Legal Services CSDA supports an emphasis on simplification of forms and less rigid procedural requirements to move a case through court. This will reduce costs and the need for additional legal representation. See Topic Area Number 21 for discussion of simplifying the modification process. CSDA supports expanding self-help services to help litigants with basic	who have to participate in legal proceedings in a variety of counties. Right to Present Live Testimony at Hearings The issue of telephone and video-conference appearances is a case management issue which is current discussed in that recommendation, and will be address more fully when drafting implementing rules on case management. Expanding Legal Representation and Providing a Continuum of Legal Services Agree that simplification of the process will help lessen the need for representation.

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	instruction in preparation of forms and with what to expect during the court process. Caseflow Management CSDA supports education and information for litigants beginning at an early stage in the proceedings. (Additional comments are in the Litigant Education section). • CSDA also recommends that written orders be prepared on approved Judicial Council forms. This will result in quicker preparation of orders as well as to promote uniformity of orders. Providing Clear Guidance through Rules of Court CSDA supports centralized statewide rules. Local rules should be eliminated except as required by statute or Rule of Court, and that local local rules should be eliminated entirely. These so called local local rules pose barriers to litigants and result in inconsistent results among courtrooms. Litigant Education Participants are unprepared for the hearing process. Participants do not understand the IV-D court process when they go to court. Participants often meet a live person from the LCSA for the first time at the courthouse when they are called by the LCSA attorney to meet and confer. The setting is stressful for participants and not conducive to fruitful negotiations. The setting is uncomfortable for participants and LCSA attorneys. Many other cases are calendared at the same time so the setting is noisy and chaotic. There is no privacy for discussions.	Caseflow Management Education for litigants early in the proceedings No response required. Written orders prepared on approved Judicial Council orders Forms may not be as useful for complex orders, but are often very helpful. Providing Clear Guidance Through Rules of Court No response required. Litigant Education Agree that education is critical to prepare litigants for the court process and enhance compliance with court orders.

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	There are usually no tables to write on or to set documents on. Participants often bring new documentation to the courthouse that is relevant to the hearing which means that guideline calculations for child support have to be redone. Often, time does not allow the LCSA attorney to complete the conference with the participants so the hearing must go forward with partial information. When this occurs the hearing can take longer because the guideline calculation must be redone to incorporate documentation the participants bring to court. As a result of the above, participants are often dissatisfied with the hearing experience, may feel that no one listened to them and may feel that the resulting order is unfair. These feelings reduce participant compliance with the child support order. CSDA recommends that steps be taken to educate the participants about the hearing process beginning with the first contact with the participant. The first letter to the participant could include a webpage link to educational videos (professionally produced), arrayed in a menu on the webpage. Each video would be short (2-3 minutes) and address one subject. Participants could play each video he or she was interested in, as many times as they wished. Buttons for each video on the webpage would be labeled with the process name and a descriptive picture. Sample video topics Service of Process Income and Expense Statements (I&E) Establishing Paternity State Guideline Child Support Court Hearing Streamlining Family Law Forms and Procedures CSDA supports simplifying forms and making use of standard forms mandatory. CSDA also supports simplifying the procedures for establishing parentage.	Educational videos Agree that videos would be a very helpful way to provide education for many litigants. Streamlining Family Law Forms and Procedures No response required.

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	Interpreters CSDA strongly supports the recommendations in the section. Trained language interpreters should be available for all non-English speaking parties. If the court cannot obtain certified interpreters to appear in person, the court should be authorized to use available telephone language interpreter services. Family Law Research Agenda IV-D cases represent a significant portion of the Court's caseload. Data that specifically covers information of IV-D cases should be gathered and the data should include information regarding the utilization of Family Law Facilitator services. This data is needed for the Court to properly analyze and allocate resources.	Interpreters Telephone interpreter services may be entirely adequate for some matters before the court such as scheduling. This is an area that should be considered as part of implementation. Family Law Research Agenda The recommendation was modified to broaden the categories of basic statewide statistical reporting to general areas of inquiry rather than specific data elements. Information related to IV-D cases would be captured under the broader categories. Information regarding the utilization of Family Law Facilitator Services is already gathered through the AOC's AB 1058 program.
	Court Facilities • Meet and confer space with cubicles or partitioned tables and internet connectivity should be specifically allocated for the LCSA. LCSA attorneys and support staff could then meet privately with the participants in a comfortable, private setting and attempt to resolve cases without court hearing, or at least be able to gather sufficient current information from the participants to allow a hearing to be handled efficiently. This would also allow LCSA staff to meet with litigants after the hearing to respond to questions regarding the court's	Court Facilities The Task Force believes that it is not necessary at this time to include this level of detail in the recommendation. Specific space and equipment needs, and the feasibility of accommodating them, will be determined at the local level in the implementation process.

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	orders. Leadership, Accountability, and Resources CSDA strongly opposes the enhanced use of IV-D commissioners in family law. LCSA attorneys and staff are required to be present during hearings on IV-D cases. It would create a major resource issue for the LCSA, and would reduce the efficiencies that AB 1058 introduced into the IV-D program. CSDA recommends that steps be taken to simplify the court order modification process and eliminate modification hearings if neither party objects to the proposed modification. Court hearings for modification of support are time consuming and expensive. This is true even when there are no significant issues for the court to resolve (e.g., obligor has become incarcerated; obligor has regained custody of the minor children, etc.). In order to expedite obtaining child support orders the legislature created a process whereby a defendant is served with a summons and complaint and a proposed judgment. If the obligor does not object to the proposed judgment by filing an answer to the complaint, the proposed judgment becomes the final judgment without any further need for court hearing. A similar process can be created for modifying existing child support cases. In these instances, the parties could be served with Notices of Motion and proposed orders for support. If neither party objects, the proposed order would become the final order. If either party objects, the matter could be set for court hearing. This process has already been piloted in several counties on select categories of cases. (See SB 1483 - 2006; Family code § 17441). Initial data from these pilot counties indicates	Leadership, Accountability, and Resources The Task Force notes the concerns about the effect on LCSA attorneys and staff, and will refer these issues to the implementation process. Simplifying court order modification process These suggestions should be considered as part of implementation.

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	that the cost to process a case without going to court is only about 1/3 of the cost if the case has to go to hearing. Also, there have been very few instances when either party has challenged the proposed order and exercised the right to a court hearing.	
	Currently, Superior Courts have appointment and supervisory responsibility over child support commissioners. Superior Courts throughout the state have their own local rules as well as practices and procedures. Often these local rules, practices and procedures are designed to accommodate non IV-D courts and are inappropriate for IV-D matters. Variations in these practices and procedures make uniformity among IV-D court commissioners impossible. The Office of Administration of the Courts (AOC) has responsibility to provide training to family court commissioners. AOC education does promote uniformity, but the local rules, practices and procedures remain a barrier to achieving full uniformity among commissioners' courts. The AOC does not have authority over the court commissioners and cannot direct uniform practices among them.	Child Support Commissioners This comment on the appointment and supervisory responsibility of IV-D commissioners deals with a substantive policy issue that the Elkins Family Law Task Force did not address.
	AB 1058 Commissioners should be appointed by, and supervised by the AOC. Through this structure the AOC could directly assure that courtroom efficiencies are maximized throughout the state by creating uniform practices and procedures to be followed by 1058 commissioners. By having commissioners report directly to the AOC, the supervising judges in the various counties would be able to devote more time to the oversight of the regular family law bench. It is important that all parties are ensured access to a record of the court proceedings. The practice of using official shorthand reporters to make a verbatim shorthand record of proceedings in IV-D courtrooms is	AB 1058 commissioners This suggestion to have the AOC appoint and supervise IV-D commissioners, deals with a substantive policy issue that the Elkins Family Law Task Force did not address.

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	costly, inefficient, and outdated. Current video technology is capable of making an accurate record of proceedings in real time, which would be much less expensive than the current practice. In addition the electronic records would be easily stored and retrieved and would allow a much better method for disaster recovery than the current system. A legislative proposal should be introduced to authorize video records of court proceedings as official records. Funding should be made available to equip each IV-D courtroom in the state with modern video conference and recording equipment that would be used to record proceedings involving IV-D cases. If it is decided by DCSS and the LCSAs that there needs to be an "official record" (see CCP Section 269) of all IV-D proceedings and that the electronic record would be the official record, then legislation would probably be necessary. If it is decided that an official record is not needed, except on a rare occasion, the courts, with appropriate funding, could install and use modern recording equipment and methods.	Video recordings The Task Force agrees that access to the record in family law is a serious access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings. The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. See comments above re creation of an

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		official record.
189. James A. G. Overton San Ysidro, CA	Commentator submitted brief on his case.	No response required.
190. Charles Paclik San Leandro	Enhancing Mechanisms to Handle Perjury Aren't those sanctions already in the law? Perhaps we need to clearly specify a tort cause of action for emotional distress and punitive damages to be set by a jury. To cover the potentially non-working spouse?	Enhancing Mechanisms to Handle Perjury This recommendation has been significantly modified as a result of comments.
191. Maria Palazzolo Family Law Attorney Law Offices of Maria Palazzolo	Domestic Violence Form changes. I suggest that, in addition to the form changes to accommodate the proposed changes, the following form changes also be implemented To continue a TRO hearing, the Reissue Temporary Restraining Order (DV-125) form is used. However, on this form there is no way to indicate a continuance of the hearing if the TRO was denied. Instead of "I ask the judge to reissue the Temporary Restraining Order, Form DV-110" I suggest the following "I ask the judge to reissue the orders from the Temporary Restraining Order and Notice of Hearing, Form DV-110" When requesting attorney fees on a Domestic Violence case, on the Request for Order form (DV-100), item 15, page 3, the Petitioner is required to submit Form FL-150, Income and Expense Declaration. Whereas, when requesting attorney fees for a Civil Harassment case, on the Request for Orders to Stop Harassment form (CH-100), item 18, page 4, there is no such requirement. 6. Domestic Violence	Domestic violence Forms Each of these forms suggestions should be reviewed and considered as part of the implementation process or referred to advisory groups addressing domestic violence issues. Domestic violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make

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	In addition to the proposed legislation, there needs to be a clarification of whether a support person is allowed for the respondent on a domestic violence restraining order hearing. The statute on point for this is Family Code (FC) section 6303 (see below). The text that is confusing is subsection (b), where it states that a support person shall be permitted to accompany "either party." However, the case law (Ross v. Figueroa (2006) 139 Cal App 4th 856) and the statute on which this statute was built (Cal Code Civ Proc § 527.6(f)), seem to indicate that the support person is only for the petitioner, not the respondent.	recommendations.
192. Lee C. Pearce Attorney Certified Family Law Specialist Law Offices of Lee C. Pearce Walnut Creek, CA	I first want to thank you for the time, thought and creativity that you brought to the task. It is clearly demonstrated by the results of your efforts. The analysis and recommendations are broader and further than I had dared to hope. I especially appreciate the fact that you did not try to limit yourselves based on whatever budgetary difficulties the State is going through but instead ignored that to define what needs to be done. Whether or not it can be done immediately or must be deferred, at least setting forth the goal will make it must easier in the future. I also believe that the breadth of problems addressed resulting in over 100 specific recommendations highlight the years neglect and second class status for family law and family law litigants. By way of disclaimer, I am the designer of the survey of Contra Costa county family lawyers that was taken pursuant to the request of the Supreme Court to have an Amicus Brief submitted on behalf of the Family Law Section of Contra Costa County. Based on those results, I	

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	wrote the Supreme Court brief that was submitted. I am gratified and humbled to see that the recommendations of the task force addressed the most glaring issues raised by that survey. I overwhelmingly endorse and support all of the recommended changes made in the report, and while some will have a bigger impact than others, they are all very important steps toward achieving justice in and access to the courts for all family law litigants. However, there is one area I feel the task force did not go far enough. Quite simply this is addressing the use of the Evidence Code in family law, particularly by pro per litigants. All too often, the rules of procedure and evidence are simply used to prevent a litigant from telling their story, under the banner of due process. This especially true in cases where one side is in pro per, and the other has an attorney who constantly poses objections and demands compliance with procedural rules that quite effectively hamper the pro per from being able to present a case (you may recall that is exactly what happened in the Elkins case). Most judges feel they must hold the pro pers to the rules. No one can feel that they have meaningful access to the court if the rules of evidence are used to exclude information required to achieve a fair result. Exclusionary rules of evidence are barriers to the family court's ability to hear each side and their story and obtain a complete picture of the facts. This effectively impairs access to the court, and forces judges to make decisions based on incomplete or inaccurate information. This is recognized in the section on presenting live testimony at hearings where you note that. "In many cases, a judicial officer may simply choose to swear the parties and ask them questions." It might be better if the court was able to do that in all cases. In the case of two pro pers, it is unlikely that either one of them knows the rules of	Pro Per Litigants The Task Force agrees that cases involving self-represented litigants should be decided on the merits of their cases, and that relevant material facts should not be excluded on the basis of a procedural technicality. The Task Force also believes that there should not be different standards of evidence for self-represented litigants and represented litigants. Many of the recommendation made by the Task Force are concerned with facilitating the ability of self-represented litigants to present their cases. The recommendations on case management, expanding legal representation, and expanding assistance to self-represented litigants all are concerned with handling cases involving self-represented litigants in a

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	evidence, whether there is a foundational rule, best evidence rule, or hearsay rule with its many technical exceptions. Quite simply, dealing with two pro pers allows the court to sift through what is being said, and use that which is reliable and relevant, without having to entertain and rule on objections. A stricter enforcement of all "rules" and "procedures" does not benefit or increase the access to the courts of those who do not know the rules and the procedures. You have recognized that family law is not like other fields of law. It is not like a slip and fall or traffic accident. It involves people at their most vulnerable, dealing with unexpectedly complicated issues in the foreign territory of a public courthouse. They often do not realize how important these events are in their lives now, much less the life altering and long term potential effects of decisions made on a short cause calendar. I am not suggesting that the Evidence Code should not apply in family law. There are many reasons why technical rules must be used, such as dealing with expert reports and controlling the conduct of testimony. However, there are different considerations in controlling the flow of evidence which is presented to a jury that a court trial. An experienced family law judge is used to identifying what evidence is likely to be reliable and what is not, especially in the most common cases where there are only two witnesses and the task of the court is to find the truth in competing versions of "he said/she said." This is illustrated by the Elkins case itself. Telling Mr. Elkins that if he can't lay a foundation, his documents will not be considered presumes that he even understands what a foundation is and the criteria for laying. Similarly, it makes no sense to exclude bank records because they were not produced pursuant to the business records exception to the hearsay rule. They may be the only objective evidence of the party's financial	manner that affords them due process and basic fairness.

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	situation. Family law litigants know their story. They need to tell it in their own words. The family law courts have vast power to reorder people's lives. Appearing in the family law court is not just a legal process; it is a social, economic and psychological process and I wish the task force would look more closely at this issue. That being said, I realize that it is going to be difficult to translate that into rules and procedures that are more effective, more user-friendly and lead to real justice as opposed to only legal justice. My dissatisfaction with the failure of the task force to go further than it did is not a criticism of what was accomplished. These recommendations go further than anything I have seen in my 34 years of practice toward promoting not only access to the courts, but improving the respect and status given to family law litigants and their important and life-changing problems. I am very grateful for the time, energy, thought and results in such a relatively short period of time and yet, still have such a breadth of impact. The task force is to be commended on a Herculean effort. While the Aegean Stables aren't clean, we now a sensible, cogent and thoughtful work plan for making them so.	
193. Lydia T. Percin Certified Family Law Specialist & Family Law Mediator No county information	I read with interest the recommendations. I have no disagreement with the recommendations and therefore no comment.	No response required.
194. Elizabeth Perry Associate Family Law Attorney	All major (and most minor) issues have been identified and nominated for good-sense changes. Thank you. I hope all possible is done to see these improvements implemented quickly and efficiently.	No response required.

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Trope and Trope Santa Monica, CA		
195. Hon. Aaron Persky Judge Superior Court of Santa Clara County	Expanding Services to Assist Litigants in Resolving Their Cases I have been presiding in a family law assignment in Santa Clara County for just under two years. I applaud the Elkins Task Force's efforts to expand the use of alternative dispute resolution (ADR) in family law cases, and I agree with the recommendations in Number 12. I write this comment to propose a specific use of ADR in our family courts. The difficult budget situation presents us with an opportunity to rethink how we handle family law cases in our justice system. I believe that we can improve public trust and confidence in the family courts by implementing new ADR initiatives. Our justice system is based on an adversarial model. This works reasonably well in civil and criminal cases, but not so well in family cases. My impression from the bench is that there are several reasons for this, each relating to the major players in our family court system. First, the parties in family law cases are typically angry or disappointed or frustrated with each other. They do not trust each other. These emotions are not conducive to rational thought, good-faith negotiation, or truthful testimony. Contested litigation can become a tool to hurt the other party or a misguided attempt to right a perceived past wrong. The casualties of this corrosive type of family law litigation are the marital assets and the mental health of minor children. The adversarial model of litigation is founded on the assumption that spirited advocacy before a neutral fact-finder will yield some measure of "truth" and a fair result. The model breaks down in the family law context where the search for truth gets lost in the fight.	Family Court System The Task Force recognizes the commentator's observations with respect to the problematic issues currently existing in family law litigation; however, almost any model of dispute resolution will break down if it is significantly and consistently under resourced. The Task Force has concluded that the family court is significantly and consistently under resourced in most current allocations of judicial and court staff resources. This exacerbates the issues set out by the commentator.

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	Second, while attorneys can provide a vital service to family law litigants as they navigate a complex set of rules and procedures, attorneys can also unnecessarily prolong family law litigation. Many have written about the perverse incentive of the billable hour in litigation. Scott Turow put it well when positing an imaginary conversation between attorney and client "I want you to understand that I'm going to bill you on a basis in which the frank economic incentives favor prolonging rather than shortening the litigation for which you've hired me." The Billable Hour Must Die, ABA Journal August 2007 Issue (http//www.abajournal.com/magazine/article/ the_billable_hour_must_die.) I believe this perverse incentive is particularly strong in family law cases, where the clients are often primed for a fight and may seek out attorneys with reputations as aggressive litigators. I do not mean to denigrate the family law bench, but we must recognize that the incentives built into family law representation can affect the length and relative bitterness of litigation. We now have angry parties represented by zealous advocates with an economic incentive to litigate rather than cooperate. Enter the judges. Most judges do not like being assigned to Family Court. This is because the learning curve is steep, the workload is significantly greater than most other judicial assignments, and the day-to-day work on the bench is stressful. I write not to complain about our lot, but simply to point out that incentives matter here as well. Supervising and presiding judges who find it predictably difficult to fill the family law slots resort to one of two strategies tapping newer judges with little seniority, or appealing to the higher values of more experienced judges, who are encouraged to take on a challenging assignment for the greater good. Presiding judges find it an even harder	Family Law Litigation The Task Force fully supports the goal of settling family law cases without unnecessary litigation and believes that most family law attorneys share this objective. In fact, very few family law cases require a trial; most litigation occurs at hearings on Orders to Show Cause or Motions. With respect to hearings, the Task Force received substantial input from attorneys and the public-at-large that litigants want their "day in court" and that the ability of the parties to testify at their hearings was fundamental to basic fairness and the public's trust and confidence in the court. The Task Force did consider the issue of attorney fee structure in family law cases, but decided that the issue of the billable hour was one that is better addressed by the State Bar. The Task Force agrees that the often inequitable workload assigned to family court judges contributes significantly to the lack of judicial job satisfaction with the assignment, and

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	sell to expand the number of family court judicial positions they have to convince their colleagues to increase the number of undesirable assignments. As a result, the family divisions of our Superior Courts make do with too few judges and staff. These divisions often enact local rules like the one Mr. Elkins encountered; these rules are destructive of litigants' procedural due process rights, and are best seen as family law judges' coping mechanisms. We now have angry parties, either representing themselves or represented by zealous advocates with an economic incentive to litigate, appearing before harried judges with excessive caseloads, in courts with local rules that limit their procedural due process rights. These basic dynamics have two main consequences. They lead, in my mind, to far too many unnecessary contested hearings. These contested hearings, in turn, occur under conditions that undermine public trust and confidence in the California Courts. When, as a result of our overloaded law and motion calendars, we "Reiflerize" a critical issue in a case, or continue a case for lack of hearing time after the parties and attorneys have patiently waited for three hours to be heard, we undermine the parties' sense that our family courts are well-run and procedurally fair. As we know from the Judicial Council's 2005 Survey on Trust and Confidence in the California Courts, "procedural fairness, the sense that decisions have been made through processes that are fair, is the strongest predictor by far of whether members of the public approve of or have confidence in the California Courts." (http//www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf (p. 24.).) The Task Force's recommendations, if enacted, would likely increase	that this problem can become self-perpetuating. The Task Force has recommended judicial resources be assigned based upon workload, which would significantly increase the number of judges to hear family law matters in most jurisdictions. The Task Force also recognizes that significant and consistent under resourcing of family courts creates situation in which local rules like the one in the Elkins case that impact litigants' due process rights. The Task Force agrees that the court should be able to provide early opportunities for litigants, many of who are self-represented, to participate in meaningful settlement discussions. The recommendation on Caseflow Management considers this issue. The Task Force also recognizes the serious problems that can arise by "Reiflerizing" critical family law issues and while recognizing that there are matters properly decided on the basis of declarations, has recommended that the standard for hearings be live testimony.

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	the public's sense of procedural fairness in family law litigation. The obvious short-term barrier to enactment of many of the recommendations is budgetary. Given our budgetary constraints, I believe it makes sense to recommend a more systematic expansion of alternative dispute resolution in family law. Parties who resolve their disputes with the aid of the Courts will have just as much confidence in the system as parties who have litigated their cases in a system they perceive to be procedurally fair. Our state lawmakers have recognized the importance of encouraging settlement of family cases. Family Code section 271 notes that it is the policy of the law to "promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." Family Code section 3170 requires courts to set contested custody and visitation matters for mediation. I believe that one simple and effective way to greatly increase the settlement of family law litigation is to expand section 3170's basic mechanism to all contested family matters this could be accomplished by establishing a rule that requires all contested family law and motion matters (except cases involving domestic violence) to have a facilitated meet-and-confer session with a court-appointed neutral before the scheduled hearing date. When a party files a motion or order to show cause, the Court would issue two dates one for a facilitated meet-and-confer session, and one for a hearing in court if necessary (at least two days after the meet-and-confer). The facilitator could be a judge, a staff attorney or a properly-trained private attorney. I believe that a significant percentage of these matters would settle at the facilitated meet-and-confer session. Fewer contested hearings would reduce the burden on court staff and bench officers and would make the	Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. The Task Force agrees that success will entail a combination of implementing more effective operational practices, and additional resources. The Task Force agrees that an effective process to facilitate settlement is fundamental to an effective family court system, and thanks the commentator for his specific suggestion in this regard. The specific mechanism for accomplishing this goal will be considered in more detail during the implementation phase. The Task Force has concluded

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	assignment more desirable. In addition, the cases that truly need contested hearings would receive more judicial attention. Why do I think this proposal would work? I have two sources of data. In Santa Clara County, we have dedicated law and motion calendars for cases where both parties are self-represented. We refer most of those cases to our Family Law Facilitator's Office at the outset of each calendar. Staff attorneys work with the parties and are able to settle well over fifty per cent of the matters they receive. They are able to prepare stipulations on the spot for our judges to sign. In addition, in my department I have instituted a pilot project for facilitated meet-and-confer sessions for represented parties in law and motion matters. Experienced mediators who have volunteered their time are present at the beginning of my law and motion calendars. I identify cases that seem appropriate for alternative dispute resolution, check in with the attorneys to make sure they are agreeable, and refer the cases to the neutrals. Again, over fifty percent of the referred matters have settled. The simple addition of an experienced facilitator during a meet-and-confer session settles cases and reduces the need for hearings. If this facilitated meet-and-confer occurs at least two days before the scheduled hearing, then court staff, research attorneys, and judges do not need to waste time preparing for hearings on the settled matters. Additional time is available for those matters that truly need a contested hearing. My proposal operates on the premise that most family law litigants do not truly need their day in court. They will walk away from their Family Court experience with more trust in the system if they have been given the opportunity and encouragement to solve their problems	that participation in comprehensive settlement opportunities should be made available to attorneys and self-represented litigants throughout the case process. Many courts report that litigants are not only willing, but grateful to be able to participate in meaningful settlement talks with qualified neutrals. The Task Force anticipates this can cut down on contested hearings, and hearings in which the judge must take time on the bench to discover that the litigants are really in agreement on most issues. The Task Force is aware of the services provided to self-represented litigants in the Santa Clara court, and recognizes the importance of these services to effective and efficient use of judicial time in the courtroom. This is a model of settlement assistance should be considered as part of implementation. The Task Force thanks the commentator for his suggestion about settlement assistance and shares the optimism that when provided with the

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	by themselves, with help from their attorneys and a neutral. We need rules and procedures that create an expectation of cooperation rather than conflict. Paternalism is justified in this context. Parties need to be diverted from their hard feelings toward each other for the sake of the minor children and the preservation of marital assets. Attorneys need to be diverted from the troubling incentives of the billable hour. And judges need to be diverted from the impulse to erect barriers to procedural fairness in the interest of perceived efficiency. This proposal could be implemented in certain counties as a pilot project, evaluated for its effectiveness in resolving cases, and, if appropriate, introduced statewide.	opportunity to do so, many litigants will be able to settle their matters without the need of a contested hearing. The Task Force also recognizes that there are cases, or issues, in which a hearing is required, and is concerned that when that is the situation, the due process rights of litigants are protected and a fair process is accessible.
196. Helen Peters Attorney-Mediator Contra Costa County Bar Association	Expanding Representation and Providing a Continuum of Legal Services. There is no mention in this section of the benefit of private mediation with Family Law attorneys. Mediation is not included in the continuum of legal services, and yet it plays a vital part in case resolution for a significant number of court filings. Case Management Case Management mandates arbitrary deadlines for case resolution, while at the same time suggesting that each family and case is unique. While many cases can and should be resolved within six months of filing, some cannot. For the first time in 22 years of practice, I had a mediation clients' case dismissed, sua sponte, and without notice, because the parties failed to appear at a case management conference.	Expanding Representation and Providing A Continuum of Services Mediation is addressed in many aspects of the report including expanding opportunities for settlement and caseflow management. The Task Force is very mindful that attorneys provide a wide variety of services to assist litigants in framing and settling their cases. Case Management Time standards for case management are intended to support the court in providing the resources needed for those litigants who want to their case to be completed in less than two years. The Task Force is not recommending

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	The case had resolved several months before by agreement, and the parties were slow in returning acknowledged signature pages. The parties and the mediator did not learn of the dismissal until several months after submission of the Judgment and supporting forms, when the proposed Judgment was returned with a notation "we are unable to process the judgment because your case was dismissed". This resulted in the filing of a motion to set aside the order of dismissal, which has been set for hearing FOUR months after return of the unfiled Judgment. The point being, while case management may work well in some cases, orders such as the one referenced above are not in the parties or the system's best interest. I was surprised that there is no reference to economic mediation through private attorney mediators in the report.	that cases be dismissed other than by statutory time frames and with notice of the potential for dismissal. The concerns raised by the commenter should be considered as part of drafting implementing rules regarding case management.
197. Philip Pickering Berkeley, CA	Commentator raised concerns related to specific case and submitted letter.	No response required.
198. Ronald Pierce No county information provided	Commentator provided case specific information.	No response required.
199. Michael D. Planet Court Executive Officer Superior Court of Ventura	On behalf of the Superior Court of Ventura The Ventura Superior Court appreciates and supports the goals of the Elkins Family Law Task Force. Our court has worked diligently to implement and experiment with many of the recommendations contained in this report. As the overview to the task force report notes, the state of California and its court system is facing unprecedented fiscal challenges. As a general comment, we feel strongly that any new law or court rule requiring new financial resources should include a	Financial Resources The Task Force is well aware of the unprecedented fiscal challenges facing the state of California and its court system. Implementation of the Task Force recommendations will of necessity be incremental and mindful

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	provision for funding such as "This section shall become operative upon the appropriation of funds in the Annual Budget Act sufficient to implement this section." This will avoid a repetition of the problem created for Probate Courts by the Omnibus Conservatorship and Guardianship Reform Act of 2006, which more than doubled the workload of court investigators without providing funds necessary to implement it. Right to Present Live Testimony at Hearings Do not agree with the recommendation Comment Many pre-trial motions are heard shortly before trial and include issues that will not result in a final determination until trial. Requiring live testimony at all pre-trial hearings is inefficient and increases the costs to the litigants. Further, the court only has so much time to hear all its matters. Requiring the court to hear live testimony at pre-trial hearings will mean a reduction in time for conducting trials. Permitting live testimony in every case raises the risk that the court will receive evidence regarding issues not framed by the pleadings. Of course, this violates the due process rights of parties to receive notice of all issues to be addressed by the court. This concerned is heightened by the fact that the majority of family law cases involve self-represented litigants who have great difficulty understanding the due process rights of the opposing party.	of resources. Language such as that suggested by the commenter may be very appropriate for legislative proposals or rules of court which require additional resources. Right to Present Live Testimony at Hearings. The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars.

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		The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. The scope of testimony should be limited to the issues raised in the pleadings. It is important that family law matters be decided on their merits. The Task Force anticipates the use of reasonable continuances when necessary to provide adequate notice and opportunity to prepare a response to facts arising in the testimony of the parties at the hearing. These issues

Commentator	Comment	Committee Response
		should be thoroughly considered in drafting implementing rules.
	Expanding Legal Representation and Providing a Continuum of Legal Services As a general comment, Family Law Self Help Centers/Family Law Facilitators are currently funded only by the AB-1058 funds and therefore are only required to provide services relating to Paternity and child support (IV-D services). There would have to be a legislative change and additional funding if these recommended services are mandated to be provided by FLFs.	Expanding Legal Representation and Providing a Continuum of Legal Services In reports from local courts, most are using general self-help funds to provide expanded family law assistance. Courts may use those self-help funds to provide services beyond those authorized by AB 1058.
	In addition, while we commend the committee for wanting to assist self represented litigants, there is no due process right to have an attorney in Civil matters, including family law. Many of the recommendations cross over into providing legal advice or representation for SRLs, with no identified funding source.	The Task Force has not made any recommendations which it perceives to be asking self-help programs to provide legal advice or representation. Additional resources for education should be developed and disseminated.
	Assistance in preparing request for fees to obtain counsel. Agree subject to modification Comment Court-based self-help centers should provide information and assistance with motions to request fees to hire counsel. Courts should allow limited scope appearances for the purpose of obtaining early needs-based attorney fees. Our Court already provides these services, however they are not funded by IV-D funds. There would have to be a legislative change and additional funding if these recommended services are mandated to be provided by FLFs.	Assistance in preparing requests for fees to obtain counsel Agree that funds other than AB-1058 would be required to implement this recommendation.

Commentator	Comment	Committee Response
	Self- help services expanded. Agree subject to modification Comment Commendable as this recommendation is, our experience suggests that it is almost impossible to accomplish without an extraordinary infusion of funding. Although we have no objection to having resource or information available, we are concerned that assisting litigants with hearings, trial and appeals may border on legal advice and representation. It may be more feasible to focus funding and resources towards pro bono or low-cost attorney services instead.	Self Help services Expanded Agree that additional resources would be required. A number of programs provide templates for trial briefs; have workshops on introducing evidence or understanding basic court procedure. One program has produced an excellent video on how to introduce and object to evidence. These are the types of programs that the Task Force envisions self-help centers providing.
	Caseflow Management Checkpoints established Agree subject to modification Comment There should also be enforcement mechanisms such as sanctions or dismissal for non-compliance in order to make the checkpoints meaningful events.	Caseflow Management Checkpoints established It is unclear why sanctions would be required to make these meaningful events. If parties do not appear, the court could move these cases to an inactive status and wait for mandatory dismissal timeframes.
	Written orders after hearing Agree subject to modification Comments Similar to our comment on Recommendations 4.B, this is a huge resource issue, and may border on legal advice and representation.	Written orders after hearing. The Task Force recognizes that this will require additional resources in many jurisdictions. However, research indicates that parties who receive written orders are 1/2 as likely to

Commentator	Comment	Committee Response
		return to court on the same issues as those who do not have written orders. Thus, this may be a preventative measure that will save costs in the long run. It is not clear how preparing a written order memorializing a judge's oral order is giving legal advice.
	Systems to finalize older cases Agree subject to modification Comments Rules should also be amended to shorten the time required to elapse before a clerks' dismissal.	Systems to finalize older cases The Task Force has not made recommendations regarding dismissals prior to the statutory time frames. This might be considered in developing implementing rules for case management.
	Time Standards Agree subject to modification Comments Legislation and rule changes should be amended to eliminate the mandatory 6 month waiting period before a final order can be entered. Otherwise, there will be no possible way to meet the proposed time standards. Moreover, the waiting period creates confusion for many self represented litigants who believe that at the end of the 6 month period, a dissolution is automatically granted.	Time Standards. The Task Force has not made recommendations regarding eliminating the mandatory 6 month waiting period before a final order can be entered. It may be that time standards should recognize the presence of inactive cases, since the goal is to provide appropriate resources for those parties who want to conclude their divorce. This should be considered as part of implementation.
	Providing Clear Guidance Through Rules of Court	Providing Clear Guidance Through

Commentator	Comment	Committee Response
	Agree Comments None Children's Voices Agree subject to modification General Comment We support encouraging Courts to (a) recognize the importance of obtaining input from children to guarantee a just outcome, and (b) exercise discretion in utilizing a variety of age and case appropriate means to accomplish this. We believe the recommendations should emphasize the goal of accomplishing this without direct judicial participation or courtroom testimony. This section, however, seems to suggest that the best way for this to be achieved is by communicating directly with the judicial officer. This underlying assumption is contradicted by the success Ventura County has experienced with having mental health professionals speak directly with children in the context of recommending mediation. Having specially trained mental health professionals interact with children ensures their input, while at the same time protecting their vulnerability.	Rules of Court No response required. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most

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		appropriate approach.
	Domestic Violence General Comment Domestic violence cases typically can be categorized into three types of cases. The first is that of the traditional domestic violence relationship; a physically or mentally abusive relationship in which one of the parties is significantly victimized. The second is the "Spurned Partner" in which one party does not want the relationship to end, and as a result tries to persuade the other party to reconcile. The perpetrator in these cases often heaps unwanted and harassing attention on their former partner, which requires court action. The third type of case is that of a parent involved in a custody dispute in which the domestic violence is ancillary or is being used strategically to gain an advantage in the custody dispute. The remedies and consequences are the same for all perpetrators regardless of the type of cases. The "Spurned Partner" is subject to the same orders and consequences as that of the traditional abuser. A finer tool needs to be crafted in order to allow courts to make appropriate orders.	Domestic violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Enhancing Safety Recommendation 7.1.B, page 31, Hearing from children in chambers Agree with modifications. Comments This section raises the same concerns as noted above in response to Recommendation 5. Children's Voices. There is an unstated underlying principle that the preferred or best method for eliciting information from a children is for the judicial officer to speak with the child. This assumption needs to be examined and evaluated before it used as a guiding principle in obtaining information from children.	Enhancing Safety The recommendations in this section regarding children's participation are now contained in that section (see comment above regarding Children's Participation and Minor's Counsel)

Commentator	Comment	Committee Response
	Contested Child Custody Recommendation 1.A, Page 33, Methods to obtain information Agree, subject to modification. Comments The information needed by courts should be uniform throughout the state, and Judicial Council forms should be adopted to address this concern. The Application for Order & Supporting Declaration should be modified to (a) More clearly and fully request the specific aspects of the current order which are in dispute, and/or the proposed order. (b) Guide Declarations toward providing information needed by the Court and away from mudslinging and irrelevant information. This can be accomplished by requesting specific categories of information (but avoiding complex and limiting mazes of check boxes). It could, for example, have a section calling for work & child care schedules. It could also direct that for each element of a custody/visitation order requested, the parties state why that would be in the best interests of the child. (c) Retain an 'unguided' section for additional issues and supporting information. Child custody mediation services. Do Not Agree Comments The 'concerns' which are proposed to be addressed by the pilot projects are not identified except for the reference to lack of uniformity. The inference from the design of the proposed pilot project is that concerns relate to mediation with recommendations, yet the proposed pilot project is not structured to evaluate the strengths or weakness of any particular approach to mediation with recommendations, or to compare it to mediation without recommendations.	Contested Child Custody Agree with suggestion to provide forms that provide information to the courts. Recommendations in this section reflect this recommendation. Child custody mediation Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services and to identify promising practices.

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	Any pilot programs for changes in how mediation services are provided should be based on empirical study of the efficacy of current approaches. We are still waiting for results from the 2008 Snapshot Study which can help provide this. We can however, look to the results of the 2003 Snapshot Study which, in the words of the CFCC's Research, Evaluation & Statistics Division, found that parties gave "very high ratings on procedural justice" to mediation proceedings, and that the ratings were "high even among those who didn't get the agreement they sought". This suggests that concerns expressed to the Committee (a) may not accurately reflect general statewide party satisfaction with the mediation process, or (b) may instead be related to the manner in which some courts use recommendations rather than their value when appropriately considered along with party testimony and other evidence. Care must be taken to identify and address specific practices which may be generating concerns.	
	Family Court Services Directors from 19 Courts, with assistance from the CFCC, have developed and published excellent Guidelines for mediation with recommendations that emphasize that the focus should be on helping the parties resolve their issues through mediation, and which describe measures to prevent party confusion about the process. Consideration could be given to elevating this to a Standard of Judicial Administration.	Proposals for Standard of Judicial Administration Could be considered during implementation.
	Courts in 38 of the 58 counties have chosen to utilize recommending mediation. The proposed pilot program gives parties the power to overrule this choice by opting out of recommending mediation. This is an inappropriate delegation which interferes with the Court's ability to	Pilot programs The pilot projects are proposed for courts seeking to develop a range of services, not for parties to opt in or out

Commentator	Comment	Committee Response
	manage its resources and calendars. Implementation of the proposed pilot project will necessarily generate delay in resolution, as well as more party and court resources being used for the court hearings without mediator input, investigations, and evaluations that result from a failure to agree. Often, due to time and financial constraints, the Court will be left to make decisions without the input of a professional whose primary focus is the best interest of the child. That was the experience of the Ventura Superior Court when we experimented with a program similar to the pilot project in 1997. It was abandoned because of widespread dissatisfaction. Our subsequent experience with recommending mediation, where adequate time is allowed for attempted resolution through mediation, coupled with the willingness of our Bench Officers to listen to the parties and treat recommendations/mediator testimony as one element of a total evidentiary picture, has been very positive and well accepted by all concerned. Children's Voices The proposed pilot program is in conflict with the goals and recommendations of Section 5 Children's Voices. Where no agreement is reached, an opportunity for children's input, obtained with the sensitivity of a mental health professional and without bringing them into the courtroom, will be lost. Recommending mediation helps to equalize power imbalances between the parties. If the pilot project permits one of the parents to decide if the mediation will be recommending, it gives that parent a tactical weapon to use. If the parties jointly choose to forgo recommending mediation,	of mandatory mediation. Children's Voices Where appropriate, children's participation in mediation would be supported by the Task Force's recommendations. The proposed pilot project recommendation does not suggest the decision about the type of mediation provided be left to the parties, but

Commentator	Comment	Committee Response
	one has to wonder what they fear from input to the Court from a mental health professional. Child custody language Agree, subject to modification Comments: Using the phrase "parenting time" in place of "visitation" is wise and easily accomplished. Using it in place of "custody" is far more difficult, given its omnipresence in case law and statutes such as the UCCJEA, and not worth the time or energy required. Minor's Counsel General Comments In Ventura, we have been able to avoid the issues and problems addressed in the report by routinely interviewing children as part of our mediation with recommendations process. Scheduling of Trials and Long Cause Hearings Consecutive Trial Dates Do not agree Comments A requirement, instead of a best practices goal, that all trials and hearing be heard on consecutive trial days will destroy the courts ability to manage cases. This will encourage parties to not give accurate or adequate time estimates. The result will be that parties that give accurate time estimates will be punished by those parties that do not	rather that courts might consider providing these services. Child custody language The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made. Minor's Counsel The Task Force recommends that children's participation be considered on a case-by-case basis with no blanket rule requiring or prohibiting participation. Scheduling of Trials and Long Cause Hearings The Task Force recognizes that there are courts currently able to schedule long-cause hearings and trials in without the need for long interruptions. The recommendation may require even these courts to make

Commentator	Comment	Committee Response
	and have their cases started on the inaccurate estimate. A better solution is for the court to require realistic time estimates and enforce the time estimates to establish efficient case management.	a shift in calendaring strategy, but is not expected to create any quantitative increase in litigation caseload, in the time it takes to access hearing and trial dates or to extend the length of these proceedings. The long term effect is expected to reduce workload. Working with attorneys and litigants on time estimation will be a critical part of any effective caseflow management system. The caseflow management system forms the infrastructure that supports to a court's ability to comply with this recommendation. The Task Force has not received any reports from the courts that currently complete trials once started without interruption that attorneys and litigants are exaggerating the time it takes for trial.
	Litigant Education Information throughout the case. Disagree Comments See comment on page 16, expanded services, above. Self Help Centers cannot turn SRLs into attorneys.	Litigant Education – Agree that Self Help Centers cannot turn self-represented litigants into attorneys, but they can provide critical information to help litigants understand and proceed with their cases.
	Expanding Services to Assist Litigants in Resolving Their Cases.	Expanding Services to Assist Litigants

Commentator	Comment	Committee Response
	Agree subject to adequate funding Comments none Streamlining Family Law Forms and Procedures Declarations Agree, subject to modification Comments The information needed by courts is uniform throughout the state, and Judicial Council forms should be adopted to address this concern. The Application for Order & Supporting Declaration should be modified to (d) More clearly and fully request the specific aspects of the current order which are in dispute, and/or the proposed order (e) Guide Declarations toward providing information needed by the Court and away from mudslinging and irrelevant information. This can be accomplished by requesting specific categories of information (but avoiding complex and limiting mazes of check boxes). It could, for example, have a section calling for work & child care schedules. It could also direct that for each element of a custody/visitation order requested, the parties state why that would be in the best interests of the child. (f) Retain an 'unguided' section for additional issues and supporting information. Enhancing Mechanisms to Handle Perjury Disagree Comments The current sanction and attorney fee statutes are sufficient. The remedy for set-asides for fraud is sufficient. This is an additional layer of legal expertise which is beyond the comprehension of the	in Resolving Their Cases Agree that additional resources will be required. Streamlining Family Law Forms and Procedures Declarations – Agree that it would be very helpful to have a consistent format to more clearly and fully request the specific aspects of the current order which are in dispute, or the proposed order and to guide declarations to provide critical and relevant information. These excellent suggestions made for modification should be considered as part of implementation. Enhancing Mechanisms to Handle Perjury This recommendation has been significantly modified in response to comments.

Commentator	Comment	Committee Response
	typical SRL. Standardize Default and Uncontested Process Statewide Agree Comments None Interpreters Agree. Comments Requires funding Public Information and Outreach Agree Comments None Judicial Branch Education Agree Comments None Family Law Research Agenda Agree General Comment These are excellent recommendations that should be high on the list for immediate implementation. They will enable objective and cost-effective local and statewide decision making. Court Facilities Agree Comments Subject to adequate funding	Standardize Default and Uncontested Process Statewide No response required. Interpreters Agree that this recommendation will require additional funding. Public Information and Outreach No response required. Judicial Branch Education No response required. Family Law Research Agenda No response required Court Facilities Although many recommendations require and identify the need for additional funding, many others may be implemented without increased

Commentator	Comment	Committee Response
		resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	Leadership, Accountability, and Resources Standard 5.30 Disagree. Separating out family law cases, or any individual case type, for mandating resource allocations is not appropriate and conflicts with rules of court relating to the role and responsibilities of presiding judges.	Leadership, Accountability, and Resources. The recommendation to allocate judicial resources based on workload in family law is based on the overwhelming evidence that family law cases are dramatically under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources.
	Status of supervising judges	Status of supervising judges

Commentator	Comment	Committee Response
	Disagree Comments The role and responsibilities of supervising judges should not supersede those set out in Rules of Court regarding the roles and responsibilities of presiding judges and court executive officers. Presiding judges are charged with the responsibility of ensuring the effective administration of the entire court. Court executive officers are responsible, under the direction of the presiding judge, for overseeing the management and administration of the non-judicial operations of the court, including the direction and supervision of employees of the court. Decentralizing these responsibilities to supervising judges will result in inefficiencies and fragmentation in managing the court. Assignment of judicial officers to family law Disagree Applying a 20% benchmark for allocating judicial officers is premature, requiring much more analysis, including the work underway by the SB 56 Working Group to review trial court performance measures and resource allocations. The impact of how courts currently allocate judicial and other resources to family law needs to be better understood before a benchmark is established. For example, courts that prioritize resources for self help services or have efficient case tracking and management procedures may be more efficient in how their judicial officers are utilized. Implementing even a few of the recommendations in this report such as case management and time standards will have a positive impact on the courts' limited resources for all cases, including judicial officers. And, as noted earlier, such a benchmark would interfere with the presiding judges' authority to make judicial assignments that take in to account the effective management and administration of the court.	The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court. Assignment of judicial officers to family law The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics, and the Task Force acknowledges and recommends coordination with the ongoing development of improved workload standards pursuant to the SB 56 Working Group. The Task Force believes that the Presiding Judge can

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		appropriately exercise his or her authority consistent with this recommendation.
200. Mr. Michael D. Planet, Chair Executive Officer Superior Court of California, County of Ventura Court Executives Advisory Committee (CEAC) Response with the Support of the Trial Court Presiding Judges Advisory Committee (TCPJAC) Executive Committee	Court Executives Advisory Committee (CEAC) Response with the Support of the Trial Court Presiding Judges Advisory Committee (TCPJAC) Executive Committee On behalf of the Court Executives Advisory Committee, I would like to congratulate the Elkins Family Law Task Force on the completion of your task force draft recommendations. CEAC supports the mission of the task force to increase access to justice for family law litigants. Insofar as the Elkins Task Force recommendations contemplate a number of practices that would increase judicial workload and create new procedures in the clerk's office and courtrooms, CEAC is concerned that the recommendations of the Elkins Task Force do not address the fiscal impacts of implementation of these recommendations on trial court budgets, particularly in the current environment of shrinking budgets and extremely limited resources. A thorough analysis of the cost of implementing the approved recommendations is critical and must not be overlooked, as these cost implications will have consequences on not only family law resources, but also on other operational areas. Moreover, this analysis will lay a foundation for any effort to secure new funds or in making decisions about whether to reallocate current funds from other services provided by the trial courts. CEAC is also concerned that the recommendations in the report's area of Leadership, Accountability, and Resources, as they relate to structuring courts by case type, could fractionalize the governance and administration of the courts and begin to erode the gains made as a result of trial court unification. Accordingly, CEAC offers the	

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	following comments in the area of Leadership, Accountability, and Resources. Elevating standard 5.30(c) (2) of the California Standards of Judicial Administration to rule of court status • CEAC response with the support of the TCPJAC Executive Committee Do not agree with proposed changes CEAC believes that a rule of court mandating the allocation of resources solely and specifically for family law cases is not appropriate. This recommendation appears to conflict with California Rule of Court 10.603(c)(1) which states that the presiding judge has ultimate authority to make judicial assignments, and is responsible for ensuring adequate resources for all areas of the court. Status of Supervising Judges CEAC response with the support of the TCPJAC Executive Committee Do not agree with proposed changes The job description and responsibilities of a supervising judge should not conflict or be confused with the job description and responsibilities of a court's presiding judge. It is the presiding judge, with the assistance of the executive officer, who is responsible for ensuring the	Elevating standard 5.30(c) (2) of the California Standards of Judicial Administration to rule of court status. The recommendation to allocate judicial resources based on workload in family law is based on the evidence that family law cases are under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources. Status of Supervising Judges The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.

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	effective management and administration of the court. The primary responsibility of the supervising judge is to supervise and assign matters to other judges within their departments, and should not include other court operational responsibilities such as management of self-help centers. In fact, the idea that a supervising judge might provide management of a self-help center might weaken court administration's ability to effectively oversee this operation or blur the lines of supervision in self-help centers. While family law matters represent a significant share of the work performed in self-help centers, self represented litigants also use self-help resources for small claims, landlord-tenant disputes, civil harassment petitions, conservatorships and, to a lesser degree, other case types. By creating and emphasizing a supervisory role for a supervising family law judge in self-help centers, this might have the unintended consequence of signaling to staff that family law is more worthy of their efforts and attention than other case types. CEAC cautions against fractionalizing supervision of self-help centers because the centers provide diverse legal services. If supervising or presiding judges are assigned responsibility for self-help center staff or programs related to their specific areas of expertise, services could become less integrated and less efficient. Family and juvenile court role within the trial court governance structure CEAC response with the support of the TCPJAC Executive Committee Do not agree with proposed changes While CEAC agrees that it is advisable that family and juvenile supervising or presiding judges should be members of a court's executive committee, the composition of a court's executive committee is a local decision and should not be mandated statewide. California	Family and juvenile court role within the trial court governance structure. This recommendation has been modified to provide that the Supervising Family Law Judge be regularly consulted on issues of policies, resources, and facilities. The primary purpose of this

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	Rule of Court 10.605 states that "In accordance with the internal policies of the court, an executive committee may be established by the court to advise the presiding judge or to establish policies and procedures for the internal management of the court." CEAC recommends that this recommendation be set forth as a best practice to ensure family law interests are represented while still recognizing court autonomy and local governance structures. Assignment of judicial officers to family law CEAC response with the support of the TCPJAC Executive Committee Do not agree with proposed changes CEAC believes that the 20 percent benchmark to allocate resources to family law assignments is premature given the analysis currently undertaken by the SB 56 Working Group. The SB 56 Working Group was formed to review existing trial court performance measures and consider modifications to the Judicial Workload Assessment and the Resource Allocation Study model, as they relate to standards and measures of court administration. Since part of this analysis includes the 'weighting' of case types, it is conceivable that the final recommendations for standards and measures for family law may differ considerably from the recommended 20 percent benchmark. CEAC recommends that the SB 56 Working Group complete its analysis first. CEAC also believes that a statewide policy to allocate 20 percent of court resources, as well as the allocation or classification of staff, to family law conflicts with the presiding judge's duty to "apportion the business of the court" and allocate court resources in a manner that will enable the court to achieve its goals.	recommendation is to ensure that the needs of the family court are adequately addressed at the highest level of leadership in the court. Assignment of judicial officers to family law The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics, and the Task Force acknowledges and recommends coordination with the ongoing development of improved workload standards pursuant to the SB 56 Working Group. The Task Force believes that the Presiding Judge can appropriately exercise his or her authority consistent with this recommendation.
201. Brett Powell	Sanctions against attorneys	Sanctions against attorneys

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Mill Valley, CA	I strongly agree with The Elkins Family Law Task Force draft recommendations, Section 12, which includes the following "Sanctions against attorneys. Rule 2.30 of the California Rules of Court (Sanctions for rules violations in civil cases) should be amended to include family law matters or a similar rule should be adopted into the family law rules." In Pro Per litigants, should have equal rights as litigants represented by an attorney, including the ability to request and be awarded Monetary Sanctions and Issues Sanctions based on the following justification. It is important to fully consider the definition of "Sanction". As defined by the Merriam Webster dictionary, a "sanction" is "the detriment, loss of reward, or coercive intervention annexed to a violation of a law as a means of enforcing the law." Another definition, from Dictionary.com includes "to impose a sanction on; penalize, esp. by way of discipline." Clearly, the intent of a sanction is to penalize the party that misuses legal process and to deter such behavior. At the time that California Civil Code of Procedure, § 2023.010 was created, almost all cases had representation by attorneys, and as a result, In Pro Per circumstances were not given due consideration. Consequently, attorney's fees and expenses appear to be the only form of monetary penalty discussed and codified at that time, as they were a convenient means to quantify the intended penalty in monetary terms (with the knowledge and intent of monetary sanctions as having high impact in both capacities as a penalty and as a deterrent), and despite the ensuing consequences which resulted from this oversight, it was not intended that In Pro Per litigants would be treated in a disparate and unequal manner by the Court. Today however, there are a tremendous number of cases involving In Pro Per litigants (69% of Family Law Cases in Marin County in 2008	No response required.

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	per Marin Superior Court "Report On Family Court", page 8), and the Courts are now beginning to consider alternate forms of penalty which provide a just and balanced means for both parties to equally benefit from the Court's inherent ability to provide monetary sanctions as a penalty and a deterrent. The historical approach is clearly biased towards the attorney and the litigant represented by that attorney, as there are currently no effective codified means for monetary sanctions for an In Pro Per litigant (while recognizing that allowing minor expenses -- copying and mileage -- yet ignoring the time required to address misuse is biased toward the litigant with attorney representation). The consequence of this approach is that the attorney and their client can act with impunity with little financial consequence while the In Pro Per litigant is handicapped and held to a different standard. Quite frankly, the economics work to encourage attorneys and their clients to act inappropriately as the rewards far outweigh the risks associated with their inappropriate actions. If the roles were reversed (In Pro Per litigants being awarded "In Pro Per Litigation Fees" for their time, with sanctions for "attorneys fees" not being allowed), attorneys and their clients would certainly claim that this system is biased against them…and they would be correct, as they would have been treated in a disparate manner. The 2009 California Rules of Court, Rule 2.30, already provides for fair treatment of both parties in civil cases, including effective use of monetary sanctions. The Elkins Family Law Task Force recommendations with regard to the use of sanctions will increase access to justice, ensure due process, and provide for more effective and consistent rules, policies, and procedures in the family court system.	

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202. Cynthia M. Powell Family Law Contract Attorney Torrance, CA	I am a practicing attorney admitted to the State Bar of California in 1993 with the second half of my practice being devoted entirely to Family Law. I have the following comments regarding the recommendations made by the Elkins Commission. Live Testimony Testimony by Declaration is one of the most cost effective mechanisms family law litigants have available under Reifler, especially when it comes to expert witnesses. Often, use of expert witnesses such as vocational examiners, forensic accountants, medical experts and appraisers would be prohibitively expensive if the parties cannot present their testimony by Declaration. A Judicial Officer's decision to "Reiflerize" a case often is the only means by which expert testimony can be presented and made available. Therefore, a distinction on the rules for presenting live testimony needs to be made in terms of expert or percipient witnesses, in my opinion. Further, my experience is that testimony by Declaration ultimately saves resources for party witnesses because less attorney time is spent drafting an affidavit than would be required to prepare for and elicit testimony in open court. Pro se litigants have the tendency to present numerous third party declarations concerning character issues and lacking in probative value. Allowing live testimony from third party witnesses is therefore likely to burden the courts.	Live Testimony The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force is unaware of any evidence that allowing the parties to testify at their hearings will increase costs to them. The Task Force anticipates that judges will limit testimony appropriately to exclude cumulative witnesses. The Task Force has modified its recommendation on Case Management to include a requirement that when forensic experts

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		submit conflicting recommendations, those experts must meet and confer to attempt to resolve differences.
	Expansion of Legal Services I believe paralegals should be given more latitude in assisting parties with Family Law litigation. While I support attorney supervision of any paralegal services, I believe the Commission should provide guidance for such supervision and with what degree of independence paralegals may operate. This suggestion is based on my observation that much of the work we do for the parties can be accomplished by a competent paralegal as opposed to an attorney. Many parties are deprived of justice because they cannot afford the costs associated with attorney representation. Self Help Centers I fully support expansion of the self-help centers. I have litigated many times opposite of a pro se litigant and find innumerable court resources are spent in open proceedings advising the pro se litigants. Such time in open court could be avoided if the pro se litigants have better access to information and/or are required to work with the self-help centers.	Expansion of Legal Services The Task Force is mindful that much assistance can be provided by a competent paralegal. Guidance for supervision and degree of independence is an area that extends beyond family law is an area in which the Task Force did not choose to make recommendations. Self Help Centers No response required.
203. Jordan Posamentier, Esq. Legislative Counsel California Judges Association	CJA commends the Elkins Task Force's thorough and thoughtful analysis of the multiple issues facing the California courts' family law departments. Many of its proposed recommendations would improve daily court processes, such as reforming case-flow management, revising family law forms and procedures, and enhancing safety. But a number of the Task Force's recommendations are impractical or impossible and would compromise the administration of justice. Below	

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	provides just one example. Problems with unmitigated live testimony during OSC/motion hearings Of greatest concern is the Task Force's recommendation of mandating the option of live testimony at the OSC or motion stage of a case. Allowing unlimited mandatory live testimony at this stage poses at least three severe problems Live Testimony First, the unmitigated right to live testimony risks "hearing by ambush." OSC hearings currently depend on written declarations, which are necessary in that they provide a party with a meaningful opportunity to	Problems with unmitigated live testimony during OSC/motion hearings Although the Task Force received many comments requesting that there be no good cause factors to exclude live testimony, and that judicial discretion in this regard should be eliminated completely, the recommendation does not mandate unlimited live testimony. Judicial discretion to exclude live testimony has been maintained. The recommendation simply sets out reviewable factors judges must consider in exercising their discretion. The right to provide live testimony was an issue brought to the Task Force by attorneys and litigants through public input and attorney surveys as a fundamental to due process in family law. Live Testimony The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement

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	respond to the factual evidence put forth in other parties' written declarations. Written declarations prepare a party for the others' understanding and assessment of the case. The proposed recommendation neglects the significance of written declarations and perhaps inadvertently encourages spur-of-the-moment live testimony without notice.	of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. The scope of testimony should be limited to the issues raised in the pleadings. It is important that family law matters be decided on their merits. The Task Force anticipates the use of reasonable continuances when necessary to provide adequate notice and opportunity to prepare a response to facts arising in the testimony of the parties at the hearing. These issues should be more considered in drafting implementing rules.

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	Discretion to Limit Live Testimony Second, the recommendation does not give sufficient discretion to the court to limit live testimony at this stage. CJA readily acknowledges that live testimony can provide a valuable complement to a written declaration during an OSC or motion hearing, such as when it is useful for cross-examination or corroboration of evidence set forth in a declaration. Live testimony can fall prey to those factors in the recommendation's list of good cause exceptions, and it can also be superfluous or redundant. Putting the court in the position of disallowing live testimony, and restricting it to the factors in the recommendation's list of good cause exceptions, would frustrate the parties' expectation of and dependence on live testimony, a prospect which would burden the court's ability to manage live testimony during OSC and motion hearings. Mandating unmitigated live testimony Third, mandating unmitigated live testimony via legislation or a Rule of Court would impose even greater time-consuming processes into already exceedingly long court dockets. As it stands, courts will sometimes need to hear over forty cases in one morning, cases with complex issues including custody, visitation, DV restraining orders, child and spousal support, exclusive use of property. The recommendation, as written, would overwhelm and undermine Family Law departments across the state. It would take extensive additional resources – e.g., more judicial officers in a Family Law assignment – to relieve the pressure that this recommendation would apply.	Discretion to Limit Live Testimony The Task Force anticipates that judges will limit the scope of any testimony to the issues raised in the pleadings. Additionally, judges would be expected to use the Evidence Code to manage the proceedings and exclude such things as cumulative testimony, or testimony based on hearsay. Mandating unmitigated live testimony The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting

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		motions to strike.
	Alternatives to unmitigated live testimony during OSC/motion hearings. A more manageable approach might be to encourage local rules that provide options to attorneys and litigants with the understanding that they do not conflict with statewide Rules of Court. It also seems imminently useful to set forth guidelines instructing counsel and litigants on what they need to do rather than to impose a restrictive set of guidelines on the courts.	Alternatives to unmitigated live testimony The Task Force has concluded that the right of litigants to present testimony at their hearings, particularly on substantive issues, or where there are material facts at controversy is fundamental to due process in family law.
	Resource Issues It should be noted that a number of proposals are to be praised as long overdue, but many will need an infusion of resources, money and time. The above discussion offers one such example. In this era of budget cuts, increased caseloads and furloughs, the implementation of these objectives may be long in coming if ever.	Resource Issues Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	CJA offers this public comment in addition to its comment dated November 17, 2009. Leadership, Accountability, and Resources,	Leadership, Accountability, and

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	The Task Force identifies a disparity between the resources provided to family law departments and the volume of cases and proceedings to family law, and then recommends that each superior court "should determine the number of judicial officers to be assigned to family law based on the percentage of the court's workload that is family law." This recommendation would restrict a presiding judge's ability to make assignments based on the needs and resources available to her or his particular court and locale. Under that same topic header, the Task Force correctly notes "Presiding judges need flexibility and discretion to consider judges' expertise, professional background, temperament, interest in the assignment, and other factors to make the best possible assignments to the family law court." The "other factors" matter and vary per court. How much court time is needed for a particular kind of case? How swiftly can it be adjudicated? How complex is it? Does it require more court time, e.g., impaneling a jury, researching issues, organizing and reviewing more documents, setting an extensive hearing schedule? When making assignments, the presiding judge considers these factors and the issue of whether of caseload is proportional to the number of judicial officers. CJA does not object to the prospect of introducing additional unlimited resources to assist presiding judges in achieving proportionality, but requiring a reallocation of resources risks compromising the delicate balancing act that a presiding judge must perform when determining what assignments are best for her or his court and community.	Resources The recommendation to allocate judicial resources based on workload in family law is based on the evidence that family law cases are under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources. The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics, and the Task Force acknowledges and recommends coordination with the ongoing development of improved workload standards pursuant to the SB 56

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		Working Group. The Task Force believes that the Presiding Judge can appropriately exercise his or her authority consistent with this recommendation.
204. Shawn Quinlivan Fairfax, CA	*Commentator provided comments on general family court experiences and raised concern about the level of injustice he has observed or experienced and following comments on specific recommendations. Right to Present Live Testimony at Hearings I agree with part A A. Live Testimony. I take exception to (see below) B. Good Cause Exceptions. COMMENT The task force has made a recommendation to allow for "live testimony," but leaves out cross-examination and then proceeds to offer the judicial officers an OUT to limit live testimony, under section B of its proposal for "good cause." May I remind this panel that the right to be heard "belongs to the litigants?" This panel is overstepping boundaries when it offers "judicial officers" the ability to circumnavigate the right to be heard for…."just cause" …..it does not and cannot trump the supreme law of the land, regarding due process. Only a stipulation of the parties, who both have been advised of their right to live testimony, can and should be the only mechanism to "waive" live testimony and cross-examination. Such a waiver should be at the preface to any stipulation,	Right to Present Live Testimony at Hearings The Task Force expects that cross-examination is inherent in the right to live testimony, but this wording issue will be considered during the drafting of the rule. The goal of the Task Force is to increase the opportunities of litigants to present live testimony at their hearings. While the recommendation does maintain judicial discretion in this area, it creates a set of reviewable factors judges must consider in their exercise of their discretion, and prohibits a generalized policy of excluding live testimony.

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	if these rights are to be respected. The exhaustive "just cause" list provides a barn door one could drive a Courthouse building thru. And with Judicial Officers who are saddled with so many cases, some with over 2000 cases on their dockets, drive thru it they will. Expanding Legal Representation and Providing a Continuum of Legal Services Attorney fees COMMENT The recommendations regarding attorneys' fees leaves too much discretion to the judiciary, the rule should be simple, from whatever funds the parties may have both are authorized to spend from a pooled budget that is equal; furthermore it has long been the practice that attorneys fees are percentage limited to the amount of assets recovered in civil actions, and even in the probate courts…but in family courts the sky is the limit, and the courts ability to extort money from concerned parents who fear a loss of child thru custody proceedings is legend in this State…this panel should deal with the reality of what takes place. Some here might think that the term of extortion is rather strong, well what do you call it when the Court orders you to pay in advance tens of thousands of dollars directly to an appointed expert who is not qualified under the Family Code or the Rules of Court, and your failure to pay as ordered will result in a contempt proceeding and a potential jail visit? Again the recommendations made by this task force, complicates matters needlessly, it's simple really, discover the assets, set a budget from the beginning of not to exceed xxx amount of the families total assets for legal fees, and remind parents and counsel, that every penny saved pays for the education of their children, for example.	Expanding Legal Representation and Providing a Continuum of Legal Services. While the Task Force is mindful of the current complexities of obtaining attorney fees, it recognizes that there are often issues that require attorney assistance such as custody and visitation issues for families that have little to do with the party's assets. Ideas regarding potential streamlining of attorneys fees request should be considered as part of implementation.

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	I Take Issue With Expanding legal services programs for appellate cases. COMMENT UNDER Expanding programs for Appellate Services…let's start with the FACT that everyone is entitled to an appeal of a judgment, as a matter of right….BUT in California, this is not true. The Court Reporter's Fund will provide "transcripts" for indigent litigants…kind of ?…it will not provide transcripts for those poor litigants who are IN PRO PER, or representing themselves…this then leads to a Constitutional discriminatory violation of the right to appeal…based on income….because the appellate court will find against a party complaining who has not provided the "entire" record for review. Not many people can pay 3 to 5 thousand dollars or more for trial transcripts….what good is this right, without an effective remedy….it's not a right…it's a wish. One more question. What the purpose of the law concerning a Writ of Habeas Corpus, that requires that the Court must state its reasons for denial, and not just a one word "denied" response….particularly where a person is in pro per, is it proper to "draw a line thru the Title "Writ of Habeas Corpus," and write in Writ of Mandate/Prohibition and then write denied, is that compliance with the law….our California Supreme Court has done this. I Take Issue with Availability of attorneys. COMMENT As for your "suggestion" to add attorneys' to the Family Bar….have	Expanding legal services programs for appellate cases The purpose of the recommendation to expand the self-help appellate program operated by Public Counsel in collaboration with the Court of Appeal, Second Appellate District is specifically for the purpose of significantly increasing access to the appellate process for family law litigants. Availability of attorneys- The Task Force believes that its recommendations, once implemented,

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	you spoken to attorneys who could or might expand their practice to Family Law…those with experience wouldn't enter, as one lawyer told me, "that snake pit" unless at the end of the barrel of a gun. The rules are not followed, and the rights of the litigants are circumnavigated at every turn. Some Factual Examples At Least with Marin, Contra Costa, and Sacramento counties there is not one thin dime in their respective budgets for "child custody evaluations or investigations"…in fact in Marin they have never paid for and then been reimbursed, by a party, for any child custody evaluation…..the LAW States Fam Code section 3112 that the Court pays for its "expert" and can "after a hearing to determine ability to pay" order the parties to REPAY the Court the amount that the Court determines is necessary. That's not how it's done, in fact with nearly a dozen Judicial officers on this panel, they have to admit that IF they order an evaluation under Family Code 3110, they completely by-pass this legislative mandate and order the parties to pay deposits up front for these Court Experts. In fact in Marin they switched, by Local Rule, from ordering open ended "deposits" as required by the specific expert to making it a 1000 or 2000 dollar fee…..again paid to the expert, not the Court and this is directly contrary to the written law.. Family Code section 3118 says that when there is an allegation of child sexual abuse the Court SHALL, which I remind this panel means must, order an investigation….BUT with what money…there is no money in the budget for this law to be complied with…in fact just recently this Family Code section was the subject of an appeal…and reversal….because the law was not complied with.	will encourage more attorneys to specialize in family law. Family code section 3112 appears to refer to situations in which court employed investigators conduct the investigation not private evaluators or investigators. It is not clear that courts are expected to cover the costs of private child custody evaluators or investigators in situations other than when they are employed by or on contract with the court. Family Code section 3118 evaluation can be conducted by court employees. When that is the case, the court pays for the evaluation and may seek reimbursement from the parties pursuant to Family Code section 3112. In that case, the financial situation of the parties and their ability to pay must be taken into consideration. Family Code section 3118 does not interfere with criminal prosecution of sexual abuse. This code section deals

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	Family Code section 3118 is unconstitutional on its face, because it takes what no one can dispute as a crime, the sexual abuse of children…. and converts it to a civil proceeding….inviting "civil experts" to determine or evaluate the situation…crimes are to be investigated by authorities equipped to handle these complex events while respecting the rights of the accused….it standard practice for these experts to report to the Court that the alleged perpetrator would not co-operate, and why should they, they have a right to remain silent, without the presumption of guilt that the expert infers from their lack of participation. Does anyone here remember the 5th Amendment to the US Constitution?	only with the issue of child custody and visitation. Although Family Code section 3118 is fairly detailed in what an investigation of child sexual abuse should include, it does not require interviewing the litigants. The Task Force anticipates that if a custody evaluation ordered under Family Code section 3118 includes any statement or conclusion by the evaluator that a parent who is charged, or potentially charged, with a crime was non-cooperative because of a refusal to be interviewed, that portion of the evaluation would be stricken, and appropriate weight afforded the evaluator's other conclusions by the judge.
	Further for those judicial officers who know of these limitations concerning funding for "experts," rather than acting contrary to standing law, some fall back onto Evidence Code 730 for child custody experts and fees issues avoiding the law as made, in Family Code 3110 Et Seq, which circumnavigates the entire legislative purpose of the family code provisions designed to handle these matters of child custody evaluations. Constitutionally and legally, (never mind Fry tests and the like), there isn't one so called expert, that can point to any reference of medical science that proves what is and what is not a good parent. These reports generated by these experts, call into question each parents "relationship" with their children and opines what they find	Each case should be considered according to its own specific facts. The Task Force anticipates that its recommendation on the Right to Live testimony will afford litigants and their attorneys increased access to question evaluators and present their own testimony regarding the evaluation reports. In fact, the presence of an outside professional is one of the

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	lacking….they are not competent evidence of anything …..they are an escape route for overburdened judicial officers to defer to and as they nearly always do adopt these reports and recommendations as offered wholesale. You have at least 11 Judicial Officers on this Task Force, and not one of them can swear under oath that they have ordered the Clerk of the Court to pay for the "COURTS" expert pursuant to Family Code Sections 3112 or 3118. Caseflow Management COMMENT There is not one mention of the "legal technicians" (or Law Clerks) that work in every county courthouse, in this state. In Marin for example, the judicial officers use to get what were called "BLUE SHEETS" a synopsis of what some law clerk garnered from the papers filed in the matter before the Court, now however, it's not so much…and we are talking about the color here…these same events are occurring…just not with the blue sheets available for the litigants to see…these brief synopsis provided to the Judicial Officers many times provide incomplete facts or misstated law…and why is this important, because it explains why the Court made a determination without considering the matter correctly…because they are so overburden they must rely on these short briefs because they just don't have the time to read all the	factors that judges would be required to consider before any decision is made to proceed without live testimony. The Task Force also anticipates that implementation of effective caseflow management can help reduce the number of child custody evaluations As stated above, Family Code section 3112 does not require the court to pay for outside private practice child custody evaluators, even in cases involving sexual abuse allegations. Caseflow Management The Task Force has made recommendations regarding increasing the number of judicial officers available to hear family law matters which will help to address the concerns raised by the commenter.

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	moving papers….it's not unusual for a judicial officer to be assigned over 2000 cases….in Contra Costa County, and more than 600 in Marin. With 365 days a year and 8 hours a day, that's 2920 hours, and we all know that this is an awesome exaggeration of the time a judicial officer will actually spend working on their cases, this means that there is 1.46 hours available to each assigned case…to do justice under these time limits is not a maybe…it's an impossibility. As for your recommendations regarding the Orders after a hearing…it should be that each Judicial Officer is mandated to produce right there at the conclusion of the matter what the order is….and present both parties with a copy rather than leaving it up to the parties who already can't agree, nor can their "professional counsel" as to what the Judicial Officer meant in stating the Order from the bench. Getting something in writing from a Judicial Officer in this State, as a matter of regular practice, is as rare as shooting stars in the nighttime sky. Children's Voices COMMENT I would suggest that this panel review from the US Supreme Court the case of Crawford vs. Washington, 541 US 36 (2004) which over turned Ohio v Roberts, no longer can there be a usurpation of the confrontation clause regarding "testimony." There is to be no more acceptance of a "indicia of reliability" series of exceptions to the hearsay rules. Particularly, whereas here there can be allegations of physical and sexual abuse, crimes that should be handled by the criminal courts and not family courts in the first instance.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be

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	The Supreme Court dealt with the sensitive nature of rape victims and children, if one reads the actual decision, rather than just the synopsis most gloss over. Way too many innocent citizens were wrongly convicted, of sexual predator acts, by then Florida State Prosecutor, Janet Reno, eventually United States Attorney General, because of this "prosecutorial loop hole" and this Task Force ought not promote those wrongheaded maneuvers here either. As, the Supremes said; the Founders insisted, it's only the "crucible of confrontation" on the stand that elicits the truth. COMMENT If your own cite, claims that only "sworn testimony" of children can be used to make a determination, (see In Re Heather H, above) then why all this extended "make reasons for" to use "in chambers" or any other "child interview process." It's repugnant to justice, and it should not be done unless done according to the law of the land. Domestic Violence COMMENT *Commentator provided general information about domestic violence laws and cases that did specifically address task force recommendations.	beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. Domestic violence No response required.
205. Glen L. Rabenn Attorney at Law Certified Family Law Specialist Seal Beach, CA	* Commentator provided information on his background and the following You will note that I have checked the box adjacent to "Agree with the recommendation subject to modifications as described below.	

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	Overall, I believe that the Commission did a thorough job in identifying and addressing the numerous problems that presently confront the family law system in California. I believe, however, that the report requires certain changes and modifications. Initially, I would like to admit to a professional bias that is the result of thirty-seven years of family law practice. After being personally involved in thousands of appearances before numerous judicial officers, I have come to the conclusion that a courthouse is the worst place for divorcing couples to resolve their marital issues. There are several factors which cause me to harbor that view The cost of litigation, with representation by counsel is simply out of reach for most Californians. Prior to the current recession we had seen that in a majority of cases at least one party was self-represented. This trend has been exacerbated by the economic downturn. Time The crush of case filings has caused most courts to incur a backlog of cases which bottlenecks calendars. As a result, in many courts bifurcated trials can take months, or years to conclude. In one of my current cases, trial commenced in June 2007. We are scheduled to return for the final hearing in February 2010 - a trial time of2 3/4 years. Inappropriate Settlement Facilities and Insufficient Support of Settlement Alternatives A courthouse does not provide the optimal environment to address and resolve the sensitive issues that arise in the typical family law matter. In the courthouses in which [practice litigants often find themselves	Inappropriate Settlement Facilities and Insufficient Support of Settlement Alternatives While the Task Force acknowledges that there are aspects of a courthouse

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	standing in the hallways outside the courtrooms, making important decisions regarding their children and the division of their community estate. These are decisions that should be addressed in an environment that is not as supercharged as a courthouse. The Orange County Superior Court does not, in my view, provide sufficient settlement support at the mandatory settlement conference stage. Unlike the Los Angeles County Superior Court, which enlists the services of volunteer attorney-mediators, the Orange County Superior Court has no formal system to facilitate meaningful settlement discussions at mandatory settlement conferences. Instead, the parties are simply expected to "talk settlement" in a cafeteria, lunch room or in the courthouse hallway. Moreover, mandatory settlement conferences are set before the judicial officers who will ultimately hear the case if it proceeds to trial. With that said, the following are my comments and, where applicable, recommendations. Right to Live Testimony Instead of conceptualizing methods to streamline the hearing procedure, the Commission appears to have taken the position that full evidentiary hearings should be the rule. This orientation flies in the face of the fiscal realities facing divorcing couples and courts. At a time when courts are literally closing their doors, how can a recommendation that will place even more demands on the system be justified? I believe that the right to an evidentiary hearing should be restricted at the Order to Show Cause stage, where the Court is making temporary	environment that may not be conducive to privacy or settlement, the focus has been on improving conditions within the courthouse due to concerns about litigant safety in offsite locations that may not have adequate security screening. Right to Live Testimony The Task Force recommendation on the right to live testimony should be read in context with the rest of the recommendation, particularly the recommendation on Case Management. Making the hearing process more effective is an important goal of the Task Force recommendations. The right to live

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	order. The San Diego Superior Court, which was severely criticized in the Elkins decision, was trying to deal with the congestion in its courts, albeit in a clumsy and unfair way. However, instead of recognizing the crisis that our family law courts are experiencing, the Commission's recommendation, if implemented, will only serve to make a bad situation even worse. My Recommendation The Commission has recommended that there be a presumptive right to an evidentiary hearing, which can be restricted upon a finding of good cause. To adequately deal with the realities of the Twenty-First Century, the presumption should be in the other direction. That is, at Order to Show Cause hearings, the Court will rule on the pleadings unless good cause is shown for the court to take live testimony. Moreover, uniform rules should be drafted to mandate a procedure that will allow courts to limit the issues that will be given a full evidentiary hearing at the trial of the matter. Section 3, Subsection 11 contains several concepts and ideas that point in that direction. Caseflow Management	testimony is just a part of that effort. Additionally, with respect to live testimony, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force has concluded that the right of the parties to present testimony at their hearings, particularly on substantive issues, or where there are material facts in controversy, is fundamental to due process in family law, and that live testimony should be the standard. The Task Force recognizes that the *Elkins* case has set the standard for trials. Caseflow Management

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	Subsection 7 provides as follow "Resources available for ADR. Settlement assistance should be available throughout a case to assist parties in resolving all or a portion of their cases. However. ADR should not be utilized in such a manner as to limit a party's right to a full and fair hearing of any issues in dispute. (Emphasis added) The portion of that recommendation that I have emphasized illustrates my concerns regarding the Commission's report. This section, while paying lip-service to ADR, reaffirms the presumptive right to an evidentiary hearing. Such a bias fails to recognize the realities that family law judicial officers, attorneys and spouses experience every day in courts throughout the state. We have a system that is being simultaneously buckling under the weight of its own complexity and strangled by fiscal realities. My Recommendation The emphasized phrase should be deleted and replaced with the following "ADR should be recognized as an essential and equal component in the family law system. Rules and procedures should be devised to enable and encourage parties to resolve their cases without the intervention of judicial officers." Litigant Education In this section the Commission is certainly pointing in the right direction when it recommends that "Parties should receive information about legal resources including brochures from the State Bar, free or low-cost legal clinics, legal services, and county bar lawyer referral panels; information about limited scope representation; and information about options such as mediation and collaborative law." (Sub-section 1, A, second paragraph) However, the Commission should give Courts	The Task Force is very mindful of the benefits of ADR. It has heard also heard from parties and attorneys of their concern that they do not want to be forced to come to an agreement and be denied access to present their case to the judge. This recommendation is intended to ensure that litigants know that they do not give up their right to be heard by the judge if ADR does not work. Litigant Education Alternatives to litigation would be provided in resources for mediation and other ADR options.

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	more direction in this educational process. Instead of making materials and information available at the courthouse, family law parties should be given a form which clearly identifies alternatives to litigation. The second paragraph of Section 4 contains the following phrase, which tends to reinforce the apparent litigation bias of the report "Given the wide range of issues and case types arising in family court. educational materials and information should avoid a bias that supports settlement over litigation;" (emphasis added) As noted above, in my comment to Section 3, ADR needs to be view as an essential and equal (to litigation) component in the Family Law system. My professional experience tells me that, if there is to be any bias, it should be in favor of finding ways for people to avoid the courtroom altogether. At the very least, the Commission should avoid any language that might appear or be interpreted as placing ADR in a negative light. My Recommendation ADR should be encouraged at all stages of a family law case. The Judicial Council should be directed to create an adopted (not "approved") form which will be attached to the Summons (Fan1ily Law). That form will list ADR alternatives and include reference to a Judicial Council website that will provide detailed information regarding ADR, including mediation and collaboration. Expanding Services to Assist Litigants in Resolving Their Cases This section addresses many of the concerns that I have expressed above. The Commission should be commended for bravely and forcefully bringing all forms of ADR into the dispute resolution	The Task Force has amended the recommendation to remove this sentence. ADR The Task Force recognizes the great importance and value of ADR. The recommendations appear to be supporting ADR rather than placing it in a negative light. The recommendation for developing a form regarding ADR options should be considered as part of implementation. Expanding Services to Assist Litigants in Resolving Their Cases No response required to this section. Concerns raised by commentator have

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	process. However, I am concerned with the inconsistencies between this section and other portions of the report, several of which I have discussed above. The Commission's position and recommendations regarding ADR should be clear and consistent. My Recommendation The Commission's recommendations should be consistent in their insistence that all forms of dispute resolution be recognized and utilized. Furthermore, if the Commission is reluctant to emphasize ADR as the preferred method of resolving family law disputes, it should make every effort to treat litigation and ADR with an even hand.	been discussed above.
206. Erin Rager Modesto, CA	Domestic Violence Add all parties' mandatory treatment for Domestic Violence not just anger management. There is a difference. 10. Supervised exchange is required for litigation period and while there is unresolved conflict. Even with non-domestic violence cases. (in the best interest of the children)	Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. These comments raise issues related to substantive policy areas where the Task Force did not choose to make recommendations.
207. Andrea W. Ransdell, Executive Director Heather Markert, Legislative Director Incest Survivor's Speakers Bureau of Davis, CA	Caseflow Management Courtroom management tools-legislation required. Please delete all three paragraphs of recommendation 3.11. This recommendation is an over-simplification that diminishes due process rights and removes litigants' liberties. It would negate all the other Elkins Task Force recommendations and reforms; It has a high probability of abuse, as is currently occurring in counties with individual case management. Judicial officers should not have any of the extra authority described, especially in cases which include allegations of domestic violence,	Caseflow Management The Task Force intends that case management will allow a judge to spend more time with litigants who need attention, rather than to refer them to ancillary professionals to make recommendations. The Task Force heard from many members of the public and attorneys regarding

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	child physical abuse, or child sexual abuse as defined respectively by Family Code 6203, Penal Code section 11165.4, and Penal Code section 11165.1. Courtroom management tools that give broad power and control over parties from initial filing through post-judgment to a specific professional (i.e. Special Master, case coordinator, parenting coordinator, or commissioner) deprive children and protective parents of their rights to procedural fairness (See Elkins Guiding Principle 2). If the Elkins Family Law Task Force feels that 3.11 must be included, then please, at least stipulate that Judicial officers must NOT have any of these abilities or authorities in cases which include allegations of domestic violence, child physical abuse or child sexual abuse, because these are the cases that MUST utilize the justice system to its fullest, non-abbreviated extent.	concerns about these referrals and has made a number of recommendations designed to minimize the need for such referrals.
	A sentence needs to be added at the end of paragraph 3.7 to stipulate that Cases which include allegations of domestic violence, child physical abuse, or child sexual abuse (as defined respectively by Family Code 6203 , Penal Code section 11165.4, and Penal Code section 11165.1) cannot be referred to binding alternative dispute resolution (ADR). This is important, because domestic violence and child sexual abuse victims can be easily intimidated by the abusive parent during binding arbitration and this deprives the children and protective parents of their rights to procedural fairness (See Elkins Guiding Principle 2). Even non-binding arbitration is not likely to be helpful, because in a case involving domestic violence or child sexual abuse, the losing party will probably appeal the case. However, if the Elkins Task Force Recommendations must include ADR for these cases, then we ask you to add a sentence such as “If parties in cases which include allegations of domestic violence, child physical abuse, or child sexual abuse {as	The Task Force is mindful that cases involving abuse require special care and protections. However, there are many reports that ADR can be beneficial depending upon the situation. Recommendations regarding triage and appropriate review of agreements should be considered as part of implementing rules. If a party has signed an agreement under threat, coercion or duress, it is not clear that any statement that they sign to the contrary would not also be

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	defined by Penal Code section 11165.4, Penal Code section 11165.1, or Family Code 6203) choose to use ADR, they can only be offered non-binding arbitration, and must sign a statement that indicates there was no coercion, threat or duress used in that choice. Children's Voices Exercising discretion and finding the least traumatic method for child involvement Involving other professionals and providing information. Exercising discretion Recommendations describe the status quo, which is NOT working for children in family court. Most children express a desire to talk directly to the judge regarding their custody and visitation wishes. Many children report having been misrepresented by mediators, evaluators, or court appointed psychologists they met with. Children should be entitled to the same respect as children in dependency court, including notice of the hearing; choice of counsel (if the court has appointed counsel); ability to address the court and participate in the hearing if desired; and at age 10, guarantee of ability to be present and participate in hearings. This would provide children access to justice, fairness, due process and equal protection under the law, while increasing their trust and confidence in the court. This is especially important for children in families with alleged domestic violence, child physical abuse, or child sexual abuse as defined respectively by Family Code 6203, Penal Code section 11165.4, and Penal Code section 11165.1. Children in family court must be entitled to make their wishes known directly to the court if they so desire. This will provide the court with more accurate information. Please remove the listed a, b, c, and d, and	executed under threat, coercion or duress – requiring a higher burden of proof to set aside the agreement. Children's Voices The Task Force agrees that children of sufficient age and capacity who would like to testify should be provided with that opportunity. The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the notion that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial

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	amend the second and third sentences of Recommendation 5.3.C to read as follows "Courts should consider the following in determining the appropriate action to take Whether the child wishes to testify or speak to the judge; and if so, whether testifying is best done in chambers or in open court. If the child wishes to testify or speak to the judge, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which a child can be open and honest. Please also add "In all cases, a court reporter must be present to ensure due process." This is especially important t for children in families with alleged domestic violence, child physical abuse, or child sexual abuse as defined respectively by Family Code 6203, Penal Code section 11165.4 and Penal Code section 11165.1. Domestic Violence Domestic Violence Safety needs are not addressed sufficiently, In cases that include allegations of domestic violence, as defined by Family Code 6203, an investigation should be ordered, and the child needs to be asked directly by the judge if he or she feels safe while in the custody or while visiting the alleged abuser. In light of the many cases in which children have been killed or witnessed another parent being 'killed, the child's testimony needs to be taken seriously, and again, must not be filtered through the viewpoints of court appointed officials. Enhancing safety Related procedures. Safely needs are not addressed sufficiently, In cases that include	discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. Domestic violence Current law permits an investigation to be ordered as needed and the Task Force recommendations reflect the need to consider this and related services. Enhancing Safety Related procedures. The task force agrees that family court

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	allegations of domestic violence or child physical or sexual abuse as defined respectively by Family Code 6203 , Penal Code section 11165.4, and Penal Code section 11165, the child should always have the same rights to due process as they would in juvenile court.	should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile court are parties and are provided with state-funded attorney representation so that their participation as parties whose rights are directly affected by the proceedings can be appropriately addressed. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court.
	Expedited Handling The recommendation uses the vague term serious allegations. All cases that include allegations of domestic violence or child physical or sexual abuse as defined respectively by Family Code 6203, Penal Code section	Expedited Handling The recommendation seeks to broadly encompass a range of cases that may be before the court where children

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	11165.4, and Penal Code section 11165.1, should be expedited A child's physical and sexual safety should always be more important than a parent's access to the child, These children should always have the same rights to due process as they would in juvenile court.	need this type of approach. Contested Child Custody Use of template The Task Force recommendations have been updated to reflect the recommendation that further research be conducted into the use of templates for reporting on these and related evaluations (see Family Law Research Agenda).
	Contested Child Custody Information provision Investigators and evaluators In those cases where additional information is needed, courts should have investigators and evaluators available. Court orders should clearly indicate whether an investigation (to determine facts and not to make assessments, recommendations, or evaluations) or all evaluation is being ordered." But we ask that it be changed to Investigators and evaluators In those cases where additional information is needed, courts should have investigators and evaluators available, Court orders should clearly indicate whether an investigation (to gather existing information pursuant to Family Code section 3118 when allegations of child physical abuse, child sexual agues, domestic violence or substance abuse arise, present facts to the court on a standardized template, and not to make recommendations), or an evaluation (when there are no allegations of child physical abuse, child sexual agues, domestic violence or substance abuse) is being ordered, California rules of court should be clarified to ensure that these categories are distinct, and that all reports are provided to the parties and their attorneys for review and correction before being provided to the court, to ensure that accurate information is provided to the court. A clear definition for each role is	Contested Child Custody Information provision The recommendation calls for clarification regarding the role of evaluator and that of investigator.

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	needed. Investigations of domestic violence and child physical/sexual abuse should be done be qualified investigators highly trained by a multidisciplinary team including law enforcement officers who investigate violent and sexual crimes using a uniform curriculum and standard template, The court should ensure child physical and sexual safety above all, evaluators should be mental health professionals who provide assistance on parenting plans in cases without such criminal allegations. The changes that we ask for are urgent and extremely important, because fatalities have been caused by the family courts' use of evaluations that presented incomplete or erroneous information, in cases that did include allegations of child physical abuse, child sexual agues, domestic violence or substance abuse, These cases should have been investigated correctly, and not evaluated. Contested Child Custody Child custody mediation services. Mediation services should not be used in cases which include allegations of child physical abuse, child sexual agues, or domestic violence. It needs to be made clear that Recommendation 8.2 applies only to cases that do not include allegations of child physical abuse, child sexual agues, or domestic violence. Contested Child Custody Information from family court services and evaluators. 1. As mentioned above, mediation services and evaluator should never	Contested Child Custody Child custody mediation services. California law mandates mediation where there is a conflict over child custody. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Information from family court services 1. California law mandates mediation where there is a conflict over child

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	be used in cases which include allegations of child physical abuse, child sexual agues, or domestic violence, 2 Family court service staff should not present any information at all unless they are currently trained and qualified as mediators. FCS staff members are not qualified or trained pursuant to CA Rule of Court 5,225 to provide investigations or evaluations. 3. Mediations should be confidential. Mediators should not make recommendations, because they are not investigators and cannot fairly evaluate the information they have. Mediators should only present a list of unresolved issues to the court, and no recommendations. 4. The court should ensure that evaluators are paid pursuant to Family Code 3112 with repayment by the parties to the court only if parties are financially able to repay. Family Code section 3112 requires parties to repay the court if they are able (not pay court-ordered professionals directly, as is current practice in many courts.) 5. The court should also ensure that, prior to submission to the court, any evaluation report has been stipulated by the parties, pursuant to Family code 3111(c). 6. The court should give the parties the opportunity cross examine the evaluator.	custody. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. 2. Many family court services staff are trained pursuant to CRC 5.225 and if appointed as investigators or evaluators, are required by current law to have met those requirements. 3. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. 4. Family Code Section 3112 This code section appears to refer to situations in which court employed investigators conduct the investigation not private evaluators or investigators. It is not clear that courts are expected to cover the costs of private child custody evaluators or investigators in situations other than when they are employed by or on contract with the

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		court. 5. Family Code section 3111(c) says the report may be received into evidence upon stipulation of the parties. The Task Force's recommendations do not include a restatement of this existing statute. 6. The Task Force's report includes recommendations in support of making evaluators available to testify and to be cross-examined.
	Minor's Counsel Minor's counsel's role; Role definition. Family Code section 3151 should be amended to state that any counsel appointed by the court to represent a child in a custody proceeding shall owe the child the same duty of competent representation as any other counselor for any other party, and should be bound by the same ethical rules and guidelines as all other attorneys.	Minor's Counsel Minor's counsel's role; Role definition. The Task Force recommendations in this section support clarifying the role of minor's counsel as an attorney for the child which includes the duties associated with this role.
	Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel; Review of costs. When ordered by the court, minor's counsel should be paid by the court and the court be repaid by the parties, if parties are financially able to repay. It is the exact opposite of due process and fairness to have parties pay for court-ordered minor's counsel who charges the market rate stays on the case until the child is 1 B, because the wealthier of the parties will often end up paying minor's counsel, in which case the	Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel; Review of costs. The Task Force recommends that courts routinely review costs and bill for those parties paying minor's counsel directly and that courts

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	counsel often ends up representing the payer instead of the child. Judicial Branch Education General family law education Court-connected mediators Mediators should immediately refer cases to investigation if there are any allegations of child physical abuse, child sexual abuse, or domestic violence. Mediations should also be confidential. Mediators should not make recommendations, but should only present a list of unresolved issues to the court, without recommendations.	consider imposing a cap on fees, limiting the time minor's counsel is involved in the case, and setting automatic hearings on these fees so that the parties are aware of the expenditures. Under current law, mediators may make recommendations under certain circumstances. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. However, the Task Force does recommend establishing pilot projects to that those courts seeking to provide a range of services including confidential mediation may do so. Judicial Branch Education General family law education Court-connected mediators In the section on Enhancing Safety, the Task Force recommends expedited handling of child abuse allegations.

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	Judicial Branch Education General family law education; ADR Panels. ADR panels should immediately refer cases to investigation if there are any allegations of child physical abuse, child sexual abuse, or domestic violence. Summary We at ISSB of California want to thank all the members of the Elkins Family Law Task Force for the important work you've done. Your recommendations will be of vital importance for correcting the current problems in the California Family court system. However, if you do not clarify your recommendations by enforcing stricter guidelines for ADR, mediators, evaluators, and investigations, then the rest of your recommendations will become worthless. Please incorporate our suggestions or others, to correct these loopholes. Again we thank you for your hard work, diligence, and your concern for the safety of children and families in California.	
208. Hon. James F. Reilley & Sharol H. Strickland Presiding Judge & Court Executive Officer Superior Court of Butte County	The members of the Elkins Family Law Task Force are to be commended for the time, effort and thoughtful consideration given to the development of these recommendations. Thank you for the opportunity to submit the following comments. GENERAL COMMENTS Implementation of many of the task force's recommendations would require significant increases in local funding and resources. Also, many of the rules recommended for Judicial Council adoption would impose new mandates limiting a presiding judge's flexibility in managing local workload and resources. During these times of severe budget shortages, courts are struggling to meet existing mandates and new ones imposed	GENERAL COMMENTS The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-

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	legislatively. Local leaders are actively engaged in court-wide analysis and prioritization of workload, processes and resources. Imposing additional mandates from within the branch or limiting a presiding judge's flexibility in responding to local needs would have a detrimental effect on court operations and service to the public. Recommendations throughout the report seek to create processes and governance structures effectively segregating family workload from the rest of a court's case management system. While some segregation makes sense from a case-flow perspective, creating separate or competing governance systems would have a detrimental effect on trial court organizational structure. The primary goal of court unification was for local courts to actually function as unified organizations and not separate silos. As we focus our attention on areas in need of improvement, we should be mindful not to dismantle our unified structures which have proven to be so effective. The AOC's SB56 Working Group is currently engaged in the review of existing judicial workload and resource allocation models. The Elkins Task Force recommendations should be thoroughly analyzed for both fiscal and operational impacts after the SB Working Group submits its recommendations to the Judicial Council. SPECIFIC COMMENTS Leadership, Accountability and Resources Recommendation 1A – Elevating Standard 5.30(c) (2) of the California Standards of Judicial Administration to Rule of Court Status. Disagree. Presiding judges are ultimately responsible for ensuring that the workload of the court is equitably distributed amongst judicial	allocation of existing resources, and medium- and long-term plans to secure additional resources for family law. The details of specifically how to assess and meet the needs in family law will be addressed in the implementation process. Leadership, Accountability and Resources The recommendation to allocate judicial resources based on workload in family law is based on the

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	officers. The rules of court also give the presiding judge the authority and responsibility of making judicial assignments. In doing so, s/he takes into consideration a multitude of factors relative to local court operations. Mandating the allocation of resources specifically for family law cases would inappropriately impose upon the presiding judge's authority and discretion.	overwhelming evidence that family law cases are dramatically under-resourced throughout the state. The Task Force recognizes that Presiding Judges must balance numerous competing needs and tensions, but the recommendation is intended to provide a basis for conducting the necessary analysis to inform resource decisions. The recommendation also states a clear policy that in family law there is a critical need to increase resources.
	Status of Supervising Judges Disagree. The primary responsibility of supervising judges is to supervise and provide leadership to other judges within their divisions. This is markedly different from the court-wide responsibilities of the presiding judge. The court executive officer in most jurisdictions is responsible for ensuring that the court's personnel system is uniformly administered. S/he works closely with the presiding judge to ensure that all areas of court operations and management have adequate resources and are operating efficiently. Self-help centers provide assistance in many case types other than family law. These include, but are not limited to small claims, guardianships, civil harassment and unlawful detainers. It is important that this broader service base is incorporated into the court's management structure. It is the role of the presiding judge and court executive officer to maintain a court-wide management perspective that	Status of Supervising Judges The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.

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	ensures all case types and services are adequately resourced. It is unnecessary to create a separate layer of oversight for self-help centers. Family and Juvenile Court Role Within the Trial Court Governance Structure. Disagree. The CRC 10.605 provides that a court may establish an executive committee to advise the presiding judge or to establish policies and procedures for the management of the court. Courts are not required to establish an executive committee. The composition of a court's executive committee, if it has one, is a local governance issue and should not be mandated by the state. Assignment of Judicial Officers to Family Law Disagree. Decisions regarding the setting of resource allocation benchmarks by case type should be postponed until the SB56 Working Group completes charge and recommendations are considered by the Judicial Council. Many factors beyond filing ratios go into determining how a weighted caseload model is applied at the local level. Pursuant to the rules of court the presiding judge is responsible for ensuring the work of the court is apportioned equitably. Even if the Judicial Council ultimately adopts a revised allocation model, it should be considered a useful tool rather than a mandate. Many factors not captured by a weighted caseload model are taken into consideration when presiding judges and court executive officers apportion local resources.	Family and Juvenile Court Role Within the Trial Court Governance Structure. The Task Force recommends a process to reassess and modify rules and standards to ensure that family and juvenile court judicial leaders are appropriately involved in court governance issues including policy, resource allocation, and facility needs. The changes are proposed to be made through a collaborative process. Assignment of Judicial Officers to Family Law The Task Force recommends that each superior court determine the appropriate number of judicial officers to be assigned to family law, based on the percentage of the court's workload that is family. The recommendation specifically acknowledges that courts should look at the unique local caseload characteristics, and the Task Force acknowledges and recommends coordination with the ongoing

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		development of improved workload standards pursuant to the SB 56 Working Group. The Task Force believes that the Presiding Judge can appropriately exercise his or her authority consistent with this recommendation.
209. Earl Richards Halifax, NS	Commentator submitted letter regarding services not being provided to specific groups of people.	No response required.
210. Neil Ribner, PhD Cher Rafiee, MA, Christina Moran, MA Center of Applied Behavioral Services (CABS) Family Center San Diego, CA	The following recommendations were drafted by the CABS Family Center Dr. Neil Ribner, Cher Rafiee, M.A., and Christina Moran, M.A. General Recommendations There needs to be an active recruitment into family court services to get more judges who want to stay and more lawyers willing to take on such cases. There is too much cycling of Family Court judges. If cycling does continue there needs to be a training program and mentorship program to more successfully and efficiently bring in cycling judges. As contentious as family court can get between litigants, it may be useful to have a short debrief session to provide litigants a more productive way to discuss their questions, concerns and grievances. This may decrease the number of complaints and public scrutiny of the Family Court System. There needs to be a greater education and offering of newer programs aimed at helping the Family Court System such as New Ways and High Conflict Case Managers. This may take some pressure off of the courts.	General Recommendations The Task Force concurs that having judges in family law who want to stay and having more lawyers to take such cases will benefit the family courts and improve the services available to the litigants. These additional suggestions will be referred to the implementation process.

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	Recommendations in response to specific items on the Elkins Family Law Task Force Draft Recommendations	
	Right to Present Live Testimony at Hearings B. Good Cause Exception (add the following item) i. When there are issues of physical or mental harm; such as child abuse (mental, physical, sexual or neglect), domestic violence, exposure of the child to drug/ alcohol abuse, and all other forms of violence perpetrated by one or more of the litigants, and those acting on behalf of the litigants (i.e. current partners).	Right to Present Live Testimony at Hearings The Task Force anticipates that the issues raised by the commentator are covered in the recommendation by the good cause factor referencing the presence of substantive issues in the case.
	Expanding Legal Representation and Providing a Continuum of Legal Services Attorneys Fees (add the following item) Institution of Incentive Programs for attorneys who take low-fee custody cases.	Expanding Legal Representation and Providing a Continuum of Legal Services Unclear what type of incentive programs is being suggested. This may be considered as part of implementation.
	Expanding Self-Help Services (add the following item) For those forms and procedures that are applicable, posting online tutorials with directions and recommendations of how to fill out, write and file, may be helpful for those litigants who are appearing pro per.	Expanding Self-Help Services Some on-line tutorials and procedures are available on-line. This should be considered as part of implementation.
	Children's Voices In high conflict custody disputes, it should be recommended that the	Children's Voices The recommendations in Children's

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	child see a court appointed psychologist to interview the child in order to get the child's input, as opposed to the potentially traumatic interview of an untrained professional or in a perceived unsafe environment such as the court room. This way the professional can help determine if the child's report is valid and if they are not being directly or indirectly influenced to respond in a particular way by one or both parents. They should also provide a written evaluation to the court regarding the child's input only, thus keeping the child out of the court room. Minor's Counsel When minor's counsel is appointed, so too should a therapist for the child. These two should be provided with releases to share information,	Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the notion that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. Minor's Counsel The Task Force recognizes that different cases require different

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	so that the minor's counsel can obtain relevant and helpful information regarding the represented child that they may not have gotten otherwise.	approaches and did not make a recommendation regarding appointment of therapists in all cases where minor's counsel might be appointed given this variation.
	Streamlining Family Law Forms and Procedures Forms for evaluators and mediators should also be streamlined. When referring a family law case to an evaluator or mediator, there needs to be a clear request from the judge on what the scope of the evaluation or mediation should include and exclude. If this is not possible, then there needs to be a preliminary assessment done by the evaluator or mediator or FCS mediation that will provide some scope. Only one of these procedures should be adopted. It should not be a choice between the two. The process also needs to be streamlined. It should also be made a clear part of the procedures that evaluators and mediators must always be court appointed. Often these professionals are approached by attorneys or litigants without appropriate orders, decreasing efficiency and elongating the process.	Streamlining Family Law Forms and Procedures The referral forms currently ask a judge to identify the scope of the evaluation. On-going training and discussion regarding appropriate identification of scope may be helpful.
	About the Elkins Family Law Task Force This suggestion applies to the composition of specific members of the Elkins Task Force. It is recommended that professionals such as custody evaluators, mediators, and other mental health professionals trained in areas such as forensics and family law also be represented on the Task Force. Often times various professions have specific legal, ethical, and practical standards that differ across professions. Having a representative from each profession that are involved in family court on the Task Force will provide for a more comprehensive understanding of	About the Elkins Family Law Task Force Two current child custody mediators and one former mediator were represented on the Task Force. The Task Force recognizes that a broad variety of perspectives are important.

Commentator	Comment	Committee Response
	the ethical issues and codes of conduct across professions. This suggestion addresses a need to increase the efficiency of legal proceedings particularly in relation to custody, mediation, domestic violence and alleged molestation. Expanding Legal Representation and Providing a Continuum of Legal Services, the Elkins Report states Suggestion to Elkins Report recommendation number 2 on page 14 One suggestion that addresses this problem would be to provide opportunities for graduate student interns to provide litigant participants with information and reviews such aspects as the litigation process and the local rules court. Currently, legal aid and court-based self-help centers provide such services, and other areas of the report suggest that paralegals and law students may also provide such services. However, there are many graduate programs that offer curriculums and internships in such fields as forensics. Many students involved in forensic programs are required to take family law courses and attend mandatory annual training updates consisting of such topics as domestic violence and child custody evaluation procedures. Often times, attorneys will present at such conferences to discuss legal updates which many times include updates to the local rules of court. This suggestion serves a variety of purposes with the first being to provide needed services to the 75 percent of family law cases that have at least one self-represented party. Secondly, graduate interns in psychological and forensic programs, will obtain supervised training in the areas that they are teaching to the litigants. The next generation of professionals that provide services to the courts such as mediators and custody evaluators will receive additional training in complex family	Expanding Legal Representation and Providing a Continuum of Legal Services All forms of volunteers may well be appropriate for self-help centers which can provide appropriate training and supervision.

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	laws and procedures. Increasing the amount of professionals in the area who are knowledgeable and trained in family law and legal processes will ultimately assist with the growing demands and limited resources available. Intern students often need practical experience in order to graduate from practical graduate programs, and many times there is an influx of interns who cannot be placed due to insufficient numbers of available internships. The use of interns will also help to provide services to litigants for little to no cost. If interns are recommended to be involved in a family court case, it must be required that they be supervised by a licensed professional who has an expertise in the field. Litigants must also be made aware of the internship status, and be asked to sign a document acknowledging and accepting the services of an intern and the risks that come with such work. Caseflow Management The Elkins Report describes the following While it is true that some cases need to proceed at their own pace because of individual issues, such as the possibility of reconciliation, most family law litigants want their matters concluded in a timely manner. Allowing cases to languish unresolved does not help the parties, the court, or the children involved in the litigation. All too often, greater problems result because of delay. One suggestion that addresses the quality and cohesiveness of the development of draft recommendations in the future would be to hold an annual conference for various professionals frequently involved in legal proceedings such as judges, lawyers, evaluators, etc. The conference could address topics such as local rules of court, legal standards, and law updates that often precede and follow custody and	Caseflow Management The idea of holding an annual conference for various professionals frequently involved in legal proceedings from a variety of perspectives could be very helpful. This suggestion will be referred to implementation.

Commentator	Comment	Committee Response
	mitigation proceedings. Currently, such an annual conference exists for custody evaluators; however, individuals across other professions are generally not present. This conference would provide a wealth of information regarding aspects such as the standards of practice across professions, and help to improve processionals knowledge and understanding of the various professional roles and obligations in order to make legal processes more timely and effective for litigants.	
211. Ronald L. Riedell Public Bloomington (No further identifying information provided)	The Elkins task force is trying to make a road map for a journey with a car that has a flat tire and they are putting a patch on a tire that needs replaced. By taking a complex problem that has been accumulating over the past 200 years and fixing it with a patch, when it needs replaced, is not only unwise but foolish. We don't need a road map; we need a new tire. Comments summarized Education of the masses needs improvement, the court can use media geared at emotion like television, internet web pages, and video programs to explain the process and realistic outcomes of the court system not watered down or dummied down. It is important to provide information so that clients can have more realistic expectations of what lawyers do and the expected outcomes of their matters."Both look for what's in it for me!" to the detriment of the court. It is also important to let people know how much it will cost to use the Family Court with a lawyer and without a lawyer. Offer ADR and Mediation as alternatives to court hearings at fixed costs. ADR and Mediation should have conference rooms set up for family friendly negotiations at the court house with security and cameras.	Education Agree that litigant education is very important. ADR The Task Force has recommended enhanced ADR resources. The Task Force has made

Commentator	Comment	Committee Response
		recommendations regarding adequate space for family court services, private space for consultation and settlement, and court security
	Interpreters Interpreters are a necessary luxury of the litigants. The tax payers are not responsible for ignorance of the National language, the litigants are, and have a duty to get or pay for their own interpreters. Low cost interpreters can be listed in a small booklet for selection by litigants	Interpreters Interpreters are also critical for the court to get necessary information. In studies of interpreters in domestic violence cases, the majority of the litigants are eligible for fee waivers and thus would have a very difficult time paying for an interpreter.
	Children are the future of the United States of any race, religion, or creed, we need to give them a truthful and honest view of the Justice System which includes the rules of evidence and civil procedures that make up the law they will be required to live under. Babies cannot speak for themselves, nor can children with disabilities. The courts must step up, become their voice and appoint an adult representative who will speak for them relative or not.	Children's representatives In its recommendations on Children's Participation and Minor's Counsel, The Task Force sought to provide possible approaches for the various types of cases and needs of children that come before the court by providing discretion as to when and how children might participate.
	Parents and adults who use the family courts to seek revenge should be punished. At the beginning of every marriage the court should require the parties to watch a video on what it means to get legally married in the United States, showing the benefits and responsibilities of marriage. The same video should be required to be watched by people going into the Family Courts or immigrating to the United States in their own	The idea of an informational video regarding rights and responsibilities of

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	language or available on a web page that can be viewed in the court or a public library.	marriage is one that can be considered as part of implementation.
212. Delilah Knox Rios Attorney at Law Certified Family Law Specialist A professional Law Corporation Diamond Bar, CA	*Commentator provided cover letter thanking the task force members and the following summarized comments Live Testimony Agree with Recommendation subject to modifications as described below Working in primarily a four County area, (Los Angeles, Orange, San Bernardino, and Riverside) most OSC courts have a calendar of 20-30 cases a morning. This does not include afternoon calendars, trials, or such matters as Guardianships or Conservatorships in some cases. Access to the Courts is a guarantee. Allowing each party to have an unfettered platform to hold the rest of the litigants hostage is not. In re Marriage of Reifler was a much welcomed addition to the common law when it was first decided. That case allowed a court room judge to timely manage a courtroom bursting with angry, anxious and talkative litigants. In some courtrooms, a single request for a continuance can take all morning, because a judicial officer has difficulty managing the calendar. Commentator noted concerns with the amount of time some cases take on the calendars and how little time other cases receive. I suggest the following Each courtroom post in the courtroom and perhaps on-line their rules on what the Court would consider good-cause. Counsel will be prepared to submit live testimony unless there is an agreement	Live Testimony Access to the Courts. The Task Force recognizes that family court calendars can be quite crowded. However, with respect to live testimony, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. Calendar management is addressed in the recommendation on Case Management. Calendar management is also included in the current CJER curriculum for judicial education in

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	otherwise. Pro Pers and counsel alike must be cautioned that rambling orations are not favored. Notwithstanding the recommendations regarding no local or local-local rules, it would be appropriate for litigants and counsel to know the rules before entering courtroom. In cases involving motions, perhaps the civil court's practice of tentative decisions would be helpful.	family law. The Task Force anticipates that judges will limit the scope of any testimony to the issues raised in the pleadings. Additionally, judges would be expected to use the Evidence Code to manage the proceedings and exclude such things as cumulative testimony, or testimony based on hearsay. This suggestion will be considered further in drafting implementing rules.
	Expanding Legal Representation and Providing Continuum of Legal Services Attorney Fees Statewide forms for attorney fees are already in place -- the Income and Expense Declaration. However, the form does not require this information to be disclosed unless the party is requesting fees. Sometimes this is the 3rd or 4th attorney and the form is not accurate enough for full disclosure. Current law provides that a party asking for fees needs to prove how much fees are earned. This requires a Declaration signed by the attorney and a copy of the billing statements. These billing statements can include confidential information. A better form is needed. Early needs based fee awards.	Expanding Legal Representation and Providing Continuum of Legal Services Attorney fees Agree that a form with additional information is required. Early needs based fee awards.

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	Even after an early fee award is granted, it is nearly impossible to get the fee paid. This is true with minor counsel private pay and when one party is ordered to pay the other's attorney directly. Current law says the court ordered attorney fees belong to the client, not the attorney. The attorney has difficulty getting his court ordered payment, and often attempting to collect is so burdensome, they leave the case. Perhaps the legislature might consider making a fee order paid to the attorney who has not yet been paid and that attorney would have a collectible lien on that court ordered fee. When there is an asset that can be reached for payment of fees at the beginning of the case, this is very helpful. When there is not, fees can be ordered paid in payments. However, again the problem is collection of the court ordered fees. Back in the 1980s, the wage assignment forms included a provision for attorney fees to be paid in monthly installments. This was later changed for two reasons, to my recollection (1) there was no specific statute that provided for such collection of attorney fees, and (2) the federal child support rules may have not allowed for attorney fees to be included on the same form as the child and spousal support collection. Perhaps a different form for attorney fees could be used. Also, this would be helpful for private pay minor's counsel, many of whom cannot afford to assist the court and the parties at such low rates because they cannot collect.	The issue of allowing attorneys to collect fees through wage assignment is one that can be considered as part of implementation of this recommendation.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Referrals to private attorneys Local lawyer referral services with modest means/low cost family law panels with unbundled services, can work if-attorneys can be assured they will not be blocked from collecting the court ordered attorney fee when the client moves on to new counsel parties are assured their attorneys will not "abandon" them after the attorney receives the court ordered attorney fee some unscrupulous "document preparers" do not hold themselves out as such referral services. The problem of some document preparers who take advantage of frightened litigants is often seen in our office, when we must correct badly drafted and incompetent pleadings. Some document preparers have gone to court as a "lay interpreter" and actually give advice when they translate, taking advantage of foreign language Speakers. Some document preparers state in the Judgment or in correspondence that they "represent" the litigant. The State Bar is without jurisdiction to investigate these infractions or practicing law without a license. Funding for legal services. Yes. Unfortunately there are little if any resources available. Clients sometimes expect that my office has some funding or they expect that I can finance their case. I cannot. Although we assist by allowing payments in installments, often we are holding the bag at the end of the case because the parties do not have the funds, fail to pay, or have exhausted their resources.	Referral to private attorneys - The Task Force heard many very disturbing reports of inappropriate behavior by a variety of professionals providing family law assistance including attorneys. Legal document assistants are licensed, but there appear to be other persons providing self-help assistance who are not following those requirements. Funding for legal services No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Self Help services. Great. They do a great job at the Courthouse. Again better than document preparers. Availability of attorneys. Often attorneys do not handle a great caseload in family law, due to the mindset that the practice is too "touchy-feely" for a Litigator. Others cannot handle the high emotional overload that can and does inundate family law practitioners from time to time. Family law attorneys have difficulty collecting their fees (as previously mentioned) and a wage assignment for opposing counsel's court ordered fees in installments would improve this substantially. As to Mentoring - Commentator mentors and would be glad to assist. CaseFlow Management Agree with Recommendation subject to modifications as described below Caseflow Management beginning at case initiation Sometimes the parties at the time of the filing of a new case are still very unsure about what they want. They are conflicted on whether or not they are going to get back together, whether they are ready to serve the papers after they are filed, and what they should do next. It may be helpful to have a status conference set up for the filing party with a volunteer attorney within a month or two after filing to sort out their options. Court personnel, unfortunately, cannot give this independent advice on how to proceed with their entire case. Sometimes a free initial consultation, perhaps through the attorney referral service can be helpful.	Self-Help services No response required. Availability of Attorneys The Task Force recognizes that the issues raised impact the availability of attorneys to practice in family law. Caseflow Management Caseflow management beginning at case initiation An early checkpoint with a volunteer attorney is one that should certainly be considered as implementing rules are developed.

Commentator	Comment	Committee Response
	Checkpoints In the Pomona court (LA Co) there is a volunteer panel of family law attorneys. On Wednesdays, pro per litigants have an opportunity at a status conference to meet with an attorney acting as a mediator -more like a settlement officer -to review their case, assess their needs, point them in the right direction, send them to self-help center, advise them to seek counsel, give notice of declarations of disclosure rules and requirements, and ultimately let the Court know whether the parties need another status conference, a settlement conference, or a trial date. Thereafter the Court reviews the mediator comments and can more effectively manage their caseload and calendar. It would be great if they were immediately ordered to appear for a status conference within 30 days of filing a new case. In child custody actions, the parties are required to attend mediation. There are no court rules that require property or support issues to be sent to mandatory mediation. I suggest that mandatory mediation be required in all cases dealing with property or support issues. In the Los Angeles Superior Court there is a panel of family law mediators who provide free mediations of three hours in length. In the event the parties wish to continue the mediation with that mediator, they may do so at the mediator's rate. There is also a pay panel for more experienced mediators who receive $125-$150 per hour for the same three (3) hour mediation. Again, in the event the parties wish to continue the mediation with that mediator, they may do so at the mediator's rate. This would be a tremendous assistance with the pro per litigants. Early interventions-can happen by allowing the parties to reach some	Checkpoints This service with volunteer attorneys sounds like one that might work well for courts with those resources and should be considered in the development of implementing rules. The Task Force has recommended that mediation options be expanded for all types of family law issues, but does not make the recommendation that such mediation be mandatory. Models such as that described should be considered in developing implementing rules. Early intervention

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	"band-aid" quick fixes. The worst thing that litigants are subjected to in any child custody situation is a state of limbo, where there are no rules and no guidelines. No one knows if they can trust the other parent to return the child if they go to visit before there is an order. Often the parties are unclear if they have to file an OSC to get orders. Ex Parte child custody orders are disfavored. It might be very, very effective if the parties at the time of the filing of a new case are immediately given a Conciliation or Family Court Services appointment time, even if it is a PACT type of group meeting room. Then couples who both show up can be seen right away, to avoid this sense of unease in loss of immediate contact with the child after a separation. The Court should automatically grant Order Shortening Time for any newly filed child custody OSCs to shorten the time before the parties get to mediation and to a court order for initial contact with the children after separation. This would shorten the "limbo" period. Most FCS/Conc Ct mediators are not privy to moving documents at the time of the mediation and often therefore start on a flat intake. This can be very beneficial, because the parties do not necessarily need to file voluminous declarations and court documents to reach an immediate mediator. Collaborative Divorce professionals and private mediators may be very willing to donate some time rendering some early assistance to newly separated couples, so that some immediate contact with children can be established. Long periods of time away from a parent, especially at	The suggestions made by the commenter for rapid referrals to family court services or other settlement assistance should be considered as part of implementation.

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	initial litigation is very disturbing to the children I have come in contact with during the process. Easing the frustration and loss of familiar bonding at the inception creates havoc by the time the parties get to court before a judge. For attorneys, managing a client's frustration and anger at these losses is our first job. Default Family law unfortunately is a very complex area of the law. Pro Pers are charged with this knowledge, which is unfair. Even when parties can agree quickly, it may be based on false or misleading information or understanding of the law. An immediate initial consultation with an attorney would assist in this regard, whether referral to a volunteer or low-cost panel or referral service. The process of obtaining a default or uncontested Judgment is confusing and requires many different forms. Each form has a separate purpose. Can they be combined when there is an agreement? Perhaps. The best suggestion I have is that the SUMMARY DISSOLUTION PROCESS be revamped to allow for the parties having real property and children. Resources for ADR. Unfortunately this one area is given such short consideration in the recommendation. Perhaps this is because ADR is primarily OUTSIDE the courtroom and OUTSIDE the courthouse in most cases. The whole purpose of ADR is to keep the parties OUT of the court process and INTO the crucible which will allow the parties to reach their agreement with the assistance of Collaborative Divorce	Default The Task Force agrees that consultation with an attorney to obtain legal advice about one's case is always advisable. Forms The Task Force has recommended a simplified judgment process as suggested by the commenter. Resources for ADR Posters and brochures for any type of service at the courthouse imply a recommendation of those services and would not meet the courts' responsibility to both be and appear neutral. It seems unlikely that people who are approached by document

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	Professionals or private Mediators. Many divorce Mediators are also Attorneys. However, divorce mediators come from all mental health or financial backgrounds. Co-mediators of attorneys and mental health practitioners are also very common. While the Court cannot refer directly to an attorney or a mediator, the Court can allow the mediators, collaborative attorney/interdisciplinary practitioners, and ADR settlement officers/arbitrators permission to make their services known through brochures and flyers at the filing window or self-help centers. In some Courts this is not yet approved, yet in many courthouses document preparers badger litigants waiting in line for security to enter the court buildings and litter the outside of Courthouses with aggressive hand delivered materials. Sanctions against attorneys AGREE/DISAGREE Sanctions against attorneys for inappropriate or delaying tactics may not always be laid to rest on the attorney. The party who retains counsel may very well insist on certain action and the attorney is hard-pressed to nay-say his client. The client may very well bring an action against counsel for not "zealously" prosecuting his case. In my own practice, I advise the client that if they want to wage that type of campaign, there are other attorneys who will do so, but I will not. If my client's view of the case and mine are so dissimilar, I withdraw. There are of course, those few counsel who push the envelope and those few should be held accountable, and they know who they are.	preparers outside the courthouse would believe that is a court-sponsored service. Information for litigants about a variety of options to resolve their cases would be helpful. Collaborative lawyers and mediators may well want to consider joining lawyer referral services and developing specialized panels to enable the courts to make referrals knowing that there are appropriate consumer protections. Sanctions against attorneys The concerns raised by the commenter should be carefully considered in drafting implementing rules.

Commentator	Comment	Committee Response
	However, making a blanket rule (that could be misused in the wrong hands) could simply drive possible new family law attorneys out of the field. Rules of Court Agree with Recommendation Children's Voices Agree with Recommendation subject to modifications as described below In 29 years of practice, I have had only one judicial officer take a child into chambers and interview the child. In that case, I believe it was extraordinary and the judicial officer make the highly unusual process. I believe the judicial officer made the right decision in that one case, both in the decision to interview the child (who was 17 years old) and in the decision rendered as a result. I have never had a judicial officer in a family law case place a minor child on the stand. Recently there have been panels of adults who were children of divorce. My sense is that no minor child would have wanted to be on the stand or interviewed by the Judge, and it would be the worst nightmare of any minor child I have ever met in a dissolution or child custody case. Children's Voices Agree with Recommendation subject to modifications as described below As minor's counsel, I have had the opportunity to represent the interests of minor children and have been able, through this perspective, to assist the parents to understand the needs of the children to the point that in	Rules of Court No response required. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out

Commentator	Comment	Committee Response
	most cases, the parties are able to resolve the issues based on their new knowledge. In every case, the parents are mainly interested in the best interests of their children and in most cases; the parties have been very appreciative of the services of minor's counsel. In those cases where minor's counsel is not fully appreciated by the parties, either minor's counsel did not reach the same position that conforms to a party's preconceived version of reality or a party is so invested in their own position they cannot see the child's best interest. In the same vein, when minor's counsel is appointed in my litigation cases, the client and I rely upon the perspective of minor's counsel to perhaps see a different view that from our rose-colored glasses. When the parties do not reach agreement, minor's counsel is still sometimes the brightest and best hope for the family. Minor's counsel is often available to the parties and sensitive to their situation over a period of years. Commentator provided example of specific case and process involving minor's counsel and parenting coordination and the following A Parenting Plan Coordinator [PPC] is a step above the mere appointment of minor's counsel and is the in basic format of a Referee. Recommendations Provide accolades to the family law attorneys who represent minors, they act out of the best interest of the minor children they represent. Provide a means for installment payment through wage assignments for minors counsel in private cases so that minors counsel can continue to provide this absolutely necessary and awesome role.	of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. The Task Force recognizes the important role minor's counsel can play in family law cases and included recommendations to help guide the appointment and use of minor's counsel in Children's Participation and Minor's Counsel. Costs The Task Force recommends that costs be reviewed and considered in line with existing rules of court addressing fees and payment to minor's counsel. PPC legislation The Elkins Family Law Task Force focused primarily on

Commentator	Comment	Committee Response
	Legislature to enact legislation that the Court have the power to appoint PPC counsel for a period of three (3) years in a case where the court finds that the parties have a high conflict child custody case and provide for apportionment of the payment thereof by the parties. In cases involving contentious parties with limited funds, once resources are available, funding should be made available for PPC. Domestic Violence Agree with Recommendation subject to modifications as described below Repeat of Response to Recommendation 3, paragraph number 4. Early interventions This happen by allowing the parties to reach some "band-aid" quick fixes that might assist with avoidance of Domestic Violence. It might be very, very effective if the parties at the time of the filing of a new case are immediately given a Conciliation or Family Court Services appointment time, even if it is a PACT type of group meeting room. Then couples who both show up can be seen right away, to avoid this sense of unease in loss of immediate contact with the child after a separation. The Court should automatically grant Order Shortening Time for any newly filed child custody OSCs to shorten the time before the parties get to mediation and to a court order for initial contact with the children after separation. This would shorten the "limbo" period. Commentator provided perspective on domestic violence legal changes	procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Domestic violence The Task Force agrees that improved processes and procedures can assist parties in a wide variety of cases. Early interventions The Task Force recognizes the value of early opportunities for settlement and recommends that pre-mediation programs (such as orientation) not delay the opportunity to mediate but instead serve to enhance the mediation process.

Commentator	Comment	Committee Response
	and noted As currently on the books, Domestic Violence has a negative connotation as well as a very real prejudice to an "offending" party. Particularly as it affects child custody orders Domestic Violence findings are very detrimental, in many cases, it doesn't have to be that way. In many cases, the conduct fails as a finding of domestic violence and falls far short. The conduct may be the simple result of just frustration, often about the children...often about the adult relationship. A "mutual cooling off" without the prejudice would be advisable. At the current time, if the conduct falls short of Domestic Violence, the Court has no perceived power to grant a lesser "mutual cooling off" period or non-CLETS general restraining orders to offer the equally anxious parties. Recommendation Provide Judicial officers with specific authority to provide or make "mutual cooling off" period non-CLETS restraining order to keep the peace and de-escalate the emotion between the parties at the inception of the separation. True Domestic Violence Deserves To Be Treated As Such! Enhancing Safety. Agree with Recommendation Contested Child Custody. Agree with Recommendation Minor's Counsel.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Enhancing Safety No response required. Contested Child Custody No response required. Minor's Counsel

Commentator	Comment	Committee Response
	Agree with Recommendation subject to modifications as described below REPEAT RESPONSE TO RECOMMENDATION NO. 5 Scheduling of Trials. Agree with Recommendation YES. YES. YES. Long overdue. Litigant Education. Agree with Recommendation Expanding services. Agree with Recommendation subject to modifications as described below Repeat Response to Recommendation No. 3 Caseflow Management beginning at case initiation Sometimes the parties at the time of the filing of a new case are still very unsure about what they want. They are conflicted on whether or not they are going to get back together, whether they are ready to serve the papers after they are filed, and what they should do next. It may be helpful to have a status conference set up for the filing party with a volunteer attorney within a month or two after filing to sort out their options. Court personnel, unfortunately, cannot give this independent advice on how to proceed with their entire case. Sometimes a free initial consultation, perhaps through the attorney referral service can be helpful.	See response to comments regarding recommendation 5. Scheduling of Trials No response required. Litigant Education No response required. Expanding Services See response to comments regarding recommendation 3 Caseflow Management beginning at case initiation Agree that parties are sometimes uncertain about the appropriate path to take regarding their relationship. The status conference suggested by the commenter might be identified in a checkpoint. Courts may well want to consider utilizing volunteer attorneys to help with these functions if those resources are available in their jurisdiction.
213. Julie Rivera-Coo Supervising Attorney, Family Law Advocacy Group	Domestic Violence Agree with Recommendation Subject to modification as described below	Domestic violence No response required.

Commentator	Comment	Committee Response
Neighborhood Legal Services of Los Angeles County El Monte, CA	Survival of Orders It is critical that there be clarification concerning the ability of support and custody orders to survive the termination of permanent restraining order. We agree with this part of the recommendation. Paternity and domestic violence cases It is not clear if the goal is to reduce the number of paternity cases by having parties settle all of their issues in DVPA case or if it is to allow the court to order visitation for parents that have not establish paternity. Litigants will bypass paternity actions because they will have gotten all the relief they needed in the restraining order case. It is important to note that restraining order cases are not confidential, unlike paternity actions. Although many people would benefit from being able to establish paternity in a restraining order case, there is a concern that there is an inherent imbalance of power between the victim and the batterer. A victim may feel compelled to sign a stipulated agreement. Also, many litigants do not understand the legal ramifications of establishing paternity. If this recommendation is adopted, I recommend that the following court forms be adopted for mandatory use The Judicial Council should create a new attachment to the DV-100. It would allow the moving party to notify the other party they are requesting the ability to stipulate paternity for the specific child(ren) listed on the attachment. The moving party would acknowledge that the other parent is the legal parent of the minor child(ren). On the face of the form, it would explain that the judge can only order the relief if both	Survival of Orders Family law files include a confidential portion that where appropriate can contain confidential information. However, the goal in this recommendation to make establishing paternity more accessible to parties. The forms suggested for implementation should be considered as part of implementation efforts.

Commentator	Comment	Committee Response
	sides agree. If the relief is not requested in the moving papers, the court should not have the ability to establish paternity. The moving party would be given proper notice of the ability to stipulate to paternity and can seek legal advice, if they desire to do so. Finally, giving litigants the ability to establish paternity in a restraining order case would create more permanent orders. Currently, judicial officers see restraining orders as a quick fix solution. The understanding is that parties will have to file a paternity action if they want more permanent orders. There would be no need for a litigant to establish paternity action if the relief was granted in the restraining order case. There are also no filing fees for restraining orders, only for paternity actions. I don't understand what the fees issue is.	
	Family law court access to Paternity Opportunity Program (POP) The Court should have access to the POP computer database. Furthermore, in order to make appropriate custody orders all family law judicial officers should have access to the CLETS system and the criminal database.	Family law court access to Paternity Opportunity Program (POP) No response required.
	Procedural Changes No one would disagree that procedural changes must preserve the due process rights of the parties and protect the right to a fair hearing. The language proposed, "subject to the court's ability to control the process" is vague. It needs to be clear whether you can call a witness or present testimony. Children's Participation Unfortunately, many children in domestic violence situations have witnessed the abuse or are actually a victim of the abuse as well. There	Procedural Changes Control the Process The Task Force recommendations on testimony are contained in the section on Live Testimony. Children's participation This section has been redrafted and is covered in Children's Participation

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	are very few cases where a child should be called to testify. Children react to their environment in different ways. Their reactions can vary depending on their age and gender. One child may relate to the batterer as a result of manipulation or self-protection. Another child may lie about the abuse to protect the "family secret". Others may be re-traumatized if forced to testify (re-live) the traumatic experience. Training of judicial officers and minor's counsel is imperative. Judicial officers and minor's counsel need to understand the dynamics of domestic violence and the impact it has on children. We recommend that judicial offices be trained in interviewing minor children and also in the dynamics of domestic violence and it impact on minor children. We recommend the following Allow the minor child to submit the child's point of view in writing or to have trained custody evaluators interview the child about their point of view. Settlement Process In Los Angeles County, there is court mediation and voluntary bar association mediation. The Court does a good job of identifying domestic violence cases and making sure that the parties meet separately. The volunteer bar association mediators have no mechanism to screen for domestic violence. The parties are forced to meet in the same room across from each other. As explained above, there is an inherent imbalance of power in relationships where there is domestic violence. A litigant may concede when she receives that knowing glance or hears the knowing tone in his voice. It can be so subtle that it may go unnoticed by others. However, the impact on the victim can be devastating. All mediators, including volunteer mediators should screen	and Minor's Counsel. The recommendations are designed to provide guidance to courts as to when it may be helpful for child or the court to hear testimony directly from a child as well as provide a variety of approaches to including children in the family law process as may be appropriate. Settlement Processes The Task Force agrees that mediation procedures need to take into account the reality of domestic violence and other power imbalances and the recommendation in this section reflects that concern.

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	for domestic violence and meet with the parties separately. Form Changes We are in agreement with this recommendation. Statewide Consistencies We support the recommendations that local domestic violence procedures must conform to statewide rules of court and current statutory requirements. In addition, there should be clarification about whether non-CLETS orders can be issued. Throughout the state and county the rules are inconsistent. The statute should state that Non-CLETS restraining orders do not exist and cannot be issued by any court or judicial officer/ Enhancing Safety Do not agree with the recommendation Appropriate Procedure The recommendation is that the family courts adopt the procedures that dependency courts follow in regards interviewing minor child. The judicial officers in dependency court only handle matters related to children and their best interest. Family court judicial officers handle a wider array of law with one aspect being custody and visitation of children. This recommendation should have an ancillary mandatory training for all judicial officers on child abuse, neglect and violence in the home. In addition there, should receive specific training on how to interview minor children. The recommendation has a preference for having the child testify in a	Form changes No response required. Statewide Consistencies The Domestic Violence Practice and Procedure Task Force report (see appendix) includes a recommendation on this topic. The Task Force supports that report and the implementation efforts currently underway by the Domestic Violence Practice and Procedure Implementation Task Force. Enhancing Safety Appropriate Procedure The Task Force is recommending that pilot projects be establishing and funded to identify promising practices in handling cases in family court where abuse is alleged. Training could be part of that pilot project and is recommended elsewhere in the Task Force's report, specifically noting the importance of training on interviewing children. The Task Force's recommendations include a variety of ways for judges to

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	formal courtroom instead of the judge's chambers. The clear and convincing standard is problematic. A judicial officer with the proper training should have the discretion to determine whether a child testifies in the courtroom or in chambers. Expedited Handling This recommendation is vague and a specific plan of how to expedite these cases should be laid out. Child Welfare services CPS should not be involved in family law cases. Instead family court should have staff dedicated to working with at risk families. The recommendation of providing extended service to children is in theory, a very good idea. However, involving CPS would have a chilling effect for domestic violence victims. Many victims would stop filing a restraining order because CPS could take their children away for failure to protect them from the domestic violence. The mere filing of a domestic violence restraining order can be interpreted as an admission that there has been violence in the home, and the children's exposure to it can lead to a determination of failure to protect the children from the violence. Survivors who have left the home and are living in a shelter sometimes get their children taken away, even if the children are safe and no longer being exposed to the violence. Contested Custody Disputes Agree to the Recommendation subject to the modifications as described below The recommendation to replace the words "custody" with "parenting	hear children's testimony, including in chambers. Expedited Handling Specific details for this recommendation should be considered during implementation. Child Welfare Services The Task Force recommends child welfare services involvement in cases involving allegations of child abuse so that children whose parents happen to be seeking relief in family court are not denied access to the resources providing by the child protection system. However, the Task Force also recommends pilot projects be established to identify promising practices that could be implemented in family court to handle these cases as well. Contested Custody Disputes Parenting Time The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but

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	time" fails to consider that the federal government recognizes the term "custody" as a requirement for a single parent to obtain a passport for a minor child. Language should be built into the court orders identifying whether one parent will have the ability to obtain the passport or if there is a need for both parent's to consent. Minor's Counsel Agree to the recommendation subject to the modifications as described below In addition to the recommended education and training, minor's counsel should be required to take cultural sensitivity and domestic violence training. Also, if minor's counsel will no longer be ordered to prepare a statement of issues and contention, minor's counsel should prepare a report of the information they gathered and provide it to the parties and the court ten days before any hearing. Parties cannot adequately prepare for court when an oral report is made on the day of the hearing. Parties would be unable to subpoena witnesses and gather evidence to support their position. Finally, if a litigant has an existing fee waiver, there should be a presumption that they will be unable to pay their share of the cost and a PACE attorney should be appointed unless opposing party has the ability to pay for a private minor's counsel.	not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made. Minor' counsel Training for minor's counsel is addressed in existing statewide rules of court (Rule 5.242) and includes cultural diversity and domestic violence. The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and that any position counsel will be taking be presented in writing to the parties prior to a hearing on the matter. Fees The Task Force recommends implementation of existing rules of court on minor's counsel and costs and periodic reviews of costs where parties

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		are paying as well as consideration of a cap on fees. The specific suggestion regarding a presumption based on a fee waiver should be considered during implementation.
214. Lindsey A. Robbins Attorney Law Offices of Lindsey A. Robbins Modesto, CA The Stanislaus County Bar Association, Family Law Section	As President of the Stanislaus County Bar Association, Family Law Section, I submit the following response to various recommendations on behalf of our section. Please feel free to contact me at (209)524-6431 if you have any additional questions or require additional information. The Stanislaus County Bar Association, Family Law Section met on November 19, 2009, to review the Elkins Family Law Task Force Draft Recommendations. Right to Present Live Testimony at Hearings Disagrees with Recommendation Comment The Family Law Section of the Stanislaus County Bar Association disagrees with the recommendation that "At the hearing on any order to show cause or notice of motion (or request for order) brought pursuant to the Family Code, absent a stipulation of the parties or a finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing and may ask questions of the witnesses." The Section believes such a rule of court will substantially delay the court calendar and result in an increase in costs to parties. Further, the Section is concerned that the use of "any live competent testimony" will adversely impact matters, as counsel and parties will be unable to adequately prepare for any order to show cause or notice of motion hearing which are held in the initial stages of a proceeding. For example, counsel and parties will have had	Right to Present Live Testimony at Hearings The Task Force received input from attorneys and the public that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting

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	limited time to investigate matters, potential witnesses and other evidence that would most likely have a bearing upon the credibility and scope of the live testimony offered. Additionally, the Section is concerned about due process issues which may arise as a result of being "blind-sided" by unexpected testimony produced at the initial stages. Also, as this provision would relate to any order to show cause or notice of motion proceeding brought pursuant to the Family Code live testimony would be taken as it relates to issues of child custody and visitation perhaps prior to the parties' participation in mediation. It is the Sections concerned that parties and counsel may be less likely to be open to resolution through child custody mediation if the matter initially proceeds in a more adversarial nature involving live testimony.	motions to strike. The Task Force anticipates that judges will limit the scope of any testimony to the issues raised in the pleadings. Additionally, judges would be expected to use the Evidence Code to manage the proceedings and exclude such things as cumulative testimony, or testimony based on hearsay. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars. The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant

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		material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. The scope of testimony should be limited to the issues raised in the pleadings. The Task Force concluded that the right of parties to testify at their hearings, particularly on substantive issues or where there are material facts in controversy, is fundamental to due process in family law. If there is a contested custody or visitation issues, current statutes require that the parties participate in mediation prior to a hearing on the issue. The Task Force is unaware of any evidence that allowing litigants to testify at their hearings would cause there to be less agreements in mediation.
	Providing Clear Guidance Trough Rules of Court Disagrees with Recommendation Comment The Family Law Section of the Stanislaus County Bar Association disagrees with the recommendation that "Local rules should be eliminated except as required by statute or rule of court." The Section believes that local rules are beneficial to the practice of family	Providing Clear Guidance Through Rules of Court The Task Force has amended its recommendation in response to this comment.

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	law in Stanislaus County and that our existing local rules do not set evidentiary policies or standards inconsistent with the Evidence Code. It is the Section's concern that the elimination of local rules, except as required by statute or rule of court will limit our court's ability to properly address issues that are unique to our county and the practice of family law in Stanislaus County. Further, the Section is concerned that the implementation of centralized state rules may result in rules which are irrelevant or burdensome in our county and are rules which are best designed to meet the needs of larger, metropolitan areas. Contested Child Custody Disagrees- with Recommendation Comment The Family Law Section of the Stanislaus County Bar Association disagrees with the recommendations related to child custody mediation services. Specifically, the Section strongly believes that the mediation system provided in Stanislaus County best meets the unique and diverse needs of our community. Currently, our county is a recommending county with attorneys allowed to appropriately participate in mediation. It is our opinion that this model best suits our county and the use of confidential, non-recommending mediation would not be advantageous to our county. Scheduling of Trials and Long Cause Hearings Agrees with Recommendation Subject to Modification Below Comment The Family Law Section of the Stanislaus County Bar Association agrees with the recommendation that "long-cause hearings and trials that cannot be completed in one day must, absent a finding of good cause, he continued on consecutive trial days until completed." However, the Section believes such a rule of court will require that	Contested Child Custody Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. The recommendation does not preclude courts from continuing with their current approach. Scheduling of Trials and Long Cause Hearings The Task Force agrees that time estimation is a fundamental part of the ability to schedule long-cause hearings and trials so that they are completed without undue interruption,

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	parties and counsel properly estimate the length of the long-cause hearing or trial. It is common practice in our county that long-cause hearings or trials which are estimated to be longer than one (I) day will receive a setting that is further out in the calendar than those long-cause hearings or trials that are estimated one (l) day or less. The Section is concerned that parties and/or counsel may attempt to obtain a more immediate setting by misrepresenting the length of the long-cause hearing or trial knowing that the long-cause hearing or trial will be continued on consecutive trial days until completed. Therefore, we would request that good cause may include a failure to estimate the correct amount of time necessary for the long-cause hearing.	particularly in a direct calendaring system. It is critical that judges also have sufficient time to conduct appropriate hearings on law and motion matters which can be substantive and orders long-lasting. Also important are case status information for judges with respect to settlement, calendar management and cases entitled to priority. The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these issues. (See Case Management). The issue of bad faith behavior in the estimation of time by one or the other party can be considered as part of developing implanting rules.
	Leadership, Accountability and Resources Disagrees with Recommendation Comment The Family Law Section of the Stanislaus County Bar Association disagrees with the proposed "Enhanced use of IV-D commissioners in family law." Stanislaus County currently utilizes a direct calendaring system in our family law matters. The exception to the direct calendaring system is the determination of support made by a IV-D Commissioner when the Department of Child Support Services is	Leadership, Accountability and Resources The Task Force recommendation contemplates that IV-D commissioners would "time study" the non-IV-D issues, so that the resources that are dedicated to the IV-D support issues would continue to be used only for

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	involved in a matter. The IV-D Commissioner is not located within the main courthouse and is viewed as a department separate from the family law departments. The Section believes that our IV-D Commissioner has a substantial calendar which would be negatively impacted by the addition of all aspects of a family's case if this recommendation is adopted. As a practical matter it would be difficult, if not impossible because of the logistics related to the use of the IV-D Commissioner for family court mediators to mediate matters from our IV-D department. Additionally, the Section believes that the IV-D Commissioner attains a wide knowledge of support matters as a result of his/her current assignment and that it would be difficult to quickly obtain the same knowledge base for other issues of a family's case such as child custody and visitation, property division, etc.	support matters. The other aspects of the case such as custody, visitation, restraining orders, etc., would have to be funded separately by the court, as the IV-D funds are not permitted to be used for non-support matters. It is the intent of the Task Force that the commissioner resources be increased to ensure that parties who have IV-D support matters will have the benefit of having all aspects of their case heard by the same judicial officer.
215. Diana L Rocha Legal Studies Major - Undergraduate Level Cuesta Community College	I believe if you build a computer program that a family member can access from home, that asks a series of questions progressively that serve to provide likely outcomes that apply the applicable rules of law to the families own unique set of circumstances and legal issues, this would reduce the outrageous demands placed upon attorneys and the courts, and would provide the litigants with a strong idea of where they stand legally, and what they might stand to lose if proceeding. Having answers like this might cause a family to reconsider litigation and may promote the healing of the family wounds by encouraging some level of cooperation amongst litigants before they ever become such. I also believe that if the courts had some sort of self-scheduling programs via the internet that family members could access that would	The idea of developing a computer program that asks questions progressively and provides information about applicable law is one that can be considered as part of implementation. Self-scheduling for hearings versus the internet is something that should be

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	show on a dynamic calendar the available court calendar dates and times, so that they could schedule a time most convenient for both themselves and the courts, it would make the process of calendaring more streamlined and efficient from every perspective.	considered as part of implementation.
216. Mike Roddy Court Executive Officer Superior Court of San Diego County	Agree with proposed changes. No additional comments.	No Response required.
217. Gilbert Rodriguez Citizen Investigator Fresno, CA	Commentator raised general concerns related to specific case.	No Response required.
218. Roland Romero No county information provided	I thank the distinguished members of this body for the opportunity to present my comments and suggestions regarding the recommendations put forth in this current draft. Given the fact the families are the elemental fabric and fiber of our society, the decisions and rulings of family trial courts are arguably among the most weighty and significant legal proceedings affecting the interests of our state's citizens, and even those of our nation. The harm caused to families by rulings of family trial courts which produce results that could be described as miscarriages of justice can be devastating to the injured parties and the resulting damage and costs are difficult to calculate, both in the short and long term. All efforts should be taken to avoid such destructive results. After careful study of California law, I believe that our Legislature has wisely enacted provisions of law that provide a framework which, if	Agree that legal representation is extremely helpful, particularly when facing opposing counsel.

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	adhered to and properly applied by the courts, generally provide adequate protection for our citizens from such harm and injury. However, due to the complexity and volume of these statutes and rules, legal representation is indispensable to the effective operation of such protections for the vast majority of our citizens. Litigants in pro se are therefore at a clear disadvantage and peril, especially when facing opposing counsel without adequate legal representation in their defense. While I agree with and support the vast majority of recommendations included in this draft, there are critical deficiencies which have the potential to render all these recommendations meaningless and ineffective. Specifically, provisions which I submit are among the most essential and critical to assure fair and impartial operation of family law are not addressed, or even mentioned in the draft. The most important are family code sections 12, 2100, and 2030. While section 2032 is mentioned, it is only described in terms of the provisions for case management specifications. It is imperative that all courts apply the requirements specified in these sections in all family law cases, including by all reviewing courts. Section 2030 states in plain language the court shall ensure that each party has access to legal representation. Section 2032 states in plain language that the court should also ensure that each party have sufficient resources to adequately prepare and present their case. Should a family trial court decide not to comply with or even consider these requirements and deny such a request for access to legal representation" our Supreme Court has determined that such a decision may be immediately appealed to a reviewing court. However, the complexity and difficulty in preparing and submitting such an appeal is	Recommendations The Task Force decided that its primary responsibility was to consider the family court process at the trial level. Nevertheless, the Task Force agrees that access to the appellate process is also important. Therefore, while focusing on trial court matters, the Task Force has also included in its recommendation of expanding legal services the issue of access to appellate courts. The purpose of the recommendation to expand the self-help appellate program operated by Public Counsel in collaboration with the Court of Appeal, Second Appellate District is specifically for the purpose of significantly increasing access to the appellate process for family law litigants. The Task Force has made recommendations regarding early awards of early needs-based attorney fees from one party to the other as set forth in Family Code section 2030 and

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	significantly more difficult and challenging than presenting a case to the family trial court. The litigant in pro per is at a huge disadvantage, and in the majority of cases is simply denied access to reviewing courts directly because of the lack of access to legal representation and/or resources. In such cases, for all practical purposes, family trial courts are provided absolute power to rule without the possibility of review by a higher court, and therefore justice is clearly threatened and compromised. In the only actual cases where requests were submitted when litigants faced such circumstances, motions for access to legal representation submitted to the reviewing court, specifically the fourth appellate district, division two, the reviewing court found that section 2030 does not apply to appellate courts and therefore they have no duty or compelling authority to comply with the requirements intended by the Legislature to protect against miscarriage of justice. Those litigants were denied fair review. Our Supreme Court also failed to comply with the provisions of those critical sections of our family law. Litigants were denied proper consideration of their cases and deprived of due process of law. Issues at stake included child custody and support under life-threatening circumstances. There are few issues more weighty to the interests of an individual which can be considered by any court, civil or even criminal. The result was irreparable harm to the litigants, and gross miscarriage of justice. All California citizens are consequently at risk of similar results unless corrective measures are instituted as soon as possible. Therefore I urge this body, in the strongest possible terms, that a recommendation that the provisions plainly described by family code	2032. It has also recommended that additional funding be provided to legal services for those cases where there are not sufficient funds for attorney fees.

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	sections 12, 2100, 2030, and 2032, be mandatory and compelling to all courts considering family law issues, both at the trial court level and at the review court level. Such compulsory authority is absolutely critical to ensure justice and protection for our citizens from miscarriage of justice, harm, and injury. I believe that these requirements must apply to all appellate courts as well as our state's Supreme Court. In my opinion, anything less constitutes an assault and infringement of various fundamental rights provide by our state's and country's constitutions, and maintains an environment where justice in family courts is reduced to simply a matter of chance, and where citizens are denied the right to review by higher courts, which is completely and totally unacceptable.	
219. Tina Rasnow Emeritus Attorney Ventura County Bar Association Volunteer Lawyer Services Program	I commend the Elkins Task Force for such a well crafted and comprehensive report that addresses access to justice issues for unrepresented litigants in family law matters. I specifically applaud the report's recognition of unbundled or limited scope representation to enhance access to justice in family law matters. In terms of improvement, more emphasis should be given to cultural competence training for bench officers, mediators and all court staff that work with litigants, including LGBTQ issues, particularly with respect to youth and child custody matters, but also including immigration and cultural issues relative to the countries of origin of the litigants.	Report The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content, and it will be referred to the implementation process.

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220. Peter David Rubin Attorney at Law Santa Rosa, CA	Clear Guidance through Local Rules Family Law incorporates the general code of civil procedure. However many of the general rules do not really fit what happens in Family Law. Clarity in how these rules will be applied will cost no money, beyond the cost of statutory redrafting, and make the system easier for both lawyers and litigants to navigate. For example When does the discovery cut off apply? Before what is normally considered a trial or before any evidentiary hearing? It clearly applies to the trial, but what about a post judgment motion to modify? What about a prejudgment motion relating to some single issue? Does the single deposition rule prevent a deposition on a motion to modify, if one was taken prejudgment? Whatever rule is selected will likely not cause major difficulties. It will avoid expensive and unnecessary bickering over points where each side can make a coherent and reasonable argument. Selection of a rule will provide clarity making the system more credible with users. Related to this last point an expansion of the cases in which a judge needs to provide a statement or decision or -at the minimum- an explanation of logic would be helpful. Clients are more likely to accept a ruling they understand the rational of rather than one where the rational is basically “Because”. Explanations will save all concerned from unnecessary motions where the standard is some change from the time of the last order. Knowing why will avoid motions where there has been no change, or at least reduce the number.	Clear Guidance through Rules The issues that the commenter raises are all important ones that should be considered in drafting the rules.

Commentator	Comment	Committee Response
221. Bonnie Russell San Diego, CA	*Commentator suggested use of GPS monitoring and provided references. The Solution GPS monitoring with a twist Victim Notification, for Family Court. GPS monitoring completely eliminates perjury. How it works When ordering a monitor, one person wears a bracelet, but the other is equipped with a receiving device that signals the intended victim when the stay-away area is violated. This provides the intended victim a head start in taking evasive action. http//www.GPSmonitoring.com works with all major providers to evaluate which device functions best for a particular, geographic area and court. (They also examine contracts, which, not surprisingly, demonstrates where sales representations, meet reality.) After a year's worth of study, I learned not all GPS devices are created equal). The job now is making judges aware how technology can level-the-playing-field, and reduce police man hours. Judges know when ordering restraining now can do so with greater comfort as GPS devices featuring victim notification renders these orders effective. Why it's needed now. *Commentator provided additional information about GPS monitoring.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	Although Probation Department officials are not aware of the nuances of family court, officials do understand their effectiveness. My hope is family court judges soon, do too.	
222. William S. Ryden Lawyer, CFLS Jaffe and Clemens Beverly Hills, CA	Right to Present Live Testimony Live Testimony I think the rule change is problematic for a number of reasons Live testimony at OSCs/Motions will prolong process I think there is a danger of more continuances the minute someone announces they have a time estimate of 1 hour or more There is duplication in a trial parties do not present declarations or responsive papers You simply put on witnesses The rule change would seem to indicate double work because you prepare declarations then prepare direct examination If there is live testimony does that mean a party would prepare a more limited declaration and expand the facts by live testimony at the hearing	Right to Present Live Testimony Live Testimony The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force recognizes that there are many family law OSC/Motions such as those related to ancillary procedural matters, or in which there are no material facts in controversy, that may be appropriately decided on the basis of declarations. The issue of declaration is addressed in the recommendation on Simplifying

Commentator	Comment	Committee Response
	How are exhibits to be handled attached and authenticated by declaration or introduced by live testimony One possible solution would be to require parties in advance of an OSC to commit as to witnesses that will be called and the testimony required I think the problem with testimony at OSC hearings is that often times discovery has barely commenced as opposed to trial when discovery is completed The Court should be able to make interim orders in advance of more detailed hearings if continuances result from requests for live testimony There also should be recourse if discovery reveals that earlier orders based on inaccurate information is wrong	Forms and Procedures. The role of declarations should be considered in more detail during the drafting of the implementing rules. The Task Force agrees that the issue of notice is important and has modified the proposal to include the requirement of adequate notice when witnesses other than the parties are involved. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response. The Task Force also anticipates that interim orders pending the continuation date would be made when necessary. The scope of testimony should be limited to the issues raised in the pleadings.

Commentator	Comment	Committee Response
		These issues should be considered in drafting implementing rules.
	The local rule allows the judge to ask questions and examine witnesses This is a good way to efficiently get information with two represented parties But what about when attorneys are involved Does that affect the balance I think often times lawyers object to judge conducting examination.	There are situation in which there is express statutory authority allowing judges to ask questions at hearings. For example, CCP 526 (d) is expressly allows judges to ask questions during hearings on civil harassment restraining orders. Perhaps more importantly, as long as a judge does not become an advocate for one side of the case, there is no ethical prohibition to asking questions of litigants. For example, in commentary discussing cases involving self-represented litigants, American Bar Association Standards Relating to Trial Courts, standard 2.23 states "Where litigants represent themselves, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be necessary to supplement or clarify the litigants' presentation of the case."
	The good cause exceptions could cause the Court to more often than not accept live testimony rather than state reasons why testimony will not	While a judge may be required to consider the factors, the reasoning he

Commentator	Comment	Committee Response
	be allowed I think limited timely testimony from each side will focus parties on the most important aspects of case from his/her point-of-view. The good cause exception requires a lot of judicial input which could be challenged by litigants	or she must state in writing or on the record need only address the factors that are relevant to the decision that was made. The Task Force does not anticipate that this will be overly time consuming. A goal of the recommendation was to preserve judicial discretion to take live testimony, but to create a set of reviewable factors that must be considered.
	Expanding Legal Services Attorneys Fees Good concept I think as part of the disclosure process each party should be required to disclose to the other party and bring to Court at hearing a listing of all monies on hand of bank accounts etc The disclosure should happen early on within 30 days unless parties stipulate in writing otherwise	Expanding Legal Services Attorneys Fees The Task Force has recommended that disclosure be exchanged within 60 days of filing the petition.
	Caseflow Management Agree with concepts	Caseflow Management No response required.
	Rules of Court No comment	Rules of Court No response required.
	Contested Child Custody Information Agree that mediators should not be making recommendations to Court	Contested Child Custody No response required.

Commentator	Comment	Committee Response
	Minor Counsel Agree with concept of providing factually accurate information that is admissible without recommendations. Too often I think Court appoint minor counsel that they know and then rely on recommendations without evidentiary protections The minor counsel then seems to be in position of a tiebreaker and ally to prevailing party Scheduling Long Cause Trials Agree with recommendations I also think that there are many judicial officers with family law experience assigned to civil departments who could handle overflow long cause cases In LA County there are a number of civil judges who have prior family law experience and who could handle long cause trials This would help in reallocation of judicial resources and avoid trials that take six months or more to complete. Also litigants should be held accountable to time estimates to avoid delays Expanding Services	Minor's Counsel No response required. Scheduling Long Cause Trials The Task Force recognizes that there are probably many judges currently in civil assignments with significant family law experience that could help with the reallocation of judicial resources. The Task Force agrees that the issues of accurate and accountable time estimation, along with communication to judges about case status with respect to settlement, calendar management and cases entitled to priority are all critical issues to be addressed during implementation of this recommendation. The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these issues. Expanding Services

Commentator	Comment	Committee Response
	In LA County there are family law mediators who donate time 2 to 3 times a year Many times no cases are assigned to mediators on duty This is a waste of available talent in LA County there was a time when attorney donated time to assist processing judgments to avoid backlog It worked Perjury This is a problem but the recommendation seems to narrow to solve problem. Awards of attorneys fees and losing an issue is a good deterrent in appropriate cases	The Task Force is aware that many attorneys are very generous about donating time to assist litigants and the court with settlement and other services. Perjury The recommendation has been modified substantially to reflect concerns.
223. Carol Saia Mother and Litigant Center for Judicial Excellence Richmond, CA	I spoke at the San Francisco Public Hearings, near the end of the day and wore the black tee-shirt with the I AM JANE.com logo from the Family Violence Law Center in Oakland. Ms. Zelon heard the deep emotion in my voice as I spoke of my desire for judicial education regarding “smart” crimes and mental/emotional abuse. *Commentator raised concerns specifically related to case. Perjury must be penalized or the spousal and child abuse power games will never stop. Abusers rarely “heal”. It is a deep internal soul wound. Mental and Emotional abuse must be acknowledged as harmful and stopped. I have PTSD from all this. I suggested that a separate/adjacent judiciary system be set up for abusive divorces, one where all involved are more educated in these covert / overt Abuses. In this court, the judges don’t shift their cases to a new judge every two	Perjury The Task Force report includes a section addressing concerns about perjury. Separate system The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a

Commentator	Comment	Committee Response
	years, but keep them until the pattern is seen and prevented from continuing on for years. I have been through 4 judges, (and 4 mediators) and the 5th is about to take over this January. The Family Court mediators need to work in tandem with Child Protective Services when Family Court is involved with new divorces and new allegations and 2.family therapists and 3. their family / community. It takes more than an hour to see the issues in contested custody cases. The children sure would appreciate it. Why are family courts tried like criminal courts? Lawyers fighting to win and lying for their clients. Family law lawyers need to be held up to a higher standard and not allowed to represent an obvious lying and power-playing parent against the best interests of the child. This is not tug-of-war. The playing field needs to be leveled in regards to money and custody battles. Are two households really the best for children? Book Between Two Worlds, by Eliz. Marquardt. Children's own custody desires should be taken into consideration. PAS	substantive policy area in which the Task Force did not choose to make recommendations. Recommendations made throughout the report address several of these issues within the existing family court structure The Task Force recommendations include recognition of the need to provide access to families to CPS in those cases that may require investigations similar to those in juvenile court cases. Additionally, the Task Force recognizes that appropriate information sharing across agencies can benefit families in specific instances. Children The Task Force recommendations include recognition that in certain cases, the court may be required to hear from children regarding their wishes. PAS

Commentator	Comment	Committee Response
	Don't force a child to have custody with a cruelly abusive parent. Maybe marriage/divorce needs to be harder to do, and a custody plan put into place before the marriage and children start. Ahhh, but the abuser knows how to present the "perfect partner-parent" maybe the dark side hasn't shown itself yet... We need more education about ALL forms of Abuses. Hand that out with marriage licenses! It is SO complicated! I am glad not to be in your shoes and I am very grateful for all your good work for all of us, now and in the future. Abuse is the gift that keeps on giving. I am committed to stopping it.	The Task Force recommendations seek to support safe outcomes for all children.
224. Catherine Sakimura Staff Attorney National Center for Lesbian Rights San Francisco, CA	Streamlining Family Law Forms and Procedures Simplifying procedures for establishing parentage Comments The National Center for Lesbian Rights supports the recommendation to modify form FL-100 to allow petitioners to indicate that they wish to seek a determination of parentage as a part of a dissolution of a marriage. We recommend that these changes also be made to FL-103, Petition for Dissolution of Domestic Partnership, to ensure that registered domestic partners have equal access to simplified procedures for establishing parentage. We would also modify the recommendation to clarify that the forms should indicate that there is a presumption of parentage for children born before the marriage or domestic partnership if the presumed parent	Streamlining Family Law Forms and Procedures Simplifying procedures for establishing parentage This issue regarding modifying forms FL-100 as well as FL-103 should be considered as part of implementation.

Commentator	Comment	Committee Response
	is named on the birth certificate or is obligated to support the child under a written voluntary promise or by court order, to reflect the requirements of Family Code 7611(c). Domestic Violence Paternity and domestic violence cases Comments The National Center for Lesbian Rights supports legislative efforts to allow courts to make parentage determinations in Domestic Violence Prevention Act cases without requiring litigants to file a separate action to establish parentage. We suggest that this recommendation be modified to address "parentage" rather than "paternity" to clarify that courts should be able to establish parentage for both mothers and fathers in these proceedings.	Domestic Violence Paternity and domestic violence cases Agree with recommended change to "parentage."
225. Sarah Sanborn Mother, paralegal student, Respondent in long cause family law matter Sonoma, CA	I suggest that the Elkins Law also include a section that directly addresses some kind of organized healing program (even animal therapy, or sports) to aid in the side effects from being separated from either one parent, both or other caretaker due to custody battles. Individual also provided information related to specific case.	The Task Force recommendations include support for referrals for litigants and their children to appropriate services.
226. Deborah Jo Sandler, Esq. Law Office of Deborah Jo Sandler Walnut Creek, CA	*Thank you for giving the family law community the opportunity to comment on the recommendations. Generally I think you have done an excellent job. Family law issues are of critical importance to litigants, and have long deserved more attention from the legal system. My comments on individual recommendations follow Right to Present Live Testimony at Hearings Agree. Many family law litigants do not feel heard by the Judge when they or their attorneys file declarations, there is minimal discussion in the "hearing", and then the Judge decides, without them saying a word	Right to Present Live Testimony at Hearings Agreed – no response required.

Commentator	Comment	Committee Response
	in Court. Expanding Legal Representation and Providing a Continuum of Legal Services Agree. Caseflow Management Agree with most of it but I have some concerns about specific recommendations contained within this section. Sanctions against attorneys - As a family law attorney who has been in practice for over 20 years, I am aware that some attorneys practice law as if it is war, and those attorneys are likely to use sanctions against attorneys provision as a way to personally attack their opponents. If this provision is to go into effect, very specific guidelines or criteria for such sanctions should be set in advance. While there are attorneys who are well known for being extremely difficult and rude, most of us operate in good faith, and we are officers of the Court. I do not believe attorneys should be sanctioned by the Court except in extraordinary circumstances. For the case management process, cases in alternative dispute resolution such as collaborative law or mediations should be exempt from frequent check-in processes. The whole point of the alternative dispute resolution movement is to avoid Court, and the system should assist those people to avoid Court as much as possible, as long as their cases are progressing toward settlement.	Expanding Legal Representation No response required. Caseflow Management Sanctions against attorneys. The concerns expressed by the commenter should be considered as part of drafting implementing rules. Case Management The Task Force recognizes that litigants participating in alternative dispute resolution processes may not need frequent check-ins. It, however, recommends that a next date always be set to ensure that the case does not "fall through the cracks" in case ADR is not successful.

Commentator	Comment	Committee Response
	Time standards I am quite concerned about this being set as a possible requirement. In my experience, nowhere near 75% of family law cases are resolved within 12 months, let alone 90% within 18 months. Often the litigants who hire attorneys are those with more complex cases or more high conflict cases, and those cases by their nature do not resolve quickly or easily. Some of those cases could resolve more quickly if Judges were more available to do Settlement Conferences with counsel and parties, and if Judges were more engaged in really trying to get us to settle, as opposed to refusing to give any guidance to how the Court views the case, and simply confirming it for trial. I am concerned that if strict time limits are imposed, the cases will come to be viewed in cookie-cutter terms, when each family law case is unique. Providing Clear Guidance Through Rules of Court I strongly agree with this recommendation. In Contra Costa County where I practice, we currently have six family law departments, and in many cases six different sets of expectations as to how hearings will be conducted by counsel and/or self-represented litigants. And we have changes of judicial officers in the Family Law Division virtually every year as Judges rotate in, get burned out, and then rotate out. It is extremely frustrating even for those of us who regularly practice in this County to keep straight what each judge wants and expects. It would be much fairer to have statewide rules that everyone can read and understand. Children's Voices I have grave reservations about these recommendations. Court-appointed Minor's Counsel work has been a major part of my practice	Time standards The proposed standards have been modified. They are designed to ensure that courts can provide adequate resources including judges to allow those parties who want to conclude their case in a timely manner to do so. Without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet. Providing Clear Guidance Through Rules of Court No response required. Children’s Voices The recommendations in Children’s Voices (changed to “Children’s

Commentator	Comment	Committee Response
	for the past 15 years. I have also helped teach our County's training program for Minor's Counsel twice in the past few years, as well as presenting on various Minor's Counsel-related topics at our local Custody Issues Committee meetings. As an attorney with extensive experience in representing and advocating for children, and as a parent, I believe that in virtually all cases it would be traumatic and very frightening for children to testify, under any of the circumstances set forth in the recommendations. Commentator described cases in which children were terrified about testifying despite appropriate action by all professionals involved and noted the following I believe children's voices need to be heard, but that can be accomplished by having Family Court Services mediators more frequently interview them, by having custody evaluators interview them, by having Minor's Counsel represent and advocate for them, by having Special Masters interview them, or possibly by other means, but having them testify should be only done in extraordinary circumstances. If children are to be called to testify, there should be very specific guidelines about when it is OK to call them to testify, and under what circumstances they should testify. We need to be extremely careful with this issue. If a parent believes he or she can force a child to testify, that could be used to abuse or threaten a child, or to abuse or threaten a parent with the possibility of the child testifying. Domestic Violence Agree with these recommendations except that I have the same concern about Minors testifying as set forth in 5 above. Also, there should be more consideration by Judges of the safety of litigants where a TRO has	Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. Domestic violence The Task Force agrees that safety concerns need to be given due consideration throughout the family

Commentator	Comment	Committee Response
	been issues. I recently had a hearing where a Judge demanded that my client, who has a TRO against the other party, meet in person with the other party to divide furniture, and I had to very forcefully argue against this, including reminding the Judge that there is a TRO in effect, and that FC 3044 findings had been made against the other party. No protected party should ever be ordered to meet with the restrained party.	court process.
	Enhancing Safety As noted in 5 above, I do not believe children should be forced to testify except in extraordinary circumstances.	Enhancing Safety The Task Force agrees that there should be no blanket rule requiring children's participation in family law cases.
	Contested Child Custody I agree with these recommendations, and especially like increasing the time parties have for an initial mediation, as well as being able to schedule follow-up sessions. Ideally they should be able to schedule a session without having to file a motion, but I recognize that resources are quite limited for our Courts. Perhaps the parties could pay a reduced fee to support an extra mediation a year (without having a motion pending).	Contested Child Custody No response required.
	Minor's Counsel I agree that Courts sometimes try to use Minor's Counsel as a custody evaluator, and that is not appropriate. However, I believe we should still be able to submit a Statement of Issues and Contentions. Those need not include custody recommendations, but are allowed to include information gained from collateral contacts and/or from observations	Minor's counsel The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and,

Commentator	Comment	Committee Response
	and other investigation, and are allowed to request orders on behalf of the Minors. Other attorneys representing adults are allowed to request orders on behalf of their clients, and Minor's Counsel should retain that same right. I agree that Minor's Counsel should not testify, and current law provides that we cannot be called to do so. I disagree that Minor's Counsel cannot determine if a child is of sufficient maturity to state his/her wishes. We are currently required to have extensive training if we are to be deemed qualified to be appointed as Minor's Counsel. Most of us are also parents. In my experience, it is usually quite clear whether the Minor has sufficient maturity to have their wishes considered or not. I have never had the Courts question my conclusions on that issue. I do not agree that the Courts should regularly review the bills of privately paid Minor's Counsel, because the Courts generally do little or nothing to enforce our right to get paid in those cases. Minor's Counsel in private pay cases should NEVER be appointed unless there are funds to pay at least a reasonable amount, and unless the Court is prepared to enforce its appointee's right to be paid. This is a serious problem in Contra Costa County, and I suspect in other counties as well. Scheduling of Trials and Long Cause Hearings I agree with these recommendations.	because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. The Task Force does recommend that the results of counsel's investigation or fact gathering should only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected and that any position minor's counsel will be taking also be presented in writing to the parties prior to any hearing on the matter. Costs for Minor's Counsel The Task Force recommends that existing rules of court related to minor's counsel be fully implemented and that courts routinely review bills, consider imposing caps on fees, limit the time minor's counsel may be involved in the case, and set automatic hearings on these fees so that parties are aware of the expenditures. Scheduling of Trials and Long Cause Hearings No response required.

Commentator	Comment	Committee Response
	Litigant Education I agree with these recommendations, but would add that as part of the litigant education process, litigants should be informed of the ADR possibilities such as collaborative law and mediation, including getting a description of how these processes work.	Litigant Education Agree that information about ADR possibilities should be included.
	Expanding Services to Assist Litigants in Resolving Their Cases I agree with these recommendations, but would also include collaborative law as one of the options available to parties. Many of them would love an option that gets them out of the Court system and operates on the premise that the parties will work together to come up with a settlement that is in everyone's best interest.	Expanding Services to Assist Litigants in Resolving their Cases This series of recommendations has primarily focused on services that a court might reasonably provide. Collaborative law is a valuable tool that litigants should be made aware of.
	Streamlining Family Law Forms and Procedures I agree with these recommendations, and definitely agree that the current set of family law forms are way too complicated, even for attorneys.	Streamlining Family Law Forms and Procedures No response required.
	Enhancing Mechanisms to Handle Perjury I agree, but would suggest that there be very specific guidelines for what would have to be proven before the Court would make such a finding. Otherwise parties and attorneys will use this new procedure as another weapon in the litigation.	Enhancing Mechanisms to Handle Perjury This recommendation has been substantially modified. This recommendation re clarification is one that should be considered.
	Standardize Default and Uncontested Process Statewide I agree with this, and also suggest that a uniform procedure be set up	Standardize Default and Uncontested Process Statewide

Commentator	Comment	Committee Response
	for processing Judgments that must be finalized by the end of the calendar year, as there tends to be a rush at the Clerk's office, and frequently papers are lost or severely delayed. I have one currently pending uncontested Judgment that was submitted six months ago and the Clerk's office has lost it twice. Our attempts to have it expedited to compensate for the delays caused by the Clerks' errors have been rebuffed. There seems to be no procedure for dealing with this sort of problem, and now it is magnified by the end of the year rush of Judgments.	The issue of deadlines and other procedures for end of year judgments is one that should be considered as part of implementing rules.
	Interpreters I disagree that minor children of the parties should be allowed to be interpreters for either parent, as it puts the children in the middle and exposes them to conflict. Otherwise I agree with these recommendations. I agree that more interpreters are needed throughout the Court system.	Interpreters Agree that it is never optimal to have children interpret.
	Public Information and Outreach I agree.	Public Information and Outreach No response required.
	Judicial Branch Education I agree with these recommendations, but note that there is a serious problem with Judges not wanting to do family law, hence the rapid rotations in and out of the division each year or two. This leads to instability in the family law system, as each Judge has their own way of doing things, and we never know what to expect, nor do our clients. Some of the Judges make it quite clear that they do not want to be anywhere near family law, and are being forced into the assignment. I have even have Judges tell us in chambers that they dislike family law	Judicial Branch Education The Task Force concurs that having judges stay in the family law assignment longer is an important goal, and therefore there are numerous recommendations that attempt to address the resource needs, education, staff support, and other changes that will make the family law assignment

Commentator	Comment	Committee Response
	attorneys and litigants. Something needs to be done to encourage Judges to stay longer in these assignments, but I don't know how that would be accomplished. As a practitioner with over 20 years of experience, I find it very frustrating to have a constantly changing set of Judges, many of whom know little or nothing about family law when they arrive, and then once they have been there for a year or two and know much more about how to handle these cases, they rotate out and we have to start over.	more desirable.
	Family Law Research Agenda I agree with these recommendations, and especially like the idea of a consumer survey. I bet many of the litigants have creative ideas that would help us improve the system. I also like the idea of having the work loads of family law Court personnel examined.	Family Law Research Agenda No response required.
	Court Facilities I agree with these recommendations, and especially would like to see a children's waiting area. Too many parents bring children into the Courtrooms.	Court Facilities No response required.
	Leadership, Accountability and Resources I agree with these recommendations, and especially like the idea that the family law workload will be considered in allocating resources to family law. We definitely need more qualified visitation supervisors, including those who offer low cost options. I also strongly agree that access to lower cost transcripts is needed, but that should include Minor's Counsel, who frequently is not being paid much or anything, and who may be involved in lengthy custody trials where transcripts would be useful but are not affordable. I like the idea of having IV-D	Leadership, Accountability and Resources Resource allocation No response required. Access to the record No response required. IV-D Commissioners hearing all

Commentator	Comment	Committee Response
	Commissioners hear the whole case, as otherwise litigants not only have to go to multiple hearings in different departments, but their attorney's fees rise drastically since the DCSS departments usually make litigants and their attorneys appear at the beginning of a four hour litigation window, but cases are not heard until much later in that window of time, hence the higher billing. I think that considering the temperament of Judges who will handle family law is critical, because some of the litigants (and attorneys) will try the patience of even the most calm Judge at times. There are some Judges who are excellent Judges for other areas of law but who are not suitable for family law assignments.	aspects of the case – the concern re attorney's fees will be referred to the implementation process. Temperament of judges In making judicial assignments to family law, the Task Force recommends that the "presiding judge must have the discretion to consider all characteristics or qualities that make judges well suited for the unique nature of the family law assignment, including but not limited to subject-matter expertise, temperament, calendar management, ability to work with self-represented litigants, and familiarity with child development issues."
227. Sanford Single Father Danville, CA	*Commentator provided information related to specific case and noted that "Item number 2 is just another hook for a bias Judge to attack a responsible parent. It invites any attorney who might be under employed because of their own lack of business skill or talent to roll the dice on some poor family for money!"	Family law remains a complex area of civil litigation. The issues for those involved cover matters fundamental to their financial and emotional lives, and to their children. While there have been efforts made at both state and local levels to simplify court processes to some extent, the seriousness of the legal matters involved still require knowledgeable legal analysis. The

Commentator	Comment	Committee Response
		court self-help centers provide tremendous assistance to self-represented litigants; however, the Task Force concludes that families are best served when everyone has access to representation. The Task Force is aware that the legal costs can be highly challenging. It anticipates that the implementation of effective case tracking may assist in containing legal fees by making sure that cases are moving forward in a reasonable manner.
228. Don Saxton Executive Vice President National Coalition for Men San Diego, CA	*On behalf of the National Coalition for Men The Family Law Research Agenda should be amended to include regular reports from the CCMS on the disposition of both domestic violence and child custody by demographics of litigants. Whenever false allegations are mentioned, there has been a pat response that "regular procedures are sufficient to determine when allegations are false." Here we argue to measure performance at a level above the courtroom in a manner to guarantee improvement. Commentator provided additional information about his perception of gender bias against men. The report section on Family Law Research Agenda recommends performance measures garnered from the CCMS and patterned after NCSC's CourTools. For Access and Fairness, CourTools suggests a "customer satisfaction survey." The Judicial Council has always made a	The extent to which litigant demographics are readily available in court case management systems is questionable. As such, the proposed amendment would likely require substantial manual data collection. The Task Force has chosen to emphasize measures that do not require onerous manual collection and are focused on court workload and caseflow to help assess resource needs and improve operational decision-making The AOC is required to conduct periodic studies of court-based child custody mediation that already capture

Commentator	Comment	Committee Response
	meaningless mess of such surveys. Besides, surveys are an added expense on top of CCMS. Family Court offers unique opportunities not addressed by CourTools because the top two substantive issues can be specifically measured in CCMS. The Task Force should ensure that the Family Court disposition of 1) child custody and 2) domestic violence can be specifically identified in the CCMS and are regularly reported by relevant litigant demography. Litigants and the public want fairness and to know that their kids won't be sacrificed to a game. Otherwise due process is useless. Due process, like transparency and trust are public goods distributed by the court. These are limited when there is a conflict with private goods also distributed by the court. Organizations tightly bound to private interests can easily become in conflict with delivery of public goods. Public reporting of public outcomes is the most direct way to ensure the delivery of due process. Elkins Task Force was begun to correct due process. Costs to Californians currently far outweigh the expense of courts and extend too much of government turning from schools to prison. Early estimates on the consequences of Family Court now run to $48 Billion annually, $12 Billion in taxpayer expense. Every dollar is taken from children. Behind every dollar are the tears of a child, the missing comfort of a parent and dimmed prospects. The time to report is now.	some of the data elements in the suggested amendment.
229. Barbara E. Scramstad Attorney Scramstad & Bryan, P.C. Martinez, CA	Right to present live testimony Agree subject to modification The good cause exception could be used to exclude live testimony in almost every case. Language should be added to require the court to state its specific reason with the goal of eliminating a simple finding that the matter is "too complex" and must be continued at a later date. Rather than say "case-by-case basis" only, the finding of good cause	Right to present live testimony The Task Force agrees that the goal of the recommendation is to increase the parties' opportunities to present live testimony. The Task Force has concluded that the right to present live testimony is fundamental to due

Commentator	Comment	Committee Response
	should also not be routine, but a true exception to the rule.	process in family law and should be the standard at hearings, particularly on substantive issues or where there are material facts in controversy. There are, however, The Task Force also recognizes that there are many family law OSC/Motions such as those related to ancillary procedural matters, or in which there are no material facts in controversy, that may be appropriately decided on the basis of declarations. This concern should be considered during the drafting of implementing rules.
	Expanding Legal Representation Agree with the recommendation Regarding 1B early needs based awards – this is very important. The courts are routinely deferring the issue to trial. This is extremely unfair to the lower earning spouse.	Expanding Legal Representation No response required.
	Expanding legal services programs for appellate cases It is extremely important to have more appellate decisions to guide attorneys as well as litigants. The Elkins case itself may have never been appealed and the abuses identified by the Supreme Court would not have been exposed without the assistance of counsel. Providing Clear Guidance Through Rules of Court	Expanding legal services for appellate cases No response required.

Commentator	Comment	Committee Response
	Agree with the recommendation These recommendations are important. I welcome the attempt to have common statewide rules for all family law proceedings and to eliminate the types of local rules that are inconsistent with the codes and other counties.	Providing Clear Guidance Through Rules of Court No response required.
	Domestic Violence Agree subject to modification below. The proposals do not discuss evaluations. As in settlement processes, evaluators need to have a judicial determination of domestic violence before evaluating a family. Often there is a deferral of the determination until the evaluation is conducted. This leads to evaluators putting language in their reports such as "if the court determines there was domestic violence" This has been a problem since FC §3044 was implemented and the courts and evaluators started treating domestic violence like a hot potato. No one wants to say whether there was or there wasn't domestic violence and the determination is further delayed.	Domestic violence Judicial determination of domestic violence The Task Force recommends further clarification of the role of evaluators and investigators. An evaluator cannot make a judicial determination as to whether domestic violence has occurred and safety concerns in these situations warrant having the court address this issue as early in the case as possible .
	Contested Child Custody Agree subject to modification below Mediation should be confidential. Only agreements should be reported to the court. That mediator's status reports often become the "facts" rather than have a hearing. Judges tend to rubber stamp the mediators recommendations (because they are pressed for time)	Contested Child Custody Mediators are permitted to provide recommendations in specific circumstances under current state law. The Task Force does recommend implementing and funding pilot projects in this area to identify promising practices.
	Child custody language Agree wholeheartedly.	Child custody language No response required.

Commentator	Comment	Committee Response
	Minor's Counsel Agree subject to modification below Develop procedures The notice requirement is vague. Does it mean any action whatsoever or something specific to a minors counsel appointment? Is the attorney to report to the judge appointing minor's counsel? Is the attorney to report to the supervising judge? Review of costs What does "routinely" mean in this context? Is the attorney to file a declaration in the case attaching invoices? If so, on a monthly, quarterly, or yearly basis? It would be helpful to have the court review the invoices and have specific orders for payment plans and wage assignment to assist the minor's counsel who are supposed to be paid by the parties to receive specific compensation orders without having to file a motion. Scheduling of Trials and Long Cause Hearings Agree with recommendation 1 (A) and (B) are excellent recommendations.	Minor's counsel Develop procedures Notice specific details associated with implementation of this should be considered as part of implementation efforts. Review of costs During implementation, consideration should be given to whether more specific details regarding review should be provided. In this case, the Task Force is recommending that regular reviews be scheduled to consider costs. The Task Force recommends that costs and payment plans be reviewed or considered as part of the process of appointing minor's counsel and throughout the case Scheduling of Trials and Long Cause Hearings No response required.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Litigant Education These are also excellent recommendations.	Litigant Education No response required.
	Streamlining Forms and Procedures This is an excellent recommendation. It is way too cumbersome for parties who are in total agreement to finalize their dissolution.	Streamlining Forms and Procedures No response required.
	Develop one comprehensive request for order form Great recommendation. The OSC and Notice of Motion forms should be merged into one form with the attached declaration.	Develop one comprehensive request for order form No response required.
	Declaration templates It would be very helpful if the declaration templates were developed and put into use. I would help with this effort.	Declaration Templates No response required.
	General comment Put notice on the petition and response that the dissolution is not automatically final after 6 months.	General Comment Notice re dissolution not automatically final after 6 months. The Judicial Council circulated language with this warning, but found that it was very difficult to convey this accurately.
	Judicial Branch Education Agree subject to modification Domestic Violence is missing.	Judicial Branch Education The Task Force endorses the report from the Domestic Violence Practice and Procedure Task Force which contains recommendations regarding domestic violence education for

Commentator	Comment	Committee Response
		judicial officers.
230. Kathryn Schlepphorst (Attorney Schlepphorst & Emede A Professional Corporation Chair of the Strategic Planning Subcommittee) On behalf of the Family Law Section of the Santa Clara County Bar Association (SCCBA) San Jose, CA	*I am currently the chair of the Strategic Planning Subcommittee of the Family law Section of the SCCBA. In that capacity, I enclose responses from the Santa Clara County Bar Association ("SCCBA") to the Elkins Task Force Recommendations. Right to Present Live Testimony at Hearings. Agree with the recommendation subject to modifications as described below. Comments Rule 5.118(f) provides that "The court may grant or deny the relief solely on the basis of the application and responses and any accompanying memorandum of points and authorities." Live Testimony. I would revise the language to read, "At a hearing on any request for order(s), absent a stipulate any of the parties or finding of good cause, the judge must receive any live competent testimony that is relevant and within the scope of the hearing and may ask questions of the witnesses.' Reason for Revision Consistent language. Terms OSC and NOM are recommended to be replaced by "Request for order" per Recommendation 13. Good Cause Exceptions. Subsection (a). I would revise sub section (a) as follows Whether the issues relate to substantive matters such as child custody, parenting time (visitation), parentage, child support, spousal support, request for restraining orders, characterization, division or use and control of property or debt of the parties, or any other issues which are before the court on the subject request for order.	Right to Present Live Testimony at Hearings. The Task Force agrees with the commentator that the language in the recommendations be consistent. If the recommendation regarding the "Request for Order," is implemented, the language in any implementing rule of court regarding the right to live testimony will be modified accordingly. Decisions about specific language will be addressed during the drafting of the rule. Good Cause Exceptions. The Task Force intends that the language in subsection (a) simply give examples of substantive issues, not be used as a limitation to those issues. The Task Force anticipates that judges will limited the scope of testimony to

Commentator	Comment	Committee Response
	Reason for Revision To clarify at the issues on which allowance of live testimony should be considered will not be limited to those listed in subsection (a) but will be limited to issues properly raised' the pleadings which are before the court on the request for order. Subsections (b) - (h) are well thought and adequately cover the appropriate concerns. Additional Comment regarding Offers of Proof Offers of proof are widely used but are not codified and are not addressed by this recommendation. The practice of proceeding by offer of proof should be addressed. I believe offers of proof expedite hearings and provide for a less formal and less adversary atmosphere. At the same time, there is much confusion about what an offer of proof is and how it should be used. I would recommend codifying the procedure by further amendment to Rule 5.118, Recommended language may include allowing the court to proceed on a request for order by offer of proof in appropriate cases and defining an offer of proof as, for example, (l) a succinct statement given by counsel that states what the evidence will show, such as what a particular witness would say if called to the stand, (2) consisting of matters not in the declaration' (3) not consisting of argument, and (4) subject to the same evidentiary objections live testimony, The court should ask questions of the parties and counsel as necessary to gain information needed to make a decision. If the court finds that it does not have sufficient information to make a decision based on the moving and responding papers with supporting declarations, the supplemental offers of proof, and further quest on elicited of counsel and parties, it may	issues raised in the pleadings; however, the commentator's concern about the interpretation of the recommendation is noted and will be considered during the drafting of implementing rules. The Task Force has modified the recommendation to require offers of proof whenever a litigant proposes to offer testimony of additional witnesses. The role of offers of proof will be considered in more detail during the drafting of the rule. The Task Force agrees that the role of offers of proof is an important issue to consider. The Task Force appreciates the commentators suggestions about language related to offers of proof and will consider them in detail during drafting of rules to implement this recommendation.

Commentator	Comment	Committee Response
	then request additional live testimony or other evidentiary proof as necessary. Expanding legal representation and Providing a Continuum of Legal Services Agree with the recommendation Item 3 (Funding for Legal Services) Funding to provide attorneys for 131/ the people who need them would be astronomically expensive due to (1) sheer volume as well as (2) complicated individual cases t at, alone, could tap an extraordinary amount of resources. In addition, considering resources will undoubtedly be limited • What detailed criteria will be used to determine who is provided representation? • Who will make the final determination about who receives free services? • What if one side in a case is provided free representation - should the other Side be provided free service, too? What if the other side's income is higher? • Is there a limit to the amount f resources one family can use? • Will the taxpayers/legislature approve this cost? Items in 1 (Attorney fees), 2 (Referral to Private Attorneys) and 5 (Availability of Attorneys) could be implemented no at relatively low cost. Funding for Legal Services and Expanding self-help services would require a significant monetary investment. Caseflow Management	Expanding legal representation and providing a continuum of legal services No response required. Funding for legal services – Agree that these are all critical questions. They will be considered as part of the implementation of AB 590 (Feuer), the Sargent Shriver Civil Representation Pilot Program that will provide funding for pilots to provide these services and evaluate their effectiveness. Attorneys fees, Referral to Private Attorneys Availability of Attorneys No response required. Funding for Legal Services and Expanding Self-Help Services – agree that additional resources would be required. Caseflow Management

Commentator	Comment	Committee Response
	Agree with the recommendation Subject to modifications as described below Comments The Case Flow management time frames may need to be relaxed in DV cases where additional time is often required due to the traumatic nature of the adjustments required by the family. While better case management is a laudable goal, it should not unduly increase the cost of the case to represented parties. In recommendation 3.8, it is not clear what the task force intends when it proposed to minimize the need for ancillary reports. The concern is that in striving to increase the timeliness and quantity of judicial decisions that quality not suffer unduly. Expert reports in custody cases are often helpful to the court and should be encouraged in appropriate cases. The use of scarce court resources to implement recommendation 3.14 should be reconsidered. Many of these cases will resolve through automatic dismissal and those that have temporary support or custody orders may continue to serve a useful purpose. Providing Clear Guidance Through the Rules of Court Agree with the recommendation. Children's Voices Agree with the recommendations subject to modifications as described below. a. Generally Increasing the amount of child involvement in court	The proposed timelines suggested by the Task Force recognize that 10% of the cases may well need more than 2 years to complete based upon the families circumstances. The Task Force has made suggestions regarding implementation actions that would minimize any additional expense to the parties. Expert reports in custody cases are often very helpful in appropriate cases. The Task Force hopes that by early intervention in cases, situations can be resolved early on, and may not need additional experts. The timing and prioritization of this recommendation will be considered as part of implementation. Providing Clear Guidance Through Rules of Court No response required. Children's Voices The Task Force recommendations in Children's Participation and Minor's Counsel were developed to provide

Commentator	Comment	Committee Response
	proceedings is not necessarily a positive step. There should be clear guidelines to judicial officers as to when and how they will obtain input from children. This section does not contain sufficient guidelines to determine the appropriateness of obtaining an individual child's input. b. Section 2B The recommendation should state that minor's counsel should be appointed any time the court is seeking the child's point of view or planning to elicit testimony from the child. Minor's counsel shall determine whether it is appropriate to receive information from the child and how that should happen. This appointment may be on a limited-scope basis. If the court does not appoint counsel, then the recommendations should be clarified as to the procedure for how the court is to assess the appropriateness of having a particular minor provide information. Section 3B considers having the child first meet with a mediator or evaluator. However, there is not always a mediator or evaluator involved who is familiar with the child to make an appropriate determination. Additionally, if there is no mediator or evaluator involved, then the obvious way to obtain that information is through the parents. This may be harmful to the child by causing added pressure on the child from the parent or a greater emotional toll on the relationship between the parent(s) and the child. Therefore, appointing minor's counsel is the most appropriate way to obtain the necessary information before proceeding. c. The recommendations should provide a procedure for courts and parties to follow prior to the court seeking input from the child. One such possibility would be for the court to first require that a party bring a motion or, if the judge desires the input, to have the judge state his/her desire to the parties. The judge shall then make an order appointing minor's counsel to determine the appropriateness of obtaining input from the particular child and how that information	guidance in this area. The Task Force recommends against a blanket rule regarding appointment of minor's counsel given differing resources around the state. Additionally, the recommendations reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. c. The specifics proposed here could be reviewed as part of implementation effort where they reflect the Task

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	should be presented. Finally, the court should be required to make particular findings; e.g. the child wishes to provide input to the court, it would benefit the court to question the child, it would benefit the child to be questioned, and there are no significant drawbacks to questioning the child. Domestic Violence Agree with the recommendation subject to modifications described below Survival of orders The Task Force recommends legislation to clarify that custody and support orders made in the context of a permanent restraining order survive termination of the restraining order, even though Family Code 6345{a) specifies the duration of the conduct orders is not more than 5 years and Family Code 634S(b) specifies the duration of the custody/support orders is "governed by the law relating to those subjects." It would be helpful if the Task Force also supplied proposed clarifying language. The Task Force should also recommend, as a matter of best practice, that when permanent DV orders are issued at a hearing, that any orders with a different end date (e.g. custody, visitation, support) are broken out into separate orders. This can be done by using standard Judicial Council forms for custody, visitation and support (e.g. FL-340, Fl-341, FL-342, Fl-343, FL-350, Fl-355) and would solve the problem of end dates, pending clarifying legislation. Having two orders also prevents less relevant information from being submitted to the Sheriff for entry into CLETS. longer term, modification of the simplified DVPA forms for custody, visitation and support (DV-140, DV-150, DV-160) should	Force's recommendations. Domestic violence Survival of orders Details associated with this recommendation should be identified as part of implementation efforts

Commentator	Comment	Committee Response
	be considered, in order that they can operate as "stand alone" forms. That way, litigants and attorneys do not lose the value of their simplification, including ease of use and comprehension. Paternity and DV Providing litigants the ability to stipulate to paternity within a DVPA case without having to open a separate parentage case is a good thing. However, this recommendation implies that a DVPA case can be opened between unmarried persons who have children together. In some counties, litigants may be informed or even pressured to file a Parentage case and a DVPA case at the time of filing. The Task Force should more specifically mention within this recommendation that this is a disfavored practice and no DV victim should be required to open a Parentage case when they are seeking DVPA relief. Access to Paternity Opportunity Program This is a good recommendation. Procedural changes This is a good recommendation but the language should go further. The Task Force should add "Courts are encouraged as a matter of best practice to allow testimony and call witnesses in DV matters, many of which proceed as summary hearings lasting only a few minutes. Court are especially encouraged to question victims to probe for evidence of abuse and allow testimony/witnesses in matters where a request for a DVPA order was denied pending hearing and the victim is in pro per." Children's participation in DV matters There is agreement in principle that the child's point of view has a	Paternity and DV litigants The Task Force recommends that issues such as the once described be considered as addressed as part of implementation efforts. Access to Paternity Opportunity Program No response required. Procedural Changes The Task Force agrees that live testimony should be permitted and addresses the topic in that section. Children's participation in DV matters The Task Force agrees that family

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	place in a DV matter. However, DV cases in Family Court are very distinguishable from Dependency Court, where everyone has lawyers, including the children, and there is access to social workers or other professionals who can present the child's point of view safely. This recommendation should add that "In order to minimize the risk to children, courts must be careful how they seek the child's paint of view in these matters, recognizing that the dynamic of domestic violence includes the abusive parent aligning the children and undermining the non-abusive parent. As a result, information gleaned from the children may not reflect the reality of the domestic violence situation in the home or the parenting deficiencies of either parent. Courts must take into account the level of risk to the child when seeking their point of view and must consider appointment of minor's counsel in these cases. Courts must also be trained to appropriately assess the parenting capacity of each parent, utili.ing research-based methodologies for differential assessment of domestic violence." Settlement processes This is a good recommendation but the language should go further. Beyond the provision for meeting separately, this recommendation should clearly specify that mediators utilized by the courts in DV matters do not employ "muscle mediation or other coercive tactics to rush a victim to an agreement for the sake of expediency of the process. Victims should be able to have a support person present in all court-sponsored mediation processes. Form changes This is a good recommendation.	court processes and procedures should be appropriate for family court matters. The section on Children's Participation addresses this concern in greater detail. Settlement Processes The Task Force agrees that parties should not be subjected to coercive tactics to produce agreements and that support persons can be helpful in these settings. The section has been redrafted since circulation. Form changes No response required

Commentator	Comment	Committee Response
	Statewide consistency This is a good recommendation. Additional recommendation Differential Assessment The Task Force should consider including an additional recommendation identifying to the need for appropriate differential assessment of DV matters. Judicial officers and mental health professionals employed by the courts should be trained on and encouraged to use new, research-based methodologies for accurate differential assessment of DV cases. Differential assessment is crucial, both for purposes of issuing restraining orders and for creating appropriate custody and visitation orders. One example of a current, research based tool is the P5 screening, created by Dr. Janet Johnston and other leading researchers. It is suggested that the guiding principles utilized in P5's assessment model could be incorporated into the Task Force's recommendations as a suggested best practice for those involved in making custody and visitation orders and/or parenting plan recommendations in DV cases. • Priority 1. Protect the child from violent, abusive and neglectful parenting environments • Priority 2. Protect the safety and support the well-being of the victim parent(s) • Priority 3. Respect the right of the victim parent(s) to direct own lives and make decisions in interests of child • Priority 4. Hold perpetrators of domestic violence accountable for past & future behavior • Priority 5. Allow & promote the least restrictive parent-child access plan that benefits the child Under these principles, courts should strive	Statewide Consistency No response required. Differential assessment Current training requirements for mental health professionals appointed by the court include review of different assessment literature and methods. This recommendation should be considered as part of implementation of education and training recommendations.

Commentator	Comment	Committee Response
	to achieve all five priorities and resolve conflict by abandoning lower priorities one by one. Enhancing Safety Agree with the recommendation subject to modification described below Appropriate procedures; (A) In matters where child abuse is at issue, it is appropriate that courts follow juvenile court procedures relating to child's testimony. However, this recommendation must go further, given that Family Court is $0 different from Juvenile Court, and does not include attorneys for all parties, including children. The court should appoint minor's counsel prior to seeking testimony from a child, and should consider the additional comments included herein that relate to Recommendation 5, Children's Voices. Courts must minimize the risk to children and ensure that their voice is heard in the least traumatic method. Courts should be encouraged to hear the child's input from other sources, including mediators, social workers or other mental health professionals, before requiring direct testimony of the child. (B) Hearing from children in chambers The court should appoint minor's counsel prior to seeking testimony from a child, even if the testimony is sought to be heard in chambers. Expedited handling This is a good recommendation. CPS Involvement In addition to requiring child welfare/CPS to become involved in all Family Court cases involving child abuse or neglect, the Task Force	Enhancing Safety Appropriate procedures This section was redrafted after circulation for public comment and calls for implementation and funding of pilot projects to identify appropriate ways of handling family court cases with allegations of abuse or neglect. Children's Voices The Task Force agrees and its recommendations reflect a range of ways children might participate in the court process. In some instances, minor's counsel may not be available, however, and it may be appropriate to hear from a child so the Task Force did not recommend that counsel be required in every case. Expedited handling No response required. CPS Involvement This section was redrafted after circulation for public comment and

Commentator	Comment	Committee Response
	should urge that child welfare/CPS offers Family Court cases a broader range of differential services in order to support families that do not rise to the level of Dependency Court but are "borderline." We believe that such "borderline" cases will end up in Dependency unless a greater range of services are provided. Contested Child Custody Agree with the recommendation subject to the modifications described below Investigators and evaluators With regard to I.B., "investigators" - there should be a clear definition for litigants of the role, educational background, training and responsibilities of these individuals. Pilot Projects Santa Clara County strongly supports the recommendation for pilot projects to track confidential mediation in "non -confidential" counties. Where the parties come to an agreement in mediation, the proposed agreement prepared by the mediator should be sent to counsel of the represented parties as well as to the parties directly for review and an opportunity to request modification in cases where either a) the document does not accurately reflect the agreements made and/or b) one or both parties has changed position after leaving the mediators office. Where a party is represented by counsel, the mediator should not ask the party to sign off on an agreement until the represented party has had an opportunity to get input from counsel. Family court services	calls for implementation and funding of pilot projects to identify appropriate ways of handling family court cases with allegations of abuse or neglect. Contested Child Custody Investigators and evaluators The Task Force agrees that further clarification as to these roles is necessary. Pilot Projects No response required. Family court services

Commentator	Comment	Committee Response
	We strongly support the recommendation that family court services mediation be made available without the necessity of filing a motion re custody, once a Petition has been filed and served.	No response required.
	Information from family court Clear guidelines should be published re how an evaluation report with/without recommendations should be delivered to the court (e.g. by Family Court Services, by a party or attorney tor a party in a sealed envelope) including re notice of the communication to the other party or counsel for the party and to the evaluator.	Information from family court This comment should be considered during implementation.
	Child custody language The section re "Child Custody Language" should be clarified to provide that the substitution of "parenting time" refers to the "physical custody" label used historically.	Child custody language The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.
	Minor's Counsel Agree with the recommendation subject to the modification described below. Generally, these recommendations are ambiguous as to the intent of minor's counsel's role. Specifically, the recommendations are unclear as to whether minor's counsel is to advocate for the child's stated interests only or whether there is to be a hybrid role such that minor's	Minor's counsel Details for this section should be considered during implementation; however, the Task Force recommendations note that the role of minor's counsel is to act as an attorney in the case.

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	counsel represents the child's stated interests as well as the minor's best interests. Minor's counsel should continue to express the child's stated interests where appropriate, which this recommendation makes clear, but counsel should ultimately be responsible for representing the minor's best interest. Minor's counsel, if required present only the stated interests of the child, would be unable to act if the child is too young, has no position, or expresses a detrimental preference that would harm him/her. Acting within the scope The recommendation states that minor's counsel is not to "replace the court's weighing and determination of the facts with his or her own." Minor's counsel's overarching role is to investigate facts and come to a position on the minor's best interest. While s/he is not making the ultimate decisions for the court, the recommendation should clarify that considering and evaluating all of the evidence is an important function of minor's counsel. Providing information Minor's counsel should be free to serve as an advocate for his/her client. This recommendation seems to hamper minor's counsel by permitting information "through the presentation of reliable, admissible evidence in a proper court proceeding." There are times when advocating for a client in other ways is appropriate; e.g., making arguments in favor of minor's position. Statement of Issues The recommendation eliminate the statement of issues and contentions is appropriate	Acting within the scope The Task Force agrees that minor's counsel should be considering and evaluating information it gathers and presenting its case as an attorney for the child pursuant to the rules of evidence. Providing information The Task Force recommendations in this area support minor's counsel acting as an attorney and none should preclude a minor's counsel from making arguments in favor of minor's position. Statement of Issues No response required.

Commentator	Comment	Committee Response
	Children and the record The courts should address the issue of methods of putting evidence of children's stated wishes into the record without the necessity of children testifying in custody trials and hearings. Possibilities might include a. Testimony of children's therapist or other professionals; b. Testimony of 730 experts; c. Hearsay exception for evidence of minor's statements third parties in custody matters d. Trial Courts should be trained in the complexity of children's "stated wishes" and the child's confidential relationship with their attorney. Children in conflicted families often request that their attorney not tell their parents what the child really wants. At times this leads the attorney to advocate for a result other than one that appears to be the stated wish of the minor because the stated wish is held in confidence by minor's counsel.	Children and the record The recommendations in Children's Participation and Minor's Counsel provide a range of possibility for including children in the family court process, including several of those listed here.
	Trials and Long Cause Hearings Agree with the recommendation with reservations. While there should be little disagreement that trials and long cause hearings are more efficiently conducted when not broken up, the unintended consequences to the Court's and counsel's calendars should not be overlooked in the implementation of this recommendations. Other commitments or counsel may need to be rescheduled or the delay to find sufficient time to hear the matter may be worse then hearing it in a less contiguous manner.	Trials and Long Cause Hearings Accurate time estimates, and good communication between the court and the attorneys and self-represented litigants whose cases are scheduled for long-cause hearings and trials is critical to avoiding delays and wastes of time. The Task Force anticipates that implementation of effective caseflow management will build an infrastructure able to provide

Commentator	Comment	Committee Response
		significant support for moving these calendars along smoothly.
	Litigant Education Agree with the recommendation subject to modifications as described below. We appreciate the efforts to have more uniformity and less local deviations. However, self represented litigants need very specific information about what to expect and where to go. There will be a need for local orientation information with specific directions to buildings, court rooms and clerks. Even information about parking and costs of parking would be helpful.	Litigant Education Agree that any statewide material should be supplemented with the very practical local guidance as suggested by the commenter.
	Written materials should be at 301 grade reading level or below. Lots of photographs in brochures or online, would be helpful; for example photos of the self-help clinic, the clerk's office, the front of the various court houses, court rooms, where to stand. A photo of an actual clerk - what they can and cannot do; of a bailiff - what they can and might do; a judge etc.	Written Materials Agree that written information should be easy to read and that photographs and other graphics are helpful.
	Any of the classes and materials should be available to family law practitioners, in fact lawyers should be encouraged to familiarize themselves with the materials and invited to any programs.	Materials Agree that all materials should also be made available to family law practitioners.
	Expanding Services to Assist Litigants in resolving their cases. Agree with the recommendation Services to help parties with settling cases Santa Clara County Superior Court, due to the close working	Expanding Services to Assist Litigants in Resolving Their Cases Services to help parties with settling cases Agree that Santa Clara has a wide

Commentator	Comment	Committee Response
	relationship of the local Bar and the Family Division, offers ADR at all stages of a family law case. All forms of ADR available Santa Clara County Superior Court along with the local Bar makes many ADR options available and publicizes them on local form FM-1021;	variety of excellent options for ADR and that a working collaboration between the bar and court is extremely helpful to develop these resources.
	Local Bars should be encouraged to publicize non-court-based mediation options.	Local Bars Agree that local bars should be encouraged to publicize mediation options.
	Litigants are educated about their legal rights through local Bar referrals, Limited Scope Representation, either through the Bar or legal services providers, and through the Court's Self-Help Centers. Limited Scope Representation should be more strongly encouraged within the Bar and more publicized to the community.	Limited Scope Agree that limited scope representation should be more strongly encouraged within the bar and more publicized in the community.
	Appropriate family law training for ADR providers It is crucially important that court mediators, paid or otherwise, have the specific skills listed, especially Domestic Violence/power imbalance training. There are no formal guidelines describing the training required of volunteer mediators that provide in-court mediation services. Especially as it relates to domestic violence hearings the consequences can be severe.	Appropriate family law training for ADR provider Agree that guidelines for required training would be very helpful.
	Streamlining Family Law Forms and Procedures Agree with the recommendation	Streamlining Family Law Forms and Procedures

Commentator	Comment	Committee Response
		No response required
	Simplified Judgment Process Concerns What defines an emergency? Could a party file a notice revoking the joint agreement at any time prior to its being finalized? Even after it's been submitted but before it has been processed? Would the filing of such a notice allow the party to file a request for orders? These concerns are largely based on the fact that it currently takes Santa Clara County between 6 to 10 weeks at times to process judgments which could prevent someone utilizing the proposed procedures from obtaining orders should such become necessary while their forms are being processed .	Simplified Judgment Process The provision requiring an emergency has been deleted from this recommendation.
	Request for Order form and corresponding Supporting Declaration (form FL·31O) should specify issues which need memoranda of points and authorities and declarations of counsel and also that such should be submitted separately from the party declaration. Rule S.118(a) states "No memorandum of points and authorities need be filed with an application for a court order unless required by the court on a case-by-case basis." There are certain motions which do not need P&A and others that do. It would be better to address this initially in the pleading forms rather than wait for the court to review and determine that a P&A is necessary which results in unnecessary delay.	Request for Order Form and Corresponding Supporting Declaration This recommendation re identifying which cases need a memorandum of points and authorities should be considered as part of developing the streamlined forms and procedures.
	To extent possible, the Request for Order form should also set forth a checklist of most common requests for orders and state legal basis for such so that the facts set forth in the Support Declaration cover issues that are material to the issues before the court. This will reduce	This recommendation regarding a checklist of common requests and the legal basis for them should be considered as part of developing the

Commentator	Comment	Committee Response
	inclusion of irrelevant and inflammatory fact. Service by posting Along with posting documents that are to be served by posting on a Web site, pending Court Findings and Orders after Hearings should also be posted on the court's website. This would allow parties to quickly check to see if an order after hearing has been issued and filed. Templates for each of the areas recommended are a great idea. Certain templates which are already in use are very helpful to both counsel and SRLs and the use of templates should be expanded. Enhancing Mechanisms to Handle perjury Agree with the recommendation subject to modification as described below. We agree that some mechanism is needed to address the issue of perjury in family law cases. We agree that legislation is the appropriate means to bring about the change. We agree that orders obtained using knowingly or fraudulently misrepresentations should be set aside and that sanctions should be included. We would request that available sanctions specifically include issues sanctions, in addition to financial sanctions. The language included in the recommendation is uncomfortably vague with respect to the phrase "essential element of evidence." We would request that the legislative history or some legislative notes provide examples "essential elements of evidence" in certain kinds of	streamlined forms and procedures. Service by posting Agree that posting pending court findings and orders should be available on-line if password protected. Templates for agreements No response required. Enhancing Mechanisms to Handle Perjury This recommendation has been modified in response to comments. The suggestions of the commenter should be included as part of implementation to develop more effective mechanisms to handle perjury.

Commentator	Comment	Committee Response
	proceedings, like custody and visitation, support, property division trials, etc. The language included in the recommendation is also uncomfortably vague with respect to the phrase "measurable damage." For example, false testimony that results in a $50 change in outcome on an equalizing payment is measurable, but not significant or substantial enough to justify judicial intervention. We would request that the final legislative language include a term with which litigants and courts are more familiar, such as significant or substantial, or in the case of a financial issue, include a minimum dollar amount. Standardize Default & Uncontested Process Statewide Agree with the recommendation Interpreters Agree with the recommendation Public Information and Outreach The court could use the media to disseminate the materials – TV Newspaper and the Internet are likely to be accessed by more people than "community presentations." Judicial Branch Education Agree with the recommendations subject to modifications as described below. We support the need for additional training for the judicial branch. In	Standardize Default and Uncontested Process No response required. Interpreters No response required. Public Information and Outreach Agree that TV, newspaper and internet are likely to be accessed by more people than community presentations. Judicial Branch Education The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a

Commentator	Comment	Committee Response
	addition to the topics listed, we would add the following 1. Training on mental health disorders and how to manage litigants with such disorders; 2. Training on the factors to consider and effects on children of testifying in court; 3. Training on the latest research and approaches in domestic violence cases, including differential assessment tools; and 4. Given the high emotions in family court, training on personal safety and privacy for judicial branch employees. In addition, it is requested that a recommendation be included for increasing the number of family law bench officers with family law practice experience.	wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content, and it will be referred to the implementation process. The Task Force does recommend that family law attorneys seek judicial appointment, and it recommends that the judicial appointment process be further modified to this end. .
	Family Law Research Agenda Agree with the recommendation with reservations. While the information described could add to the quality of decisions made by the court, it should not be a top priority for the use of existing scarce resources.	Family Law Research Agenda Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions

Commentator	Comment	Committee Response
		are identified, there is no way to plan and seek adequate resources in the future.
	Court Facilities Agree with the recommendation subject to modifications as described below. Our particular county used to have one Unified Court that handled cross over issues facing families. For example if there was Paternity action pending and someone filed for a Guardianship in the same case, then both cases would be heard by the same judge. Cross over issues occurred in dependency cases, delinquency cases, family law cases, guardianship and at times criminal matters. While we acknowledge that one recommendation is that family law courtrooms should not be located close to criminal cases, it can benefit the family to have all of their issues heard by one judge.	Court Facilities This recommendation should not interfere with the courts' ability to unify or coordinate cases; it is designed to provide supportive family-focused court environments.
	Leadership, Accountability, and Resource Agree with the recommendation subject to modification as described below. Within the entire recommendation, which we support, the following are of particular importance 1. Promoting the work of the family court by enhancing judicial leadership. 5. Judicial appointments and assignments A. Judicial appointment process- essential to expanding the pool of potential appointees, which is crucial to family court C. Judicial experience prior to family law assignment also crucial one change should applicable at least as a best practices standard to all	Leadership, Accountability and Resources No response required.

Commentator	Comment	Committee Response
	counties for all judges handling family law matters. and 7 - also crucial as when resources are available	
231. Julie Setzer (On behalf of the William R. Ridgeway Family Relations Courthouse)Director Family Law/Probate William R. Ridgeway Family Relations Courthouse Sacramento, CA	Right to Present Live Testimony at Hearing Do not agree Giving the right to present live testimony at hearings would impact the efficiency of the court and would increase the number of long cause hearings set to increase and would cause delays in the setting of hearings. Judicial officers should have the discretion to have live testimony and take evidence versus it being mandated. It would require a skilled family judge to handle live testimony in most cases. Requiring a good cause exception would be extremely burdensome on the court.	Right to Present Live Testimony at Hearing The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force recommendation on the right to live testimony does not eliminate judicial discretion to make decisions based on declarations. It simply sets out reviewable factors judges must consider in exercising their discretion. While a judge may be required to consider the factors, the reasoning he or she must state in writing or on the record need only address the factors that are relevant to the decision that

Commentator	Comment	Committee Response
		was made.
	Expanding Legal Representation Agree subject to modification below The attorney fees section appears to border on asking court to give legal advice. Courts have programs in place to address these issues such as Pro Bono Assistance Programs and Self Help Centers. Therefore, it is recommended that statewide rules pertaining to the information that should be submitted does not seem necessary or appropriate.	Expanding Legal Representation Based upon the comments received in response to the Task Force report from attorneys and litigants, it appears that there is a lack of clarity regarding requirements for attorney fees and that rules should be considered as part of implementation.
	Caseflow Management Agree subject to modification below Caseflow management is an administrative task that this court can support given the appropriate resources being allocated to make it successful. We have concerns about the stringent time standards requiring more hearings regarding compliance and sanctions.	Caseflow Management Any implementing rules must balance the interests of the parties in having their matter concluded against concerns regarding additional hearings and sanctions. Time frames have been modified.
	Providing Clear Guidance Through Rules of Court Agree subject to modification below It is unclear whether this section 3 pertaining to the elimination of local rules pertains to all local rules, or those invoked individual judges that are not included in written and published local rules. This court's assumption was that the intent was to eliminate all or most local rules; therefore, this response pertains to that assumption. Local rules are procedural in nature and intended to compliment rules of court and statutes, and having one set of policies or procedures may not be feasible for all 58 counties. Recommend elimination of sentence	Providing Clear Guidance Through Rules of Court. This recommendation has been modified to reflect the need of local courts to have procedural rules.

Commentator	Comment	Committee Response
	1, "Local rules should be eliminated except as required by statute of rule of court". Additionally, there were mixed opinions about the last sentence, "Local rules should not set court evidentiary "policies" or standards inconsistent with the Evidence Code". Children's Voices Agree subject to modification below This section was a good summary but lacks recommendations, which are suggested. Domestic Violence Agree subject to modification below This court is strongly opposed to allowing paternity judgments in DVPA matters. Allowing parties to stipulate to paternity is not a recommended practice, and it is contrary to the goal of rendering clear and forcible orders. In addition, it is unclear whether parties would bypass the payment of fees.	Children's Voices Recommendations have been updated. Domestic Violence The Task Force is recommending that parentage actions be permitted as part of DVPA proceedings to increase access and enable the courts to more effectively respond to the needs of parties appearing before them. Such an approach should not prevent clear and enforceable orders nor should concerns about fees outweigh an interest in increasing accessibility for these matters.
232. Kathy Sheahan* Litigant No further identifying information provided	Commentator appreciates the work done by the Task Force and noted specific concerns with the court process in her case.	No response required.
233. Hon. Marjorie A. Slabach Commissioner	Commenting on behalf of the Unified Family Court in San Francisco	

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Unified Family Court Superior Court of San Francisco County	Minor's Counsel Providing Information We agree with the recommendation subject to the modifications as described below Although we agree that Minor's counsel (unless also a mental health professional) should not make recommendations to the Court, nothing should prohibit Minor's Counsel from specifying the orders s/he wishes the court to make, which is a requirement of all attorneys representing a party in the action. Streamlining Family Law Forms and Procedures Develop one comprehensive Request for Order form We agree with some concerns We agree that there should be one form; but has the committee contemplated the service requirements and the distinction between those "requests" that need to be served personally, versus those that may be served by mail? Self-represented litigants have been able to more easily distinguish between the two methods when there are two different forms. And we should add that attorneys often require that distinction as well. Standardize Default and Uncontested Process Statewide Full Review of documents We do not agree with this recommendation Because we have clerks review the procedural issues and staff attorneys (with a judicial officer's oversight) do the review of legal issues, waiting to reject the pleadings with a procedural problem until the substantive issues have been reviewed would create a very cumbersome internal process, and a delay in getting the judgment filed. If a court has	Minor's Counsel Providing Information The Task Force agrees and its recommendations reflect the role minor's counsel should play in specifying orders he/she wishes the court to make. Streamlining Family Law Forms and Procedures Agree that information regarding what needs to be personally served and what may be served by mail should be clearly stated on the form or instruction sheets. However, there are situations now where OSCs may be served by mail, so that distinction is not determinative. Standardize Default and Uncontested Process Statewide The issues raised should be considered in developing rules implementing the recommendation. The experiences of a variety of courts will be helpful to identify common procedures and issues.

Commentator	Comment	Committee Response
	discovered an efficient method of providing this one-time-only process, we'd love to hear about it. We've tried. It doesn't work. And we know it's frustrating for the attorneys and litigants; so, if we send it back twice and there are still problems, we set it on calendar for a default hearing.	
	Leadership, Accountability, and Resources Ensuring access to recording for preparation of orders We do not agree with this recommendation No, absolutely not. This is a slippery slope that will finally push the court reporter off the cliff. If orders are prepared before the parties leave the courtroom, there is no need to review a recording. If the court staff is preparing the order, the court reporter should be required to use "Live Note" or real time reporting connected to staff computers, so that the record can be reviewed immediately after the hearing. If attorneys are going to prepare the order after hearing they can pay for a transcript.	Leadership, Accountability, and Resources Ensuring access to recording for preparation of orders The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders.
	Leadership, Accountability, and Resources, Family and juvenile court assignments We agree with the recommendation subject to modification as described below We request that you add a recommendation that Family Law Judges with the requisite skill and desire be encouraged and allowed to stay in	Leadership, Accountability, and Resources, Family and juvenile court assignments This suggestion will be forwarded to the implementation process.

Commentator	Comment	Committee Response
	the Family Law Assignment as long as possible to ensure stability, institutional memory, and uniformity. With the decrease in Commissioners' positions, such longevity is rapidly disappearing.	
234. Barbara Smart Staff Family Court Services Superior Court of Los Angeles County	Listed below are my comments regarding the Task Force Recommendations. Plus I have a question or two. I agree with the recommendations not mentioned here. Listed below are my comments on the areas where I do not agree, or partially agree. Hope you can make heads or tails out of it. Hope you find it useful. Hope someone reads it. Right to Present Live Testimony at Hearings. On the "Right to Present Live Testimony at Hearings", does that mean Evaluators will possibly testifying on every case and there will not be a fee charged to parties? Caseflow Management On page 19 under Streamlined Procedures there is a discussion of unnecessary court appearances. How will unscrupulous attorneys be reigned in? There are some who prefer to go to court for an agreed	Right to Present Live Testimony at Hearings. The Task Force does not anticipate that child custody evaluators will be required to testify in every case. For example, there may be cases in which the parties have come to an agreement subsequent to an evaluation. The Task Force recommendation does not alter current California law that requires a person making recommendations to the court on the issue of child custody/visitation to be available for questioning in court. Caseflow Management It is likely that a court will be much more aware of these types of behaviors in a case management system where

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	upon continuance rather than request it over the phone, thus costing their clients more money. Some unscrupulous attorneys encourage litigation over settlement which also causes unnecessary court appearances with more fees to clients. Perhaps there should be some kind of incentive for family law attorneys who move their clients toward settlement.	there is more careful attention paid to the cases.
	On ”Caseflow Management”, sounds like they are recommending a triage system which is good as long as there is adequate time allotted for evaluators and mediators to work the remainder of the cases which will likely be the worst of the worst cases. The easier ones will have filter out.	A goal of caseflow management is to allow those parties who need additional assistance to have the appropriate time with judges and court staff.
	Sanctions against attorneys. This should also include sanctions for pro pers and litigants for non compliance with court orders. This should include the parent who does not exercise his/her court ordered visitation. After all, the parent who deprives time of the other parent is often penalized but the parent who leaves the child waiting is not. How fair is that? All parties should receive copies of their minute orders before the leave the court.	Sanctions against attorneys. The issue of compliance with court orders is somewhat different than the types of sanctions suggested as part of caseflow management. The Task Force has recommended that parties should receive copies of written orders whenever possible when they leave the court.
	Courtroom Management Tools There needs to be a mandatory requirement for Pact Attendance and mandatory that litigants inform the court and evaluator of change in address or phone number.	Courtroom Management Tools This type of requirement should be considered in developing implementing rules.
	Statewide family law rules	Statewide family law rules

Commentator	Comment	Committee Response
	On continuances etc, This needs to be expansive and inclusive to allow continuances by fax or phone if all parties are in agreement. Children's Voices I believe children should only be interviewed by a mental health professional. They have the skills and the neutrality necessary to elicit useful information. Judges should not have the discretion to bring children in simply because some abuse it.) I hear there is a Judge in Torrance who routinely requests children be brought to court. When a Judge talks to a child in chambers the child may feel intimidated or empowered or responsible for case outcome and could blame themselves plus there is a risk a parent will blame them and penalize them for case outcome. A neutral third party mental health professional is the best person to interview children. Child Interviews should be expanded to District Courts. If a child's testimony is required to verify domestic violence, perhaps a court rule could skirt this issue somehow so that the information can still be used as the basis of court's determination on an issue or fact?	Continuance policies should be discussed as part of implementation of this recommendation. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the notion that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court

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		and/or their parents to be the most appropriate approach.
	Studies and Children's Participation Page 26, item a states that studies recognized the importance of hearing from children in matters that affect their lives and have shown that children do better when they are aware of the process and how decisions will be made. I would like to know what specific studies they are talking about? Perhaps these studies can be discussed at a staff meeting? I fear these "studies" could be misinterpreted to imply that children want and need to be a part of the court process. Also, are there studies to the contrary?	Studies and Children's Participation. The Task Force recommendations in this section seek to strike a balance so that children's participation can be considered on a case-by-case basis, taking into consideration whether a child is seeking to testify or otherwise participate as well as the facts of the particular matter before the courts. For an overview of relevant studies, see "Children and Procedural Justice," in Court Review, Vol. 44 Issue 1/2 (2007-2008).
	Involving other professionals and providing information Page 27 under item B providing information, a short film could be developed to be played in Children's Waiting Room. A different procedural/informative film could be developed and played in adult waiting room. Page 28, if there is ultimately going to be more use of child's testimony, then mandatory training for Judges and Minor's Counsel in Interviewing Children is necessary.	Involving other professionals and providing information This suggestion for a film to be developed for children and for adults should be considered as part of implementation efforts. The Task Force agrees and recommendations include such training.
	Enhancing Safety	Enhancing Safety

Commentator	Comment	Committee Response
	Item B regarding determination by the court whether testimony in chambers is necessary to ensure truthful testimony or whether the child would be intimidated by a formal courtroom setting if the child is afraid to testify in front of his parents. I think there must be an assumption that all children are afraid to testify in front of his/her parents.	The Task Force agrees that great care and consideration must be given to whether in a given case testimony from children is appropriate and the possible impact on the child of providing such testimony. The recommendations reflect the need to balance these concerns and take a case-by-case approach so children are not routinely required to participate nor are they prevented from doing so in a case where such participation would be appropriate.
	CPS Page 32 re CPS, it is a concern that CPS often does not take seriously FCS cases and generalizes that can allegations are false simply because parents are in family law court. Problem with this assumption is that children could be left in harm's way because CPS has powers to protect that FCS staff doesn't have.	CPS No response required.
	Contested child custody Paragraph two, there is confusion when some mediators in some counties make recommendations and other counties they do not, my personal opinion is that there is no way a mediator can have sufficient information to make recommendations regarding custody and visitation absent collateral info, child's input or observing the child with each parent. Mediators should not recommend.	Contested child custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	Investigators and Evaluators Item B. Home visits are an important part of the information gathering process.	Investigators and Evaluators The Task Force did not address the specific processes and procedures involved in child custody evaluations.
	Opportunity to respond IMPORTANT Suggest the Court can hear party's response to evaluator report and take due notice, weighing argument and then make court determination without having further involvement of the Evaluator. To do otherwise, further delays the process adding to court congestion with cross examination issues already explained in report And the parties already stipulated to the report when they asked for it or it was ordered. Just because one party does not agree with the report should not be cause to delay or require presence of the evaluator. This would surely be misused and a waste of valuable resource and time. Continuing the case for cross examination of evaluator provides additional forum to continue the conflict and maintains adversarial mode, perhaps encouraged by unscrupulous lawyers OR highly litigious clients. There needs to be incentive or interest in settling the case. This approach is opposite what we want to achieve. Plus extensive resources, diligence and exhaustive work goes into providing the Court with Child Custody Evaluations. The report must stand on its own as currently stipulated by the parties. Calling the evaluator back is not cost effective, duplicates work and provides opportunity for parents to continue fighting because they have nothing to lose; ESPECIALLY IF THERE IS NO FEE.	Opportunity to respond The Task Force recommends that those providing information or reports to the court, such as evaluators and investigators, be available to testify and to be cross-examined.
	Resources for Child Custody Mediation Services. I agree time to mediate needs to be expanded. Also there should not be	Resources for Child Custody Mediation Services The Task Force did not develop

Commentator	Comment	Committee Response
	a 300 p.m. case because the deputies close the court and mediator and clients are still working. Those cases get short thrift.	recommendations as to specific local court practices with respect to scheduling mediation sessions; however, it does recommend that appropriate time be allocated for mediation services.
	Additional item Page 36 there needs to be an item number nine that says 9. Consider whether the need is for appointment of minor's counsel or appointment of child custody evaluator. Appointment of both on same case duplicates effort and is not cost effective. Needs to be Training Funds to train Minor's Counsel on Interviewing Children.	Additional item Training for minor's counsel is currently required under existing statewide rules of courts. Given the various types of cases in family court, the Task Force recommends that judicial discretion be utilized to determine the most appropriate way to proceed in a given case.
	Leadership of family and juvenile court I do not agree that Dependency Court and Family Law Court and Juvenile Court be under same umbrella. They each have different issues, needs and resources. Not to mention that the perception of FCS clients that they are in the same category as drug addicted parents or foster kids is not one that should automatically be associated with divorce.	Leadership of family and juvenile court The Task Force does not recommend that juvenile and family court cases be handled the same way, however, those families with issues that might be responded to with particular resources in juvenile court should be able to access similar services in family court so that issues related to children's safety may be most effectively addressed.

Commentator	Comment	Committee Response
	Family court management and resource allocation Important A regarding training for presiding judges and court executives is good but I would add combined training with mediators, evaluators, judges and executives. They are all working toward same goal. Combined training provides opportunity for all court staff to gain perspective, understanding of the challenges experienced by bench officers, executives, mediators and evaluators and offers a team approach to problems, issues, challenges.	Family court management and resource allocation This comment should be considered during implementation and development of training opportunities.
235. Karen Sommer Irvine, CA	The Family Law system is flawed beyond belief for stay-at-home moms who are married to financially controlling and abusive spouses.	The Task Force recognizes the challenges faced by financially dependent spouses, particularly when caught in an abusive situation. The Task Force is hopeful that the recommendations it makes be of significant help in such circumstances. The commentator is also referred to the recommendations developed by the Judicial Council's Domestic Violence Practice and Procedure Task Force as received and approved by the Judicial Council and contained in the task force's report dated January 2008. The Elkins Family Law Task Force supports the work currently being undertaken to implement those recommendations by the council's Domestic Violence Practice and Procedure Implementation Task Force.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
236. Fariba R. Soroosh Family Law Facilitator Superior Court of Santa Clara County	Agree with proposed changes if modified Comment Self-help services expanded I disagree with the recommendation. Assistance with trial preparation and discovery is legal advice and should not be provided by self help centers. FLFs cannot give legal advice by statute. Checkpoints established I agree with the recommendation except that two months may be too early in the process to check in with the petitioner. In our county, at filing of the petition, we set a case management conference six months after the filing of the petition. Also, we plan to do 3-year and 5-year reviews to comply with CCP sections 583-210 and 583.310. Information for litigants I agree with a general overview but disagree with this recommendation. Based on experience with SRLs, front-loading them with all the information is too overwhelming and chances are very low that they will use all the information. Instead, we compartmentalize the information into logical sections to maximize chances of success. We do provide a flow chart of the process in family court. This has worked. Streamlined procedures for defaults and uncontested cases Sometimes it is more efficient to work the case through with the parties present at a case management type of hearing. So it is better to offer	Self-help services expanded There are many ways that a self-help program can provide information about how to prepare for trial and conduct discovery in a manner that is informational, rather than providing legal advice. Checkpoints established Time frames suggested are intended to be illustrative. As pilot programs develop more experience with what time frames appear to work best, these may be considered. Information for litigants Flow-charts and opportunities to find information throughout the case are important. Many programs find that a general education component at the beginning is also very helpful. Streamlined procedures fpr defaults and uncontested cases Agree that a variety of methods should

Commentator	Comment	Committee Response
	both options. Resources available for ADR If volunteers are used to provide ADR services, the courts need to consider quality control and volunteer management issues. Flexibility in design In our county we have found that if the petitioner is provided information at filing and a CMC at the six month interval, she/he will have a chance to finish the case way before the first CMC. If respondent files a Response in the mean time, an earlier CMC should be set as a result to bring both parties in to review the case and determine possible next steps. Efficient use of time The crucial factor is that the case analysis be done by the right staff member at court. Identity of the parties is difficult to verify though telephone appearances and communication by email. As to SRLs and from a court resource standpoint, this is a high maintenance way of providing services. Courtroom management tools-legislation required CCP sections 583.210 and 310 should not apply to family law cases at all.	be developed to assist with case management. Resources available for ADR Agree that quality control is important with volunteers – this should be considered as part of implementation and training. Flexibility in design The experience of Santa Clara with case management should be reviewed in developing implementing rules. Efficient use of time No response required. Courtroom management tools-legislation required The issue of whether family law cases should be exempted from mandatory dismissal statutes is one on which the Task Force did not make

Commentator	Comment	Committee Response
		recommendations. This issue should be considered as part of implementation.
	Written orders after hearing Formal service should be required of SHC staff. This is too time consuming. If both parties were present, no service. If responding party was absent, either no service or moving party's responsibility to serve.	Written orders after hearing Recommendations regarding methods of service should be considered as part of implementation. Clerks often serve orders after hearing if they are issued post-hearing.
	Systems To Finalize Older Cases We have started this process in our county. The problem lies with older cases where computer records are incomplete and manual review of each file is required to determine whether the case was finalized.	Systems to Finalize Older Cases No response required.
	Time standards A meaningful exception to the financial disclosure requirement should be legislated for easier finalization of some dissolution matters such as those served by publication or posting or where the parties agree that there are no property issues.	Time standards No response required.
	Expanding services to assist litigants in resolving their cases Help should be provided to write up the settlements too. Often the safeguards required get complicated depending on the holdings of the parties. Again, high income/asset cases should not be handled. For every one such case, two or three simpler cases can be processed.	Expanding services to assist litigants in resolving their cases No response required.
	Appropriate family law training for ADR providers	Appropriate family law training for

Commentator	Comment	Committee Response
	Legislation should be passed requiring any attorney who provides family law ADR services to have one forty-hour mediation training and continuing education in family law mediation. Non-attorneys mediating family law cases should also have similar training. Court sponsored ADR should only be provided by qualified and monitored individuals. Courts can collaborate with outside agencies for overseeing these ADR providers or hire staff to do the same.	ADR providers Guidelines regarding training required of attorneys who provide family law ADR services should be considered as part of implementation.
	Standardize Default and Uncontested Process Statewide Hearing on if necessary It is sometimes helpful because if there are any mistakes or necessary clarifications, they can be taken care of on the spot.	Standardize Default and Uncontested Process Statewide Hearing on if necessary No response required.
	Judicial Education Yes, please! No judge should be assigned to the family law bench unless they have had state mandated training in family law and related issues.	Judicial Education No response required.
	Information about challenges of self-representation SRLs in high income/asset cases should be encouraged to hire private professionals to assist them. Self help centers should not assist in these types of cases. The complexity created by the nature of these cases, and by the conflict if any, means that legal advice is going to be necessary in preparing a stipulation or for litigation.	Information about the challenges of self-representation No response required.
	Information throughout the case In my opinion, hearing and trial preparation will inevitability involve	Information throughout the case A number of self-help centers provide

Commentator	Comment	Committee Response
	giving legal advice. Strategizing on discovery and presentation of the evidence is a major part of such work and is clearly equal to giving legal advice.	templates for trial briefs, have videos on how to present and object to evidence and provide workshops to assist litigants in preparing for hearings and trials. None of those would be considered strategy or providing legal advice.
	Enhanced parent education prior to education This should be done on a case-by-case basis and applicable in medium to high conflict cases only.	Enhanced parent education prior to education Agree that if parties are in agreement, parenting education should not be required.
	Enforcement of Orders This is a major problem. The judges must be willing to impose sanctions for violation of court orders. The judges should also treat serious orders seriously. For example the order "father shall have reasonable supervised visitation" completely does away with the restrictive purpose of supervised visits and renders this order "toothless"!	Enforcement of Orders No response required.
	Childrens Voices I am concerned about "parentifying" children and putting them in a position of having to select between the parents. In my opinion, no child should be burdened with this type of decision making responsibility with exceptions for extra ordinary circumstances and children close to emancipation.	Children's Voices The Task Force recommendations in Children's Participation and Minor's counsel support considering children's participation on a case-by-case basis without requiring or prohibiting participation across the board.

Commentator	Comment	Committee Response
	Paternity and domestic violence cases This would make initiating a DVPA action as complicated as opening a paternity action in terms of the forms if notice is to be adequate. If the intent is to ask the parties at the hearing if they object to entry of paternity judgment, I am still concerned about notice and opportunity to consider options. Orientation I recommend that the orientation be given in segments so that SRLs can retain the information better. It also motivates them to come back and finish the case.	Concerns such as those raised here need to be considered as well as those discussed in the recommendations. Paternity and domestic violence cases The Task Force recommends that consideration be given to these concerns during implementation of the recommendation regarding parentage and domestic violence. Orientation The recommendation that orientation be provided in segments is one that should be considered as part of implementation.
237. Michael F. Schafle, MD Physician Fortuna, CA	I am a physician. The law mandates that physicians report child abuse, with possible removal of licensure if not. *Commentator provided specific information related to case and the following suggestions New law should be written that a. Denies alimony to abusive spouses b. Mandates attorneys report child abuse during divorce proceedings c. Mandates judges to investigate child abuse d. Mandates District Attorneys to investigate child abuse e. Mandates that abusive spouses be obligated to pay for all attorney fees, both for themselves and for the non-abusive spouse, since the abusive spouse caused the legal action f. Mandate judges to notify the FBI that an abusive spouse has illegally transported a child to another State and mandate that the District Attorney file kidnapping charges and litigate the action.	New Law The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	*Commentator provided specific information related to case and the following suggestions New Law should be written that provides a. Spouses who leave the State or jurisdiction, abandoning their children, should nonetheless by held financially responsible for their HALF of the costs of educating their children. b. Mandate judges to hold both spouses EQUALLY responsible for the costs of educating their children c. The spouse that leaves the State should NOT be allowed to deny enrollment in the school chosen by the child and custodial parent d. Any attorney who argues in Court that the custodial parent must bear all of the financial responsibility for the education of a couple's children should be immediately disbarred. e. Judges should be held responsible for protecting children and ensuring their education, despite the legal maneuvering and obfuscation by disreputable attorneys. Any judge whose decision results in the termination of an educational opportunity for a child should be removed from the Bench and subsequently disbarred.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	*Commentator provided specific information related to case and the following suggestions New Law should be written that provides a. Mandate that any District Attorney, Judge, Law Enforcement official or Attorney who fails to report child abuse and investigate such abuse, and use the findings of such investigation in divorce proceedings, should be disbarred, removed from the Bench or fired from their job. 4. New Law should be written that a. Mandate that perjury be grounds for dismissal of divorce	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	proceedings, with no financial consideration given to the perjurous spouse. b. If the Court allows a certain period of education, then that person's income should be calculated on the basis of the additional education and made retroactive to the start of the education, whether or not they choose to become employed. Laziness should not be an excuse for not being employed, nor should it be allowed to influence the Court's determination of alimony payments. c. Mandate that an attorney who knowingly allows their client to obfuscate the Court, to abuse the judicial process to garner sympathy, or to mislead the Court, that attorney should be disbarred. d. Mandate that an attorney who counsels their client to remain unemployed so as to prolong additional alimony, or increase the amount of alimony that client receives, should be disbarred.	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
238. John R. Schilling	Agree with proposed changes	No response required.
239. Roger Schlafly Santa Cruz, CA	The Elkins Task Force has many recommendations, but very few of them are directed at its main purpose -- to propose measures that allow family court litigants to get the protections that are ordinarily available in civil court. The California Supreme Court ruled in Elkins v Superior Court (2007) that family court trials should be governed by the rules of civil procedure in civil cases, and no new legislation or funding should be required to abide by that decision. Some of the recommendations seem to be even contrary to the Elkins decision. My comment is that the Task Force should focus on concrete recommendations that will bring civil court protections to the family court. I propose measures in three particularly important areas, hearsay, finality, and court-appointed witnesses.	

Commentator	Comment	Committee Response
	Hearsay. The Family courts are extremely sloppy about hearsay, and the recommendations threaten to make it worse. For example, section 5 recommends allowing child hearsay that would never be allowed in civil court. I propose No one should be allowed to report on a child interview, unless the interview is recorded and the parents are each able to conduct interviews under similar circumstances. No family court should accept any documents or other communications, unless submitted by a party in connection with a scheduled hearing, and served on the other parties. No expert opinion should be accepted or considered, unless it meets the conditions below. Finality. Civil courts are entirely focused on working to a final judgment, which is then enforceable or appealable. Even juvenile dependency court is usually able to come to a conclusion within a year on whether a parent is fit or not. But family court cases can go on for years, without ever resolving anything with any finality. I propose that any allegation of unfitness must be proved within 6 months, or else the child custody would automatically revert to whatever permanent status was held before the allegation. If there was no permanent order, then custody would revert to 50-50 joint custody.	Child interview The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. However, the Task Force does recommend it be mandatory that those professionals who provide such information to the court be available to testify and to be cross-examined. Expert Opinions The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	In particular, no order requiring that visitation be supervised should ever last more than 6 months. Expert witnesses. Family courts frequently appoint an Evidence Code 730 expert witness to recommend outcomes for a case, and then rubber-stamp the witness recommendations. In effect, the courts are delegating their decision-making power to the witnesses. For example, a psychologist might decide which parent should get legal and physical custody. A civil court might also appoint an EC 730 expert witness, but the witness's role is only to help resolve some factual issue in dispute. For example, a physician might testify about whether an x-ray showed a tumor, but would not give an opinion about monetary damages. I propose new rules that would limit family court experts more narrowly within their expertise, as civil court experts are limited. No 730 witness should be appointed unless there is a scheduled hearing within 3 months, and the court has enumerated specific factual issues under dispute at that hearing. No 730 witness should give any opinion on a conclusion of law, such as legal custody of a minor. No court should act on any 730 recommendations without opportunity to depose the witness, have a court hearing with testimony from the witness, and have opportunity for rebuttal testimony.	Expert witness The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	No hearing should be delayed because of the inability of the court to appoint a 730 witness. No 730 witness should be appointed with a boilerplate form, as such a form fails to specify the "purpose and scope of the evaluation", as required by Rule 5.220(d) (1) (B) (ii). No 730 witness should given any written opinion in a report unless that opinion is admissible under the Frye rule, as required in civil court, and that report documents how the report meets the rule requirements. In particular, the report must cite sources for any generally accepted knowledge. Individual provided additional information on specific case.	
240. Hon. Robert Schnider, Ret. Judge Superior Court of Los Angeles County	I strongly support most of the recommendations of the task force and will comment only on recommendations where I see issues. I will identify my comments by the recommendation number contained in the report. Live testimony I generally support this recommendation. I never had a policy barring testimony even when my calendars were exceptionally heavy. However careful training for judicial officers and lawyers is required (self-represented parties, hereinafter "SRPs", can more easily be assisted in a Stevenot type hearing which is endorsed by this recommendation). There is a substantial risk that we could end up with a hybrid system (declarations plus testimony) that gives us the worst of both worlds, raising the fee cost of hearings while also making them	Live testimony The Task Force agrees that the role of declarations is important. The recommendation on Simplifying Forms and Procedures has addressed the issue of declarations; however, the role of declarations at hearings will be considered more fully during the drafting of implementing rules.

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	take longer. While clearer rules will help the proclivities of individual judicial officers will (and should) still vary meaning differences both between and within counties. Finally, the findings rebutting the presumption of live testimony should not be required if no party is requesting live testimony. A. "Keech" form While this is a good idea it is important to note that the cases do NOT require a declaration in every instance. See Martino v. Denevi (1986) 182 Cal.App.3d 553 and IRMO McQuoid (1991) 9 Cal. App.4th 1353. The court can base some order on the work it observes and the attorney can testify with the court using its expertise. No court rule can "overrule" these cases, nor should it. Early needs fee award While I don't disagree with this section and it clearly is already the law the facts of each case should determine the timing of fees rather than some absolute policy. I recommendation such as this could be misinterpreted particularly to judicial officers new to the assignment. I believe some additional language should be added to make clear that individual issues (such as SP/CP disputes where the wealth of each party is unknown at the outset) must be considered.	A. "Keech" form The Task Force concluded that the right of the parties to present testimony at their hearings is fundamental to due process in family law. The standard should be live testimony, with certain exceptions. The Task Force chose not to make this right dependant on a request by the parties with respect to their own testimony. However, the fact that neither party has requested to testify may be a reason not to take testimony. The factors set out in the recommendation are not exhaustive. But, if a judge does not take testimony for the reason that no party requested it, it should be so stated on the record or in writing. Early needs fee award Agree that any implementing rules should be clearly drafted to recognize the complexity of issues regarding timing. The Task Force heard a great number of concerns from lawyers and litigants about the difficulty of obtaining early attorney fees so that a

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		case can be effectively researched and presented.
	Attorney Sanctions Would these only apply to violation of case management rules? Or be added to FC sec. 271? This should be clarified.	Attorney Sanctions This should be considered more closely in developing implementing rules or legislative proposals.
	Time Standards I believe these are difficult to apply to Family Law but believe they are acceptable as goals or guidelines. I would oppose this recommendation if sanctions are attached to the standards. Civil and criminal cases usually center around a specific unitary event—the crime, tort or breach—and the case deals with that event. Family law cases start with an often ill defined separation and both the parties and their children often need time to adjust to that. Often there are other major changes in the lives of the parties that make appropriate resolution of issues like custody and support hard to determine (previously non-employed outside the home spouse starts to work, house gets sold, kids change schools, etc.). Sometimes it is helpful for these changes to play out a bit before the most appropriate resolution becomes clear. So while a goal or guideline will fit most cases other cases should be given leeway without fear of sanction.	Time Standards Agree that these standards will need to be developed more fully as part of implementation. The Task Force does not recommend that sanctions be associated with the standards. They are designed to ensure that courts can provide adequate resources to allow those parties who want to conclude their case in a timely manner to do so. Without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet.
	Statewide rules While I agree with this in the abstract it clearly will be difficult to fashion rules that work both in a two judge court and In Los Angeles County with 47 courts hearing family law matters. Thus I believe some type of limited local exceptions with substantial publicity for out of	Statewide Rules This recommendation has been modified based upon comments to more clearly allow for appropriate local rules.

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	county lawyers and no severe sanctions for violation would be appropriate. What is a "local local" rule should be carefully defined. For example, in cases with numerous disputed items of personal property I would require counsel or SRPs to prepare one list containing each claimed item stating each party's contention regarding location, value and separate or community nature. I saw this as a trial aid not a local rule. I believe such techniques should still be permitted. Involving the child Proposed legislation should allow the court to interview the child privately in chambers, without swearing the child, without reporter, with or without counsel and/or parties but ONLY on the stipulation of the parties. The Court should be allowed to consider the information so received as evidence. This likely makes the trial court decision on these issue appeal proof but offers the greatest guarantees to protect the child. Many parents accept the limitations and personal disabilities of this procedure recognizing it will harm their child the least. Domestic Violence If the recommendation is that the orders should survive then, at the very least, they should be subject to modification without a showing of change of circumstances in a dissolution or parentage proceeding. Further there must be procedures and forms for modification of custody and support orders in the DV case itself. Contested Child Custody Additional forms would seem to complicate matters for SRPs. The	"Local local" rules This type of list would appear to be more in the nature of an order arising from case management rather than a "local, local" rule which requires publication. Involving the child The Task Force agrees that consideration should be given to whether testimony from a child should be taken by the court in chambers; however, all testimony should be on the record. Domestic Violence These comments should be considered during implementation. Contested Child Custody The Task Force agrees that forms

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	judicial officer can obtain such information very quickly and often more clearly by asking a few direct questions of the parties (Stevenot type hearing).	should be not used to complicate processes and procedures but to simply and to assist the court in its decision-making.
	Information from family court services and evaluators This section mentions a "confidential" portion of the file. Except in parentage cases (and the justification for confidentiality in those cases does not exist any longer) there should be no "confidential" portion of the file or separate confidential file. Sequestered evidence (such as an evaluator's report) can be sealed and held by the clerk's office.	Information from family court services and evaluators Current law requires maintaining a confidential portion of the family law file for specific documents.
	Enhancing Safety I concur. A bill to do that was offered in the legislature by Assembly Member Tom Bates in January 1990. (AB 2621). I have a copy of the Bates bill which I would be glad to furnish to the task force if requested.	Enhancing Safety No response required.
	Minor's Counsel As I understand it the MC would simply become another attorney in the case able to call witnesses and offer documentary evidence (although under 2B it seems possible MC can make an oral representation as to the wishes of the child). This major change in the role and purpose of MC might be acceptable if all the financial and staffing recommendations were adopted. As that is unlikely the net result will be to remove an extremely valuable tool for the court and parties because of a few abuses. MC can be hugely effective in obtaining basic information in an efficient, inexpensive fashion (e.g., child's performance in school, thoughts of teachers and other third parties	Minor's Counsel The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and that any position counsel will be taking be presented in writing to the parties prior to a hearing on the matter. The Task Force agrees that minor's

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	closely involved with the child, availability of community or medical resources to meet a child's needs and the child's stated desires). A compromise is made with the rules of evidence but it is not greatly different than administrative proceedings where reliable hearsay can be received. Because the type of information MC can gather is likely to be reliable under the circumstance and a neutral counsel is a reliable reporter this is a fair compromise to make so long as there is an opportunity to rebut.	counsel should be acting as an attorney in the case.
	While MC could present much of this information under the rules of evidence this would greatly increase the cost, hours required and paperwork necessary. Simple cases will balloon out of proportion to the ability of the parties or the counties or courts to pay. A compromise would be to more clearly limit the issue of recommendations, psychological evaluations and other areas where abuses are seen while still allowing oral or written reports with basic factual information including an evaluation of the basis for credibility and received in a fashion that allows the other sides to call witnesses or otherwise respond.	The Task Force recommendations are not designed to increase costs in this area.
	Complaint procedures To whom does the complaint go? To the appointing judge? To the SJ or PJ or some third judge not involved in the underlying case? To a Bar panel? FCS? This should not be a matter for local policy.	Complaint procedures Details regarding implementation of complaint procedures and related forms should be considered during implementation. The Task Force recommends statewide approaches in this area.
	Scheduling of Trials	Scheduling of Trials

Commentator	Comment	Committee Response
	To fairly make this recommendation the Task Force must address the issue of cases that exceed the stated time estimate. Should they be automatically mistried? Does the court cut off testimony even if it is relevant and punish a party (and maybe a child) for the failings of counsel? What about the cases where one side uses a disproportionate share of the estimated time? There may be fair answers to these questions but they must be addressed.	The Task Force agrees that the issue of time estimation is critical to this recommendation. Other important issues include case status with respect to settlement, calendar management and other cases entitled to priority. The Task Force anticipates that implementation of effective caseflow management will provide significant help to address many of these issues. Several commentators have suggested setting out specific good cause factors for interrupting a case and continuing it to a time further down the road. These factors should be considered in drafting implementing rules.
	Enhancing Mechanisms to Handle Perjury This recommendation opens up a potentially huge new area of litigation and leaves no judgment secure. Current precedent and statues more reasonably balance the desire for fairness with the need for certainty. I don't believe new legislation is required.	Enhanced Mechanisms for Perjury. This recommendation has been significantly modified based upon comments.
	Leadership, Accountability and Resources I would oppose consolidation of Family Law and Juvenile Supervising Judge responsibilities. At least in Los Angeles, where I have experience, the job of each SJ is too large for one person to do both. Further, in Family Law, and I'm sure in Juvenile a high level of substantive knowledge is very beneficial for the SJ. I believe it would	Leadership, Accountability and Resources The Task Force recommends "assessing the viability of consolidating both the juvenile and family court departments under the

Commentator	Comment	Committee Response
	dilute both to combine them.	leadership of a single judge." The concerns raised in this comment will be referred to the implementation process
	Access to the Record Based on substantial experience with taping I strongly agree with this recommendation.	Access to the Record Agree. The recommendation on access to the record has been modified based on extensive public comment. It now provides that options to create a cost effective official record should be available in all family law courtrooms, including court reporters, audio recording, or other available mechanisms. This recommendation addresses both the concern about access to appellate review, and finalizing court orders. The Task Force agrees that access to the record in family law is a serious access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an

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		official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings.
	Calendaring approaches Organizations assisting and representing SRPs usually object (with a valid basis) to "pro per ghettos". Also that calendar is often less satisfying as a judicial assignment.	Calendaring approaches Each court would need to consider the pros and cons of various calendaring approaches with an eye toward improving services to the public. The concerns raised in this comment about "pro per ghettos" will be referred to the implementation process.
241. Erin Scott Family Violence Law Center Oakland, CA	On behalf of the Family Violence Law Center Domestic Violence We also would like clarity concerning the ability of support and custody orders to survive the "dropping" or expiration of a temporary restraining order at the hearing. We also would like clarity concerning which county can accept a temporary restraining order for review. Did the incident have to occur in the county? New issue – Need clarification concerning using Guardian Ad Litems to file restraining orders on behalf of children under the age of twelve. Who can serve as a GAL? If the parent cannot or is not an appropriate GAL, who is?	Domestic Violence The Task Force's recommendation on survival of orders addresses permanent restraining orders; the issue of whether these orders survive when issued as part of a temporary restraining order should be considered as part of implementation efforts. The issue of venue was not considered by the Task Force which focused primarily on procedural issues; this is a policy issue that could be considered by the legislature.

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		GALs This clarification may be appropriate for consideration by the legislature.
242. James D. Scott Law Office of James D. Scott San Diego, CA	As I read through your report, time and time again I found myself thinking, right on! You must have a good balance of people bringing experience and perspective to the table. After page 13, I could not stop reading. From my perspective, as an old man with almost thirty (30) years in a high-volume family law practice, I would have to say that you have made almost all of the recommendations of my dreams. I humbly offer the following, additional suggestions 1. That the family courts become paperless with digital filing as soon as possible. This huge savings will help balance the books. The labor and space saved by going paperless will easily pay for the conversion very quickly. 2. That self-help kiosks be implemented in the lobby when the system is paperless to assist Pro Pers with document completion and relieve the burden on facilitators. Enhancing Perjury Civil sanctions. Make this language mandatory, not discretionary to the judge. Use the word “shall” rather than “could” ask for, or that the court “may” order.	Digital filing should become much more possible with the California Case Management System (CCMS) is completed. Self-help computer programs such as ICAN! and EZLegalfile are currently available in most courts and can certainly be expanded when e-filing is available. Enhancing Perjury Civil sanctions. This recommendation has been modified in response to comments.

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	Standardize Default and Uncontested Process Statewide. When the system is made paperless, implement computer programs that will show successive forms to the user. This way the attorney back at the office, or the Pro Per in the lobby at the courthouse using a kiosk, has to get it right or it win not be successfully submitted. Leadership, Accountability, and Resources. Members of the bench should actively recruit or support the candidacy of members of the bar who specialize in the practice of family law to take the bench with the goal of a long term commitment to the family court. Ideal candidates would show commitment to family law often (10) to fifteen (15) years, youth, and an interest in advancing the Family Code. Under the subject of Leadership, Accountability, and Resources Assign all trials and long cause hearings of one half-day length to the "wheel" used by the civil departments for trials. E-filing or fax-filing E-filing should be an important option. The advantage to a paperless system is the ability to drop the document right into the file by the party or the attorney, with that going straight to the judge without a human hand touching the document.	Standardize Default and Uncontested Process Agree that this process will be easier with electronic filing and forms completion programs. Leadership, Accountability, and Resources. The Task Force encourages attorneys with family law experience to seek appointment to the bench. The Task Force also recommends further changes to the judicial appointment process that are consistent with the points made in this comment. This suggestion should be considered as part of the implementation process. E-filing or fax-filing No response required.
243. Ben Siegfried CCFC Coronado, CA No further information	*Shared Equal Parenting for two fit parents should be the default for divorce and separation.	Shared Equal Parenting The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in

Commentator	Comment	Committee Response
provided regarding organization		family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Cameras recording/Audio recordings of each proceeding should be implemented and with a minimal fee of no more than $50 dollars for copies, and copies should be made available anytime, no matter what. They should also be allowed in custody evaluations, too bad if the private evaluators don't like it. The majority of San Diego County's dozen or so evaluators all lie. Parents need protection from bias, excessive and unnecessary verbal attack, and from unprofessionalism that is rampant.	Cameras recording/Audio recordings The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. The Task Force believes that access to the record in family law is a serious access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings
	Trial by jury, no exceptions.	Trial by jury, no exceptions. The Elkins Family Law Task Force

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	These three things ought to firm up a lot of problems. Your Elkins efforts went nowhere, you missed the big three. Get rid of custody evaluations. Pay Judges more, I don't care if you make $250,000+ a year with a new raise, just do your job, do it professionally, with care, with ethics, without bias, and with transparency of being surveilled by cameras to hold you accountable. The way things are, you all want too much without any real care for families or children. I do not agree with your draft recommendations. I do agree with the article at the following links. There needs to Elkins 2, 3, 4 and so on... you have far more work than you portray with your weak recommendations and insincere video. The Public will not stop. You will have no choice but to listen to a continuance of complaints until you finally do something that is right. Commentator provided links to articles in addition to above comments.	focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This suggestion to get rid of custody evaluations is a substantive policy area in which the Task Force did not choose to make recommendations. The Task Force did not make recommendations on judges' pay. It did make recommendations in response to the many concerns raised about the need for greater accountability, as follows the creation of a complaint mechanism, public information about how to resolve complaints, and the evaluation of the creation of a court ombudsman position. The Task Force did not recommend

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		videotaping of family law proceedings out of concern for parties' privacy and safety.
244. Hon. William Silveira (Ret.) Judge Superior Court of Tulare County	Minor's Counsel Page 36 of Chapter 9 begins appropriately enough by recognizing that courts "appoint minors counsel as a result of the limited availability of other resources such as family law investigators or child custody evaluators and the need the court may have for additional information on which to base a child custody decision." Paragraph 1 (A) at page 37 further notes that Family Code Section 3151indicates that one of the duties of minor's counsel is "to gather facts relevant to the proceeding". Unfortunately, these salutary goals are then totally undercut by the recommendations of paragraph 1 (B) at page 37. Except in very limited circumstances, a written report from minor's counsel regarding the facts gathered by minor's counsel, filed and served on the parties before hearing, is necessary not only to give the parties notice of the facts gathered, but also of the sources of the information gathered. The parties would then be free to subpoena witnesses named in the report or present evidence to the contrary (having had notice of the evidence to be produced). This proposal seems to require a process in which minor's counsel would call however many witnesses were needed to establish the facts without notice to anyone regarding who those persons would be or the issues to be presented. While existing procedures (and others recommended in this report) would presumably allow discovery of these matters before hearing or trial, pro pers would be put at a distinct disadvantage over skilled trial attorneys. Moreover, we could end up with very lengthy proceedings, when they aren't necessary to insure a hearing that	Minor's Counsel The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and that any position counsel will be taking be presented in writing to the parties prior to a hearing on the matter.

Commentator	Comment	Committee Response
	comports with the Elkins decision and due process. If a party has notice of a source for a fact set forth in a report that party can subpoena the source; the party can also present contradictory independent testimony. Paragraph 1 (B) then goes on to intone "minor's counsel should never be called upon to stand in the place of a mental health evaluator or to replace the court's weighing and determination of the facts with his or her own." While I don't have any quarrel with proposition, I believe the reference to mental health evaluators should not be included. Many parties cannot afford to retain them and the courts do not have fiscal allocations to pay them if appointed by court. Moreover, the opinion of mental health evaluators is based on a determination of facts the mental health evaluator determines to be true. If the goal of the task force is to limit such fact finding by others, it has left itself wide open with this suggestion. I believe that this proposal has been gratuitously placed here without any real thought as to the limited number of situations in which such reports can be truly helpful (if available at all), and to soften the task force's proposal for straight-jacketing the role of minor's counsel. The task force is concerned with allowing due process, but has also noted the need to expedite proceedings consistent with due process. This proposal would enormously increase the expense of litigation to the parties. The parties who can afford attorneys will have their advantage further leveraged. This report seeks to ameliorate this problem by suggesting a greater willingness on the part of the court to order the payment of fees by one party to another. This ignores the reality that sometimes the money for counsel is coming from a non-party to the litigation. It ignores the reality of the size of retainers	The recommendation is designed to guard against inappropriate use of minor's counsel and to assist in further clarifying the role minor's counsel should play in family law cases.

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	demanded in this kind of protracted litigation. Delays will occur while fee hearings are being conducted and payments finally made. Enhancing Mechanisms to Handle Perjury The recommendation for new civil sanctions is akin to placing further adhesive bandages on a wound that instead calls for surgical stitches. It is my experience that allegations of specific acts of cruelty to children or sexual abuse of children often lead to protracted and difficult proceedings. It is my opinion that when a court determines that such claims are knowingly and falsely made to gain custodial advantage that the court should have the explicit authority to deprive the person knowingly and falsely making them of legal and physical custody of the child, in the court's discretion. There should be a statutory presumption that the making of such false claims is detrimental to a child's best interest.	Enhancing Mechanisms to Handle Perjury This recommendation has been significantly modified in response to comments.
245. Monica Slone, MFT Palmdale, CA	It appears that the judiciary has gone overboard on protecting the rights of fathers. However, nothing really is being done to protect the rights of the children and their mother. It would be best that children are able to remain with their mothers unless there is real danger such as physical abuse, sexual abuse or substance abuse. Attorneys are filing petitions such as the following" attach Petition to Establish Parental Relationship and call your specific attention to Paragraph 2b. You can file the action during the pregnancy, and I believe that one could obtain a pre-birth order again removing the child. This type of action is very stressful to the mother and in some cases has caused so much distress that the children actually die in utero. The mother is biologically the primary care taker and the mother gives birth to the children. The father has a very different role. However, abusive men who don't want to pay child support often use the legal system to further abuse as well as extort	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	money from the mothers. There should be a prohibition against this type of behavior and abusers should be carefully scrutinized. The law against giving custody to an abuser should be used and not ignored as it often is. This is a recommendation for the Elkins Task Force regarding research Students from law schools should be organized to go through the cases in family law court with a research instrument as a guide. The research guide will be a questionnaire indicating yes/no responses as to was there a. domestic violence in the case b. child abuse allegations c. did the alleged abuser receive custody. The researching students will use restraining orders, pleadings, and other court filings to determine the allegations of abuse. The allegations do not have to be sustained. There are too many cases of abusers receiving custody of children and the PAS standard is wrongfully applied.	Family Law Research Agenda The Task Force has chosen to emphasize measures related to court workload and caseflow to help assess resource needs and improve operational decision-making. Additionally, the commentator's proposal raises concerns about access to confidential information in the court files and about the court resources required to support such a project.
246. Amanda Smith	FINALLY! ALL I HAVE TO SAY IS...WOW!	No response required.
247. Hon. Diana Becton Smith Assistant Presiding Judge Superior Court of Contra Costa County	Expanding Legal Representation and Providing a Continuum of Legal Services Agree with the recommendation subject to the following modification This section might note that the Sargent Shriver Civil Counsel Act will be a step towards providing funding for the representation suggested in these recommendations. Interpreters Agree with the recommendation subject to the following modification This section should be broadened to include an explicit reference to	Expanding Legal Representation and Providing a Continuum of Legal Services. Agree to add a providing regarding the Sargent Shriver Civil Counsel Act (AB 590) Interpreters Agree to include an explicit reference to sign language interpreters.

Commentator	Comment	Committee Response
	sign language interpreters for persons who are deaf or experience hearing loss as defined in Evidence Code §754. Unless there is a reference in the recommendations to the provision of sign language interpreters, courts might not address the need in a timely manner (see particularly subsections 1.A through G.) Sign language interpreters should also be referenced in section 18.C. Judicial Branch Education. Agree with the recommendation subject to the following modification Subsections 1.K and 2.A-G should include a requirement that judicial officers and court personnel receive cultural competency training in the handling of custody matters involving same-gender relationships; and that judicial officers also receive education and training concerning the unique challenges presented in two additional areas child custody proceedings involving LGBTQ youth, and child custody proceedings in relationships where one partner or spouse is transgender. The advisory committee also wishes to underscore the importance of other concerns addressed in the task force recommendations. Leadership, Accountability, and Resources. Agree. The references to improving and promoting transparency and accountability are critical to the Court's efforts to insure that litigants believe that justice is served in their cases. The advisory committee strongly endorses the recommendation that each court must assess	Judicial Branch Education. The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content, and it will be referred to the implementation process. Leadership, Accountability, and Resources. Agree. No response required.

Commentator	Comment	Committee Response
	critically the resources it assigns to its family law division. Many of the problems involving access to justice and due process are created – unnecessarily – because there are too few bench officers assigned to the family law division. As a result, thoughtful, diligent bench officers must find ways to handle too many cases on a calendar – resulting in short cuts and curtailed hearings – which limit the litigants' access to justice. The single greatest reform that could be made is to assign adequate judicial resources to this important area of the law.	
248. Julie M. Smith Chair San Joaquin County Bar Association Family Law Section	The Bench, Bar and Family Court Services in San Joaquin County want to thank the members of the Elkins Task Force for their work on what was obviously a monumental endeavor. Many of the recommendations can greatly enhance the necessary work of the family law court system. As a group we choose to address the following points that we were able to unanimously agree on and that had particular impact on our county. Caseflow Management Do not agree with the recommendation COMMENTS We do agree that some cases would benefit from case management, but they are in the minority and should be dealt with on a case by case basis by the judicial officer. Our judicial officers will schedule a CMC any time any litigant requests one. The judicial officer can set a schedule and enforce it for those cases needing an extraordinary amount of attention. To impose a mandated case management system on the courts, for family law cases, would push the inadequately resourced courts over the limits and cause more of an undue hardship than we already face.	Caseflow Management Agree that this recommendation will require additional resources for many courts. Statewide data indicates that more than 70% of litigants currently represent themselves in family. Courts that have instituted these checkpoints have found them very helpful as most of the litigants did not know that there was anything more they needed to do to finalize their divorce, let alone knowing that they could request a case management conference.

Commentator	Comment	Committee Response
	Information for litigants. Our Family Law Facilitator/Self-Help Clinic is already overburdened and understaffed and would not be able to provide education about the court processes and courtroom procedures. Most days the 4 people that staff this clinic see over 80 customers and are only able to help with forms.	Information for litigants Agree that additional funding will be required to implement this recommendation in many courts.
	Efficient use of Time It's great to say that case management conferences could be held by phone or by email statements regarding the status of the case, when appropriate. We do not think these methods would be appropriate for the majority of the self-represented litigants because using a system such as Court-Call, is an expense and not everyone has access to computers/the internet for email.	Efficient use of time California Rules of Court do not require the use of court call and courts may want to consider other alternatives given the expense as noted by this comment.
	Systems to finalize older cases. We agree that a system should be established to finalize older cases because if you don't have one in place, all outstanding cases need to be cleaned up (disposed of) before going live on CCMS. This was a lesson learned in our civil experience. All cases not disposed of then need to be converted as legacy cases and this is a major programming effort on the part of the business partners for CCMS.	Systems to finalize older cases No response required.
	In summary, CMC is unnecessary in every case, is not cost effective for attorneys to appear in most cases, and if required there are no court resources (clerical staff, funding and judges time) to handle additional hearings. If adopted, we believe it should be optional for the courts and not mandatory.	For those cases where the parties are able to complete their case or attorneys indicate significant process appearances may not be required.

Commentator	Comment	Committee Response
	Sanctions Against Attorneys Strongly agree with the recommendation COMMENTS We feel that this change is long overdue. Giving the Judges more discretion on dealing with unnecessary delays will enhance the process for everyone. This is clearly in the best interest of clients. The current system relies on a client's dissatisfaction with their attorney in order for there to be any impact on the attorney. A client should not have to be punished for the actions of their attorney. It is the attorney that is in the best position to remedy their own calendaring, or any other issues that they may have. By the time the client might be aware that things are not proceeding as they should, the current system will have them paying cost to the opposing side. Sanctions will have an immediate impact on the attorneys who are not proceeding in the manner that best serves the interest of justice.	Sanctions Against Attorneys No response required.
	Contested Child Custody Do not agree with the recommendation COMMENTS To address concerns raised, the task force recommends that pilot projects be implemented throughout the state to provide litigants initially with the opportunity to mediate their contested child custody matters confidentially. The concerns have not been publicly presented. Therefore, the suggestion of having pilot programs offering recommending counties the chance to try the confidential model appears to be based on a bias in favor of the confidential process. If there is a body of data that shows recommending counties have	Contested Child Custody The Task Force recommendations regarding child custody mediation seek to provide opportunities for courts to offer child custody mediation services akin to mediation services provided in civil matters. Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services.

Commentator	Comment	Committee Response
	negative outcomes when compared to confidential counties, then that information should be shared with all and there is no need for pilot programs. If there is no data distinguishing the two formats, then a more fair approach would be to offer pilot programs so that non-recommending courts can have trial runs with the recommending process as well as recommending courts trying the non-recommending method. However, we want to make it clear that the recommending process worked extremely well for the parties in this county and we would strongly oppose any proposal to change it. Information From Family Court Services And Evaluators Do not agree with the recommendation COMMENTS The Bench, Bar and Family Court Services in San Joaquin County strongly object to a requirement that recommendations be in writing. Briefly, the procedure for mediation in San Joaquin County is that on the morning of the hearing, in cases in which the parties do not already have an agreement, they are sent to mediation. Attorneys may accompany clients in the mediation session but do not advocate during the session. If the mediation successfully concludes with an agreement, the parties sign a statement acknowledging the agreement and an order is prepared. In cases in which there is not agreement, the parties and mediator return to court that day at which time the mediator orally explains the recommendation and the reasons therefore. Parties and counsel are then given an opportunity to be heard regarding their objections or support of the recommendation. For matters that require	Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. Information From Family Court Services And Evaluators Recommendations Be In Writing The recommendation in this section reflect current law (California Rules of Court, rule 5.210(8) indicating that mediation must conclude with the following (A) A written parenting plan summarizing the parties' agreement or mediator's recommendation that is given to counsel or the parties before the recommendation is presented to the court; and (B) A written or oral description of any subsequent case management

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	longer time or additional evidence, a further hearing is set. The court may accept the recommendation or not after hearing from the parties. The mediators in this county are stretched to the limit and there would be no time for them to prepare written reports. There are absolutely no resources to hire additional mediators and therefore requiring written reports would be an unfunded mandate that would be impossible to comply with. The family law judges do not feel they need the recommendation in writing. The attorneys and litigants do not need it because they are present during the mediation as well as when the recommendation is reported to the court. Continuous Trial Do not agree with the recommendation COMMENTS The goal of allowing complete trials is laudable. It is just not practical under current conditions. And even under optimal conditions it probably makes no sense to try to achieve it in this fashion. The trial court judge should be in control of the process, not the legislature. The court can take input and information from the litigants, and can make an independent evaluation of what is more efficient in any given scenario. Yes, trial courts have to manage their calendars well, and with due respect to the problems inherent in bringing a case to trial. But that responsibility is a local one. If a court is mismanaging calendaring, it is a problem for a supervising judge, a presiding judge, or the bar liaison. But it makes no sense to pick a path by legislative fiat, which by its nature, is removed from the competing interests. If the trial includes expensive experts, or children, or litigants who have	or court procedures for resolving one or more outstanding custody or visitation issues, including instructions for obtaining temporary orders; Continuous Trial The prolonged continuances of hearings and trials so that there are weeks and even months between court sessions, were the source of numerous complaints from attorneys and litigants. Judicial time is wasted and attorneys' fees are increased as expert witnesses are prepared and the testimony is not completed, and as judges review the status of the hearing or trial prior to each segregated session. Matters that could be completely heard in two or three court sessions can end up taking five or more sessions due to the additional review and preparation time for both

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	traveled great distances or have other exigencies, the court must be mindful of those things. But just as many times, it is the WAITING case that has the great weight of those higher priorities. Or the ongoing case may need a break. It is extremely difficult to bring a case to trial on the scheduled date only to see a going case spill over. Frequently cases go longer than they should because a) attorneys aren't ready, b) attorneys underestimated the time required, c) good faith bargaining has not occurred, or d) there are missing pieces. The local court can interpret which of several cases should proceed, which attorneys consistently underestimate their trial times, what missing piece would lead toward potential resolution, what important or difficult cases are coming up and how much time the court has available. The court has to have the ability to "bob and weave" to adjust to events, evidence adduced and competing needs. If a case involves out of state participants, expensive experts, or time-sensitive material, it should proceed when set, if at all possible. The cost of litigation rises exponentially when a case cannot go because of an ongoing case. And trailing a case should be left to the discretion of the court, with feedback from the participants. Sometimes it makes sense, sometimes it doesn't. But it certainly doesn't make sense to wrest that discretion from the court and apply an automatic "one size fits all" proscription.	judges and attorneys. This also creates additional time lost from work for litigants. The Task Force anticipates that implementation of effective caseflow management can address some of the problems with attorneys and self-represented litigants being unprepared to proceed at the time scheduled for their hearings and trials. In some courts, additional judicial or other resources may be required. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future. The goal of the Task Force is to facilitate to the greatest extent possible cases proceeding forward at the time scheduled. The caseflow management system can assist with this, particularly in early identification of cases with special circumstances, such as out-of-

Commentator	Comment	Committee Response
		state litigants. There is nothing in the recommendation to prevent trailing a case, as long as there is good cause do to so. But conducting longs-cause hearings and trials without interruption should be the standard, trailing matters the exception.
	Judicial Experience Do not agree with the recommendation COMMENTS This recommendation is self-contradictory. In the first sentence there is a requirement of two years judicial experience prior to a family law assignment. In the very next sentence it says 'the PJ must have the discretion to consider all characteristics or qualities that make a judge suited for the assignment.' You cannot have it both ways! We believe it should be the latter. In our county, we have a particularly good example of a new judge, with little or no family experience, who has settled in quickly and well. She was a much better choice than many of the older judges on our bench. As with other areas of proposed legislative control of important local decisions, we believe that the judges on the ground have a much better handle on which assignments are appropriate for which court. And any court of any size, understands that the family law assignment calls for particular characteristics and qualities that not all judges possess. Sacramento does not need to tell us that. If an assigned judge does not possess those characteristics and qualities, the bench will hear from the bar soon enough.	Judicial Experience Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including for example the expertise of the judge.

Commentator	Comment	Committee Response
	Regarding Increased Use Of Iv-D Commissions In Family Law Cases Strongly agree with the recommendation COMMENTS We unanimously agree with the recommendation of the Commission that consideration be given to allowing IV-D commissions to hear all aspects of a family law case. Initially, the commissioners have extensive background not only in the area of family support, but also in all other general family law issues including custody, visitation, property rights, restraining orders and the like. We agree that it is not the best use of judicial time to require that parties must appear before different judicial officers for different portions of their family law case. When the child support commissioner hears a case involving child support, there will necessarily be consideration of custody and visitation issues, if for no other reason than to determine parenting time for the non-custodial parent. To then reach a child support order and then require one or more separate hearings to consider related issues does not appear to be good public service and gives disjointed access to the court system. Under the current IV-D system parties can be forced to make repeated court appearances that, in many cases, provokes further animosity between the parents. There does not appear to be any good reason for not allowing a commissioner to hear a family law case in its entirety. Reaching a complete resolution of family law issues allows the families to move on with their lives and lessens the burden on court resources by minimizing the need for judicial intervention. If the recommendation is adopted, litigants will be better served. There will be continuity in the handling of their case. The family court would have improved efficiency and greater use of the background and expertise of the IV-D commissioners.	Regarding Increased Use Of Iv-D Commissions In Family Law Cases Agree. The Task Force based its recommendation to allow IV-D commissioners to hear all aspects of a family's case on the belief that parties would be better served by having a single judicial officer deal with matters such as custody, visitation, and requests for restraining orders.
249. William L Spence Santa Cruz, CA	Domestic violence Do not agree with recommendation Comments	Domestic violence Existing law provides for specific

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	The courts must first fully appreciate that many, perhaps most, restraining orders issued in connection with family court litigation do not reflect legitimate safety issues, but rather are tactical, and were requested for the sake of posturing through affixing the `domestic violence' label to the case, manipulating the court calendar, or obviating mediation, or the subject parent's participation in certain of their child's activities. Children and parents afflicted with these forms of what's arguably abuse of protective orders' purpose need sharper legal handles by which they can pursue recourse and obtain relief.	remedies in these cases; the courts are responsible for implementing those remedies under law. Resources for the courts and for court-connected services are key to providing effective responses in these matters, including resources that will assist courts in identifying and responding to safety concerns. In terms of change the law, the Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.
	Contested child custody Child custody mediation services Do not agree with recommendation Comments Pushing for comprehensive `confidentiality' in court ordered mediation has been a pet cause for parents interested in concealing bad faith negotiation or stonewalling, when the parent can confidently expect the court to grant them, from their perspective, a better deal than the other parent would ever accede to. A statewide statutory rule mandating confidentially in mediation which does not reach an agreement has been debated in the Legislature in recent years, but not acted upon. The actual, underlying issue of the `confidentiality' debate is that substantive family law creates frequent situations in which parents are so unequally matched when custody is contested that mediation is to no	Contested child custody Contested Child Custody Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. The Task Force recommendations regarding child custody mediation seek to provide opportunities for courts to offer child custody mediation services akin to mediation services

Commentator	Comment	Committee Response
	avail it would be best to at least not further a facade that it's otherwise. Pilot projects have in effect already occurred some counties have had in all essential aspects the recommended procedure in place for decades. Information from family court services and evaluators Agree with recommendation subject to modifications described below Comments It's currently deeply ingrained in the culture of family court that parties---pro se parents or their attorneys---are essentially not allowed to introduce pleadings presenting their own parenting plan to the court (outside of stipulation), or disputing a court appointed evaluator's recommendations that these are exclusively privileges of `experts.' The merits of the parties' arguments are customarily dismissed prior to any consideration, on the sweeping grounds that they lack credentials or professional qualifications. The recommendation appears to offer a welcome nod against this practice, but contains nowhere near enough flesh to stand a chance of making a real change in practice. In particular, a dilemma remains, in that even if their presentation is permitted, the court can, in exercising its discretion, always ignore such party-supplied arguments, and the appellate standard of review in custody cases, deferential abuse of discretion, bars recourse through demonstration of judicial error. Minor's counsel Minor's counsel's role Agree with recommendation subject to modifications described below Comments	provided in civil matters. Information from family court services and evaluators The Task Force recommends that those providing information or reports to the courts be available to testify and to be cross-examined and that parties have a genuine opportunity to be heard on these issues. Minor's counsel The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due

Commentator	Comment	Committee Response
	Provision by which a parent can swiftly obtain injunctive relief---not just a complaint resolution procedure---against minor's counsel who threatens or attempts to bully them, undermine a working relationship the other parent, interfere with a parent's attempts to work with a therapist or other practitioner, including the child's teachers and school authorities, or pressures such professionals to act against a parent, needs to be provided in statutory law. Notice should moreover be given to parents in cases receiving an appointment that the minor's counsel's powers are strictly limited to introducing motions in court and responding to other parties' motions, on behalf of the child, and do not include overriding or modifying court orders on the fly or issuing ad hoc orders to other ancillaries---and that indeed minor's counsel is also bound by court orders. While minor counsel's mode of input to the court is to be formally that of counsel to a party with full standing, in determining the child's best interests for purposes of presentation to the court, a minor's counsel's role still transcends mere representation and includes significant aspects of guardianship. Counsel's responsibilities in representing minor's child's interests_ Agree with recommendation subject to modifications described below See Comments to Recommendation 1, page 37. Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel Agree with recommendation subject to modifications described below See Comments to Recommendation 1, page 37.	process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Scope of minor's counsel involvement in a given case should be provided to the parties. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	Enhancing mechanisms to handle perjury New civil sanctions Do not agree with recommendation The prevalence of perjury in family court---leveling false accusations of domestic violence and child abuse are essentially accepted, standard litigating strategies, frequently advised by attorneys, therapists, and other counselors---may be reduced by punishing it, but doing so is unlikely to eliminate it as long as false allegations continue to be an efficacious means toward certain custody goals. Some parents who stand to receive sole custody, if conflict is proven by false accusations and joint custody thereby precluded, will take the punishment and see perjury as still offering the better deal. Perjury would be more effectively and easily eradicated by changes in the way custody determinations are made, fashioned to remove the strong incentive toward it, than by instituting penalties. Salient to false allegations in family court is that to achieve their purpose they don't have to be believed to be true by anyone the fact that they are made is what counts, and the court probably in the vast majority of cases quite quickly grasps their falsity. Courts, then, may well deem that the most common admittedly perjurious statements are not "essential elements'' in their order, when in fact through the parents-in-conflict nexus their occurrence is the single most dispositive facet of the case. Setting aside orders is not properly an aspect of perjury rules of evidence and statutes should handle false `evidence' as far as it affects findings of fact there's no point in enacting overlapping statutes.	Enhancing Mechanisms to handle perjury This recommendation has been significantly modified in response to comments.

Commentator	Comment	Committee Response
	The recommended clear and convincing standard for proving perjury is severely out of balance with the relaxed, preponderance standard for accepting evidence.	
250. Robert Souza No county information provided	*I am a frustrated parent who has battled the family court system for some years now. After reading your draft, I have to say that I fully agree and support your efforts in helping families and the children involved in legal disputes.	No response required.
251. Thomas P. Stabile Trial Attorney Stabile & Cowhig Orange County, CA	I am responding as an individual to the recommendations made by the Elkins Family Task Force. I have reviewed all 21 recommendations and while I support all of the recommendations there are a few I believe are significantly important as a trial attorney who deals with clients on a regular basis. I wish to emphasize my belief that the following recommendations are of most important to the family law bench in general Right to Live Testimony The bar here in Orange County is one of the few left that believes in testimony at Orders To Show Cause and Trials and I believe that the right to present live testimony at hearings is imperative and that the contrary position should be taken sparingly. As many bench officers have indicated, the Trial Judge should be able to look into the eye of the witness to determine the truthfulness of what that witness is saying. Caseflow management and Rules of Court Recommendations 3 and 4 are important and I believe they should be given careful attention.	Right to Live Testimony The Task Force agrees that live testimony should be the standard. Caseflow management and Rules of Court No response required.

Commentator	Comment	Committee Response
	Children's Voices and Domestic Violence Recommendations 5 and 6 are also important in my mind and I believe the priority should be given to those recommendations as well.	Children's Voices and Domestic Violence No response required.
	Contested Child Custody I believe that the recommendation dealing with contested child custody is significant and I agree whole heartedly with these recommendations.	Contested Child Custody No response required
	Minor's Counsel I believe that the role of minor's counsel should be expanded and that the attorneys involved in representing the parties should have the ability to cross examine and to question minor's counsel as to the basis for his or her opinion. Unfortunately, at the present, the bench officers generally will simply take the recommendation of minor's counsel but will not permit the attorneys involved who represent the parties to examine minor's counsel as to the basis for his or her recommendation.	Minor's Counsel The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. However, the Task Force recommendation does support the notion that the results of counsel's investigation or fact gathering should only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected and that any position minor's

Commentator	Comment	Committee Response
		counsel will be taking also be presented in writing to the parties prior to any hearing on the matter.
	Scheduling of Trials I believe it is important that long cause matters be tried on consecutive days rather than be spread out over a few weeks or a few months. Unfortunately, this leads to confusion, extra ordinary expense on the part of the client and a lack of understanding on the part of the bench officer who now must go back and review his or her notes from a previous hearing.	Scheduling of Trials No response required.
	Enhancing mechanisms to handle perjury. The old saying that there is more perjury committed in family law cases than any other is not such an outlandish statement. I believe more effective tools should be implemented so that the attorney and/or the bench officer can address the issue of perjury if in fact such can be proved.	Enhancing Mechanisms to Handle Perjury This recommendation has been modified in response to comments.
	Court facilities. I believe that there should be more attention paid to expansion of the family law facilities given the fact that on any given day, each of the Court's at least in Orange County have between 15 and 30 cases scheduled and in many instances the parties cannot be in the Courtroom with their attorneys because there simply is not enough room. In addition, I have been involved in litigation where the party can't even sit at the counsel table with his or her lawyer because an expert is necessary and again there simply isn't enough room for the expert and the party to sit at counsel table.	Court Facilities Agree. The recommendation addresses the need for courtrooms adequate in both number and size to handle the volume of family law cases.

Commentator	Comment	Committee Response
	I agree with the balance of the recommendations but those that I feel are most important I have identified above and would welcome any additional requests or comments that the Task Force might have.	
252. Eleanor A. Stegmeier Stegmeier & Gelbart, LLP Attorney at Law Family Law Practice Costa Mesa, CA	I have read and considered the recommendations of the task force and endorse and support these recommendations and encourage their implementation. My congratulations to the members for the hard work. It is clear from the recommendations that educated thought and consideration was applied to the task at hand.	No response required.
253. Kim Steffenson Rich, Fuidge, Morris and Lane, Inc Marysville, CA	I reviewed the recommendation and can tell a lot of effort was put into it. I agree with most of the recommendation, but I believe there needs to be a few additions to the recommendation. My requested additions are set forth First, if a new Judge has extensive family law experience there should be no issue putting that Judge directly into family law. The real problem is that new Judges with no experience are put into family law and leave as soon as they can, which is usually directly after they finally understand this area of law. Second, there should be something further on allowing telephonic appearances or web-cam or some other technology place for court appearances and testimony. While child support cases under DCSS allow for telephonic testimony under the Family Code there is nothing really in place for other circumstances child custody. If parties, witnesses, or even experts are from out-of-state or county they should	Agree. The recommendation has been revised based on public comments to give the Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including the expertise of the judge. The recommendations related to case management suggest increased use of telephone conferences. This comment

Commentator	Comment	Committee Response
	be allowed to testify through some sort of web-cam where the court can view the person, or in some cases by telephone at the court's discretion. There are too many cases where the litigants are out-of-state, or out of country and it are too costly to get them or the witnesses to court. (Try getting a counselor from another state to testify in California and have it not cost a lot of money). A live person on the other end of a computer screen should be sufficient in certain cases and should be allowed. Third, while attorney fees should be awarded when necessary due to financial disparity between parties to cause a level playing field there should not be a total emphasis on financial disparity and a 100% award in every case. Courts should be cognizant that it is to allow each party to be represented and it is an allocation if attorney fees and that does not mean 100% of all fees in every case. One party should not always pay for the other's attorney fees for every motion and every hearing, when the other party has a decent income. Attorney fees can and are used against some people as a weapon either you agree or it will cost you more in attorney fees to fight me. I have seen that time-and-again and that is not the purpose of the award of attorney fees. The reasonableness of the party's attorney's fees and necessity of the award need to be addressed as well.	suggests greater use of telephone or web-cam or other technological appearances, and it will be referred to the implementation process. The Task Force has not suggested that there be a 100% award of fees in every case.
254. Don Starks San Diego	Live Testimony A list of subject matter and/or motions should be made that has a presumption of a hearing by testimony, such as child custody and visitation orders, characterization and division of property and debt. Another list should be made of motions and orders to show cause which are generally procedural or are money related, such as motions to compel, motions for appointment of experts, support and attorney fee issues which could be heard by declaration. [If there is a presumption,	Live Testimony The Task Force concluded that the right of the parties to testify at their hearings, particularly on substantive issues or where there are material facts in controversy is fundamental to due process in family law. The Task Force also recognizes that there are many

Commentator	Comment	Committee Response
	presumably the courts would follow the presumption. If not, San Diego would find a good cause for having declarations for every matter and Orange County would find good cause for a live testimony in each case]	family law OSC/Motions such as those related to ancillary procedural matters, or in which there are no material facts in controversy, that may be appropriately decided on the basis of declarations. The Task Force agrees that there should be as much clarity as possible while still maintaining basic judicial discretion. Should this recommendation be adopted by the Judicial Council, this comment will be considered further during the drafting of language for the proposed rule.
	Caseflow Management Forms which could be completed and filled in by the clerks with normal child custody/visitation support, other standard orders and attorney fees orders; and which could be provided to counsel to complete prior to hearing.	Caseflow Management Forms with standard orders should be considered as part of implementation.
	Contested Child Custody Agree with recommendation.	Contested Child Custody No response required.
	Litigant Education [with an emphasis on sample parenting plan templates]	Litigant Education No response required.
	Streamlining Family Law Forms and Procedures A list of subject matter and/or motions should be made that has a resumption of a hearing by testimony, such as child custody and visitation orders, characterization and division of property and debt.	Streamlining Family Law Forms and Procedures The Task Force recognizes that there are a number of procedural matters

Commentator	Comment	Committee Response
	Another list should be made of motions and orders to show cause which are generally procedural or are money related, such as motions to compel, motions for appointments of experts, support and attorney fee issues.	that are ancillary to the fundamental issues in the case that can be adequately decided on the basis of declarations alone. With respect to substantive matters in which there are material facts in dispute, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient. While the Task Force has concluded that judicial discretion should be maintained, the suggestion of the commentator should be considered during implementation when the rule will be drafted.
	Declaration of disclosure forms Agree with the recommendation but that it be due within 60 days of filing the petition and not concurrently. [There are times when a petition needs to be filed quickly, such as to obtain jurisdiction before jurisdiction is obtained elsewhere. A form request for production and a form motion to compel would be good.	Declaration of disclosure forms The recommendation provides that this would be either concurrently or within 60 days. A form request for production and form to compel should be considered as part of implementation.
	Leadership, Accountability, and Resources Agree with recommendations subject to modifications as described. Staggered times for hearings with 50% of the calendar at 9 a.m., 30% of	Leadership, Accountability, and Resources No response required.

Commentator	Comment	Committee Response
	the calendar at 10 a.m. and 20% of the calendar at 11 a.m. Ex partes at 830 a.m.	
255. Sharon Stephens Rancho Cucamonga	I am concerned with the ease that TROs and Restraining Orders are handed out family law cases, as well as other civil actions. Often times they are given without even meeting "the burden of the law"--requested by unethical attorneys, and awarded by judges who ignore [or worse don't know] the law, with little regard as to how they affect a person's life. Many of these orders are "void on the face" but unless a defendant, or their attorney know the law of such void judgments, they stand as law. THERE NEEDS TO BE BETTER TRAINING OF WHAT MAKES A JUDGMENT VALID, OR VOID!	The Task Force recommendations include providing training in a variety of areas related to family law matters.
256. Clarissa E. Steffen Private Practice Psychologist/Child Custody Evaluator	Right to Present Live Testimony Litigant Education Information needs to be provided at an understandable language level. Most litigants need more education surrounding the evaluation process; especially if self-represented. Helping them understand the limits of a court appointed evaluation versus a private pay eval is critical to a helpful outcome. Contested Child Custody Information from family court services and evaluators Consistency on identifying the focus of mediation/evaluation is critical and helping the litigant understand the limits can be an area of conflict.	Right to Present Live Testimony Litigant Education The Task Force agrees that education for self-represented litigants about the court process is critically important and has addressed that in other recommendations such as Expanding Assistance to Self-Represented Litigants and Case Management. Contested Child Custody Information from family court services and evaluators The Task Force agrees that assisting

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	Helping the litigant understand the focus as identified in the court order would help reduce conflict. (orientation & ongoing education). Written orders after hearing Helping litigants understand what an order means and the needs to follow the order (whether written after hearing or not) Perhaps an issue of compliance that is about education regarding the process. They may need explanation beyond being provided assistance in preparing written agreements for filing. Minor's Counsel Minor's Counsel speaks to concern. Helping litigants understand best interest concepts, issues of risk and the use of recommendations and the judges role in making a determination. Explaining where the mediator/evaluators fit in the process would be helpful.	litigants in understanding court processes and court orders is useful and that orientation and ongoing education are key. Written orders after hearing Agree that additional information may be required to help litigants comply with court orders. Minor's Counsel The Task Force agrees that explaining process and procedures to litigants is important and supports litigant education and orientation.
257. Janis K. Stocks Attorney at Law Stocks & Fentin, LLP San Diego, CA	Streamlining Family Law Procedures Declaration of Disclosure Family Code Section 2102(a)(I) provides that parties to dissolution are to provide (1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, including an immediate, full and accurate update or augmentation to the extent there have been any material changes. The requirement of augmentation is ignored in most cases. It is unclear how this "augmentation" should be accomplished. Is it by letter from	Streamlining Family Law Procedures Declaration of Disclosure The suggestion to develop a form and/or procedure for augmentation of the declaration of disclosure under Family Code 2102 (a) (1) is one that should certainly be considered as a method to simplify the discovery process as part of implementation.

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	counsel? A new Schedule of Assets and Debts? Under penalty of perjury or not? If there was a Judicial Council form it would accomplish two purposes 1. Remind counsel and parties that augmentation is a requirement, and; 2. Provide a simple way to accomplish it. I suggest that that form be entitled AUGMENTATION TO SCHEDULE OF ASSETS AND DEBTS SERVED WITH PRELIMINARY DECLARATION OF DISCLOSURE. Further that the form be signed under penalty of perjury by the party and that the same instructions that are on the Schedule of Assets and Debts be included. The generic Proof of Service could be used, Thank you for your consideration. I am grateful for your hard work.	
258. Ana M. Storey Managing Attorney, West Office Legal Aid Foundation of Los Angeles Los Angeles, CA	The Family Law Unit of the Legal Aid Foundation of Los Angeles would like to thank the Elkins Taskforce for their service in reviewing family law proceedings in California to ensure fairness and due process and, to provide for more effective and consistent family law rules, policies and procedures. In addition, we wish to thank the Taskforce for facilitating the legal services' voice in the process. Our main focus is to aid domestic violence and sexual assault victims and their children in their family law cases. While we recognize that the majority of litigants who move through our family courts are not abuse survivors, we are wary of procedures and rules that are intended to streamline a process that, for our clients, can be disorganized, frightening, and potentially dangerous to them and to their children. These comments are made from the viewpoint of legal service providers who primarily represent poor and low-income litigants who	

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	are domestic violence and sexual assault victims. We encourage the Taskforce, therefore, to consider the following sections through this focused lens Caseflow Management, Children's Voices with Minor's Counsel, Enhancing Safety, Domestic Violence and Contested Child Custody, Interpreters, and Judicial Education. Caseflow Management Do Not Agree with Recommendation (as applied to Domestic Violence Victims) We are concerned that the Taskforce is advocating for a case flow management system that mimics the current Los Angeles County system. The Taskforce recommends establishing a statewide caseflow management system based on the principle of a "differentiated case management system" that would, in theory, reduce insufficiencies and provide a framework for allocating resources more efficiently. We understand that in most court cases, the caseflow management system might work quite well. However, there are two major problems with the proposed case management system that we see for our clients. First, while the recommendations state on page 18 (recommendation 3-2) that domestic violence will be a factor taken into account in the management, we are concerned that victims of domestic violence will be forced into a caseflow system that will not adequately consider their specific circumstances. For example, a form of this system is currently in place in Los Angeles County, and when it was first proposed, we understood it included the ability to "opt-out" for litigants who, for safety reasons, did not want to participate. This "opt-out" seems to have been phased out. Currently, litigants in Los Angeles receive a notice with threatening language stating that they must participate or they will	Caseflow Management The experiences of Los Angeles and other courts should be considered as part of developing rules to implement the recommendations to determine best practices. Issues regarding safety for victims of domestic violence are very important, and it may be that different procedures should be considered. However, the Task Force does not think that victims should be precluded from the benefits of caseflow management.

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	have to pay a $250 fine. We are concerned that the proposed caseflow system will not provide proper consideration for domestic violence cases; it should provide an "opt-out" provision for victims of domestic violence. The "opt-out" system works when all the players in the system understand how it works and why the "opt-out" is necessary. An example where an "opt-out" provision for domestic violence victims has failed to be effective is in the CalWORKS/Child Support Services Department (CSSD) system. Currently CSSD caseworkers are required to ask a victim of domestic violence seeking cash aid if there is a danger to her if the government contacts the abuser to collect child support. If the victim answers "yes," then the County is supposed to refrain from collecting support from the abuser because of the concern for the safety of the victim and the children. In reality, the staff is untrained and lacks knowledge of the "opt-out" provision. As a result, staff rarely notifies victims of this option and child support cases get filed and served on abusers, creating hazardous situations for the victims. While an "opt-out" provision can be useful, it requires proper staff training and education for proper implantation to keep victims safe. Although we support the recommendation on page 20 (recommendation 3-10) that the court make it easier for litigants to appear by phone or email, we are concerned that the caseflow system will increase the number of personal appearances for routine checks, which would force unwanted contact in domestic violence cases. We encourage the development of procedures that would take advantage of flexible appearances and permit compliance by phone or email, but not to procedures that will increase contact between parties in domestic	The issue of whether additional appearances will be required is an important one that will be considered as part of implementation. Time of the litigants, attorneys and courts must all be considered. Flexible appearances should be considered and may well be a way to mitigate danger in cases

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	violence cases. However, certain non-routine matters, especially involving domestic violence, should continue to require the safeguard of a personal appearance. For example, reports are commonly heard that in pro per stipulations to dismiss a restraining order, the parties involved are not the actual Petitioner, but the Respondent and the Respondent's new partner. Children's Voices, Domestic Violence, Enhancing Safety, Contested Child Custody, and Minor's Counsel Agree with Recommendation Subject to Modifications as Described Below LAFLA wishes to comment on these four sections together because our comments and concerns about them all involve their application to the well being and safety of children. Our two major concerns center around the practice of judicial officers interviewing children and the role of minor's counsel. First, LAFLA expressed concern in our oral comments during the live hearings about judicial officers interviewing children. We oppose a rule or policy that would facilitate judicial officers interviewing children in chambers because factors such as the child's developmental stage, history of abuse in the family, and issues of parental coercion serve to cloud a child's testimony, presents due process issues for the parents, and can lead to bad orders being made for vulnerable abuse survivors and their children. Judges have no training about how to interview children; how a child's developmental stage affects his or her ability to perceive and relate	involving domestic violence. Agree that a stipulation to dismiss a restraining order might best be heard in a courtroom where the identities of the parties can be verified and the voluntariness of the stipulation explored if appropriate. Children's Voices, Domestic Violence, Enhancing Safety, Contested Child Custody, and Minor's Counsel The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the notion that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly, taking into consideration the potential ways children may be manipulated during litigation. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or

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	"reality" and, are often unaware of the effects of the intentional and the unintentional pressure exerted by parents on vulnerable children who are eager to please. For example, an abusive parent might try to bribe the child to coerce testimony favorable to the abusive parent. In one of our cases an abuser actually told his child, "Daddy will buy you a puppy if you tell the judge that you want to live with me." We instead suggest that children only be interviewed by highly trained court staff or contract experts in non-threatening environments to minimize trauma and to protect the children as much as possible.	prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. If it is determined that taking testimony in chambers is the most appropriate way to proceed, such testimony should still be taken on the record.
	Second, LAFLA does not encourage the appointment of minor's counsel. LAFLA supports the recommendation on page 37 (recommendation 1A) that the role of minor's counsel should be clearly defined as that of an attorney representing the child and not that of a therapist or evaluator. LAFLA encourages judicial education on the proper role of minor's counsel as an attorney representing the child's best interests not as a psychological evaluator of the parties. Within the last five years, the appointment of minor's counsel in family law cases as exploded; courts appoint minor's counsel liberally and give their recommendations great weight. It presents major due process issues for unrepresented parents, because they cannot object to the	Minor's Counsel The Task Force agrees regarding clarifying the role of minor's counsel and training. The Task Force agrees that information provided to the court by minor's counsel must be done in the appropriate evidentiary manner. Existing California Rules of Court, rules 5.240, 5.241, and 5.242 provided

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	appointment, they do not understand the role that minor's counsel plays in the case, and they often have no advance notice of what minor's counsel is going to say or do at a court hearing despite the "Issues and Contentions" requirement. Our recommendation is that minor's counsel serves and files pleadings, and be subject to the same notice requirements, in the same manner that any attorney in the case would. There are no codified standards for minor's counsel as there are for court appointed child custody evaluators, yet these handpicked counsel are often treated as de facto custody evaluators by judicial officers. There is no mechanism for removing a minor's counsel who is not doing his or her appointed job and they cannot be cross-examined the way a custody evaluator can. LAFLA believes that the court's finite resources are better spent on high quality court evaluators who have the education and experience to properly interview children and to conduct appropriate investigations per the particular family's circumstances rather than to appoint minor's counsel as a de facto evaluator or allow an untrained judicial officer the ability to interview the child. Appointing specialized court evaluators gives bench officers the best information they need to make appropriate orders without violating parents' due process rights or harming the children. Interpreters Agree with Recommendation (also have suggested recommendations) LAFLA suggested in our oral comments during the live hearings that when the court opens a case file, that the face of the file should have some sort of indication by a sticker, marking, or tag indicating if a party	guidance for minor's counsel and for courts on appointment criteria, education and training, experience, consideration for costs, and related issues. Removing minor's counsel Specific issues related to minor's counsel appointments, including when and how such appointment may terminate, should be considered as part of implementation efforts. The Task Force recommends that distinctions be made between the roles that evaluators and minor's counsel play in family law matters and that due consideration be given to appointing the appropriate professional in a given case. Interpreters Agree that identifying a file to note that a litigant needs an interpreter is very helpful and is covered in the recommendations.

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	requires an interpreter and the language required. (This could also be used for American Sign Language). The court can get information about interpretation needs from the litigants at the time of filing, maybe as an additional question on the Family Law Case Cover Sheet. That way, each time a court room assistant pulls a file in preparation for an upcoming hearing, they will automatically know that one or both parties needs an interpreter and can schedule cases requiring the same language interpreter together in advance. This will allow their supervisors to pool resources and schedule interpreters accordingly. This would save a lot of time from the current method, where the court calls for the interpreter only after the parties have checked-in.	
	Interpreters On page 55 (recommendation 1A), the report suggests interpreters are needed in self-help centers and mediation. LAFLA agrees and recommends that the choice of interpreters should coincide with the needs of individual communities. For example, Orange County not only has a large Latino population, it also has sizeable Vietnamese and Iranian populations. We believe that in each county the interpreters at the self-help centers, and the Judicial Council forms used, should reflect the languages spoken in those communities. Perhaps section 203 of the Voting Rights Act could provide guidance in its suggestion that jurisdictions with over 10,000 members of a language minority or 5% of populations need service in that minority language.	Interpreters Agree that interpreters should coincide with the needs of the community. Courts maintain records of interpreter languages requested and also have access to Census data. Translation of key forms should be provided for common languages as funding permits.
	Furthermore, special consideration should be given to the needs of those who communicate through American Sign Language or other languages of the hearing impaired. Unlike other language minorities, interpreters cannot be accessed immediately over the telephonic	The recommendation has been modified to include American Sign Language.

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	interpretation services. The court should consider promoting certification of court staff in ASL or acquiring videochat equipment for courthouses which do not have court staff certified in ASL. Funding for this category of interpretation could be sought through separate Americans with Disabilities Act streams. Judicial Branch Education Agree with Recommendation Subject to Modifications as Described Below LAFLA supports the recommendation for more judicial training in family law and asks the Taskforce to recommend mandatory judicial training specifically about domestic violence dynamics. Often we see judicial officers only classifying a case as domestic violence when there is evidence of severe physical abuse. Some judicial officers demonstrate a lack of understanding about what domestic violence truly is a power and control dynamic that includes all levels of abusive and coercive conduct, and that is not limited to physical violence. Too many claims for relief from domestic violence are overlooked by judicial officers searching for hard evidence of physical or sexual abuse, thus missing important evidence of the psychological or economic abuse that often has long term harmful effects on its victims. In addition, some judicial officers, particularly attorney volunteer pro tems, lack a complete understanding of the "primary aggressor" standard and often find that both parties are at fault when one party is acting out of self defense or exasperation from unrelenting harassment. For example, the court should not find that both parties were dominant aggressors if, after hours of sustained verbal and psychological harassment, an exasperated victim throws a piece of fruit at her abuser,	Judicial Branch Education The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides a specific suggestion about educational content related to domestic violence dynamics, and length and frequency of programs. It will be referred to the implementation process. The Task Force endorses the recommendations of the Judicial Council's Domestic Violence Practice and Procedure Task Force, including

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	and her abuser's immediate reaction is to attempt to suffocate her in a fit of rage. Some judicial officers equate actions that are not alike, and fail to recognize the pattern of abuse, power, and control. It is unfortunate that some judicial officers still think that if a victim does not have a police report or photographs of injuries that the victim does not qualify for a restraining order. Yet, this happens every day in our courts. LAFLA encourages more judicial education about the dynamics of domestic violence, its effects on children and how the dynamics and effects manifest themselves in custody litigation. LAFLA does not believe that just one hour of training on the family code sections pertaining to domestic violence is sufficient to educate judicial officers on the complex nature of domestic violence cases. LAFLA believes that domestic violence training should be mandatory for all judicial officers, held yearly, and conducted by experts in the field.	its work on implementation which addresses expanded judicial education on domestic violence.
259. Hon. Dean Stout Presiding Judge Superior Court of Inyo County	* Children's Voices Current text in introductory section 1. Protect the child from psychological damage from feeling caught in the middle and from confusion about the process or not knowing what to expect; allow for meaningful participation by the child when appropriate, in court, in chambers, in proceedings on the record (similar to juvenile court), or through other processes such as participation in mediation or evaluation; Suggested revision might look like this 1. Protect the child from psychological damage from feeling caught in the middle and from confusion about the process or not knowing what to expect; allow for meaningful participation by the child when	Children's Voices This section has been redrafted since circulation for public comment and reflects support for considering a range of options for children's participation, including mediation or evaluation as well as taking testimony. The Task Force agrees that children's participation should not just be equated with testimony given the variety of cases coming before the family court.

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	appropriate, in mediation or evaluation, in court, in chambers, in proceedings on the record (similar to juvenile court). Rationale and additional suggestions Mediation and evaluation, as the venue for children's participation, comes at the end of this statement, "…or through other processes such as participation in mediation or evaluation." This wording suggests that mediation and evaluation seem almost like an afterthought, rather than the most likely first interventions where a child's voice would be heard. In other locations in the Children's Voices sections, however, mediation and evaluation seem to be identified as the first opportunity to be offered for receiving children's voices. See the following Children's Voices Children's input should not necessarily need to be equated with testifying in a courtroom. A child's input may not be needed at all, as in the case of a young child[4] or a case where parents are able to agree on decisions. Input may be received in the mediation or evaluation process. Exercising discretion and finding the least traumatic method for child involvement. Involving other professionals and providing information. In disputed cases where their participation seems warranted, children first should be provided the opportunity to meet with a mediator or an evaluator working with the parents in order to give them a sense of being heard and to assist them in understanding court procedures and the decision-making process.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the notion that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no

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	Related procedures. Cases involving allegations of child abuse in which the child is called upon to testify with respect to the allegations should follow juvenile court procedures dealing with the control and conduct of proceedings with respect to the testimony of the child. As set forth in Welfare and Institutions Code section 350, except when there is a contested issue of fact or law, proceedings should be conducted in an informal, nonadversarial atmosphere with a view to obtaining the maximum cooperation of the child and all persons interested in his or her welfare. The suggested re-ordering of the sentence will provide more consistency in this section. Children's Voices Suggested new sentence in Input from Children In between b and c b. Family Code section 3042(a) requires the court to consider the wishes of the child in custody disputes if the child is old enough to have formed an intelligent preference; c. Family Code section 7890 et seq. requires the court to consider the wishes of the child in termination of parental rights proceedings and to take testimony of a child who is 10 years of age or older; and Insert Family code 3180 requires the mediator to assess the needs and interests of the child and grants mediator discretion to interview the child Resulting in the following	blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. The Task Force agrees that an interview with a mediator is one of the ways children might participate in the process.

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	b. Family Code section 3042(a) requires the court to consider the wishes of the child in custody disputes if the child is old enough to have formed an intelligent preference; c. Family code 3180 requires the mediator to assess the needs and interests of the child and grants mediator discretion to interview the child; d. Family Code section 7890 et seq. requires the court to consider the wishes of the child in termination of parental rights proceedings and to take testimony of a child who is 10 years of age or older; and Contested Child Custody Question Is There A Place For "Recommending Mediation" Though it seems to be the intent of Elkins that the term "recommending mediation" slips from the official nomenclature of services offered by those courts who have chosen this approach, the Inyo court would like to consider integrating some form of "recommending mediation" as its second level of service. Currently the Inyo Court offers confidential, non-recommending mediation. In Inyo County, there are few resources for evaluation, and quite costly. Therefore the Inyo court is considering "recommending mediation" as a cost effective, less complex additional service for two reasons The Inyo Court would prefer more information than investigation or "fact finding" would offer (e.g. the San Francisco model), thus preferring recommendations when the parties remain in disagreement; and Though the process could conclude with recommendations, the Inyo court wants this second level of process to be perceived as a further	Contested Child Custody Current law and the Task Force recommendations reflect the possibility that child custody mediators may provide recommendations under certain circumstances. The Task Force's pilot project recommendation in this section contemplates a process that, after confidential mediation as been provided, might include a process resulting in a recommendation or information for the court to consider.

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	opportunity in which the parties can agree, in which resolution is also a desirable outcome, making it not just an evaluation. Footnote Even Sheila Kuehl, a strong proponent of non-recommending mediation, in her legislation that resulted in Family Code 3188 refers to "… subsequent mediation that may result in a recommendation as to custody or visitation…" This is consistent with the Family Code which states 3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child. Contested Child Custody To address concerns raised as part of its work, the task force recommends that pilot projects be implemented throughout the state to provide litigants initially with the opportunity to mediate their contested child custody matters confidentially. Pilot programs should include those superior court jurisdictions in both large metropolitan areas and suburban areas that currently authorize recommendations by local court rule. Suggested revision Child custody mediation services. To address concerns raised as part of its work, the task force recommends pilot projects be implemented throughout the state where courts that do not currently offer confidential mediation would provide litigants initially with the opportunity to mediate their contested child custody matters confidentially. Pilot programs should include those	Contested Child Custody This section has been redrafted since circulation for public comment; however, specific details about who would be eligible to participate in these pilots should be addressed during implementation.

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	superior court jurisdictions in both large metropolitan areas and suburban areas that currently authorize recommendations by local court rule. Note A number of courts are already implementing what Elkins is here recommending. 20 of the 58 courts currently offer confidential mediation. And in addition, some of these courts that have the resources offer a second level of investigation and/or evaluation, e.g. Los Angeles, San Francisco, and Santa Clara. The pilot projects would be in counties that currently do not offer confidential mediation as the first opportunity. There is also discussion/debate taking place nationally and locally that the question be considered whether confidential mediation should be the first portal for all parents in dispute over custody and visitation. Cf. Article in Family Court Review, July 2009, by Peter Salem, that promotes a "triage" initial tier. Suggested Addition Contested Child Custody In these pilots, this subsequent process should be conducted by someone other than the mediator who provided confidential mediation so as to guard against bias, perceived or otherwise. To ensure due process, these pilot efforts must include procedures to properly inform parties about any reports or recommendations that may be made and to enable parties to call investigators or evaluators to testify.	Suggested Addition Contested Child Custody The Task Force agrees that whenever a report or recommendation is provided to the court, the professional providing that information needs to be available to testify and for cross-examination and that due process requires notice and opportunity for the parties to be heard on this issue.

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	Suggested addition Contested Child Custody In these pilots, this subsequent process should be conducted by someone other than the mediator who provided confidential mediation so as to guard against bias, perceived or otherwise, unless by exception the parties choose to waive this right, and prefer to proceed with the same mediator. To ensure due process, these pilot efforts must include procedures to properly inform parties about any reports or recommendations that may be made and to enable parties to call investigators or evaluators to testify. Note A controversial question A bright line division is established between the first level mediator and the second level professional who would be offering recommendations to the court. However, in the interests of offering the parents an option of self-determination, and in the parent's interests of being able to express their preference, and of conserving time and process, could there not be an exception offered whereby the parties could waive and proceed with the same third party?	Contested Child Custody The Task Force is concerned that providing this option could result in parties believing they have no other alternative but to work with the same mediator. However, as part of implementation, consideration should be given to whether this type of procedure might be appropriate in some instances.
260. Jeff M. Sturman Member, Executive Committee Family Law Section Los Angeles County Bar Association	Comments From The Executive Committee Of The Family Law Section Of The Los Angeles County Bar Association Regarding Four Recommendations Made By The Elkins Family Law Task Force The Right To Present Live Testimony At Hearings The Elkins Family Law Task Force recommends that the Judicial	

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	Council adopt a new Rule of Court which will require that live witness testimony be allowed at hearings on motions or orders to show cause brought pursuant to the Family Code. The live witness testimony must be relevant, within the scope of the hearing, and the judicial officer may ask questions. The Elkins Family Law Task Force further recommends that live witness testimony not be allowed if (a) the parties stipulate, or, (b) there is a finding of good cause. To find that there is good cause not to hear live witness testimony, a Family Law judge must state his/her reasons on the record or in writing. Additionally, in determining whether there is good cause not to hear live witness testimony, a Family Law judge must consider eight (8) factors. The Executive Committee of the Family Law Section of the Los Angeles County Bar Association (the Executive Committee) agrees with the reasons given for increasing the use of live witness testimony at hearings on motions or orders to show cause in Family Law cases. Live witness testimony does give judicial officers a better opportunity to assess the credibility and demeanor of the parties and third party witnesses. Live witness testimony does provide the opportunity for cross-examination. Live witness testimony does provide litigants with the opportunity to be heard in court and, thereby, increases the likelihood that they will feel that the judicial process is fair. Live witness testimony does eliminate the need for Family Law judges to read sometimes voluminous declarations, poorly written declarations and/or rule on evidentiary objections. Nevertheless, there are significant risks that are presented by moving to	The Right To Present Live Testimony

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	a judicial system in which the default is for live witness testimony at hearings on Family Law motions or orders to show cause. Live witness hearings may take longer than hearings based on declarations, something that will further burden already overburdened courts. Live witness hearings may provide an unfair advantage to a wealthier spouse who has already retained an attorney to represent him/her at an initial order to show cause over the poorer spouse who has not had the money available to retain an attorney for that hearing. Live witness hearings may require that litigants plan for hearings on motions or orders to show cause as though they were preparing for trial (e.g., by subpoenaing third party witnesses) and that may cause substantial additional expense. Live witness hearings will require that Family Law judges be very well trained regarding substantive Family Law, procedure and evidence because pivotal issues may arise during a hearing when there is very little time for research or reflection. Having considered the foregoing, the Executive Committee favors the increased use of live witness testimony at hearings on Family Law motions or orders to show cause. However, live witness testimony	At Hearings The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. Many courts report that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars. The Task Force agrees the family law judges should be well trained in substantive family law, procedure and evidence. Training of judges is included in the section on Judicial Education. The Task Force concluded that the right of the parties to present testimony at their hearings is

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	should not be the default with declarations only being used if there is a stipulation or good cause not to hear live witness testimony. Instead, some procedure should be developed whereby the parties are advised of the advantages and disadvantages of having a hearing based on live witness testimony versus declarations. If the parties agree on either live witness testimony or declarations, then the Court will abide by their agreement subject to a finding of good cause. If the parties cannot agree, the Court will have the authority to determine whether there will be a hearing based on live witness testimony or based on declarations. Caseflow Management The Elkins Family Law Task Force recommends that caseflow management be implemented in all Family Law cases. Pursuant to these recommendations (a) the goal is to resolve cases in a timely manner with appropriate assistance; (b) caseflow management will begin when a case is initiated and it will differ depending on the type of case, the procedural issues, the substantive issues, and individual case factors; (c) checkpoints will be established to monitor the progress of the case and to assist the parties in resolving issues that are unnecessarily delaying the resolution of the case; (d) there will be early intervention in order to resolve as many issues as possible as early as possible; (e) litigants will be given information so that they will be better informed about the judicial process and can make more informed decisions; (f) streamlined procedures will be implemented so that the parties and the courts can avoid unnecessary court appearances; (g) there will be increased availability of ADR; (h) local courts will be given the flexibility to design caseflow management programs that meet their individual needs; (i) there should be a more efficient use of time and encouragement of alternative procedures (e.g., telephonic appearances); (j) judicial officers should have the authority to make	fundamental to due process in family law. The standard should be live testimony, with certain exceptions. The Task Force recommendation retains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion.

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	orders that will control the manner and pace of litigation in cases (e.g., by setting deadlines, limiting discovery, etc.) and this should not require the parties' stipulation; (k) Rule 2.30, California Rules of Court should be amended so that judicial officers can sanction attorneys in Family Law cases; (l) written orders after hearing should be prepared by the court or by self-help staff or, if counsel is directed to prepare such an order, it must be done timely; (m) cases initiated before caseflow management is implemented should be reviewed and litigants should be alerted if additional steps are necessary in order to finalize cases; and, (n) standards should be established for the timely resolution of cases.	
	The Executive Committee agrees that increased caseflow management will benefit Family Law litigants, judicial officers and attorneys. Family Law cases often languish in the system because self-represented litigants do not know how to complete their cases or that they need to file orders after hearing or judgments. The resolution of contested cases is delayed because judicial officers must spend time on cases that could and should be easily resolved. With the following exceptions, the Executive Committee agrees with the recommendations of the Elkins Family Law Task Force concerning caseflow management	Caseflow Management No response required regarding basic statement of agreement.
	1. Litigants should have the opportunity to request that they not be subject to otherwise mandatory caseflow management. Issues in the litigants lives may make it appropriate to allow them to proceed at their own pace. For example, a party or a close relative may be ill and that may make it difficult or impossible for a litigant to focus on a Family Law case and meet court imposed deadlines.	1. The Task Force has added language to make it clear that circumstances in a parties' life may cause them to need to slow down the process, and that any checkpoint would be set well in the future in such a circumstance.

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	Parties may consider reconciliation and they should not be pushed into completing a marital dissolution case under such circumstances. Litigants and their children may also be participating in family counseling to help them address various parenting and communication issues, and, pushing them to take part in child custody litigation at the same time that counseling is taking place could be counterproductive or damaging to the counseling.	
	2. Family Law litigants or attorneys should be allowed to provide courts with information during the case (i.e., at checkpoints) by filing and serving forms which provide information about which issues are pending, the status of discovery, whether ADR has taken place, whether it appears that trial will be necessary, and when each pending issue will be ready for trial. For example, Judicial Council Form CM-110, the Case Management Statement used in general civil cases, could be modified for Family Law cases. In order to avoid unnecessary court appearances, there would be no hearing if the new forms were timely filed and served unless the court required the hearing, for example, to find out why there had been no progress.	2. The idea of providing a written report on the status of the case is a good one and should be considered as part of implementation to save the time of the parties, attorneys and the court.
	3. It is not clear what the Elkins Family Law task force is suggesting when it states that certain cases should be scheduled for prompt hearings with a goal of minimizing the need for ancillary experts paid for by the parties. Experts are necessary and appropriate in some cases and the parties should be able to retain such experts and present their testimony so long as they can afford the experts' fees and the requirements of the Evidence Code are met.	3. The Task Force intends that if cases can be resolved in a timely manner, some of the difficult situations that arise due to lack of attention can be precluded and the case can be resolved at far less financial and emotional cost to the parties. Certainly, there are cases where experts are necessary.

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	4. While there are definitely cases in which sanctions against attorneys are appropriate, amending Rule 2.30, California Rules of Court so Family Law attorneys can be sanctioned for failure without good cause to comply with the applicable rules is troubling. The Executive Committee believes that the vast majority of Family Law attorneys act in good faith and that violations of the rules are the result of mistake, inadvertence or excusable neglect, sometimes caused by the highly emotional nature of an attorney's own client. Moreover, it seems likely that some litigants will make requests for sanctions against attorneys to either cause the attorney to withdraw or to drive a wedge between an attorney and his/her client. Accordingly, the Executive Committee does not agree with the recommendation that Rule 2.30, California Rules of Court be amended so that it applies to Family Law cases.	Agree that that rules implementing the recommendation regarding attorney sanctions must be carefully crafted to avoid improperly affecting the attorney-client relationship, or penalizing violations that are in good faith.
	Children's Voices The Elkins Family Law Task Force recommends that family law judicial officers consider ways in which to allow children to participate in Family Law cases. In doing this, judicial officers should control any examination to protect the child's best interest and this may mean having the child give his/her input with the assistance of minor's counsel and mental health professionals who are trained to interview children. Children need not be involved if the parents agree and there are no allegations of child abuse. If children are to be involved in a Family Law case, they should first meet with a mediator or an evaluator who will help them understand the Family Law court procedures and process. In those cases in which it is necessary and appropriate to involve children in the litigation, judicial offers need to balance the	Children's Voices The Task Force recommendations in Children's Participation and Minor's Counsel reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this

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	need to protect the child, the duty to consider the child's wishes, and the probative value of the child's testimony. If testimony is necessary, the court will need to determine whether the child will testify in open court, whether the child will testify in chambers, who will be present when the child testifies, and who will be permitted to ask the child questions. The Executive Committee agrees that children are deeply and personally affected by many decisions made in Family Law Courts. Furthermore, the Executive Committee agrees that children may better accept parenting arrangements made by Family Law judges when the child understands the process by which the decision was made and feel that his/her voice was considered before that decision was made. Nevertheless, the Executive Committee feels that the courts should exercise extreme caution before increasing the involvement of children in Family Law cases. Involving children in Family Law litigation implicitly forces a child to take sides with one parent and against the other. Judicial officers and attorneys are not trained to interview and assess children's testimony. Children's perception, memory, and ability to describe events is not the same as and may be substantially less than an adult's perception, memory and ability to describe events. Accordingly, it seems that children should be allowed to testify if, and only if (a) they can provide probative evidence, (b) they are of sufficient age and maturity to understand the obligation to testify truthfully, they perceived relevant events, they remember those events, and they can describe those events, (c) they can testify in circumstances under which their best interest can be protected, and, (d) they are	issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach. The Task Force agrees that children's participation should be handled with great care. These recommendations reflect existing law allow for judicial discretion and also provide guidance as to how and when such testimony may be appropriate. While some children will benefit from just talking

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	questioned by a mental health professional who has expertise in interviewing children. The Executive Committee notes that it is very difficult to reconcile some of the factors that should exist before a child is allowed to testify. By way of example, but not by way of limitation, if a child testifies in chambers and is questioned by a mental health professional, a record will need to be created so that the parties will know what evidence the court is considering and, in the event of an appeal, the transcript can be provided to the appellate court. However, that will create a situation in which parents will learn about the negative statements that their children make about them and that may damage the parent-child relationship. The Executive Committee recognizes that children testify in the dependency courts. However, there are significant differences between the Family Law courts and the dependency courts. For example, in the Family Law courts, the litigation is between two parents and there have not been allegations of abuse or neglect that would cause the state to intervene. In the dependency courts, on the other hand, parents have been accused of abuse or neglect and a child is frequently the only competent and reliable witness to such conduct because the parents have an obvious reason to deny that wrongdoing. Therefore, children need to be allowed to testify in dependency court proceedings so the state can protect them from abuse or neglect, whereas, those concerns are generally not present in Family Law cases and, for that reason, there is a reduced need for children's testimony in the latter type of cases.	with a mediator or evaluator, others may benefit from testifying without speaking first to another professional. Given the complexities of many of these cases, it is important for courts to have the flexibility to proceed in the most appropriate and responsive manner. The Task Force agrees that testimony needs to be on the record and recognizes the challenges this may pose when a child's testimony is shared with the parents. This is one of the reasons such care needs to be taken when considering how to include children in the family law process and that such participation should not necessarily be equated with testifying in a courtroom, as the recommendations indicate. The Task Force agrees while much can be learned from children's participation in juvenile court and the approaches courts take in those cases to protect and support children, different case types require different approaches. The recommendations

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		reflect the balance the Task Force believes needs to be struck in family law cases given those differences.
	Minor's Counsel The Elkins Family Law Task Force recommends that the role of minor's counsel should be clearly defined; namely, as an attorney for a child, not as a substitute for an evaluator. For that reason, minor's counsel should present neutral information to the court in a manner that meets evidentiary requirements and that protects the parents' due process rights. Minor's counsel should not make recommendations. Moreover, Family Code section 3151 should be amended so that minor's counsel does not determine whether a child is of sufficient age and maturity to express a preference about custody because the court should make this determination. Rules 5.240-5.242, California Rules of Court should be implemented so that there are applicable rules concerning (a) the appointment of minor's counsel; (b) the content of orders appointing minor's counsel; (c) complaint procedures about minor's counsel; (d) the termination of minor's counsel's appointment; (e) the compensation of minor's counsel; (f) the education, experience, and training of minor's counsel; and, (g) the responsibilities of minor's counsel. The Executive Committee generally agrees with the Elkins Family Law Task Force concerning minor's counsel and would propose some additional requirements. While it is understandable that judicial officers want to obtain information from a neutral source and minor's counsel can frequently provide such information more quickly and less expensively than a privately compensated child custody	Minor's Counsel The Task Force agrees that clarifying the role of minor's counsel is vital to the effective use of minor's counsel in these cases. Education and training is required under existing law and the Task Force recommends full implementation of relevant statutes and rules of court addressing minor's counsel in family law.

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	evaluator, there are serious flaws in the way that minor's counsel is appointed, the way that their role is defined, the way in which they presently present information to the court and the way in which Family Law courts use that information. Many judges who appoint minor's counsel and many attorneys appointed as minor's counsel clearly see their role as being a substitute for a child custody evaluation. However, attorneys are not trained to interview children or make determinations about their psycho/social well being in the way that mental health professionals are. Moreover, because minor's counsel is an attorney, he/she has a professional obligation to try to obtain the objectives of his/her child-client, but, that professional obligation may be inconsistent with the child's best interest. Some attorneys who are appointed as minor's counsel see themselves as being placed in a quasi-judicial role because they recognize (frequently correctly) that judicial officers will defer to their recommendations. Moreover, unlike child custody evaluators, minor's counsel cannot be cross-examined or otherwise questioned about the sources of information that he/she relied upon and the recommendations that he/she makes. Additional problems are created because the usual practice is for minor's counsel to appear on the day set for hearing and, for the first time, announce his/her client's desires and minor's counsel's recommendations. Therefore, the parents/litigants usually have no advance notice about what position minor's counsel will take and they have no opportunity to marshal and present evidence that contradicts	Minor's Counsel No response required. Recommendations for further clarification of minor's counsel role should be considered as part of implementation efforts. The Task Force agrees that parties

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	the assertions made by minor's counsel which, in most instances, are not supported by competent, admissible evidence. Compounding these problems, Family Law judicial officers all too often accept minor's counsel's statements and recommendations with little or no skepticism. To correct the foregoing problems, the Executive Committee approves of the recommendations made by the Elkins Family Law Task Force as they relate to minor's counsel. Moreover, the Executive Committee recommends that it be made clear when minor's counsel is appointed that his/her role is limited to gathering and presenting competent, admissible evidence that his/her child-client would like the Family Law court to consider when making a child custody order. Further, the Executive Committee recommends that parents have advance notice of and the opportunity to cross-examine the persons providing evidence to minor's counsel subject to the limitations on children testifying in Family Law cases which, as discussed above, should only happen in exceptional cases. Finally, the Executive Committee recommends that supervising family law judges monitor the number of cases each minor's counsel maintains at any given time because there are concerns that certain attorneys have been appointed as minor's counsel in so many cases that they cannot appropriately meet the needs of all of their clients.	should have the opportunity to respond to information provided by third-parties and that those submitting reports or recommendations to the court need to be available to testify and for cross-examination. Monitoring the number of cases The Task Force agrees that more consideration needs to be given to the caseload of minor's counsel in family law, however, because most counsel acting in this capacity are private attorneys, further work needs to be done to determine the best way to address this issue.
261. M. Sue Talia Private Family Law Judge Danville, CA	*I want to start by expressing my appreciation to the Task Force for the thoughtful, creative and sensitive approach to this somewhat daunting task, in addition to the countless hours I know it consumed. The quality and depth of your work shows in the resulting product.	

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	Thank you for thinking broadly and boldly. The problems faced by the family law system are layered and challenging, and band aid solutions are no solutions at all. The existence of budgetary constraints and limited resources was not allowed to deter you from the important task of analyzing what should be done, whether or not the wherewithal exists for immediate implementation. The use of the word "modernization" of the system at Item 4 of the Guiding Principles is most apt. It is long past time that we recognized that family law litigants are entitled to the same rights as litigants in boundary disputes and fender benders. The current system, grafted onto a civil law model, is not only woefully unsuited to the current needs of modern families, but not nearly flexible enough to adapt as society and those needs evolve. I want to go on record as strongly supporting the recommendations. I appreciate the Task Force's recognition that a system built on the assumption that all litigants are represented by counsel is unworkable in the current reality. I also appreciate the fact that the Task Force didn't shy away from recommendations that might be controversial. The problems are so far reaching that it is inevitable that creative solutions will result in the oxen of some entrenched interests being gored. So be it. Families are more important. Before starting my substantive comments, I should start with full disclosure. I was involved in the creation of the survey of the Family Law Bar in Contra Costa County, assisted with the Elkins brief to the Supreme Court on behalf of the Family Law Section, and am intimately familiar with the survey results and comments. Also, I no longer	

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	practice law, having limited my practice to private judging in complex family law cases since 1998. Right to Present Live Testimony at Hearings This issue goes to the heart of due process, and the ability of the court to make correct decisions based on reliable information. As a private judge, I am reminded daily of the fact that the information I receive from live testimony is much more revealing than the attorney-drafted declarations which I reviewed prior to the hearing. It is also critically important to the litigants themselves. I have been told by many litigants that the reason they chose private judging was because they wanted to guarantee that they got to tell their story directly to the court in their own words. I agree with the Task Force on the importance of full and reliable information at the temporary order stage. Unlike civil litigation, the earliest interventions in family law frequently create a new status quo, which profoundly impacts the result at trial. These are not mere stop-gap measures, but determine where children live, who has access to what property, and the fundamental issues which will ultimately be addressed at trial. The importance of live testimony at this stage cannot be overestimated. I like the encouragement of the court to ask questions. This is an extremely efficient way to elicit information. I particularly like the way the proposed new Rule 5.118(f) is drafted, to make live testimony the default and requiring the judicial officer to make specific findings showing good cause to support a decision not to receive live testimony, together with ground rules for the determination of good cause. It is	Right to present live testimony No response required.

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	hard to imagine any temporary hearing which would not involve some of the factors referred to in proposed 5.118(f) (B) (a). Expanding Legal Representation and Providing a Continuum of Legal Services There is no "one size fits all" in the continuum of legal services. Some litigants are simply unable to self-represent regardless of the quality of the coaching or self help services. Many more are able to succeed with limited assistance. The problem is so vast and the need so great, that no single solution can hope to solve it. All available resources need to be called in and allocated appropriately for the greatest benefit. Attorney Fees. Statewide rules and forms. I support this recommendation. I realize that there are differences in legal culture throughout our state. However, obtaining an award of attorney fees at the beginning of a case often determines whether justice is done, and inconsistency in the rules creates a barrier. A statewide rule and form would increase the likelihood that the court would have the information it needs to make an appropriate order. Early needs-based fee awards. I also support this recommendation. For the reasons stated above, temporary orders often determine the landscape the trial judge will be seeing, and important rights may be lost simply due to the inability to get the appropriate facts before the judge at the temporary hearing. Assistance. I agree that self help centers should be able to assist litigants in seeking	Expanding Legal Representation and Providing A Continuum of Legal Services No response required. Attorney Fees Statewide rules and forms No response required. Early needs-based awards No response required. Assistance No response required.

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	fee awards. Limited scope appearances for the sole purpose of obtaining an early needs-based fee award would increase the likelihood of litigants obtaining adequate representation, and reassure attorneys, who may be reluctant to take a case without a retainer for fear that if they are unsuccessful in obtaining a fee award, they will be stuck in the case for the duration. Referrals to private attorneys. The overwhelming needs of the currently unrepresented litigants cannot be met without the active and enthusiastic participation of the private bar. Modest means and low fee panels, limited scope lawyer referral service panels, and referrals to unbundled lawyers are all necessary parts of the continuum and should be encouraged by the court. Funding for legal services. Except for cases involving domestic violence, legal services assistance is all but unavailable for poor and moderate income litigants in California. Increased funding would be a start in giving these families the assistance they need to protect their rights. I was talking to a legal services attorney at the Harriet Buhai Center for Family Law last week, and was given some shocking statistics about the low level of literacy they see there. The functionally illiterate simply can't represent themselves effectively in court if they can't prepare decent paperwork and understand the orders they receive. There is no alternative to increased funding for full service attorneys for these individuals. I strongly agree that if legal services funds are being made available to assist individuals who are being evicted from their homes due to economic factors, they should also be made available to people who are being evicted from their homes due to marital separation. There is no	Referrals to private attorneys No response required. Funding for legal services No response required.

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	justification for the double standard. Expanding self help services. This is one of the most successful programs ever instituted by our courts. I strongly support expanding the nature and extent of the services court-based self help centers can offer. I see this as an important check on the unauthorized practice of law, which often victimizes our poorest citizens. Notarios and other document preparers often prey on poor people, luring them in with promises of cheap assistance, often charging exorbitant fees and providing shoddy documents. Some years ago, I saw a Marital Settlement Agreement prepared by a document preparer who had charged $5,000 for it (!). The spousal support provisions in the resulting agreement omitted the magic language that support would terminate on the recipient's death, making the payments non-deductible under the Internal Revenue Code. An attorney would have drafted a much better document for a fraction of the cost. This is not an isolated instance. While there is a place for document preparers, there is a flaw in the system. They are often, if not usually, the ones who decide when a client needs to consult with an attorney. This process is backwards. Attorney oversight is required at the beginning, because even with the best training, document preparers don't know what they don't know. Many will say that they refer issues to attorneys. I frankly don't believe most of them do, and if they do, how to they decide when they are over their heads? Increased funding and staffing of self help centers, which are supervised by attorneys is a much preferable solution. Availability of attorneys. I strongly support this recommendation, and would even go beyond it.	Expanding self help services. No response required. Availability of attorneys Examples of incubator programs such

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	The report correctly notes that new family lawyers need access to mentors. There is an additional challenge for those who come out of law school with a desire to serve poor populations. Not only do they need to know the law, but they need the skills to be successful in practice. If they can't make a living at it, they will be forced to seek institutional employment, if only to pay their law school loans. Most family law attorneys are in solo or small firm practices. Law schools should teach them the skills they need to be successful in practice and not just to pass the Bar. A good example is Community Lawyers, Inc. in Compton, CA, where Luz Herrera has established an "incubator" program modeled after the program at CUNY, which provides new lawyers with equipment, mentors, office space, computers, forms and other resources which they will need to build a successful small firm practice serving poor and moderate income clients.	as those described in the comment are one that should certainly be examined and encouraged.
	I also support the suggestion that law students should have the opportunity to intern at the family law facilitator's office. Of course, law school buy-in would be required, which would be a challenge. It is my opinion that law schools are more interested in their U.S. News & World Report ranking than in preparing the vast majority of their graduates (who will not be hired by top ten firms) for the realities of a community based law practice. This would also expose the law students to family law litigants, and could well inspire them to go into this practice, even if they hadn't originally intended to do so. It would be a win/win/win for the courts, litigants, and law students.	Law students volunteering in self-help centers No response required.
	It goes without saying that I strongly support the recommendation to expand and encourage limited scope representation. Fortunately, there are now free training materials available on Practicing Law Institute	Limited scope representation No response required.

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	and the website of the ABA's Standing Committee on the Delivery of Legal Services, which can help train lawyers in the nuances of limited scope.	
	Caseflow Management Family law litigants are among the least likely to know what they need to do to obtain the relief they need, or to move their case along. They are often left to drift for years in the system. The Task Force has correctly stated the frequent adverse consequences litigants often suffer under this system, which it describes as "ineffective and inefficient." I strongly concur with the statement that the current system, which establishes firm caseflow standards, rules and goals to other forms of civil litigation, should afford families the same protection. The requirement of a stipulation to enter case management should be abolished. I also agree with the suggestion that checkpoints be established, that there should be early intervention, and education and information be provided to litigants in a form relevant and accessible to them.	Caseflow Management Caseflow standards No response required.
	Caseflow management must be consistent with due process, as the Task Force recognizes, and ADR should be made available. There is something wrong with a system which is set up under the assumption that every litigant has a lawyer, every case will be decided at trial, and affirmative action is required to opt out of that model. After the ground rules and protections are in place due to early intervention, ADR, mediation, and assisted settlement should be the first line of approach to resolution, and trial should be the last result when all else has failed. There are some cases which simply must be tried, but the system should be built around the needs of the majority, not the few who cannot reach	Caseflow management Incorporating ADR No response required.

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	a reasonable solution even with appropriate professional assistance.	
	I agree that family law judicial officers should have the same authority as fast track judges to manage their cases, as well as using telephone conferences and other interventions appropriate in the circumstances.	Caseflow management Judicial authority No response required.
	As a private judge, I have often been frustrated at the limitation on the methods available to me to sanction attorneys who are clearly the source of the problem. If there isn't evidence to support a need-based order, my only recourse is §271 sanctions payable by the party. Perhaps the party can't afford them, in which case it would be error to order them. If the attorney is the problem (and family law litigants often don't know when they are badly represented, because they trust their attorney, who tells them that "this is how it must be"), I would love to have the ability to impose consequences on the attorney when appropriate, rather than only on the often hapless litigant.	Caseflow Management Attorney sanctions No response required.
	I agree that creating Orders after hearing should be incorporated into the court process. These people leave court having heard the judges say that someone is to pay so much per month, and have literally no clue how to make that happen. It is not justice to grant relief which is entirely hollow due to the litigant's inability to write an enforceable order, or even to know that such a thing is needed.	Caseflow Management Orders After Hearing No response required.
	Providing Clear Guidance Through Rules of Court Inconsistent rules from court to court and county to county are confusing and increase the expense of litigation. A course of conduct which is required by local rule one county can get you sanctioned in another. While I realize there are geographical and societal differences	Providing Clear Guidance Through Rules of Court No response required.

Commentator	Comment	Committee Response
	and variations in legal culture within California, the greater good would be served by the consistent application of clear rules and guidelines. I particularly like the recommendation of centralizing statewide rules. It is often difficult to determine which civil rules apply to family law and which do not. This is particularly important in discovery and settlement sanctions. I strongly agree with the prohibition on "local local" rules, which are often traps for the unwary. These are generally not written anywhere, are imposed inconsistently, and place litigants and attorneys at great disadvantage. I know of at least one instance where the Family Law Section of the county bar simply asked their family judges to tell them what the "local local" rules are on a department by department basis, so that that information could be published in the Section newsletter, and was met with an outright refusal by at least one bench officer. This is unacceptable and a denial of due process. Court rules should be readily available, understandable, and transparent to litigants and lawyers alike. This is the administration of justice, not "double secret probation." Children's Voices I continue to struggle with this one. Children of high conflict divorce are so vulnerable. High conflict litigants, by definition, lack self awareness or insight into the lasting effects of their actions on their children. High conflict litigants are often completely unscrupulous about the damage they will do to their own children to score a "win" against the other parent. I am often reminded of an old New Yorker cartoon where the mother and little boy are standing in court in front of the bench and the mother leans over and says "Now, Billy, tell the nice	Centralized Statewide Rules – No response required. Local, Local Rules No response required. Children's Voices The Task Force considered the complex nature of these cases and fact that different children need different approaches in these matters.

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	judge what a son-of-a-bitch Daddy is." I am constantly struggling to balance the right of the child to be heard with the need to protect the child from parental lobbying, in fact, incentivizing the parent to involve the child. I do agree that children, particularly older children, do better when they are aware of the process and how decisions are being made, since it often comes across as mysterious and arbitrary, and makes them feel even more helpless at a time when they are already uncertain. That being said, many children have specific, intelligent and child-based (as opposed to adult-based) reasons for wanting their lives to be organized in a particular way. This is not limited by a particular age. I have seen 8 and 9 year old children who were quite clear about what they wanted and why. I have never allowed a child to testify in open court, and can't imagine a circumstance where I would. I have met with children in chambers, but feel best doing it when there is minor's counsel. I frequently order parents to parenting classes, co-parenting counseling (where financial circumstances allow, which they generally do in my cases), and to websites which give parents useful tools to help their kids. The preferred method is to obtain this information through other professionals, evaluators, or the like. I'll be interested to see how this one plays out. There are so many legal and psychological issues. While I agree that there needs to be a way to hear children's voices, we need	

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	to be sure that the voice we are hearing actually belongs to the child, and that we are doing so in a way which doesn't make the child feel like more of a pawn in the process than he already does. Note, also, that some children are very good at manipulating their parents or the system.	
	Domestic Violence There is much confusion where there are competing actions, and the primary vehicle is a DVPA action rather than a dissolution. Stipulations for paternity should be allowed in DVPA actions. This wouldn't deprive a party of the protections of a paternity action, if desired, but would simplify the process if there is no dispute as to paternity.	Domestic violence No response required.
	I agree with all of the recommendations, with a caveat to Recommendation 5 on involving the children for the reasons stated in my comments to the last section. I worry about the long term impact on the child of being required to testify about domestic violence s/he has seen in the home, and would like to see the research on the subject (if any exists).	Domestic violence and children's participation The Task Force agrees that the same factors should be taken into consideration in this area as are noted in the section on children's participation generally.
	I concur in making settlement services available, with appropriate protections in place. Not all domestic violence encompasses a sustained pattern of behavior, and many couples can resolve their differences with appropriate assistance.	Settlement No response required.
	I agree the rules should be consistent statewide.	Statewide rules. No response required.

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	Enhancing Safety I strongly support following the juvenile rules for an informal, nonadversarial atmosphere where children are involved. I incorporate my prior comments regarding hearing from children. All serious allegations of abuse or neglect should be handled promptly and I strongly support the involvement of CPS. These cases require prompt attention and professional judgment. Many of these children need counsel, and often need additional public services. Contested Child Custody I did a lot of custody work when I was in practice and do a lot now as a private judge. Many involve serious allegations of sexual, physical, or substance abuse. Most of these serious allegations require strong judicial intervention. That being said, many custody disputes can be resolved with appropriate intervention and parent education. Many are pursued defensively, that is, by parents who fear they will lose their children if they don't fight for custody. Often these can be avoided by simply involving both parents in the resolution, reassuring them that the court will see that they both have the opportunity to remain active and engaged in their child's life. It is often difficult to determine what is really going on in a family. With no other practical way to obtain the information, we appoint §3110 custody evaluators. However, evaluation is a slow and expensive process. Many litigants can't afford it. Even if they can, the family is either left in limbo during the process, or a status quo is established which is hard to alter after the evaluation, even if it is not the best	Enhancing Safety No response required. Contested Child Custody The Task Force recommendations support utilizing a variety of approaches to resolving child custody matters.

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	solution for the child. Children have been enrolled in school, people have relocated, and once the evaluation is done, it is often impossible to go back to an earlier situation which might have been more beneficial to the child. I strongly support the use of investigators, who are often of more use than evaluators. We often just need to know what the facts are, and can draw our own conclusions as to an appropriate resolution. This tool is essentially unavailable to us now. Of course, the process needs to be transparent, with an opportunity to respond and cross examine, as the Task Force has pointed out. The under resourcing of family court services is shameful. The service is spotty from county to county, with one well staffed and the county next door woefully inadequate. In light of this lack of resources, I think that in recommending counties, many family court services, are forced to emphasize settlement, since they don't have the time to develop sufficient information to make thorough and thoughtful recommendations to the court. We need to decide whether mediation is confidential or not, and stick with it. If it is, then we have to substitute another method for information to be gathered and a recommendation presented to the court. An investigation arm of the family court would solve this problem. However, unless they are well staffed and funded, it is unreasonable to ask family court services personnel to wear both hats. It goes without saying that services should include follow up sessions. Many parents have no idea of the rules, or the options available to them, before the first session, and have to think about it before they can	Investigators No response required. Mediation and confidentiality Current statutory law allows child custody mediators to make recommendations in these matters. The Task Force recommends pilot projects be developed and funded so that promising practices may be identified in this area.

Commentator	Comment	Committee Response
	commit to a schedule. To expect uneducated laypeople to make thoughtful, nuanced custody arrangements after a 90 minute meeting with a stranger, however well trained that stranger may be, is unrealistic and unfair to the family, especially the children, who are the subject of a schedule hurriedly slapped together due to lack of time, or worse, a standard "cookie cutter" schedule which may or may not make sense in the context of the family.	
	I strongly agree that parents should be able to get access to family court services before filing a motion. Waiting until after a motion is filed guarantees a delay for weeks, sometimes months, before the family has any predictability of a schedule/custody arrangement. This is the precise time when children need to feel secure that they can rely on the grownups in their lives to take care of them. Early access to family court services would streamline the process and reduce the likelihood that the delay is used to position a parent for tactical reasons.	Prefiling mediation No response required.
	And yes, lose the words "custody" and "visitation." They are possessive, offensive and hearken back to a time when children were chattel, the property of the parent. Our nomenclature should reflect the fact that the children have a right to two parents, that it is the child's and not the parent's right, and child custody considerations should be unrelated to financial concerns.	Parenting Time The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.
	Related to this is an idea which is outside the Task Force's	Child support guideline

Commentator	Comment	Committee Response
	recommendations, and is a political hot button, but bears repeating. The California child support guidelines, which tie child support to timeshare, incentivize thousands of custody battles every year which have nothing whatsoever to do with the child's needs or the actual schedule. I've had cases where both parents totally agree on the child's custodial calendar. They even attach the same calendar to their respective pleadings, and then fight because one claims the timeshare is 38% and the other claims 45%. This is nuts, but it happens all the time, and strictly for financial reasons. I've even had such a case where I had to appoint a special master to calculate the actual timeshare, even though there was no dispute about the calendar. The current guideline calculator programs do a better job of this, but I recently still had a dispute pending in my court over an 8% difference in the timeshare percentage when both parents agreed on the actual schedule. I travel throughout the US and Canada in connection with my unbundling work, and talk to many family lawyers. Many states do not tie child support to timeshare, or do so in a much less mechanistic way than we do. Family lawyers often shake their heads at the way California incentivizes timeshare conflict by financial gain. This is a disservice to kids. There should be a point where we say "close enough you each have sufficient timeshare that we recognize that you both have to provide a bedroom all the time, even if the child doesn't sleep there every night, you both have to provide clothing, food, and other needs of the child, and we're not going to split hairs anymore." Minor's Counsel I have a great deal of experience with minor's counsel, and frequently appoint minor's counsel when I think the child's perspective is not	The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made. Minor's Counsel The Task Force recommendations support clarification of the role of

Commentator	Comment	Committee Response
	being adequately presented and protected by the parents. However, it is my experience that many bench officers abuse the availability of minor's counsel, and many courts and counsel don't fully understand the role of minor's counsel. I've seen bench officers routinely appoint minor's counsel just to get an attorney in a case so they don't have to deal with two pro pers. It makes the judge's job easier, but is an unnecessary (and often unaffordable) expense. They then compound the problem by not protecting the minor's counsel's fees (because there wasn't money to pay it in the beginning – that's why neither parent had counsel in the first place), so the minor's counsel is forced to work for free. I've even seen judges refuse to release minor's counsel from a case after they've filed a motion to be relieved because of nonpayment of (often) tens of thousands of dollars worth of fees. All that does is ensure that that particular attorney removes him/herself from the minor's counsel list. This has caused an exodus of minor's counsel from the public court in my county, and some of the best ones will now only accept appointments from a private judge who they know will not abuse the appointment. I also have an issue about quality control of minor's counsel. I've seen people hold themselves out as minor's counsel, not because they were any good at it or had any ability to work with and represent children, but because they couldn't make a living any other way. Some of them are truly terrible attorneys, but if they just get the minimum training, they go into rotation on the appointment list. The judge isn't allowed to choose the minor's counsel best suited to the case, but must appoint the next person in the rotation, even if that person is an idiot (I've seen it happen at the public courts). I've refused to sign stipulations for minor's counsel when I don't think the individual is qualified or suited	minor's counsel and full implementation of the statewide rules of court providing guidance in this area.

Commentator	Comment	Committee Response
	to the case. Similarly, counsel often doesn't understand the role of minor's counsel. I've had the parents' attorneys offer to stipulate to appoint counsel to talk to the children's therapists and report back to the court, even asking that they be requested to make recommendations as to custody. It is improper for recommendations to be made by minor's counsel, who do not have the psychological training required. Another potential issue should also be mentioned. We all want to protect children, and know of situations which cry out for minor's counsel. However, as one prominent and highly regarded minor's counsel has pointed out to me, it can be abused and manipulated by the child. She tells me of one case where the teenager called her constantly on his cell phone, and used the fact that he had his own attorney to try to manipulate his parents into doing what he wanted. That's not a reason not to have minor's counsel, but it is something to be aware of. As a result, I strongly support the recommendations to define the role of minor's counsel, and to stay within that role. I further agree that if a minor has expressed wishes to counsel, counsel should be required to express that desire to the court, even if minor's counsel does not believe the requested order is in the best interests of the child. The attorney can still represent the best interests while communicating the child's wishes. Minor's counsel is often a thankless task. As to the recommendation for review of costs, of course the court should be aware what the minor's counsel is charging and for what services. That being said, in my	Minor's Counsel No response required.

Commentator	Comment	Committee Response
	experience, I've seen many more minor's counsel write off tens of thousands of dollars in well-earned fees, than I've seen minor's counsel abuse the process and overbill for their services. Scheduling of Trials and Long-Cause Hearings As a private judge, I have often been appointed on stipulation of counsel because they are daunted at the prospect of having trials spread out over a period of weeks or months, and realize it is less expensive to simply book a block of my time to do it on successive days. Trials and long cause hearings which are broken up in pieces are the prime example of the most inefficient and wasteful way to underutilize our scant court resources. Each time, the judge has to not only be reminded of what went before (because they've had dozens if not hundreds of matters in the intervening time), but attorneys have to bring them up to speed on what has changed in the interim. Bank balances have changed, jobs have changed, new issues have popped up, and the original time estimate inevitably becomes inadequate. A case which will take three days to litigate sequentially may take twice that long if spread over a 6 – 9 (or longer) month period. This is unreasonably expensive for the attorneys, difficult for the judges, and impossible for pro pers. If every other civil litigant, including the $35,000 fender bender, and the dispute with the Homeowner's Association, is entitled to sequential trial days, it is outrageous that this simple procedure is unavailable to family law litigants, just because their legal issue is domestic in nature. It is time the courts treated family law trials as equal under the law with other civil cases. Litigant Education	Scheduling of Trials and Long-Cause Hearings Agree. No response required. Litigant Education

Commentator	Comment	Committee Response
	Most family law litigants have no clue what to expect when they file for divorce. They think it is a combination of "Divorce Court" and Judge Judy. Their ideas about child custody were formed by the movie Kramer v. Kramer. When I wrote my book, "How to Avoid the Divorce from Hell (and dance together at your daughter's wedding)" in 1996, it was done for the purpose of educating family law litigants about the reality of the process at the beginning so that they didn't make the common mistakes which make the process even more difficult than it needs to be for most litigants. It was intended as a reality check. Today, when people get their information off the internet, often from wacky father's rights and mother's rights websites which have an axe to grind, they have even less of an understanding of what it is really like and what the rules are. Litigant education is essential they need to have a place where they can get basic information about their rights and responsibilities, access to self help services, LRIS, limited scope, clinics, and other services which they may need. Education needs to be ongoing. It does no good to tell someone the entire process of divorce at the initial meeting. They will only remember the piece they need to do next, and will have to be able to come back to learn about the step after that and the one after that. Orientation to the courts is critical, as is orientation to child custody mediation. Many lay people think of custody only in two ways the old-fashioned stereotype where one parent had custody (possession) and the other had visitation (implying a lesser standard of parental rights) or joint custody, which they often define as rigidly equal, whether or not it suits the child's age, temperament, living arrangements, or life.	No response required. Agree that orientation to the courts is critical.

Commentator	Comment	Committee Response
	Information about the kinds of parenting plans which others have found to be successful is extremely helpful. It is reassuring to parents to know that, although this is new and scary to them, and they fear they will lose contact with their children, others have worked it out, and perhaps they can, too. It is important to frame it in terms of the child's right to two parents, and not the parent's right to possession of the child 50% of the time. They need education. Many parents have no clue about childhood development stages, or the changing needs of growing children. Many don't want to fight each other in a courtroom, but don't know what resources are available to them to resolve the question any other way. Most assume orders are self-enforcing and have no idea how to make sure that court orders are complied with. One issue of litigant education which is not mentioned in your recommendation is assistance with guideline computer programs. Perhaps the facilitator's offices have solved this one. Admittedly, I haven't appeared in court (except as the private judge) since 1998. However, I recall seeing many litigants at the first OSC hearing who were there, not because they had a dispute with each other, but because neither knew how to calculate child support, and they just needed someone to help them run a Dissomaster on an undisputed pay stub, and tell them what the temporary support was going to be. These people didn't need to be in court, could ill afford to take a day off work to be there, and were clogging up the calendar so the court couldn't get to the cases which really did need a judge to resolve a factual dispute. If DCSS and the facilitators have solved this problem, God bless. If not, this should be part of litigant education. A system which makes a	Assistance with guideline computer programs Agree that while the family law facilitator has been very helpful in this area, additional information should be developed to help litigants understand how to use guideline calculators.

Commentator	Comment	Committee Response
	specific (and ridiculously complex) computer calculation mandatory for setting child support, and doesn't provide resources for the average layperson to get that calculation done quickly and expediently, is failing its citizens. Expanding Services to Assist Litigants in Resolving Their Cases Most family law litigants don't fall into the category of "Litigation Lifers" who get off on being in court. They just want to resolve their problems and get on with life. As the Task Force correctly points out, they would rather not be litigants at all. We need to seriously expand the services available to these people to solve their problems outside of court. Ideally, there would be neighborhood mediation services, so people of limited means don't have to take three cross town buses (with children in tow) to get to the courthouse for a hearing which didn't need to happen at all if they just had someone who could sit down with them and help them reach a reasonable solution. And, as with the family court services, follow up appointments should be allowed. People can't settle their issues if they don't know 1) what is likely to happen in court, 2) what information is relevant, and 3) what their settlement options are. Sometimes they need multiple appointments to educate themselves, consider the options, think about it, and feel comfortable making an agreement they can live with. Some elements of the traditional bar will oppose the recommendation that these settlement options should be made available to both represented and unrepresented parties, fearing it will cut into their income. I lose not a moment's sleep about those concerns. If people can	Expanding Services to Assist Litigants in Resolving Their Cases No response required.

Commentator	Comment	Committee Response
	settle their case with access to a good mediator, and the attorney's presence in the case is inhibiting that, the attorney isn't doing his/her job, and is just promoting conflict for personal gain. That doesn't mean that they won't object to this recommendation, with all sorts of reasons why it will be the End of Justice As We Know It. I strongly support this recommendation. As to the availability of all forms of ADR, I incorporate my earlier comments in support of this recommendation. Streamlining Forms and Procedures Amen. Note the comment above about some elements of the Bar who want to keep it complicated for professional and personal reasons. When I talk to lawyers who oppose simplification of the process and procedures, I point to the Judicial Council statistics that 75% of family law litigants are self represented. That means, at best, 100% of the family lawyers represent 25% of the litigants. I tell them to look at this as a marketing opportunity to reach a new pool of potential clients. It isn't appropriate to make the process deliberately difficult and mysterious to protect the professional sinecure of one group. I strongly support the recommendation to simplify the process for litigants who are already in agreement. People can't understand why they have to do complicated declarations of disclosure (or worse, pay an attorney to do them) when they both know they both have all of the relevant information. This is a classic case of setting up a procedure to catch the 5% or so of people who really do set out to defraud their spouse and the court, and require the other 95% jump through expensive hoops they know they don't need. Parties should be able to waive disclosures. Judicial officers should be able to excuse the PDD under appropriate circumstances.	Streamlining Forms and Procedures No response required.

Commentator	Comment	Committee Response
	There should be joint petitions. The summary dissolution process should be expanded to include cases where people have property and children but are in complete agreement.	Joint Petitions No response required.
	Motion practice should be simplified. I support a single Request for Order form. The current distinction between Notices of Motion and Orders to Show Cause (not including contempt, of course), makes no sense in current practice.	New Request for Order form No response required.
	Discovery needs to be seriously simplified. It makes no sense to me that in a state where parties have ongoing fiduciary duties of disclosure to each other, which remain in effect until an asset is divided, sometimes long after judgment, that there is no simple method to obtain and update relevant information. As to service of process, an absent party can hold the other hostage, simply by being unavailable. Often when they skip, they assume whatever property is left behind will go to the remaining spouse. However, the spouse left behind can't get relief if they can't find someone to serve, and are limited to an expensive (and totally outdated) substitute service method. I support simplified systems of service.	Discovery simplification Agree that this is a critical issue for implementation.
	I do have a question on recommendation 13(5) (B). I don't understand the recommendation on service of post judgment motions. Is there a different standard for represented and unrepresented parties? Why? Isn't everyone unrepresented if their prior attorney has withdrawn at the end of the case? And I really don't believe any pro per is going to keep the court advised of all changes of address. This just doesn't seem workable in my opinion. I'd continue the discussions on this one.	Requirement to keep court informed of change of address post judgment This recommendation has been modified.

Commentator	Comment	Committee Response
	I agree with simplified procedures for establishing parentage. This isn't disputed nearly as often as the current parentage statutes assume and there should be a simpler way to establish it and move on. I agree with the declaration template suggestion. You'll still get eighteen pages of "he done me wrong," but there may be fewer of those if people have a simple template they can work from. Agreement templates are even more important than declaration templates. What a great idea! Likewise, the parenting plan and other sample templates. At the courthouse, online, at the facilitator's office, at clinics and workshops, etc. Enhancing Mechanisms to Handle Perjury This is one of the most frustrating aspects of family law. People lie baldly all the time, often in the face of overwhelming evidence of the falsity of the testimony. Victims of perjury lose faith in the system which is essentially powerless to punish it. A civil sanction would be a welcome additional remedy. I especially like the provision including sanctions for time off work. I'd love to be able to give those sanctions, not only for perjury, but for other conduct which renders an appearance useless because of misconduct or dereliction by one party. Standardize Default and Uncontested Process Statewide I strongly support this recommendation. People are so frustrated that they can't get their Judgment by the end of the year. In the fall, I start getting calls from people who want to appoint me as a private judge just to ensure that they get the judgment processed before the end of the year. It is particularly frustrating when they submit the paperwork	Simplified procedures for establishing parentage No response required. Declaration template No response required. Agreement template No response required. Enhancing Mechanisms to Handle Perjury The specific sanction to reimburse for time off work is also being considered as part of case management. Standardize Default and Uncontested Process Statewide No response required.

Commentator	Comment	Committee Response
	timely and it is rejected after the first of the new year due to some omission. Get it all done at once and in a timely manner. Full review of documents is essential. I'm convinced there are clerks who delight in finding one procedural error so that they can bounce the documents and go to the next set. It doesn't matter to them that the same judgment comes back 6 times until it is accepted. The litigant and the lawyer have to go over the same ground multiple times. And there's no reason to require a hearing on default and uncontested proceedings if they can be submitted by declaration.	
	Interpreters I really have no experience of interpreters, so can't comment personally. From an access to justice perspective, however, people who can't understand what is going on in court because they don't speak the language, are not informed participants in the process. At best, they need someone to explain it to them. At worst, their rights are trampled on.	Interpreters No response required.
	Public Information and Outreach This should be done early and often. Programs in the libraries. Programs on local cable and public service TV. Informational material available in multiple languages, online, at libraries, social service centers, facilitator's office, county clerk, and any place else that people are likely to find it. Many people look to their churches as sources of information on services.	Public Information and Outreach Agree. Recommendation has been expanded to include media and other outlets.
	Judicial Branch Education Many family law judges just don't know much about children's developmental needs. They are probably former district attorneys who are thrust unwillingly into family law because they have the least	Judicial Branch Education The Task Force made recommendations that attempt to address the issues that make the family

Commentator	Comment	Committee Response
	seniority and family law is a disfavored assignment. Judges should be assigned to family law because it is an honored assignment and because they care about families, not because they are the least knowledgeable and experienced judges on the bench. Judges need more education on self represented litigants and limited scope representation, and why the latter should be encouraged and supported. In addition to all of the suggested forms of training, I want to underscore the need for training to help them handle the stress and strain of this rewarding, but extremely challenging, assignment. Finally, they need to be reminded that, in the eyes of the litigants, there are no "minor" issues or claims. By definition, the issues addressed in family law go to the very fabric of their lives. Although the litigants are "only" fighting about pots and pans, those pots and pans may be the only things they own. These issues are immediate, personal, and strongly emotional to the people involved, even if they appear minimal to an outsider. Litigants who are fighting to preserve what little they own are not comforted when a judge tells them that they should work it out themselves because it isn't worth much. To whom? Family Law Research Agenda I agree with all of the recommendations. If we don't have good data on what we are dealing with, how will we craft meaningful solutions to the problems we face. I particularly support judicial workload studies. The imbalance in the workload assumed by family law judges, in comparison to other civil departments, is inexcusable.	law assignment undesirable for some judges. The need for appropriate resources, both staff and judicial, as well as education and support for judges in the assignment must be addressed. The Task Force believes that over time, the effect of the changes it recommends will be to dramatically increase the desirability of the assignment. The specific suggestions for educational content on the stress and strain of the family law assignment will be referred to the implementation process. Family Law Research Agenda No response required

Commentator	Comment	Committee Response
	Similarly, I like the idea of expedited appeals in custody cases. An erroneous custody decision which takes years to wend its way through the appellate courts is a miscarriage of justice and the responsibility of the State to protect children. Court Facilities The condition of many of our family court rooms (Contra Costa's family courts excepted) is woefully inadequate. Many were not designed as courtrooms but in converted office buildings. Many courtrooms were designed for jury trials. When designing courthouses in years past, the necessity for private consultation and settlement rooms was well under the radar. As a result, a litigant's most intimate family details are often revealed in settlement discussions which, of necessity, are conducted in crowded hallways and public lunch rooms. This is incredibly degrading to the individual and utterly unacceptable. Self help centers need to be near the courts. Not everyone can leave children at home, so there need to be children's waiting rooms. Co-location of services is essential. And, having been present at a family law shooting years ago, safety is absolutely essential. Feelings run high in family law, violent people get divorced, people with poor impulse control and mental health problems are often in family courts, and the stress of being in family court puts an additional burden on their often undeveloped and overtaxed coping mechanisms. Courts used to have evening calendars in the 1930's and 1940's. In this era, when people are barely hanging on to jobs, and missing work might result in unemployment, the courts need to fit their schedules to the needs of the people rather than requiring people to adapt to the	Court Facilities No response required. Commentator's concerns are addressed in existing recommendations.

Commentator	Comment	Committee Response
	needs of the court. That means evening and weekend courts, where appropriate. Courts with large numbers of the working poor should be targeted first for flexible hours. This would benefit the courts immediately, since a single courtroom could be used by two judges on flexible schedules. One judge could have it from 8 to 4, another from 4 to 9 or ten. One judge could have it during the week, another on Saturday. This would make more efficient use of existing resources without requiring a large capital outlay to build more courts. And, of course, we need to make maximum use of available technology to ensure the best use of available resources.	
	Leadership, Accountability, and Resources It is shameful that so few resources are allocated to family law, in relation to other civil matters. A $35,000 fender bender may take a week of a jury's time, yet hundreds of thousands of family law dollars may be divided on the equivalent of a 20 minute calendar. Judicial resources should be allocated proportionally. There is really no justification for doing it any other way.	Leadership, Accountability and Resources The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law.
	Standard 5.30 should be a Rule of Court, binding on all Presiding Judges. Family lawyers should be appointed to the bench. Family law has been a stepchild of the courts forever, and it is time that ended. Family lawyers are viewed by other lawyers as less than "real" lawyers.	Standard 5.30 No response required.

Commentator	Comment	Committee Response
	Family law judges are not generally afforded the same respect as other judges. They are overworked, underfunded, and burn out in record numbers. One need only look to the statistic that family law represents 20% of the court's workload statewide, and receives only 9% of the resources, to understand the magnitude of the problem. I can't overstate the importance of implementing the recommendations of Section 21. This requires a major overhaul in how we think about family law as a branch of the courts, how we apportion resources, and how we recruit the people with the right qualifications and temperament to be family law judges, Conclusion I did not intend my comments to be nearly as long as the report itself and I apologize for the length. I commend the Task Force on its many thoughtful, creative, forward-looking, sensitive, and courageous recommendations. I would be happy to be a resource to the Task Force if further information or discussion is requested. I would like to end with my favorite access to justice quote "Lest the citizenry lose faith in the substance of the system and the procedures we use to administer it, we can ill afford to confront them with a government dominated by forms and mysterious rituals and then tell them they lose because they did not know how to play the game or should not have taken us at our word." Moore v. Price, 914 S.W. 2d 318, 323 (Ark. 1996), Mayfield, J., Dissenting.	
262. Catherine Tancredi, CFLS El Cajon, CA	Bring back the requirement that the PDOD had to be served within 45 days of service of the first paper, if the POS isn't timely filed, then	PDOD The Task Force is recommending that

Commentator	Comment	Committee Response
	schedule a hearing for that party's attorney only with a compliance date or else face a sanction – don't schedule CMC's until all PDOD's have been served Allow telephone appearances for CMC's or schedule them out further to allow more time for discovery. If appearances are necessary for CMC's, schedule them all on the same day of the week at each court at an odd time, 1000 am or 230 pm to avoid the parking problems caused by having us all have to be at court at once	PDODs must be served within 60 days of the first paper. Sanctions may be considered as part of implementation. Telephonic Appearances Telephone appearances and staggered hearings will be important strategies to consider in establishing case management rules and protocols.
263. Curt Taras Folsom, CA	*Protect a Child's right to joint parenting Make joint custody a standard default in contested Child Custody Cases. Children's desires to have equal parenting time with both of their parents should be protected. Often a Custody award becomes a dispute over tax deductions, support, and control of the parenting hierarchy. The courts need to take a stand and make it fair by granting a 50/50 custody award to the parents. It should then be up to the parents to work out their schedule, not the courts. Deny discretional move-aways Court approved move–aways are damaging children by allowing one parent to break the bond the child has with the other parent. This is sometimes done in revenge. Commentator provided specific information on case involving move-away. The courts should follow written legal criteria to grant a move-away. The courts should not be allowed the "widest legal discretion" in this fundamental question of basic rights. Family Code 3042 lays out clear guidelines that describe "Best Interest Criteria" for making custody decisions however the last paragraph grants Judges the "widest judicial discretion". This has become a back door around the laws the legislature put in place to	Joint Parenting The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Discretional Move-Aways The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

Commentator	Comment	Committee Response
	protect children's rights. Delete the widest discretion clause in Family Code 3042 which will direct courts to follow legal criteria when determining move-aways petitions instead of discretionary opinion. Please insert a section dedicated to move-aways in the contested custody recommendations. Listen to Children's Voices Children are the best voice for what they need in life, not highly paid attorneys, experts, or mediators. A child's voice should be trusted and valued above all others in matters of Family Law. A Child should be able to write or speak to the court directly without age limits. Prohibit outsider interpretations and battling expert opinion. Save the courts resources for listening to the only voice that matter, the Child's.	Children's Voices The Task Force agrees that children's participation should be considered on a case-by-case basis and that age, interest in participating and capacity are important factors to consider.
264. Leo Terbieten Manager Marin County Family Court Services San Rafael, CA	*Commentator raised concerns about the cost of the task force and provided the following comments Marin County FCS ran a program identical to the one proposed in the Task Force recommendations i.e. non-recommending followed by Judicial intervention. This approach, subsequent recommending mediation notwithstanding, prolongs the contested custody issues by several months. This means that the parents and children are subjected to ongoing cumulative conflict for a much longer period of time. In addition to the extra emotional costs, this approach forces the family to spend resources on litigation that could be better spent on their children. In Marin we changed our program from non-recommending to recommending for the reasons stated above. The feedback I've received regarding our program and programs like it statewide is that the parents are satisfied, and the Judicial officers are glad to have feedback from a mediator who has attempted to resolve the case but also furnishes	Contested Child Custody. The recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. Specific issues should be addressed as part of implementation efforts.

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	collateral information such as child interviews, to the Court (see AOC snapshot satisfaction surveys for statistical confirmation). I believe that Judicial officers do not want to make custody decisions without some input from a neutral third party be it mediator, child advocate or custody evaluator.	
265. Laura Tielman Manager Family Court Services San Diego, CA	On behalf of Family Court Services in San Diego Do not agree with proposed changes Children's Voices Oppose the issue of children being called as witnesses to testify in courtroom due to concerns of anxiety and emotional distress this may cause. By virtue of adversarial system, parents in conflict already feel like one parent is the winner and the other a loser when matter is settled by trial. Having children testify would lead to child feeling their testimony has contributed to the trial outcome, and put them in the middle of the adult issues.	Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their

Commentator	Comment	Committee Response
		preference or is deemed by the court and/or their parents to be the most appropriate approach.
	Domestic Violence Children's participation Oppose children being called to court as witnesses, for reasons stated above. Child Protective Services interviews children when domestic violence has been reported, and FCS mediators have the ability to also interview children to gather needed information.	Domestic violence Children's participation is addressed in that section (see above response).
	Enhancing Safety Related procedures Oppose the issue of children being called as witnesses to testify in courtroom due to concern of anxiety and emotional distress this may cause. In abuse cases, children are interviewed by CPS who are the trained experts designated to assess child abuse. Family Court does not operate under the same legal criteria as Juvenile Court and therefore does not fit into the same model.	Enhancing Safety This section has been redrafted and includes a recommendation for pilot projects to consider how to best handle cases involving allegations of abuse in family court.
	Child Welfare Services Children should have access to counsel, child welfare services, social workers and CASA. Children in Family Court system are not court dependents, and these recs seem to blur the line of that status. Funding for these services is also an issue.	Child Welfare Services The Task Force recommendations in this section address the concern that children involved in cases with allegations of child abuse in neglect should be afforded the same access to services as children in other case types with similar issues. Funding issues need to be addressed as part of

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		implementation.
	Contested Child Custody Information provision Child Custody Mediation Services Pilot projects for confidential mediation. A funding source for additional mediators would need to be identified as for recommending counties, this could potentially double the amount of cases being seen for mediation. Without the ability to staff these pilot projects properly, there would be delay in the resolution for families who do not reach agreement in confidential mediation due to the time between the first confidential appointment and the second evaluative appointment. Information would not be provided to Judicial Officers to assist in making temporary recs between the time of the confidential and evaluative mediation sessions. Greater examination of current models already being utilized and an assessment of best practices would be more useful. AOC Snap-shot study research could be utilized to compare client satisfaction, agreement rate, between recommending and non-recommending models.	Contested Child Custody Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. One purpose would be to identify promising practices.
	Appropriate number of mediators Support increased staffing of mediators, but again funding of positions is an issue.	Appropriate number of mediators Agree that funds to support the appropriate number of mediators is vital.
	Litigant Education Support efforts that increase parents' awareness of the mediation	Litigant Education Agree that utilizing on-line methods

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	process and make resource material more easily available. Utilizing on-line methods can be very productive. Leadership, Accountability and Resources Status of supervising judges Oppose due to need for court operations/staffing of court programs to be centralized under executive administration. Concern over increased perception of conflict of interest when judicial officers become directly responsible for supervising staff charged with making independent assessments.	can be very productive. Leadership, Accountability and Resources The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.
266. Vicki Trapalis Minor's Counsel Panel Bar Association of San Francisco Panel members who have approved these comments are set forth below. Contributing BASF Minor's Counsel Panel Members Christina Angell-Atchison Patricia Black Shelia Brogna Gregg Bryon Katie Burke Margaret Carlson David Donner	On behalf of the Bar Association of San Francisco's Minor's Counsel Panel Minor's Counsel Do not agree with the recommendation. The Minor's Counsel Panel of the Bar Association of San Francisco hereby submit the following comments on Section 9 of the Task Force Report, entitled "Minor's Counsel." Our group objects to the following recommendations in the draft report That minor's counsel should file no written report; may not determine if a client is of sufficient age and maturity to form an intelligent preference on disputed custody issues; must report the child client's stated desire to the court under all circumstances, and; to the recommendation that judges be trained to appoint minor's counsel only when "other interventions have failed." These recommendations appear to seek to eviscerate the system of minor's counsel as it	Minor's Counsel The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. However, the Task Force recommendation does support the idea that the results of counsel's investigation or fact gathering should

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Ruth Edelstein Scott Goering David Greenthal Michelene Insalaco Peggy Pendergast Nicole Perroton Cheryl Sena Ryan Sheets Nicholas G. Soter Vicki Trapalis MarkWasacz Claire Williams, Administrator, San Francisco Unified Family Court Caroline Conn, Bar Association of San Francisco	currently exists in California. According to the recommendations of the draft report, rather than acting as advocates for the children in family law cases, counsel would be relegated to the role of investigator, simply gathering and reporting facts to the court without undertaking any analysis or articulating any opinion on what is best for the child client. This role could easily be filled by a private investigator without legal experience or child development training. The Task Force's draft report proposes this sweeping change without clearly explaining why it is needed, and without providing any statistical data or other support for the conclusions reached. The Task Force seems to have forgotten that an attorney for a child is not a guardian ad litem or a social worker. He or she is an advocate, seeking to promote the best interests of the child client, who is often times the forgotten victim in the litigation occurring between warring parents. While we appreciate the goal of the Elkins Task Force in promoting the due process rights of the parties in family law custody disputes, the children are not chattel; their rights and concerns should be first and foremost. We also query why such extensive training is recommended if the role of minor's counsel is to be so limited. The draft report also fails to recognize a key role of minor's counsel which is to act as a de facto mediator in custody cases and assist with settlement of contested issues. With respect to the cases handled by the members of this panel, many of our minor's counsel cases are settled after we conduct our investigation and issue a report, or simply discuss our findings with the parties and/or their counsel without filing a report. Such settlements are certainly in the best interests of the children and	only be presented in the appropriate evidentiary manner so that the parties' due process rights are adequately protected and that any position minor's counsel will be taking also be presented in writing to the parties prior to any hearing on the matter. The Task Force recommendations on minor's counsel seek to further clarify the role of attorneys acting as attorneys for children. The recommendations were developed in part as a response to the public comment members heard about difficulties litigants and children experienced with minor's counsel. The Task Force did not seek to limit but instead further clarify this important role.

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	the work related to them should be encouraged. Our panel recognizes that minor's counsel should not act as the judge in any case, nor take over the role of a mental health evaluator; nor act as a percipient witness. However, we do not see how barring minor's counsel from issuing reports, seeking orders on behalf of clients, and making and articulating analysis in a case is the appropriate remedy to these perceived problems. Indeed the Task Force seems to "throw the baby out with the bath water" in its draft recommendations. Our panel has no objection to and agrees with the other provisions of the draft report, i.e. that there be more transparency and clarity about how and when minor's counsel is appointed and the selection of minor's counsel; that abundant training for both minor's counsel and judges be available; and that there be a uniform complaint procedure. In our review of the draft report the recommendations therein do not stem from clearly identified and articulated problems, and we believe that many of the issues raised are already addressed in large part by the provisions of Fe §3151 et seq, We strongly urge that the draft recommendations discussed herein regarding minor's counsel not be adopted as written without further consideration to the concerns raised above.	The recommendations do not bar reports or seeking of orders.
267. Selina Tso Litigant San Francisco, CA	Expanding Legal Representation and Providing a Continuum of Legal Services Expanding self-help services Whilst self-help services are very helpful to litigants, especially to self-represented litigants, and need to be expanded, self-help centers should be separated from family courts. They should not be court-based or	Expanding Legal Representation and Providing a Continuum of Legal Services Expanding self-help services Research on self-help services has found that court-based programs are

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	court-connected. It is possible that self-help staff, when working closely to judicial officers, would influence judicial officers' decisions in courtrooms, and the orders of judicial officers would affect the services litigants receive from self-help centers. To eliminate or minimize bias in courtrooms, judicial offices should not share staff, including family law facilitators and paralegals, with self-help centers; judicial officers should be free from other court personnel's personal opinions of litigants, particularly those opinions that are case-irrelevant. Moreover, a comprehensive listing of scope of service provided by self-help centers should be posted at the centers. Besides assisting filling out forms and preparing written agreements, self-help staff should take part in giving litigants education on court and legal matters, such as explaining and providing information about court process, basic legal principles, litigants legal rights, procedural requirements, settlement opinions, that are discussed in topic 11 of the Draft. They should also be able to give litigants directions to other legal resources such as research libraries and directions to appeal process. Children's Voices Providing for child safety and well-being in court proceedings, & 3, Exercising discretion and finding the least traumatic method for child involvement; pp. 26-28 Minors' testimony should not be taken in courtrooms. Children should not be questioned by court-based officials or counsels. Although all children may have the same rights under the law, children of family law	very effective in providing easy access for self-represented litigants and in identifying problems that self-represented litigants have with the court. There are many other fine, non-court-based services that litigants can use instead of self-help services. These topics are covered in the Guidelines for Court-Based Self-Help Centers. Children's Voices The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the

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	cases should not be treated the same as children of juvenile law cases who usually have problems with juvenile delinquency. The questioning of children of family law cases should be carried out by outside-the-court child psychologists or private mental health practitioners who have been trained to interview children. Evaluators (such as psychologists or mental health specialists), who generate evidence in this regard, and decision-making judicial officers should not be related. This is to eliminate or minimize possible bias. At the same time, this can reduce workload of court staff.	court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their preference or is deemed by the court and/or their parents to be the most appropriate approach.
	Enhancing Safety Hearing from children in chambers There should not be hearing from children in courtrooms. Furthermore, consideration should be taken whether it is necessary to take testimony of children in chambers. Reports concluding questioning of children from qualified neutral parties, such as child psychologists or private mental health specialists who are not court-connected should be deemed court evidence, unless children cannot be sworn outside court chambers.	Enhancing Safety Children's participation might include having children provide testimony where appropriate; however, the Task Force is not recommending this approach be mandated or that it be the only way children can participate.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

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	Streamlining Family Law Forms and Procedures Simplify procedures for service of process Service by mail can be included in the services provided by self-help centers. For various reasons, it is not always easy for litigants to find a person to help serve documents by mail. Self-help officers who are familiar with the legal forms and documents are most suitable to help serve by mail making sure all the required documents are enclosed. Some self-help officers are probably doing the service occasionally to facilitate the court process. The service needs to be officially stated and made known to the court users as an available service at self-help centers.	Streamlining Family Law Forms and Procedures The issue of service by mail by self-help centers should be considered as part of implementation.
	Family Law Research Agenda Litigant surveys In order to eliminate or minimize bias, for surveys on court performances, the staff who collect data and the evaluators who draw conclusions should be provided by AOC instead of the family courts. Subjects of survey (the court users) should be anonymous. The evaluators should be blinded. The entire process of survey and evaluation should be monitored to ensure the results meaningful and useful.	Family Law Research Agenda The recommendation includes the AOC as a partner in the research agenda in part so that AOC research staff can provide guidance to the courts on protecting respondent confidentiality and the appropriate use of the data.
	Court Facilities Co-location of services Locating self-help centers in courthouses may provide litigants and court staff convenience; however that may at the same time create impact on fairness to litigants. Self-help centers should be located outside the courts, led by a group of qualified family law attorneys	Court Facilities Co-location of services The suggestion to locate self-help centers outside the courts in inconsistent with the *Guidelines for the Operations of Self-Help Centers in the California Trial Courts*.

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	(non-court-based), and administered directly by AOC. Court Facilities Hours of operation As an alternative to providing flexible family court operating hours, legislation may be sought to mandate employers to provide paid leave, counted as paid sick leave, for employees to attend family law matters at courts. Leadership, Accountability, and Resources Complaint Mechanism There should be directions posted at self-help centers and clerk offices for litigants to file complaint about court services. There should be an independent state department rather than the courts to process and resolve the complaints.	Hours of operation The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Leadership, Accountability, and Resources Complaint Mechanism These suggestions will be forwarded to the implementation process. The Task Force contemplates that the complaint process would be within the judicial branch.
268. Kim Turner Court Executive Officer Superior Court of Marin County	I submit these comments on behalf of Marin County Superior Court judges, commissioners and family law support staff. General Comment The depth of the work accomplished by the Task Force is impressive. Almost every recommendation would improve the courts' services throughout the state. Yet, against the backdrop of the unprecedented fiscal crisis in California, it should be noted that a number of the Elkins recommendations will require additional financial resources in order to implement them. It is our hope that the Elkins Task Force will consider	General Comment Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which

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	the financial implications of its recommendations when drafting its final report and will provide latitude to the courts to move forward with implementation in a manner that is mindful of diminished resources. Where the Task Force recommends that courts develop written materials that are subject matter specific, rather than pertaining to local practices, the quality and consistency of such material would best be achieved if AOC developed and deployed those materials through its on-line Self Help Center. Many sections recommend that the court provide educational materials, brochures and other information. In our opinion, these materials can be generic enough to meet the needs of most litigants, leaving the courts with a more manageable task of creating materials that explain local procedures, practices or resources not otherwise described in Local Rules. The AOC's Procedural Fairness Editorial Board in the Promising and Effective Programs Unit of Executive Office Programs might be the ideal work group to assist with this effort. Given the reduced staff resources in every court, centralizing the creation of some of these materials is a better business strategy. Right to Present Live Testimony at Hearings We agree that evidentiary hearings are an effective way for the court to find out important information about family law matters. However, we disagree that there should be a presumption that there will be live testimony for every OSC, notice of motion or request for order. As conceived, this idea is impractical under the current structure of most family law departments. It would, unquestionably, require additional appearances of parties, particularly self represented litigants, who are typically unaware of the required procedures to request long cause	mandates are not adequately funded. Agree that these materials should be developed on a statewide basis through its on-line Self-Help Center. The AOC also provides a website for courts to share self-help content that has been developed locally which can be adapted by other courts. Right to Present Live Testimony at Hearings The Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial

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	hearings. Moreover, this idea may be in conflict with California Rule of Court 3.1306. Litigants should be made aware of the right to evidentiary hearings and the proper procedures to notify the court and opposing parties of a request for hearing.	officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars. The Task Force concluded that the right of the parties to present testimony at their hearings is fundamental to due process in family law. The standard should be live testimony, with certain exceptions. The Task Force recommendation retains judicial discretion to decide whether or not to take live testimony, but creates a set of reviewable factors judges must consider in their exercise of their discretion.
	Expanding Legal Representation and Providing a Continuum of Legal Services Early needs-based fee awards	Expanding Legal Representation Early needs-based fee awards Agree that there are many situations

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	We have a concern that many litigants involved in family law are unable to meet basic needs, such as food, clothing and shelter. Often it is difficult for the court to prioritize attorney's fees ahead of these daily and necessary expenditures. Certainly, in cases where money is not an issue or there is an obvious imbalance in the resources of one party over the other, the court reserves discretion to make these kinds of awards.	where parties cannot afford private counsel. But the Task Force is concerned that in those cases where one party is represented by counsel it is critical for the court to consider early fee awards to balance the representation of the parties.
	Caseflow Management The Court strongly supports the recommendations pertaining to implementation of caseflow management practices in family law. In Marin, we revised our local rules several years ago to create a case management framework and have found it to be the most successful strategy to assist self represented litigants, clear backlogs and keep cases moving forward.	Caseflow Management No response required.
	Efficient Use of Time We have a concern about permitting email statements in lieu of personal attendance at hearings. While telephonic appearances are readily verifiable, delivery of email is not as reliable and may result in frustration for litigants, rather than serving as an alternate method of interacting with the court. If the email sender believes s/he has "appeared" but the court has no record of having received an email, the sender may experience adverse consequences from a perceived failure to appear at a hearing.	Efficient Use of Time E-mail confirmation is an issue that should be considered as part of implementation. A system of confirming e-mails might be one potential solution.
	Sanctions against attorneys We strongly support this recommendation, as there is currently no effective remedy available to address improper or delaying tactics in	Sanctions against attorneys No response required.

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	family law. By giving the court the ability to impose sanctions for such behavior, this will create a more fair process for litigants, whether self represented or represented by counsel. Time standards While time standards are key to every effective case management system, we have concerns about this recommendation in two areas. First, as a matter of public policy, we do not agree that it is advisable to create a systems that 'pushes' litigants through family law proceedings, particularly when there may be a possibility that the parties may ultimately reconcile. By developing rigorous time standards, the perception is that court performance is measured by how effectively the court manages cases in family law. Our second concern is about the time standards, as they seem arbitrary and our experience tells us that they are overly ambitious for all but the most simple summary dissolutions or defaults. We encourage the Task Force to recommend that time standards be developed but only after there has been more research into what those standards should be. Potentially, these standards might best be developed after CCMS is implemented and the statistical data collection has commenced. Providing Clear Guidance Through Rules of Court Centralized statewide rules We have a concern that these may be too voluminous and cumbersome for them to be useful to self represented litigants. If the goal is to simplify family law procedures, the sheer number of subject areas that would be contained in these centralized statewide rules could be quite daunting to a self represented litigant. As conceived, this may be analogous to the 'simplified tax code' published by IRS that covers so	Time standards The proposed standards have been modified and will need to be carefully researched and developed more fully as part of implementation, and will need to be modified as CCMS is implemented. They are designed to ensure that courts can provide adequate resources to allow those parties who want to conclude their case in a timely manner to do so. Without standards, it is very difficult to advocate for resources in comparison to case types such as criminal, civil and juvenile that have timelines that courts must meet. Providing Guidance Through Rules of Court This concern should certainly be taken into account as part of drafting the proposed rules. However it is anticipated that this will be a compilation or reference to existing rules, and hence should be easier for

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	much subject matter, it is very difficult for the average taxpayer to navigate or understand.	litigants to use – for example, they would be clearly directed to the civil rules that pertain rather than being told that they all apply.
	Local rules We have a concern that some courts are already outpacing California Rules of Court in terms of developing customized local procedures (like case management) that might be lost if all local rules are eliminated except those expressly authorized by statute or rule of court.	Local Rules This recommendation will be modified to recognize the importance of innovation in local rules.
	"Local local" rules We strongly support the Task Force's recommendation to eliminate courtroom specific rules or procedures, as they disadvantage all litigants in the family court and are subject to no review or oversight.	Local, local rules No response required.
	Children's Voices We have a concern that the judicial discretion to include children's testimony or other input into family law proceedings is very subjective. Absent some relatively clear guidelines on age/developmental stage appropriate interaction with the court, the judicial officer may find it very difficult to know where to draw that line. Considering the best interests and wishes of children is already occurring in family law, but typically these are not ascertained by involving children in contested hearings (unless there is a very compelling reason to do so). This practice could be very controversial and may not provide the intended results.	Children's Voices The Task Force's recommendations in "Children's Participation" have been redrafted and provide factors and guidelines to review in considering taking children's testimony. The recommendations also provide for other ways children might participate if they do want to testify but would still like to be involved in some way in the family court process.
	The need for parents and the court to hear children's voices regarding	The Task Force agrees that

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	their experiences and/or choices about their time with parents who do not live together has been rated as "high" by some experts. The issue, though, for the court is whether their voices should be heard in a family law proceeding in the courtroom and/or judges' chambers. It is already established that the opinions and choices of children, ages 12 and older, living in two families should have priority. Some children, 11 and younger, depending on their maturity and family issue(s), may also have opinions or choices about their situations vis-à-vis the two-family structure. Just as important, research and experience tells us that children's opinions about their two-family experiences can be reliably obtained in settings outside of the formal court setting. We do not support the practice that a judicial officer interview a child or have a child testify in court in a family law proceeding. We do support providing an appropriate forum for a minor to discuss his/her opinions if he/she wishes to do so as to matters affecting the minor related to the two-family structure. Children's voices may be heard regarding the parenting plan/timeshare or other issues whenever children meet with a mediator, minor's counsel, Parenting Coordinator, school counselor, CPS, or with their own therapists. Implementation of a reasonable and safe procedure by which that information reaches the court mediator would ensure that the court has that information at the time custody/visitation orders are made. Any direct interaction between the judicial officer and the minor, regardless of age, should be the last resort and only then if circumstances are so extreme that that is the only way to obtain important information related to the child.	information may be obtained about children's wishes in a variety of ways and that no blanket approach to children's testimony or participation is appropriate given the wide variety of cases and issues before family courts. The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The recommendations also include other ways children might participate when they do not want to testify or they are not of sufficient age or capacity.

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	Enhancing Safety Child welfare services If the court becomes aware of an allegation of abuse or neglect, CPS is always notified and subsequently reports back to the court after its investigation. A difficulty arises when there are numerous unfounded and unproven allegations regarding a particular family law case, particularly when there are contested custody/visitation issues. Child welfare services are adjusting to the same funding cutbacks as other government agencies and must be mindful of expending limited resources on these cases to the exclusion of cases with serious, verifiable issues. The assistance of CASAs in these cases may be very worthwhile to provide support to children caught in the middle of these disputes.	Enhancing Safety The pilot projects recommended in this section can help identify promising practices in this area, including the role CASAs might play in certain family court cases.
	Contested Child Custody Methods to obtain information We have a concern that the methods described in this section to advise judicial officers of important and relevant information are duplicative of the information already provided by family mediators. It seems unnecessary to have additional forms and procedures to direct information to judicial officers when this information is readily available from the mediators.	Contested Child Custody Methods to obtain information Some courts may already use the forms recommended but such practice is not uniform throughout the state.
	Child custody mediation services We have a concern that the Task Force is recommending that all courts adopt a non-recommending, confidential mediation program. This model is already in use in about half of the courts in California while other courts have adopted a recommending model. Absent some evidence-based findings that confidential mediation is superior to	Contested Child Custody. The recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services and to assist in identifying promising

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	recommending mediation, this recommendation should be deferred until such time as those outcomes are available. Confidential mediation is more time consuming, more costly and there is no evidence that it renders better outcomes.	practices. The recommendation does not mandate that all courts adopt this approach.
	Resources for child custody mediation services We have a concern that there is no practical way for a court to estimate the amount of time needed to mediate each case. What does the Task Force envision here?	Resources for child custody mediation services The Task Force recommends that courts consider how to allocate resources according to the needs of various cases that go to mediation. Some cases may be more quickly handled than others, for example, if parents are close to reaching an agreement, while some families may benefit from additional mediation sessions.
	Appropriate number of mediators Unless the Task Force plans on providing caseload standards for mediators, there is no way a court can 'ensure that it has an appropriate number of family court services mediators'. How will this be accomplished?	Appropriate number of mediators The Task Force is aware of workload studies being developed for family court and recommend that consideration of mediator workload be included in those and related efforts.
	We strongly support the recommendation that mediation should occur before filing custody/visitation motions. However, this additional burden on FCS will require more financial resources.	The Task Force recognizes that expanding mediation services to include prefiling mediation would require resources and recommends this

Commentator	Comment	Committee Response
		be considered during implementation.
	Minor's Counsel We have a concern that the Task Force recommends that minor's counsel be limited to filing motions and proper pleadings. We believe that minor's counsel should be able to file a report, possibly labeled 'offer of proof', and that parents would have an opportunity to seek a hearing upon receipt to address the contents of the report, thus insuring due process rights.	Minor's Counsel The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and that any position counsel will be taking be presented in writing to the parties prior to a hearing on the matter.
	Develop procedures The declaration process set forth in rule 5.242 is impractical, as it requires the courts to develop tracking procedures for these declarations that may be easily and inadvertently overlooked by family law staff. Particularly in courts where the appointment of minor's counsel is infrequent, the follow up on the return of declarations may be difficult to administer, given the number of staff who may handle a declaration in a court. A better approach would be to have the court establish an annual qualified list of attorneys that self certify to having met the education, training and experience requirements so that parties may select attorneys from a pre-certified list of providers. Regarding the notification of the court when an attorney is subject to disciplinary action, there is no practical way a court can enforce this requirement or be held accountable for its enforcement.	Develop procedures The Elkins Family Law Task Force recommends full implementation of California Rules of Court, Rule 5.242, which does not preclude courts from establishing lists of qualified attorneys. Proposed changes to this existing rule should be referred to the appropriate Judicial Council advisory group or be considered during implementation efforts.
	Complaint procedures	Complaint procedures

Commentator	Comment	Committee Response
	While courts have developed complaint procedures to handle complaints against minor's counsel, it is impractical for this to be handled as an administrative procedure. Complaints against minor's counsel typically are made in the courtroom, in motions for removal or in declarations or other pleadings. These complaints rarely, if ever, come to court administration, as contemplated in rule 5.240.	In addition to full implementation of California Rules of Court, rule 5.240, the Task Force recommends statewide forms be developed to assist with these processes.
	Litigant Education Wherever possible and practicable in this section, it would be helpful for the AOC to take the lead on developing litigant orientation and educational materials. Please see our general comments about the Elkins Report.	Litigant Education Agree that the AOC should take a lead on developing materials for courts to use and adapt.
	Streamlining Family Law Forms and Procedures We agree that legislation should be enacted that simplifies many of the cumbersome processes in stipulated judgments and summary dissolutions. Wherever possible, AOC should take the lead on developing simplified, readable forms and procedures for routine family law matters and discovery. Again, please see our general comments about the Elkins Report.	Streamlining Family Law Forms and Procedures No response required.
	Interpreters While there is no question that interpreters are needed in family law and that any prohibitions on their use in family law should be eliminated, there remains a severe shortage of these resources in California. It would be helpful to standardize a way to identify interpreter cases (perhaps a check box on the petition or response) so that the court can try to plan for these resources whenever possible.	Interpreters Agree that it would be very helpful to standardize a way to identify interpreter cases. Since many parties will not actually need to speak in court, this identification might be most appropriate on motion forms.
	Judicial Branch Education	Judicial branch education.

Commentator	Comment	Committee Response
	We support all efforts to bring specialized training in family law to judicial officers and support staff. CJER should make this a high priority. Family Law Research Agenda Statewide statistical reporting As long as CCMS is designed and has the functionality to automatically collect and tabulate the data identified by the Task Force, we are in support of this initiative. If, however, the data must be gathered manually, it will create a significant administrative burden on the courts. Court Facilities Hours of operation In these difficult times, it will be impractical to extend courthouse hours into the evenings. Staff and facility costs would be prohibitive. Leadership, Accountability and Resources 1B. We have a concern about the recommendation that the supervising family law judge have a supervisory role in the court's self-help center. Self-help centers provide services in a number of areas that are not related to family law. If the family law supervising judge was involved in supervision of the self-help center, it might send the wrong message to staff about what is important. Moreover, it might create confusion about oversight of this core function in court operations.	No response required. Family Law Research Agenda Agree. The recommendation had been modified to emphasize the collection of data that are readily available through case management systems. Court Facilities The Task Force recognizes the potential cost implications, which is why the recommendation encourages courts to take such factors into consideration in exploring the feasibility of offering extended hours. Leadership, Accountability and Resources The recommendation on the status of the supervising judge has been modified to clarify that the role is to provide leadership and coordination, rather than management of the self-help center and other critical services in the family court.
269. Peter Turner	Commentator provided letter with information on specific case and the	

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San Francisco, CA	following comments Regarding the sections of the draft proposal The Right to Present Live Testimony at Hearings I have never spoken to anyone involved in a family law case who has not claimed false declarations. I have experienced that with every hearing, and part of the problem has been that the judge refuses live testimony in the hearing. No one can ever be held to account for perjury without having testified, so when a judge is known to not allow it, truth - and the justice that depends on it - is the first casualty. Reminders of the fifth and sixth amendments to the constitution guaranteeing due process and the right to confront witnesses should not be necessary, nor should be reminders of the erosion of due process that has become epidemic in our society. Under NO circumstances should live testimony be prohibited. Expanding Legal Representation and Providing a Continuum of Legal Services While I think the findings and suggestions in this section are well motivated, I find a disconnect between them and the real problems of representation and attorney fees. Attorney fees became a vehicle for conflict, not a means to diffuse it, and that is always a danger. When one party is represented and the other is not due to inability to	The Right to Present Live Testimony at Hearings. The Task Force agrees with the commentator with respect to the importance of live testimony. The recommendation. There are many family law OSC/Motions such as those related to ancillary procedural matters, or in which there are no material facts in controversy, that may be appropriately decided on the basis of declarations. The Task Force has therefore elected to maintain judicial discretion, but set out reviewable factors judges must consider in exercising their discretion. Expanding Legal Representation and Providing a Continuum of Legal Services The Task Force recognizes that a case in which one party is represented by counsel and the other is not can be challenging for all concerned. This is one of the reasons the Task Force

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	afford counsel, the represented party wins disproportionately due to counsel's familiarity with the preferences of the judge. The unrepresented party then has to pay attorney fees they can't afford in the first place. In the unlikely event that an unrepresented party wins, the time and energy spent, which can be financially burdensome, result in no compensation. Add in a judge who openly criticizes a party for being unrepresented and the scales of justice wind up with a metaphorical brick on one side in favor of the party with more resources rather than truth, fairness, or the best interests of the affected child. Obviously, reduction of litigation results when the reality of the costs becomes apparent. But when an attorney assures a client that their motion will probably be granted, resulting in attorney fees, that incentive for cooperation is lost. A party who simply wants to continue a working agreement that is oftentimes a court order becomes saddled with attorney fees for just wanting to not enflame conflict. Just as obviously, unethical attorneys will be tempted by the financial rewards of such tactics, and we all know that far too many of them exist. Court policies prohibiting attorney fees for upsetting standing visitation agreements should be enacted. The task force should examine the tie between attorney fee awards and exacerbation of conflict. If the result of any recommendation is an increase in litigation, almost inevitable when attorney fee awards become a part of legal strategy, you should instinctively know you are on the wrong track. While a more balanced access to counsel seems fair on its face, the means of achieving that can result in more problems than it solves. The reality of budget constraints leads to an acceptance	concluded that a recommendation facilitating the ability of both parties to access representation would be beneficial. Additionally, the Task Force received many requests from the public asking for a recommendation regarding the need to make attorneys' fees awards early in the case so as to help square off the imbalance described by the commentator. The Task Force recognizes that the issue of attorneys fees can become a contested issue that can then ironically lead to the need for more attorneys' fees. Attorneys' fees in family law are either based on need (when one party can afford representation and the other cannot) or as a sanction, a deterrent to a litigant to filing needless motions or other pleadings, or not cooperating in some way with the court. The Task Force anticipates that the implementation of effective caseflow management can be helpful in containing attorneys fees and that judges will have the information they need to make awards of attorneys' fees appropriately with respect to the

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	that significant funds for legal services will not be forthcoming in the foreseeable future. Therefore, a goal of reduced litigation should guide you, and that would trend towards solutions envisioned by the collaborative law process.	financial realities of the parties as well as their litigation behavior. The Task Force expects that family law judges should be neutral and not biased against either attorneys or self-represented litigants. A separate sanction for attorneys who seek to change an existing visitation schedule is not an appropriate remedy to the issue of problematic attorneys fees. There are many situations in which circumstances have changed and there are good reasons to change an existing visitation schedule.
	Expansion of legal services for appellate cases I think expansion of legal services for appellate cases is a worthy recommendation, as my main concern is judicial accountability and increased access to appellate relief would enhance that.	Expansion of legal services for appellate cases No response required. Expansion of legal services for appellate cases – no response required.
	Caseflow Management Sanctions against attorneys Sounds great, but my experience is that inappropriate behavior is praised and rewarded, not sanctioned. The real problem, unstated, is inappropriate ties between judges and attorneys, allowing for that behavior, as well as inappropriate behavior on the part of the judge,	Caseflow Management Sanctions against attorneys Concerns about judges should be provided to the Commission on Judicial Performance for their review.

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	creating a tone that is mimicked. So sure, sanction them, but when the judge creates the problem, who does the sanctioning? And who sanctions the judge? Children's Voices Input from children Generally, I think the notion that children are so vulnerable that they will suffer psychological damage from expressing themselves in custody proceedings is an exaggeration. Testimony on a witness stand in a courtroom filled with other parties and attorneys is an exception. Commentator raised concerns about minor's counsel not interviewing the minor and the minor not otherwise having direct access to the court. When a law such as Family Code Section 7890 exists and a judge threatens a party for asking for its application, is the problem the lack of a law or the lack of judicial accountability? 5.2-3) I believe that all children should be heard, with the caveat that maturity should determine the setting, but with no subject off the table unless a clear showing that psychological damage could result, with the burden of proof on the claimant; and that more deference should be granted a child's wish in contested custody matters. Failure to hear children usually results in misrepresentation of their wishes, and lest we forget, the overriding concern of any family law decision should be the best interests of the affected children.	Children's Voices Input from children The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. In addition to providing children who want to testify the opportunity to do so, the recommendations offer ways for children who do not wish to testify to participate in the family law process as may be appropriate, or to be kept out of the process entirely if that is their

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		preference or is deemed by the court and/or their parents to be the most appropriate approach.
	Domestic Violence and Enhancing Safety Unfortunately, domestic violence and child abuse are oftentimes falsely claimed in contested custody proceedings. At the same time, the existence of both is oftentimes concealed by any or all interested parties. Cultural prejudices can intervene to place undue burdens on fathers who are effectively presumed guilty until proven innocent. The task force should take into consideration an important factor regarding this issue Usually the outcome of these issues depends on the actions of the police, and usually that outcome is not in anyone's best interest nor a lasting resolution of the problem. They, and child protective services, are oftentimes overburdened, understaffed, jaded, or unable to deal with the complexities of a situation that might not fit stereotypes; and the child, who is confused, frightened, intimidated, or unsure of who to trust, ends up without their voice being heard. Of all subjects in this draft, this one cries out for more education and monitoring of court officers and advisors. It is too easy for subjective feelings or personal experiences to trump sensitivity and compassion regarding these issues.	Domestic Violence and Enhancing Children's Safety The Task Force recognized the importance of carefully considering allegations of abuse and violence in family law cases and considered this in developing recommendations in these areas
	Under no circumstances should an allegation of child abuse go unanswered. Parties or attorneys who make false claims should be strictly sanctioned, as that is harmful to children, but the conclusions of police or child protective services should not be taken at face value. Instead, children should be questioned in as sensitive a manner as possible, but that must be done. Judges, or anyone else charged with the responsibility to report on that issue, but fail to do so when abuse	Sanctions Currently law provides for sanctions under certain circumstances related to making false allegations. Because the Task Force focused primarily on procedural changes to ensure access and due process in family law and this

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	allegations are brought should be sanctioned as well. Family law professionals need to recognize that the adult world frequently brings its darkest side to children and those who are charged with acting in the best interests of those children must be cognizant of every aspect of this issue and their actions should be above reproach. Contested Child Custody Methods to obtain information This section states that the due process rights of litigants must be protected. But protected against whom? It is judges who deny those rights, so if oversight of judges is lacking, this mandate of protection becomes meaningless. The concept is laudable, but if judges are making the final recommendations of this task force and are reluctant to make recommendations that might impinge on their sense of judicial independence – an understandable instinct - you will have made no progress. An acknowledgement that due process, while originating in legislation, is inevitably interpreted by appellate judges, and that it is lower level judges who create problems, is key. Strict judicial accountability is necessary to guarantee due process. Investigators and evaluators The sense of this subsection is very commendable. Commentator raised concerns about evaluations being used in litigation and causing additional trauma and noted the following evaluations are dangerous in that they become forums for parents to trash each other, fueling competitive instincts, creating unnecessary and burdensome costs, and also put third parties whose motives might not be as neutral as is the ideal in what is effectively a decision making role. Therefore, while concurring with your recommendation I would add that education	issue is a substantive policy area, the Task Force did not choose to make recommendations regarding this issue. Contested Child Custody Methods to obtain information The Task Force includes judicial officers, attorneys, and court managers and administrators; recommendations were developed with significant public input received in writing and through in person meetings, public hearings, and focus groups so that the final recommendation might reflect a range of topics and points of view. Investigators and evaluators The Task Force recommends further clarification of the roles of evaluators and investigators.

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	and oversight of judicial processes to ensure that evaluation is not ordered unnecessarily should be added. Opportunity to respond and Opportunity for cross-examination This is also an important recommendation. Evaluation reports are lengthy and complex documents. The notion that a controlled viewing of such a report is adequate, as is now the practice, is known by most of its victims to be false, and is in reality a violation of due process. Sweeping assumptions and conclusions are made by those who have impressionistic understandings not subject to review by the participants. Commentator raised concerns about accuracy of evaluation reports and interviews. It is essential that all evaluations allow both parties to obtain draft reports and be given an opportunity to rebut assumptions and for that to be appended to any report to the court. Both parties should be provided copies of the final evaluation report well in advance of any hearing based on it. Both parties should be able to argue their rebuttals in court with an opportunity to present witnesses and be provided an opportunity to initiate a simple investigation to resolve questions of veracity. Evaluators should not be given judicial immunity for their work. If they commit acts that can be found to be crimes they have no business in such a responsible position. Those modifications to evaluation procedure should be codified to protect against judicial tolerance of false reportage and provision of excuses for biased decisions. Child custody mediation services I concur in the recommendation of this subsection and subsection 5 that mediators should not provide recommendations to the court. Recommendations regarding custody are of paramount importance and	Opportunity to respond and Opportunity for cross-examination The Task Force agrees that reports and recommendations need to be made available to parties and those providing that information need to be available to testify and for cross-examination. Child custody mediation services Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to

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	sensitivity, and should be done only by those whom the parties understand have that purpose. The confidential nature of mediation can only be utilized to its fullest advantage when both parties have confidence in it. That cannot occur when the candid give and take normally present in mediation could lead to a custody change.	provide a range of services.
	Access to family court services I concur in the recommendation regarding access to family court services, but would add that rules regarding confidentiality be clear and consistent. I recommend that the task force incorporate a recommendation that would allow exceptions to confidentiality rules for inappropriate conduct, especially by attorneys, that seeks to encourage contempt or create conflict.	Access to family court services Existing law provides consistency regarding confidentiality and requires that limitations on confidentiality be explained to parties in child custody mediation.
	Information from family court services and evaluators Please see my response to subsection 8.1.C-D above. I feel strongly that the present prohibition on parties being provided copies of evaluation reports should be reversed, as this results in a compromise of due process. Given the length and complexity of those reports, simple viewing is inadequate. If confidentiality is an issue, a compromise between the parties receiving evaluation reports and those reports being available to the public can be enacted.	Information from family court services and evaluators The Task Force agrees that parties should receive copies of reports or information being provided to the court by evaluators.
	Minor's Counsel Commentator raised concerns about perceived conflict with minor's counsel and opposing counsel. Strict neutrality between the parties and committed involvement with the client is necessary for a minor's counsel. When no one involved understands that the counsel becomes just another drain on the finances of the parties, raising tensions, and	Minor's Counsel Specific issues related to minor's counsel appointments, including when and how such appointment may terminate, should be considered as part of implementation efforts.

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	adding to the perception that every aspect of the process is a job security program for attorneys. Minor's counsel should be subject to rejection by either party at any time if a lack of appreciation of their responsibilities is demonstrated. Litigant Education Orientation to child custody mediation If courts are to provide what could amount to referral services for custody evaluations, the courts should be careful to monitor those evaluators. My experience with custody evaluators showed me that some might have impressive credentials but no sensitivity to their responsibilities or accountability when the neutrality and accuracy mentioned in the draft is absent. Any information on evaluations should include warnings to litigants on what can go wrong, as the consequences can be serious, and also guidance on how to resolve the problems that can arise. Settlement opportunities Your statement that bias favoring settlement over litigation should be avoided is absolutely wrong. It ignores the destructive nature of litigation and the mistrust and divisiveness that results. One of the tragedies of custody litigation is that cooperation is replaced by antagonism when it occurs. 12) Expanding Services to Litigants in Resolving Their Cases I fully agree with the statement in your second paragraph of this section and wonder if you realize how it conflicts with the statement in 11.4 cited above. Commentator recommends "open mediation", described as follows a mediator would be free to report to the court on whether good faith had	Litigant Education Orientation to child custody mediation The Task Force recommends clarification of the role of investigators and evaluators and full implementation of existing statewide rules in this area. Open mediation Child custody mediation is governed

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	been shown by either or both parties, should be explored as a procedure when allegations of bad faith on the part of a party is alleged. Better training and education for not only family court services mediators, but also private ones, would help in this; but the key could be the more frequent use of it, resulting in more familiarity with the procedure on the part of the mediators and encouraging good faith by the parties. A realization that the entire family court process can bring out competitive tendencies in those who have the emotional investment that is common is necessary to appreciate the need for expanded use of this procedure. Streamlining Family Law Forms and Procedures In spite of this subject initiating the task force, I think emphasis on it is misplaced. The procedures are the symptom, not the cause. The problem is the ability of judges to create self serving procedures. While uniform and fair procedures are necessary, a deeper understanding of root cause of this issue - and willingness to face it - is as well. Enhancing Mechanisms to Handle Perjury I fully support your analysis, conclusion, and recommendations, but would add to that. Under “New civil sanctions” the conditions necessary for criminal prosecution are listed. I believe all parties should be informed of the consequences of perjury at the outset and if the conditions listed are met, that prosecution should occur. Furthermore, rarely does that perjury take place without the knowledge of counsel. I believe the laws governing subornation should be enforced just as rigorously. Parties in custody cases are inevitably emotionally involved. While the interests of children are harmed by perjury in those situations, making the offense that more onerous, it can be reasonably argued that serious criminal intent is usually not present. But attorneys	by existing statutory law regulating what mediators may report to the court. The Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Streamlining Family Law Forms and Procedures No response required. Enhancing Mechanisms to Handle Perjury This recommendation has been significantly revised in response to comments.

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	are experienced in the law, trusted as officers of the court, not emotionally involved, and have a potential material interest in enflaming conflict which some are not ethically disposed to resist. No matter what collegial relationship a judge might have with an attorney, to allow subornation to occur without consequence would compromise the credibility of the entire process. I have seen and heard of that, and much of the cynicism that the public holds for family law is a result of it. However, one problem that relates to this is the presentation of information in the court. Motions are accompanied by declarations, supposedly made under penalty of perjury, but perjury laws are rarely, if ever, applied to them. When courts rely on those declarations without their authors testifying, those courts can make decisions based on false information. Additionally, attorneys always present information during oral argument that has none of the potential for sanction as testimony might, but which is usually relied upon by courts for decisions. In order for the issue of perjury to be adequately addressed, several points should be included. First, parties should be sworn when in court and their declarations should be explicitly entered into the record as testimony under penalty of perjury. Secondly, attorneys should be cautioned that knowingly false argumentation will bring sanction, and that should be enforced. Penalties, including both civil and criminal, should be applied. I know this sounds harsh, but this is a situation that is far more commonplace than seems to be acknowledged, and the civility and credibility of the process will greatly benefit if that harshness is applied. The reality of perjury is usually that it contains inflammatory charges that reduce the possibility of cooperative and constructive solutions. If perjury, subornation, and false argumentation	

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	are allowed to continue with the frequency they now enjoy, a less obvious but far more destructive harshness will result in the form of emotional distress to the affected children. Judicial Branch Education My experience is not that a lack of knowledge of the law hampers family law judicial officers, but a lack of respect for it. My own research on family law and appellate decisions leaves me thinking that all of it is surprisingly simple, reflecting common sense and community standards. Therefore, any contention that judicial officers make errors out of ignorance seems questionable. However, given the laudable goals expressed in your recommendations, I heartily concur. Children's Needs The best way to ascertain children's needs is to hear from them directly. This is far simpler than is normally stated. In this respect, children are tougher than adults give them credit for. They would feel more at ease with the situation if they thought adults listened to them and respected their wishes. Family court I'm sorry, but the negative stereotypes about family courts are more accurate than your own opinions amongst yourselves than you realize. The Elkins case is a proverbial canary in a coal mine. In that case the canary spoke through the State Supreme Court. Listen. Enforceable orders Orders should not only be enforceable, but enforced when they can be. If a judge engages in contempt of her own order, and that is clear and	Judicial Branch Education No response required. Children's Needs No response required. Family court The educational content in 18 B) is "about the role of family court and the impact and significance of decisions." The Task Force believes this is consistent with the Elkins case. Enforceable orders The Task Force recommends that "All

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	demonstrable, that judge should be subject to contempt sanctions and discipline, up to removal, by the court or the Commission on Judicial Performance.	judicial officers should be provided with training and education on how to craft court orders that are clear, specific, and able to be enforced effectively." Any issues involving judges being in contempt would appropriately be handled through the judicial discipline process.
	Self-represented litigants In cases where one party is represented and the other is not, attorneys who take advantage of that, for example by drafting stipulations that clearly misrepresent what has been agreed upon, should be subject to sanctions. I would like to see that included in the recommendations of the task force.	Self-represented litigants This comment is in response to a recommendation about judicial education related to self-represented litigants, but it raises a concern about attorney misconduct. The suggestion about attorney sanctions will be referred to the implementation process.
	Procedural justice Commentator suggests that judges who insult or threaten litigants should be sanctioned, up to and including removal. Additionally, he notes the following If they cannot restrain themselves from that they are unqualified for their position. Additionally, chambers conferences in which all meaningful negotiation occurs, but which exclude litigants, deprive those litigants of their voices. When judges find themselves embarrassed by the introduction of transcripts they routinely resort to chambers conferences. Chambers conferences should be discouraged, as they are too frequently used as a means of avoiding litigant's voices and judicial accountability.	Procedural justice This comment should be considered as part of the implementation process.

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	Family Law Research Agenda I applaud the effort to keep statistics as listed in your recommendations, and also think a mandate for studies that draw conclusions from them should be added. I especially think that litigant satisfaction surveys related to procedural fairness should be given added emphasis. In case you need a warning you will be overwhelmed with the responses, and they won't be good. This was the original issue in Elkins, and while in his case it related to structural procedures for his trial court, procedural fairness is absent all too often in courtroom practices and only discerned by litigant satisfaction surveys. Additionally, those surveys should not be a dead end for complaints. Obviously additional staff would be needed to investigate and respond to complaints, but that could create an incentive for more fairness at the trial court level and gradually result in actual cost savings due to decreased litigation and appeals, not to mention the less tangible social benefit. One important statistic that should be closely monitored is the gender of awards of contested custody. The judiciary has not kept up with its mandate from the legislature in this regard. Judges or jurisdictions that indicate bias should be scrutinized, educated, or disciplined. Expedited Appeals Your recommendation for expedited appeals, especially in custody matters, is excellent and overdue. Leadership, Accountability, and Resources Everything I've written up to this point leads to the crux of the problem Leadership and accountability. But here is where I separate from the	Family Law Research Agenda With respect to complaint reporting, the Task Force believes that research and statistical projects should be conducted separately from any quality control processes or performance monitoring. Methods of ensuring accountability are addressed in other sections of the recommendations. Expedited appeals No response required. Leadership, Accountability, and Resources The recommendations on Leadership,

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	recommendations of the task force most clearly. Your concept of leadership is to advocate for raising the status of judges in place and to promote commissioners to judges. For me, leadership means to inspire confidence by example, to elevate the credibility of the system in which they have been chosen for the honor of serving the people, to demonstrate wisdom and compassion in the face of opportunities to oppress and deceive. Yet the very necessity for this task force, the personal accounts and examples of impropriety from the aggrieved, and the cynicism about the family courts that permeates the discussion among its veterans, point to a culture of contempt for law, lack of accountability, and an indictment of a professional class for a betrayal of principle. While your recommendation for more judges or commissioners due to their disproportionate caseload has merit, your recommendations for promotions do not. A clear message should be sent by this task force lest its purpose be lost in minutia. When a study of this magnitude ends with a recommendation for promotion of those who have brought about the need for the study at in the first place while giving little attention to the need for accountability, the nature of bureaucracies to find a means to degenerate will inevitably emerge. While your recommendations contained in subsections II and 12(C) are laudable, it is important to note that the standards and court rules cited already create an obligation of courts and presiding judges to ensure against bias. Yet appeal to a presiding judge to remove a trial judge for cause rarely produces results. The task is farmed out to a judge in another jurisdiction who has little patience for the task, does a superficial reading of the appeal, and allows professional loyalty to dictate the decision against the appellant. Also, the standards applied by the Commission on Judicial Performance are narrow and focus on such	Accountability, and Resources are intended to make far-reaching improvements in the quality of services to the public in our family courts. The Task Force recommendations point to the critical need for increased judicial resources in family law through all available approaches, including improvements to increase operational efficiency, the re-allocation of existing resources, and medium- and long-term plans to secure additional resources for family law.

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	mundane issues as excessive tardiness and absenteeism. The Commission and presiding judges need to be attentive to rulings so erroneous that they suggest incompetence, deliberate bias, or contempt for law. As has been noted by the task force, a disproportionate number of litigants in family courts are unrepresented. They are vulnerable and distraught from the dissolution of their families and possibility of losing their children. To victimize them is cruel and irresponsible. Those who would do so are unsuited for their positions. The lack of judges should never excuse tolerance of abuse. I would draw your attention to Marriage of Biallas (App. 4 Dist. 1998) 76 CalRptr.2d 717,65 Cal.App.4th 755. That modified the standard of abuse of discretion by trial court judges in family law cases and stated "Standard of appellate review of custody and visitation orders is the deferential abuse of discretion test; nevertheless, when the trial court orders a change in an existing custody arrangement, an appellate court is less reluctant to find an abuse of discretion." Part of the message here is that special attention needs to be provided to judicial accountability in family law, but my experience is that no such attention is applied when seeking removal of a judge for cause in a family law case. The procedures for removing a judicial officer who shows bias or a lack of respect for law (not a simple and understandable error) should be more accessible and responsive. Repeated examples of this should result in removal from the judiciary altogether. The overall tone of this section when addressing accountability is vague and misleading. I read no acknowledgment of bias or the discrediting of the family law process that results. Instead I read a reference to court - based services and an emphasis on procedure, head counts, jurisdiction, funding, and staffing. Subsections 11 and 12(C) need expansion and	Accountability The recommendations to increase accountability in the family courts include the creation of a complaint mechanism, public information about

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	emphasis. Judicial accountability is the problem, and affects every section of this report on which I have commented. If the only references to that are those two meek subsections, you will have come up short in fulfilling the responsibility to which you have been assigned. I know it is difficult to take swords against a sea of troubles and by opposing end them, especially when that includes criticism of your colleagues, but that is your assignment.	how to resolve complaints, and the evaluation of the creation of a court ombudsman position. The Task Force believes that having an improved complaint process and ombudsman will provide more convenient and accessible options for litigants who have complaints and concerns, and to improve procedural fairness at the local level.
270. C. Richard Urquhart Certified Family Law Specialist Vacaville, CA	First I am grateful to the committee for the recommendations submitted. They fully comply with the spirit of Elkins. I do believe however, that the components under 11 and 12 should provide for a strong recommendation for an immediate and mandatory post filing JOINT orientation as to the alternatives available to the parties to resolve the issues in a dissolution or paternity proceeding. Appropriate dissolutions with domestic violence allegations can be post filing and post TRO if the parties agree or the court deems it safe. The requirement could be met through either the court facilitator office or by referral to a panel of court approved mediators. Family Court Facilitators should be required to undergo an introductory course on mediation so that they understand the process and how parties are introduced to the mediation process. (There are a number of states which require mandatory mediation on family law cases, but I don't believe such an order is appropriate--parties have to be willing to buy in to the process to successfully mediate). Alternatively, if the parties were referred to a qualified family law mediator, the mediator could (1) explain the various methods available	

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	for resolution (including the court process) and (2)determine with the parties their present ability to mediate--which as I am sure you know, would require full disclosure as part of the mediation process. If the parties were still at the "let the court decide" stage, then the mediator could spend additional time, if necessary, to explain some of the more traditional issues surrounding the legal process i.e. what the Court expects of them, such as disclosure forms, joinder of retirement plans etc., the necessity of having to present evidence regarding the issues they cannot agree on etc. and what they can expect of the Court, A declaration that the parties had undergone this process would then allow the parties to further utilize the court model for resolution of their case. Commentator noted his years of experience and, based on that, recommends confidential mediation with a neutral who has no ability to make recommendations or provide evidence. He included statistics demonstrating high rates of agreement and suggests mediation can be done at any stage. Additionally he noted custody mediators cannot work as true neutrals when they give recommendations, whether subject to examination or not and the use of that term is somewhat misleading. And family law judges who effectively use "mediation" techniques to obtain settlements may be successful in the short term, but I see just as many of their cases coming back because the "agreement" reached was more the result of the authority of the judge then desires of the parties. On another issue, a number of states appoint GAL's (Georgia is one that comes to mind) to represent children from the start of cases that have contested issues re custody and visitation. Their obligations are much the same as contemplated under the Elkins recommendations, i.e. to represent the child's best interest as well as appropriately express the	Contested Child Custody. The recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. The Task Force recommendations regarding child custody mediation seek to provide opportunities for courts to offer child custody mediation services akin to mediation services provided in civil matters. GALs The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a

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	desire of the child(ren), but through evidence as advocates, not as experts or evaluators. If Cal was to adopt that process, it might very well result in far less extended custody (both pre and post judgment) litigation as the parties would have an early indication of what the child's "desires" or "best interests" were from the child's perspective. Although the issue of costs would have to be explored, the Elkins commission might consider a recommendation for an automatic appointment of minors counsel in any case which indicates contested parenting issues. If the case management recommendation is adopted, then such an appointment could be accomplished fairly early. On the issue of forms simplify, simplify and delete. Over the last 30 years I have seen an evolution in the complexity of the forms at least equal to if not more than the evolution in the law. And although the law may seem very complex, it still comes down to the 3 or 4 basic areas property, children, support and attorney fees (for represented parties). The Courts and the Council should allow the attorneys to agree on what is or is not necessary for the final resolution of the case and stay away from trying to micromanage the results for the pro pers i.e. inventing forms that try to cover every possible agreement or order that a court might make. If someone forgets something, then sort it out later--that is why we have statutes and case law dealing with omitted assets, and procedures for the modification of support--and with more teeth put in disclosures rules ala Feldman, Courts should not have to make sure the parties have complied with technical details of two disclosure forms--make it one, at the time of filing with an obligation to update if other	substantive policy area in which the Task Force did not choose to make recommendations. The Task Force does not recommend automatic appointment of minor's counsel given the variety of cases that come before the court and the need to consider how to best address issues related to custody on a case-by-case basis. Forms – simplify and delete Many forms that provide for specific orders are optional and, while they must be accepted by the court, they do not have to be used. Since over 70% of the litigants in family law are not represented by attorneys, it is important to develop forms that allow them to set out their issues and obtain clear orders from the court.

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	assets were omitted for some reason.	
271. Connie Valentine California Protective Parents Association	Thank you for the well-written and well-considered recommendations to improve family court. Most clearly meet the Elkins Family Law Task Force (the Task Force) Guiding Principles. However, one recommendation appears to be directly contrary to your Guiding Principles. We believe it would replicate the very ailment the Task Force seeks to cure, which is simplification at the expense of due process. Caseflow Management Having involuntary case management (recommendation 11, page 20) by an individual, whether it is a judge, a commissioner, a Special Master or other professional, would be the diametrical opposite of access to justice, fairness and due process. Litigants report that even stipulated case management creates a situation of near absolute power. There is no oversight in family court to provide checks and balances. Appeals are prohibitively expensive, and therefore unaffordable to most citizens. Case management is not an appealable issue. • Even if a party can borrow money for an appeal, parties report that retribution is swift if an appeal is filed. • Many court hearings are not even transcribed. In one county represented on the Task Force, parties report they are not allowed a court reporter even if they offer to pay the court or court reporter. Thus, they cannot appeal. We are deeply concerned that a recommendation for involuntary case management by an individual would deny access to justice and due process, which would further reduce public trust and confidence in the	Caseflow Management The Task Force recognizes the concerns expressed by the commentator about the appointment of non-judicial ancillary professionals who are given either express or implied decision-making power that is perceived to be without any practicable accountability. The Task Force does not support the implementation of any caseflow management system that would delegate any form or type of decision making to a non-judge or commissioner. On the contrary, one of the goals of the Task Force's vision for caseflow management is to significantly decrease in the use of ancillary professionals such as special masters, parent coordinators, child

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	court. • In a second county represented on the Task Force, picketing by citizens in the late 1990's led to the elimination of the Special Master stipulated case management program and resulted in improvements. • In a third county represented on the Task Force which currently has case management, citizens are picketing because of due process violations. • In a fourth county represented on the Task Force, litigants report that they are planning to picket due to abuses by judges who appoint themselves as case managers. One litigant reported that the judge threatened "I will be on your case until your child turns 18 and you can never ever get away from me. You will stop reporting abuse." • Litigants from other counties represented on the Task Force report similar problems.	custody evaluators and minor's counsel. The Task Force recognizes the difficulty that many family law litigants have in accessing the appellate process and has recommended that the appellate program operated by Public Counsel in collaboration with the Court of Appeal, Second Appellate District be expanded to all appellate courts. The majority of the points in the recommendation on caseflow management relate to modernizing court operations in a way that is meant to facilitate access to timely and fair hearings and trials in front of judges; not obstruct it. While the recommendation does set out a requirement that the court provide opportunities to participate in settlement discussions throughout the process, participation in any type of alternative or consensual dispute resolution or settlement discussion, with the possible exception of a pre-trial settlement conference, should not

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		mandatory and should always be voluntary. The judicial case management component of the recommendation is meant to address situations in which cases are having problems moving forward. The Task Force envisions caseflow management as a way to increase the effectiveness of the court as a service to the public, never as a basis from which to behave in a threatening or disrespectful manner towards attorneys or litigants. The goal of the Task Force is to provide an effective infrastructure within the court that will help remove the types of barriers to justice that the commentator sets out. The Task Force has heard from the public through both written and oral presentations that litigants in family law want their cases to move forward in a reasonable and timely manner. Dissatisfaction has been expressed with attorneys who are perceived to drag out matters, churning fees and increased costs to litigants. Attorneys

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		and litigants have all complained about problems resolving discovery matters. Self-represented litigants often do not know how to finalize their cases so that they linger indefinitely. The Task Force concluded that the current inability of judges to implement case management absent stipulation has significantly contributed to the persistence of these and other problems identified by attorneys, their clients and self-represented litigants. In a survey of family law attorneys, respondents reported that one of the main reasons they use private judges (when their clients can afford it) is that the private judges have the time required to effectively manage the flow of the case according to its individual needs, and to be accessible to resolve procedural problems and help settle cases. The Task Force does not want the public to have to pay for private judging to access to these service.
272. Connie Valentine California Protective Parents Association	Commentators separately submitted the following comments Caseflow Management Agree with the recommendation subject to modifications as described below	Caseflow Management The majority of the points in the recommendation on caseflow

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Darby Mangen National Organization for Women San Gabriel Valley Whittier Chapter	Recommendations regarding caseflow management that are primarily clerical, organizing functions that provide timelines and reminders for those timelines generally meet the Guiding Principles of the Task Force. However, we would like to offer the following modifications, which are critical to ensure access to justice, procedural fairness and due process rights of litigants. Resources available for ADR. Settlement assistance should be available throughout a case to assist parties in resolving all or a portion of their cases. However, ADR should not be utilized in such a manner as to limit a party's right to a full and fair hearing of any issues in dispute,.-Domestic violence and child physical and sexual abuse cases should not be referred to ADR due to their criminal nature and inherent power imbalance. If parties choose to use ADR, they should only be offered non-binding arbitration and should sign a statement that indicates there was no coercion, threat or duress used in that choice. ~~11. Courtroom management tools – legislation required. Judicial officers should, with input of the litigants and their attorneys, have the ability to control the manner and pace of the litigation by a method appropriate to each case, consistent with the Code of Civil Procedure, which may include establishing discovery schedules and cut-off dates, setting dates for exchange of expert witness information, and other pretrial orders. Under current law these orders can be made only upon stipulation by the parties.~~ ~~Judicial officers in family law should have the same authority to work with the parties to develop case management plans that judicial officers have in civil cases. These plans may include early neutral case~~	management relate to modernizing court operations and providing an infrastructure that facilitates access to timely and fair hearings and trials in front of judges. Resources available for ADR. The Task Force agrees that care must be taken when considering when and how settlement services should be offered and implemented in cases where there is family violence or other power imbalance. The specific language suggested by the commentator will be considered during implementation when drafting of a rule of court.

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	~~evaluation, alternative dispute resolution, a discovery plan or limitations on discovery, use of telephone conferences, the appropriate waiver of requirements of procedural statutes, jointly selected or court-appointed expert witnesses, bifurcation of issues for trials, and allocation and awarding of attorney fees and costs. Establishing such a plan can eliminate unnecessary motions, encourage timely resolution of the case without using unnecessary experts, and identify areas where early settlements are possible, thereby saving the parties significant costs without compromising their due process rights.~~ ~~Legislation should be pursued to authorize the Judicial Council to promulgate rules giving judicial officers the authority to manage family law cases from initial filing through postjudgment. Family Code sections 2450, 2451, 2032, and 2034 should be modified to provide the courts with greater authority and flexibility to more effectively manage the full range of family law cases.~~ NOTE Courtroom management tools that give broad power and control over parties from initial filing through post-judgment to a specific professional (i.e., Special Master, case coordinator, parenting coordinator, judge, or commissioner) is the exact opposite of due process, fairness and access to justice. Litigants are not cases to be managed; they are human beings in the midst of stressful circumstances. They are seeking justice, fairness and due process from the court, not governmental parenting. We have observed picketing in front of courthouses in counties that have case management by judges and Special Masters. A research project comparing litigant satisfaction in counties with and without case	NOTE The Task Force recognizes the concerns expressed by the commentator about the appointment of non-judicial ancillary professionals who are given either express or implied decision-making power that is perceived to be without any practicable accountability. The Task Force does not support the implementation of any caseflow management system that would

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	management should show the difference in quality of access to justice, fairness, due process and public confidence/trust. This recommendation is simplification and streamlining that diminishes due process rights and removes litigants' liberties. It would negate all other recommendations and reforms. It has a high probability of abuse, as is currently occurring in counties with individual case management and will greatly decrease the public's trust and confidence. It is therefore contraindicated as a recommendation, according to the Elkins Family Law Task Force's Guiding Principles. ~~12. Sanctions against attorneys. Rule 2.30 of the California Rules of Court (Sanctions for rules violations in civil cases) should be amended to include family law matters or a similar rule should be adopted into the family law rules. Currently, the only option that a judicial officer has for sanctioning inappropriate or delaying behavior is to order the offender to pay a portion of the other party's attorney fees. This should be expanded to allow imposition of sanctions that the attorney should pay, not the interested party. In addition, where parties are both self-represented, the judicial officer should be permitted to order the parties to pay sanctions to the court.~~	delegate any form or type of decision making to a non-judge or commissioner. On the contrary, one of the goals of the Task Force's vision for caseflow management is to significantly decrease in the use of ancillary professionals such as special masters, parent coordinators, child custody evaluators and minor's counsel. The majority of the points in the recommendation on caseflow management relate to modernizing court operations in a way that is meant to facilitate access to timely and fair hearings and trials in front of judges; not obstruct it. The judicial case management component of the recommendation is meant to address situations in which cases are having problems moving forward. The goal of the Task Force is to provide an effective infrastructure within the court that will help remove the types of barriers to justice that the commentators set out.

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	Written orders after hearing. Whenever possible, the preparation of orders after hearing should be incorporated into the court's process the orders would be completed by court or self-help staff and reviewed by the judicial officer within a set time period (preferably immediately after the hearing) and a copy served on all parties, including attorneys who appeared. In cases where counsel is directed to prepare orders after hearing, clear rules should be established for their timely preparation and review. If one party is represented and the other is self-represented, the court, not counsel, should prepare the orders after hearing. Self-represented parties who reach a settlement without a hearing should also be assisted in preparing written agreements that will be filed with the court.	Written orders after hearing. The Task Force has heard from the public through both written and oral presentations that litigants in family law want their cases to move forward in a reasonable and timely manner. Dissatisfaction has been expressed with attorneys who are perceived to drag out matters, increasing costs to litigants. Attorneys and litigants have all complained about problems resolving discovery matters. Self-represented litigants often do not know how to finalize their cases so that they linger indefinitely. The Task Force concluded that the current inability of judges to implement case management absent stipulation has significantly contributed to the persistence of these and other problems identified by attorneys, their clients and self-represented litigants. In a survey of family law attorneys, respondents reported that one of the main reasons they use private judges (when their clients can afford it) is that the private judges have the time required to effectively manage the flow of the case according to its individual needs,

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	Children's Voices	and to be accessible to resolve procedural problems and help settle cases. The Task Force does not want the public to have to pay for private judging to access to these services. Sanctions. Limiting sanctions in family law to the payment by one litigant for the attorneys' fees of the other is often ineffective and unfair. Just as in other civil litigations, inappropriate professional behavior by attorneys who fail to follow the rules can cause delays and other problems, through no fault whatsoever of the client. Yet unlike in civil, only the litigants are forced to pay for these problems. The Task force believes that the court should be able to sanction attorneys for their own failure to follow the rules. The commentator's suggested modification with respect to written orders after hearing will be considered during implementation when the rule is drafted. Children's Voices The Task Force agrees that its

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	~~1. Input from children. In appropriate cases, judicial officers should consider whether and how a child might meaningfully participate in a given family matter.~~ Family Code section 3042(a) provides that "If a child is of sufficient age and capacity to reason, the court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody." There are general legal and psychological, as well as case-specific, reasons to consider a. Studies have recognized the importance of hearing from children in matters that affect their lives and have shown that children do better when they are aware of the process and how decisions will be made; ~~b. Family Code section 3042(a) requires the court to consider the wishes of the child in custody disputes if the child is old enough to have formed an intelligent preference;~~ b. Family Code section 7890 et seq. requires the court to consider the wishes of the child in termination of parental rights proceedings and to take testimony of a child who is 10 years of age or older; and c. In some cases, a child is a percipient witness and has important information that the court needs to consider in deciding the dispute before it. NOTE This is a requirement, not an option. However, currently practice of family court is to give no weight to the wishes of children, regardless of their age or capacity to reason. Comments Page 26 A. ~~The judicial officer must control the examination of the child witness to protect the best interest of the child (Fam. Code, § 3042(b).)~~ While requiring the court to consider the wishes of the child of	recommendations should include reference to Family Code section 3042(a). The recommendations in Children's Participation reflect support for considering children's wishes and input in a variety of ways, including by taking testimony. There are cases in which the parents may agree and adequately represent the wishes of the child and there are cases where children do not want to testify but where a professional mediator or evaluator may be able to present information that allows the court to consider the child's wishes without having to call them to testify. The Task Force recommends a balanced approach that considers this issue on a case-by-case basis with no blanket rule requiring or prohibiting children's participation. The section on children's participation has been redrafted and both sections of Family Code section 3042 are included in the recommendations. The Task Force agrees that courts knowing they are required to control examination to

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	sufficient age and capacity to reason, at the same time Family Code section 3042(b) also "requires the court to control the examination of the child witness so as to protect the best interests of the child. The court may preclude the calling of the child as a witness where the best interests of the child so dictate and may provide alternative means of obtaining information regarding the child's preferences". Decisions concerning the child's best interest arise in the context of a wide variety of disputes. They range from, for example, disputes about which parent is going to take the child to a piano lesson or soccer practice to challenging, prolonged, highly conflicted custody disputes. This variety calls for developing several different methods for obtaining input from the child, each appropriate to the issues involved, the age of the child, and other developmental and procedural concerns. NOTE Citing both parts of Family Code Section 3042(b) makes this section clearer. B. Children's input should not necessarily need to be equated with testifying in a courtroom. A child's input may not be needed at all~~, as in the case of a young child or a case~~ where parents are able to agree on decisions. ~~Input may be received in the mediation or evaluation process.~~ However, the judge should speak directly to children when parents disagree on custody or visitation. In cases where~~ courts decide to have~~ the child directly participate in the court process, precautions or protocols should be developed to avoid subjecting the child to unnecessary trauma. For example, the court should make certain that the child has been acquainted with the courtroom environment and knows what to expect. ~~Minor's counsel could be appointed to assist in preparation of the child and in the delivery of the child's testimony (see~~	protect the best interests of the child and that they may preclude calling a child as a witness and provide alternative means of obtaining information about a child's preferences is important. B. This section has been redrafted and does not reference a particular age; the Task Force does not recommend that the court speak directly to children in all cases where there is a contest initially over custody. In many of these cases, parents agree that keeping their children out of the custody negotiations or litigation is important for their well-being. In other cases, children do not want to speak directly to the court but may benefit from speaking with court-connected

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	~~Minor's Counsel section).~~ The questioning of the child could take place in chambers. The court could be assisted in questioning the child by professional staff associated with family court services or ~~private mental health practitioners~~ multi-disciplinary interview investigators who have been trained to interview children. NOTE It is current practice for mediators, evaluators and minor's counsel to speak for children. Having the child's voice filtered, muffled or distorted is the very problem we bring before the Task Force. Ironically, family court treats children (central members of a family) as non-entities or property, yet in other courts, children are directly involved in proceedings that affect them. For example, they have standing at any age in juvenile dependency court (W&I Code section 349) and have testified in criminal court as early as age 4. Minors have been charged with murder as young as age 7 and can be prosecuted as adults for capital crimes. Children are entitled under certain conditions to consent to mental health and substance abuse treatment at age 12 (Family Code sections 6924 and 6929) and to medical care at ages 12-15 (Family Code sections 6922, 6926, and 6927). They can emancipate at age 14 (Family Code sections 7120). They need to be able to protect their personal safety in family court. Comments Page 27 ~~Involving other professionals and providing information. In disputed cases where their participation seems warranted, children first should be provided the opportunity to meet with a mediator or an evaluator working with the parents in order to give them a sense of being heard and to assist them in understanding court procedures and the decisionmaking process. Parents and the court could obtain information~~	professional. In other cases, children may not be of sufficient age or capacity. The court has an obligation to take children's best interests into account in each case and proceed accordingly.

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	~~about the child's point of view from the mediator or evaluator, which may lead to a resolution without the necessity of further child involvement. Courts should encourage parents to allow children to participate in programs that provide information to families and children about the divorce/separation process. Family law judicial officers should consider participating in these programs or presentations that allow children to find out more about the divorce/separation process so that the children can become informed and have the opportunity to participate, even if it is only by understanding the court process.~~ NOTE This is the current status quo which is <u>not working</u> for children in family court. Most children express a desire to talk directly to the judge regarding their custody and visitation wishes. They should be entitled to the same respect as children in dependency court, including notice of the hearing; choice of counsel (if the court has appointed counsel); ability to address the court and participate in the hearing if desired; and at age 10, guarantee of ability to be present and participate in hearings. This would provide children access to justice, fairness, due process and equal protection under the law, while increasing their trust and confidence in the court. Comments Page 27-28 C. Involving the child. In those contested custody cases that present the greatest challenge of finding a way to involve the child in the proceedings while protecting the child from feeling caught in the middle or experiencing other trauma, the court, should, on a case-by-case basis, find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of	Status quo. The Task Force recommendations highlight the need for family courts to consider children's participation. Many family court cases that start out with custody conflicts settle without involving children. Most family law cases result in both parents having some parenting time with their children. Being given the same civil rights as in juvenile The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role

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	meaningful input from the child. Courts should consider the following in determining the appropriate action to take Involving the child. In those contested custody cases that present the greatest challenge of finding a way to involve the child in the proceedings while protecting the child from feeling caught in the middle or experiencing other trauma, the court, should, on a case-by-case basis, find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of meaningful input from the child. Courts should consider the following in determining the appropriate action to take ~~Whether it would benefit the court to question the child;~~ ~~Whether it would benefit the child to be questioned by the judicial officer;~~ ~~Whether there are drawbacks to questioning the child; and~~ Whether the child wishes to testify or speak to the judge; and if so, whether testifying is best done in chambers or in open court. ~~Whether a given child should testify at all, and, if so, whether testifying is best done in chambers or in open court.~~ ~~Upon deciding to take the testimony of a child~~ , If the child wishes to testify or speak to the judge, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which a child can be open and honest. Courts should consider the variety of possible settings for taking children's testimony, including an open courtroom; a closed hearing with only attorneys present; in chambers	and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by

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	questioning without attorneys and parents present, using questions submitted in advance by the attorneys or the parties; in chambers questioning with attorneys present but with the judicial officer questioning the child; or in chambers questioning with only the judicial officer and court reporter present. In all cases, a court reporter must be present to ensure due process.	case basis, as may be deemed appropriate by their parents or by the court. The Task Force agrees that considering whether the child would like to testify is an important factor for the court to consider when deciding whether to take a child's testimony.
	NOTE Children in family court must be entitled to make their wishes known directly to the court if they so desire. This will provide the court with more accurate information.	The Task Force agrees that children's testimony must be on the record.
	Domestic Violence Comments NOTE The Domestic Violence Practice and Procedure Task Force, endorsed by the Elkins Family Law Task Force, does not sufficiently address child custody in child abuse and domestic violence cases. Research shows that children of batterers are 6.5 to 19 times more likely to be victims of incest than children of non-battering parents and that 70% of batterers who ask for custody receive it. A violent parent is not harmed by seeing a child under supervision; however, a child is destroyed when removed from a safe parent and placed with a violent or sexually abusive parent.	Domestic violence The Task Force endorses the recommendations from the Domestic Violence Practice and Procedure Task Force and developed additional recommendations regarding domestic violence and family law.
	Commentators provided references to articles on the above points. Therefore, we recommend the following section be added to the report When allegations of domestic violence are raised, the court should 1) order an investigator to gather facts pursuant to Family Code section 3118 as amended by CA Rule of Court 5.220(e) (2) and submit those	Ordering an investigation Family Code section 3118 references investigations for cases involving child sexual abuse. The Elkins Family Law Task Force focused primarily on

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	facts on a comprehensive standardized template that enables the investigator to comply with all pertinent laws and Rules of Court, and 2) ask the child directly which parent is safe and whether the child wishes to visit the unsafe parent with supervision. The court should be required to err on the side of child safety when the child reports violence or sexual abuse to law enforcement or CPS. Children's personal safety must be ensured to the degree possible and the child should remain or be placed in the custody of the non-abusive parent. Children's participation. Just as in cases involving abuse and neglect, the court must give any child who is the subject of a custody or visitation hearing appropriate notice of the hearing, the opportunity to be present at the hearing and be represented by counsel of the child's choice (if counsel has been appointed), the opportunity to address the court and participate in the hearing if the child desires, and at age 10, guarantee of ability to be present and participate in hearings. ~~appropriate consideration to the question of whether the~~ The child's point of view and the information the child has regarding the violence ~~would be~~ is probative in determining the risk posed to the child and the ultimate decision regarding his or her best interest. NOTE See below for the relevant W&I Code section. W&I Code section 349. (a) A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Sections 290.1 and 290.2, is entitled to be present at the hearing. (b) The minor and any person who is entitled to that notice has the right to be represented at the hearing by counsel of his or her own	procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Children's participation. Being given the same civil rights as in juvenile The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the

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	choice. (c) If the minor is present at the hearing, the court shall allow the minor, if the minor so desires, to address the court and participate in the hearing. (d) If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire whether the minor was given an opportunity to attend. If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing. The court shall continue the hearing only for that period of time necessary to provide notice and secure the presence of the child. The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend. (e) Nothing in this section shall prevent or limit any child's right to attend or participate in the hearing.	child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court.
	Enhancing Safety A. Related procedures. ~~Cases~~ Family court should be required to ensure that, in cases involving allegations of child abuse, including allegations of domestic violence, child(ren) who are affected by the procedure are entitled to the same due process as set forth in W&I Code section 349. When the child is called upon to testify with respect to the allegations,	Enhancing Safety This section has been redrafted and recommends implementation of pilot projects to identify promising practices and provide children in cases with allegations of abuse and neglect access

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	family court procedures should follow juvenile court procedures dealing with the control and conduct of proceedings with respect to the testimony of the child. As set forth in Welfare and Institutions Code section 350, except when there is a contested issue of fact or law, proceedings should be conducted in an informal, nonadversarial atmosphere with a view to obtaining the maximum cooperation of the child and all persons interested in his or her welfare. Expedited handling. There should be expedited handling of cases involving ~~serious~~ all allegations of physical or sexual child abuse or domestic violence, including emergency procedures so that the judicial officer can quickly analyze the situation and determine what orders are appropriate to protect the child from physical abuse as defined in Penal Code section 11165.4, sexual abuse as defined in Penal Code section 11165.1 or domestic violence as defined in Family Code 6203. There should be expedited access to the courts and special training for mediators, investigators, and judicial officers. Mediation should not be required when there are allegations of child abuse or domestic violence, due to the criminal nature of the allegations and the inherent imbalance of power. The cases should move as quickly as possible to ensure child physical and sexual safety and access to justice, due process and fairness to all parties. A child's physical and sexual safety is more important than a parent's access to the child. Data on allegations of physical or sexual child abuse, domestic violence and substance abuse pursuant to Family Code 3011 must be collected by a trained investigator on a standardized template to ensure compliance with all pertinent laws and rules of court.	to appropriate services. Expedited handling. Domestic violence cases are currently handled expeditiously under the Domestic Violence Prevention Act. Child custody mediation is governed by existing statutory law; related statewide rules of court provide guidance for handling cases involving domestic violence including providing for screening, separate sessions, and participation of support persons. The Task Force recommendations on domestic violence and settlement opportunities recognize the need to consider power imbalances and provide for alternative approaches where joint sessions would not be appropriate. Use of template The Task Force

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	Child welfare services ~~. Child welfare or protective services should be required to become involved in all cases involving child abuse and neglect.~~ Research shows that allegations of child abuse in family court are no more likely to be false than in any other circumstance. Child protective services (CPS)/child welfare services should not treat those cases differently from cases involving the same or similar issues in juvenile court simply because one parent has sought relief in family court. Rather, CPS should be required to assist the court in fully investigating and providing appropriate resources as they would to children handled through their protection system. (See, for example, Welf. & Inst. Code, § 328.) If CPS substantiates an allegation of child physical abuse pursuant to Penal Code section 11165.4, child sexual abuse pursuant to Penal Code section 11165.1, or domestic violence pursuant to Family Code section 6203, family court should be required to provide protection for the child through supervised or no contact with the dominant aggressor or perpetrator named by the child until the child expresses a desire to visit unsupervised. If CPS does not substantiate the abuse, family court should conduct a thorough investigation to determine if there is evidence of physical or sexual abuse or domestic violence and protect the child as specified above. However, no child should be removed by CPS from a non-abusive parent who is not been adjudicated unfit in juvenile court. Children in these cases should have	recommendations have been updated to reflect the recommendation that further research be conducted into the use of templates for reporting on these and related evaluations (see Family Law Research Agenda). Child Welfare Services Suggestions for changes made in this section reflect substantive law changes that the Task Force did not address as it primarily focused on procedure changes. Note The Task Force agrees that once child welfare is involved, family law cases should be handled as other cases involving allegations would be handled.

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	access, if they wish, to counsel of their choice, to child welfare services, to social workers, and to Court Appointed Special Advocates (CASAs). Statutory, rule, or regulatory changes that may be necessary to implement this recommendation should be undertaken. NOTE Because child protective/welfare services are understaffed, overburdened and often the subject of lawsuits for malfeasance, it is not recommended that CPS be required to be involved in family court cases. However, once involved, they should treat the cases the same as any other case. Do not agree Contested Custody Cases Investigators and evaluators. In those cases where additional information is needed, courts should have investigators and evaluators available. Court orders should clearly indicate whether an investigation (to gather existing information pursuant to Family Code section 3118 when allegations of child physical abuse, child sexual abuse, domestic violence or substance abuse arise, present ~~determine~~ facts to the court on a standardized template, and not to make ~~assessments~~ recommendations ~~or evaluations~~ or an evaluation (when there are no allegations of child physical abuse, child sexual abuse, domestic violence or substance abuse) is being ordered. CA rules of court should be clarified to ensure these categories are distinct and that all reports are provided to the parties and their attorneys for review and correction before being provided to the court, to ensure that accurate information provided to the court. Child custody mediation services.	Contested Custody Cases Investigators and evaluators. The Task Force agrees that further clarification of the role of investigators and evaluators would be helpful and that reports provided by these professionals need to be provided to the parties and their attorneys so that they have an opportunity to respond. However, it is not always possible for those reports to be provided prior to court hearings. Child custody mediation services

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	To address concerns raised as part of its work, the task force recommends that pilot projects be implemented throughout the state to provide litigants initially with the opportunity to mediate their contested child custody matters confidentially, in cases without allegations of child physical or sexual abuse or domestic violence. Pilot programs should include those superior court jurisdictions in both large metropolitan areas and suburban areas that currently authorize recommendations by local court rule. NOTE Since many California courts already have confidential mediation, this pilot project could compare courts with confidential mediation and courts with "recommending" mediation to determine if there are differences in consumer satisfaction, complaints, appropriate use of mediation (i.e., not in cases of child physical/sexual abuse, domestic violence or substance abuse) and payment is made to ancillary professionals pursuant to Family Code section 3112. Information from family court services and evaluators. To address concerns about procedural fairness and due process~~,~~ ~~information provided to the court from~~ family court services, staff currently trained and qualified as mediators, should ~~be~~ conduct confidential mediation and provid~~ed~~ only a list of unresolved issues to the court, without recommendations ~~in writing to the parties and their attorneys prior to a hearing on the matter. Under Family Code section 3025.5, if recommendations are included in the report, the report must also be filed in the confidential portion of the family law court file.~~	Pursuant to current statutory law, all contested child custody cases must be set for mediation. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Note Implementation could include considering these questions. Information from family court services and evaluators. Pursuant to current statutory law, mediators may make recommendations under certain circumstances. The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. However, the Task

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	Evaluators The courts should ensure that evaluators do not evaluate cases with allegations of domestic violence or child physical/sexual abuse; are paid pursuant to Family Code 3112 with repayment by the parties to the court only if parties are financially able to repay; and that price to submission to the court, any evaluation of report has been stipulated toJ1.vJbe parties pursuant to Family-Code 3111 (c). In addition to reviewing the report and recommendations, the court must give the parties the opportunity to be heard on the recommendations and reports and to cross examine the evaluator so that judicial decision making and orders reflect input received from the parties directly as well as the recommendations, Recommendations should not be presented as final court orders unless and until they are incorporated as such into an order or a judgment. NOTE Family Court Services provides mediation, which should be confidential. FCS staff members are not qualified or trained pursuant to CA Rule of Court 5.225 to provide investigations or evaluations. The intent of SB 1716 (Ortiz) which established Family Code sections 3110.5-3118 was for investigators, including FCS staff, to be fully trained and qualified to gather existing information and provide facts to the court. The law's intent was muddled and lost in ensuing CA Rules of Court, and confusion arose due to the interchangeable use of the terms “investigation” and “evaluation”. This led to role confusion. One bright spot is that ROC 5.220(e) (2) broadened the scope of Family Code section 3118 to include all investigations/evaluations.	Force does recommend establishing pilot projects to that those courts seeking to provide a range of services including confidential mediation may do so. Family Code Section 3112 This code section appears to refer to situations in which court employed investigators conduct the investigation not private evaluators or investigators. It is not clear that courts are expected to cover the costs of private child custody evaluators or investigators in situations other than when they are employed by or on contract with the court. Note Family Court Services staff who are appointed to conduct child custody evaluations are required to complete the same training as private child custody evaluators and such training is routinely provided throughout the state.

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	A clear definition for each role is needed. Investigations of domestic violence and child physical/sexual abuse should be done be qualified investigators highly trained by a multi-disciplinary team including law enforcement officers who investigate violent and sexual crimes using a uniform curriculum and standard template. The court should ensure child physical and sexual safety above all. Evaluators should be mental health professionals who provide assistance on parenting plans in cases without such criminal allegations. Family Code section 3112 requires parties to repay the court if they are able (not pay court-ordered professionals directly, as is current practice in many courts). Minor's Counsel. Agree subject to modification below Role definition. .... Minor counsel's role is to function as an attorney in representing these interests on behalf of his or her client and, as Family Code section 3151 further indicates, to gather facts relevant to the proceeding. Orders, conduct, ~~and~~ training should ~~reflect recognition of this important~~ role and ensure that minor's counsel exercises ordinary care and diligence in the representation of a minor child. Family code section 3151 should be amended to stale that any counsel appointed by the court to represent a child in a custody proceeding shall function as any other counsel for any other party, and shall owe the child the same duty of competent representation. The child's counsel is bound by the same ethical rules and guidelines as all other attorneys. In no case shall the court assign the child's counsel and role or responsibility, nor permit the child's counsel to act in such a way, which usurps the court's adjudicatory responsibility, grants the child's counsel parental rights	The Task Force agrees that clarification of the roles and duties of investigators and evaluators needs to be provided during implementation. Minor's Counsel Role definition. This section provides guidance as to the role of minor's counsel and notes that minor's counsel role is to function as an attorney. The recommendations further note that "[o]rders, conduct, and training should reflect recognition of this important role."

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	and responsibilities, impairs the parents' due process rights or suppresses evidence of the child's abuse or neglect. Any child's attorney shall be subject to the court's contempt powers for malfeasance. Review of costs. Courts should routinely review costs and bills ~~being sent to parties for privately paid minor's counsel.~~ When ordered by the court, minor's counsel should be paid by the court and the court be repaid by the parties, if parties are financially able to repay. NOTE It is the exact opposite of due process and fairness to have parties pay for court-ordered minor's counsel who charges whatever the market will bear and stays on the case until the child is 18. The party with the most resources often ends up paying minor's counsel who acts as a second attorney. Expanding Services. Agree subject to modification below Any person working to help parties mediate ....particularly when domestic violence is present in a relationship. Mediation ~~may be~~ inappropriate in some of these cases, If parties choose to use mediation, they should sign a statement that indicates there was no coercion. threat or duress used in that choice and opportunities for shuttle discussions, mediations held by videoconference, or other methods should be considered to allow parties the opportunity to try to resolve their issues without physical coercion. All forms of ADR available. ~~As a component of caseflow management~~ All forms of ADR, including	Review of costs The Task Force recommends that courts routinely review costs and bill for those parties paying minor's counsel directly and that courts consider imposing a cap on fees, limiting the time minor's counsel is involved in the case, and setting automatic hearings on these fees so that the parties are aware of the expenditures. Expanding services The Task Force recommendations on mediation acknowledge that power imbalances may make joint sessions inappropriate and that parties should be informed of the process so that they can determine how to best proceed.

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	mediation, arbitration (binding and nonbinding), and settlement conferences should be available to litigants consistent with the litigants' needs and the court's resources. A court party should be able to consider the use of ADR at any time during the process, ~~case-management rules should establish, as~~ ~~a preference to assist litigants in settling their cases if possible. This would include both based and non based court options.~~ ~~Information~~ about the case, such as declarations of disclosure, should be exchanged prior to ADR and education about the legal issues in their case and potential solutions should be provided to litigants prior to their participating in ADR so that they can reach knowing and voluntary agreements. ADR is inappropriate in- cases with allegations of domestic violence or child physical/sexual abuse, due to the criminal nature of the allegations and the inherent imbalance of power. If parties choose to use ADR, they should only be allowed non-binding arbitration and should sign a statement that indicates there was no coercion, threat or duress used in that choice. Enhancing Mechanism to Handle Perjury Agree subject to modification below. Comment page 53 New civil sanctions. Legislation should be sought so that if a party can show by clear and convincing evidence that the other side knowingly or fraudulently misrepresented an essential element of evidence that caused some measurable damage to the other party, then the order could be set aside and the party could ask for sanctions and request payment for attorney fees and costs. Costs would include time off work for litigants to be in court. Parties who report child abuse or domestic violence to the court shall specifically be excluded from sanctions. Judicial Branch Education. Agree subject to modification below.	Enhancing Mechanisms to Handle Perjury This recommendation has been modified based upon comments. The suggested modification in this comment is quite different than current statutes and would need to be considered by the legislature. Judicial Branch Education.

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	Children's needs. The content of all judicial educational courses should include the best possible information about children's best interest, children's developmental needs, and types of parental behavior that may positively or negatively affect children. Judicial educational courses should also more effectively address children's needs and place greater emphasis on children's physical and sexual safety ~~psychological~~ needs. Judicial officers should receive training on how to interview children to best assess their safety needs. Court-connected mediators. All court-connected mediators must be trained to recognize and handle cases involving ~~domestic violence and other~~ imbalance of power situations, as is required under existing statewide rules (Cal. Rules of Court, rule 5.215). All mediators should also receive cultural competency training as well as training in working with parties who have limited English proficiency (LEP) and with interpreters. Mediators should immediately refer cases with domestic violence, including child physical and sexual abuse, allegations to investigation. ADR panels. Family law arbitrators and ADR providers should receive training that addresses substantive family law issues as well as ~~domestic violence~~,	Children's needs. The recommendation was modified as follows “Judicial educational courses should also more effectively address children’s needs and place greater emphasis on children's safety and psychological needs.” Judicial officers should receive training on how to interview children to best assess their safety needs. The task force recommends education for judges on interviewing children. Court-connected mediators. This comment provides a substantive policy suggestion in the context of educational content. The Task Force recommendations on Enhancing Children’s Safety note the need to handle cases involving allegations of child physical or sexual abuse expeditiously and the need to refer appropriate cases to child welfare services. ADR Panels Without education on domestic violence, the Task Force is concerned

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	the possibility of power imbalances in family law, and working with self-represented litigants, limited English proficiency populations, and interpreters. ADR panels should immediately refer cases with domestic violence, including child physical and sexual abuse, allegations to investigation. Family Law Research Agenda. Agree subject to modification Basic statewide statistical reporting. ... The types of data to be included in the basic statistical reporting should include, but not be limited to a. The number and percentage of cases with one side represented, both sides represented, and neither side represented; b. The number and percentage of cases involving children; 1) The number and frequency of allegations of parental or household domestic violence as defined in Family Code 6203, and whether the child was placed in unsupervised contact with the dominant aggressor of that violence; 2) The number and frequency of allegations of child physical abuse as defined in Penal Code section 11165.4, and whether the child was placed in unsupervised contact with the identified Perpetrator of that violence; and 3) The number and frequency of allegations of child sexual abuse as defined in Penal Code section 11165.1, and whether the child was placed in unsupervised contact with the identified sexual abuser. 4) The number of parents in the Safe at Home Program whose children live with their batterers and who are unable to visit their children when they refuse to reveal their confidential address	that ADR providers may not recognize signs of domestic violence. Family Law Research Agenda Basic statewide statistical reporting is intended to be limited to caseload and workload indicators that are readily available through case management systems. The suggested additional data elements would require extensive manual data collection from court files and some may not even be available in court files.

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	NOTE These data elements are not currently tracked. They are critical to ensure that children are safe in their custody and visitation placements.	
	Minor's counsel. The AOC should collect empirical data on cases in which minor's counsel ~~are~~ is appointed, and 2) judges speak directly with children, to determine positive and negative consequences of children's greater participation in family law proceedings and the role minor's counsel plays in that participation. The research should ensure half the involved children participated and are interviewed in person by the AOC interview team.	Minor's Counsel Research on the use of minor's counsel should be considered as part of implementation efforts.
	~~Coordination between family and juvenile dependency courts. Research should be conducted to explore the legal viability and resource needs of employing a shared or multijurisdictional approach to allow for coordination between family and juvenile dependency court for family court cases involving allegations of serious child abuse. Issues to consider should include, but would not be limited to, how cases would be identified for shared jurisdiction; what scope of services would be available to families; and whether a "hybrid" case might eventually move to dependency court based on additional investigation.~~	
	NOTE The culture of juvenile dependency court is to take children away from both parents. We have seen too many children in custody disputes shuffled from foster care to foster care when there is a safe, non-abusive parent available to care for them, whom the court disfavors for one reason or the other.	Note The Task Force recommends coordination of related cases and sharing of information where appropriate so as to most effectively address the best interests of children.

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	These two systems are both broken. Combining them would not improve the situation for children. The need for family court is quite simple to ensure that children are placed in the custody of their nonabusive parent and to protect those children from their identified abusive parent A good start would be to ask the children which parent is safe and which parent is not safe, then respect their need for personal safety.	The Task Force agrees that care must be taken to identify safe parenting arrangements for all children, however, given the various types of cases that come before it, the family court should not operate under a blanket rule that assumes all children will accurately report which parent is safe. There are many instances in which a parent who is violent may be able to coerce a child's testimony and the court needs the discretion to take that and other factors into account.
	Leadership, Accountability, and Resources Comments Judicial experience prior to family law assignment. In courts with 10 or more judicial officers, requiring judges to have a minimum of two years of judicial experience prior to assuming a family law assignment. ..... Require judges and commissioners to move from family court after 4 years, and not retain cases, to reduce burnout and abuse of power, collusion and cronyism.	Leadership, Accountability, and Resources Comments Judicial experience prior to family law assignment. Courts have a variety of practices with regard to the length of the assignment to family law. Standard 5.30, which is recommended to be elevated to a Rule of Court, recommends that courts with a separate family law department assign judges to serve for a minimum of three years. The Task Force generally supports longer service in family law because judicial experience and expertise in family court is most

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		beneficial to the court users. Issues of burnout should be addressed on a case-by-case basis between the family law judge and the Presiding Judge. Other issues raised would be appropriate for referral to the Commission on Judicial Performance.
	Supervised/monitored visitation. Seek creative partnerships with community organizations to address the significant unmet need for affordable, convenient supervised/monitored visitation and exchange services. Community-based options appear to be decreasing. Ensure that supervised visitation is only provided for violent or sexually abusive parents, not parents attempting to protect their children from violence and incest	Supervised/monitored visitation. This comment suggests a substantive policy change in the context of a recommendation to increase the availability of supervised visitation services. The Task Force's report includes a recommendation that courts should consider in contested child custody cases, when allegations of domestic violence are made, whether supervised visitation or exchange is appropriate to protect the child's safety.
	Ensuring access to the record. All family law courtrooms should have court reporters, and there should be low-cost options for parties to acquire transcripts. Automatic videotaping of all court proceedings, such as exists in at least 3 other states, should be done. Videotapes should be provided to parties at cost, so they can order the important parts of transcripts which would result in a cost saving both to the court and the parties. The record in family	Ensuring access to the record. The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. The Task Force agrees that access to

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	law proceedings is an area of long-standing concern and is a serious access-to-justice issue. Many family law courts do not have court reporters, so there is no official record for purposes of appeals. There are also widespread issues with parties having difficulty in preparing orders after hearing.	the record in family law is a serious access to justice issue, and must be significantly improved both to ensure that parties understand and can finalize the court's orders, and to ensure that parties' right to appeal is protected. The Task Force is recommending that legislation be enacted to provide that cost-effective options for creating an official record be available in all family law courtrooms in order to ensure that a complete and accurate record is available in all family law proceedings
	Transparency and accountability. Court ombudsman. Evaluating the creation of a 3 person court ombudsman ~~position~~ panel at the state level, consisting of randomly selected jury pool members, to receive and investigate complaints and make recommendations to court leadership for improvement. This position would not be limited to family law matters and would be fully empowered to research and investigate any filed complaint, pursuant to established local rules.	Transparency and accountability. Court ombudsman. The Task Force is recommending the evaluation of the creation of a court ombudsman position, and the position is contemplated to be within the judicial branch. The idea of having a panel could be discussed in the implementation process.
	Administrative Hearing Appeals are prohibitively expensive for self-represented litigants. Because the lack of ability to, appeal denies access to justice, accountability, fairness, and due process rights, self-represented litigants should have the right to a timely no-cost	Administrative Hearing The Task Force agrees that appeals are expensive and makes recommendations to increase access to

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	administrative hearing at the Office of Administrative Hearings, to ensure statutes and rules of court are followed. An administrative hearing would not prevent the litigant from filing a concurrent or subsequent appeal. "Second Look" Panel A special Grand Jury should be commissioned to take a second look at the cases in would have the power to ensure that children are physically/sexually safe. Accountability The following recommendations are made to reduce misconduct and improve public confidence and trust 1) require Judicial Performance Evaluations (such as exist in 22 other states) to provide the public with information about judicia1candidates; 2) report all Commission on Judicial Performance (CJP) decisions on their website, 3) place any judge being investigated by the CJP on administrative leave; 4) use the appointment process only in rare and unusual circumstances to prevent incumbents from having an unfair advantage in an election; 5) place judges' names on the ballot even if they run unopposed; 6) include court employees in the CA Whistleblower Act; and	appeals, and to address the issues of having an official record. The Task Force does not support an alternative appellate process for family law cases, such as an administrative hearing. Central to the Elkins decision is the notion that family law cases are entitled to due process and access to the full judicial process, including appeals.

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	7) provide qualified immunity for judges and court professionals. NOTE To diminish the public's negative perception of cronyism among judicial and ancillary professionals in some courts, recommendations should focus on accountability from outside the closely-knit system that created this perception.	
273. Ventura County Mediators	Exercising Discretion Children's Voices Want children to have a voice with someone who has a mental health background, but also want mediator to have the full ability to use discretion to not interview the child. Reasons to not interview the child Parents have a full agreement If the children have already recently been interviewed, and Mom and Dad are re-hashing old issues. The child is too young – in Ventura we interview at age six, even if is one day beyond sixth birthday. Too much anxiety for child – child is having physical reaction (throwing up, shaking, stomach problems) when coming to court. Special Needs Child – developmental age is (significantly) below chronological age.	Exercising Discretion Children's Voices The Task Force recommendations in this area allow for a case-by-case approach to participation including talking with a mediator or evaluator or testifying. The Task Force agrees that maintaining discretion in this area is key given the range of cases and children coming before the court.
274. Robert Walker Pro Per Litigant Chula Vista, CA	Ensuring Meaningful Access to Justice for All Litigants Can you add, to 2 Continuum of Legal B Early needs-based attorney fee awards Recommendation The default payee for needs based attorneys fees	Continuum of Legal Services – Early needs-based attorney fee awards Information regarding payment of

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	should be the needs based spouse. Courts should be clear when issuing fee awards that the default payee is the spouse and not the attorney. This fact is established in case law (Borson, Medows) and not incorporated into the Family Code. Pro Per litigants are not versed in applicable case law. Until the family code is amended the court should apply this practice to ensure fairness to unrepresented parties. Otherwise, if the court does not specify the payee, and the spouse is not the default payee, attorneys and pro per litigants have a high potential to enter into further litigation driving up costs and wasting precious court resources. This potential conflict is further exacerbated if the attorney is subsequently discharged from representation. Written Orders After Hearing Concur with recommendation with the exception that if Attorneys are tasked with preparation of orders after hearing, that direct submission should be limited to only simple matters. More complex orders should have a review period that allows access by both parties to review court transcripts provided for by the court. Direct submission of prepared court orders creates more litigation when the offending party discovers any impropriety. Domestic Violence Statewide Consistency There needs to be definitions within the scope of DV that stratifies the level of violence vs. consequences. In cases where there is no clear and convincing perpetrator (mutual combat) both parties should be placed on notice but neither party should have a rebuttable presumption that they are a bad parent and have their parental rights curtailed. In cases where there is clear and convincing evidence that one party is	attorney fees should be considered as part of development of litigant information as well as any implementing forms regarding attorney fees. Written Orders After Hearing A standard procedure for review of orders after hearing in complex matters should be considered as part of the development of statewide rules of court. Domestic Violence The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	the dominate aggressor, that determination should still not curtail a parents contact with their children unless it is clear that such behavior applies to the children themselves or with other people. Litigant Education Orientation and ongoing education All parties not represented by counsel should first be required to attend a divorce 101 course similar to the bankruptcy education program prior to filing a petition. Parties should be encouraged to understand the impact of divorce on issues such as impact of children, finances, standard of living, and psychological impact. Attendance should be mandatory or consideration given to those who attend private or public counseling.	Litigant Education The content of litigant education should be considered as part of implementation.
275. Deirdre Warde Attorney Law Offices of Deirdre Warde Mission Viejo, CA	Neutral volunteer family law mediators should be available to the parties at the very outset of the divorce before it turns nasty. There should not be a local "rule" that children cannot testify in custody matters or that the court will rule against the parent calling the child as a witness. Having to go through an evaluation or through minor's counsel to get that information before the court can be overly burdensome and not always necessary. Very important Attorney fee awards should be made early in the case to allow both parties to be represented. Reserving attorney fees to trial does not help the financially disadvantaged party. I have been practicing family law for 27 years. In my opinion the Task Force did a fantastic job in addressing problems with the current system. They should be commended.	The Task Force has recommended that dispute resolution services be offered early in the case. The Task Force agrees that there should be no blanket rule requiring or prohibiting testimony from children in family law cases. Attorney fee awards – agree that it is important to make these orders early in a case.

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276. Diane Wasznicky Committee Chair Association of Certified Family Law Specialists Family Law Reform Committee Members David Borges, Sharon Bryan, Vivian Holley, Michelene Insalaco, Lynette Berg Robe, Leslie Ellen Shear	* The Task Force's Draft Recommendations reflect a great deal of thought and work, but there are a number of points that require further, in-depth consideration. Some require more consultation with experts. It seems to us that it is critically important to get this right. The Association of Certified Family Law Specialists appreciates the extraordinary amount of time, effort and thought that the Elkins Family Law Task Force put into its analysis and the development of its draft report and recommendations. We (both the standing Family Law Reform Committee and the Board of Directors) have studied the draft report carefully. In some respects it exceeds our expectations, and in others it falls short. Commentators provided three overarching recommendations Reallocate Resources. Reallocating existing court funds to family law courts in proportion to the true caseload, complexity and social importance of family law. Expertise Essential. Staffing courtrooms and other courthouse programs with judges and professionals who have substantial family law expertise. Not All Parties Must Be Litigants. Completing the Family Law Act's No Fault revolution by recognizing that not all parties to family court proceedings need be litigants. We must expand and professionalize courthouse CDR (Consensual Dispute Resolution) programs to equal	Reallocate resources Agree Expertise Essential. The Task Force makes recommendations about encouraging experienced family law attorneys to seek judicial appointment, recommends further changes to the appointment process, and recommends judicial branch education to ensure the development of the necessary expertise for the family law

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	stature with adjudications so that they provide meaningful and effective services and significantly reduce demand for courtrooms.(We join the growing international trend to replace the term Alternative Dispute Resolution (ADR) with Consensual Dispute Resolution (CDR), thereby putting models (such as negotiation, mediation, collaborative family law, and parenting plan coordination) that facilitate thoughtful and informed self-ordering on an equal footing with the adjudicative model. We recommend that the Task Force adopt this perspective and terminology	assignment. The Task Force has recognized the great value of providing consensual dispute resolution services to litigants.
	Commentator noted "[grave concerns] that attempts to implement many of the recommendations set forth in the Task Force's draft report (and many of the items on our own wish list) will have devastating unintended consequences if attempted before we have enough courtrooms, staffed by experienced and expert bench officers. We envision a domino effect. We cannot graft on more hands-on case management, sanctions motions, individualized findings about the need for oral testimony or other services on a system that is already overwhelmed. Moreover, the very effort to do so would divert scarce resources away from essential direct services.	Although many recommendations require and identify the need for additional funding, many others may be implemented without increased resources. The Task Force envisions that the implementation process will consider the need for resources and seek to avoid situations in which mandates are not adequately funded. Unless issues and proposed solutions are identified, there is no way to plan and seek adequate resources in the future.
	Commentators voiced concern about "Fending Off the Workers' Compensationization of Family Law," and noted [comments have been shortened to summarize key points] Today California's courts cannot honor the basic promises made to family law litigants in our constitution, statutes, rules of court, and case law. The disconnect between the due process mandates set forth in cases like Elkins v. Super. Ct. (Elkins) (2007) 41 Cal.4th 1337 and In re Marriage of	The Task Force agrees that additional resources are important to improve family law proceedings.

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	Seagondollar (2006) 139 Cal.App.4th 1116 and the realities experienced by most represented and unrepresented parties to California family law proceedings is dramatic. Whether decisions are made in a CDR process or a courtroom, wise outcomes require expertise, time and thought. Truncated services do not produce just outcomes, and trigger relitigation. Despite the best intentions and the hard work of many, our family law courts are doing, on average, a dreadful job. As family law specialists, we have lost confidence in the ability of our state's courts to offer fair procedures, follow the law, and produce wise outcomes to the majority of the members of the public who come to our family courts. We have come to view the family law courtroom with trepidation on behalf of our clients.	Agree that additional resources are very important to improve family law proceedings.
	Californians are now bracing for catastrophic cuts of courtrooms and resources for the families served by California's family courts at a time when the needs of the family court population are far more acute and serious as a result of widespread unemployment. While the need is greatest, the resources are vanishing. This is simply not sustainable. Real human suffering results from this level of neglect of the State's responsibility to the State's families.	Impact of cuts No Response required.
	Need For Dedicated Family Law Seats California should consider reorganizing the Superior Court so that there is a separate family court with dedicated family law seats, and a budget guarantee that is not competing with other departments for dollars. If judges were appointed and elected to dedicated family law seats with four-year terms, the selection process would focus on the requisite expertise and experience. We cannot provide the quality of service that Californians deserve with	The Task Force did not make recommendations to create a separate family law court with dedicated seats. Instead, it makes numerous recommendations to ensure that family courts have the appropriate resources, (including judges and staff), judicial

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	the present model. In order to restore legitimacy to California's family courts, we must fully fund our family courts.	education, leadership, and accountability. These recommendations are intended to improve the quality of service to the public and increase access to well-functioning family courts. The Task Force believes that remaining within the existing superior court structure and ensuring the necessary resources and leadership is the best course to the goals we share in provided the highest quality of service to the public.
	Role of the Private Bar ACFLS recognizes that the private bar has an important role in this crisis. We are determined to increase our commitment to provide training in effective CDR – and most particularly, effective negotiation and settlement. We accept the Task Force's invitation to develop a mentoring program, and have appointed a chair to develop that program. We offer free admission to our CLE programs for judicial officers, and are beginning a program to lend our CLE on DVD library to judicial officers. We send our newsletter to every family law bench officer in the state whose name and contact information we are able to obtain.	Role of the Private Bar The contributions of ACFLS are much appreciated. The Task Force concurs that increased resources are critical to making necessary improvements in the family courts, and is confident that the report organization will lay a strong case for all of the Task Force recommendations.
	Funding Courtrooms and Professional CDR Programs Improved Judicial Resources Necessary For Careful and Reasoned Judgments The most promising recommendation in the Task Force's draft report is the proposal to require that Family Law Departments receive their	The Task Force has clarified how it determined the approximately 20% workload estimate – which is based on weighted filings. The Task Force also

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	proportionate share of courthouse resources. Instead of burying it near the end of the report, we urge you to move it to the beginning, and identify it as the essential pre-requisite to all other actions. We were thrilled when Judge Nancy Wieben Stock announced this recommendation at the State Bar Annual Meeting. We were saddened to find it buried deep into the 70-page report. None of the proposed reforms can work if California's courts don't put family and children first when allocating court resources. We believe that this goal can only be achieved through a legislative mandate coupled with an effective enforcement mechanism. Commentators noted that the lack of resources in family law presents serious and far-reaching challenges. AOC Studies Underestimate the Current Need The Task Force buries an estimate of the number of courtrooms necessary to serve the needs of family law departments in this state in footnotes 13 and 14 of the draft report. The estimate gravely underestimates the need because it is based only on incomplete quantitative data about the number of new filings – ignoring other significant metrics. Most Californians directly or indirectly experience our family courts at some point in their lives. Experiences in family court coupled with television's portrayal of the justice system comprise the average California's experience of justice. As the AOC public confidence study showed, California's family courts have not earned the confidence of the public or the bar. Family law proceedings are viewed as unfair and the outcomes of family law decisionmaking are viewed as	suggests that courts develop workload estimates using available assessment instruments, and taking in to consideration local issues. The Task Force does not believe that courts can address the family law needs solely through reallocation of resources, and it notes that meaningful access to justice requires adequate judicial resources, and family courts must receive additional resources through reallocation in the near term, and through the dedication of new resources to family law when the budget climate improves.

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	unsatisfactory. Judges dread and resent the workload, and risk rapid burn out. As we observed above –a significant percentage of the resources now funding the Administrative Office of the Courts must go back to the courtrooms during the current crisis. Just as the public schools must cut back on administrators and increase teaching staff, so the courts must reduce administrative costs as one source of funding to increase direct CDR and adjudicative services. Expertise is Essential If an attorney practiced family law with the ignorance of family law that most judicial officers newly assigned to family law bring to the bench, he or she would be subject to State Bar discipline, and malpractice liability. We must stop pretending that any intelligent lawyer can step into family court and perform competently as a judge. "Careful and reasoned judgments" that produce wise outcomes for children and families require expertise whether they are developed in the courtroom or through CDR. The system simply has a blind spot when it comes to the harm to children and families that results from rotating judges with little or no family law background in and out of family law. Court reorganization so that individuals are appointed or elected to dedicated family law seats would focus the selection process on candidates who want to work in family court, and who have the necessary expertise in experience. Today prospective judges are quizzed about their jury trial experience, and new judges get trained in conducting jury trials even though the biggest unmet need in the courthouse is in the family law department.	Expertise Essential. See response above Court reorganization. See response above.

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	The judges, family court services professionals, and CDR professionals serving the parties to family law actions must have the highest level of family law expertise. At present California offers judicial CLE consisting of the highlights of Family Law 101 to each entering class of family law judges and few stay in the assignment long enough to ever get to an advanced course. If judges commit to spending at least four years in the Family Law Department, they will value the investment of their time and mental energy to learning family law. Judicial Family Law Education Must Be True Judges' College; Not the Family Law Version of Traffic School Before sitting in family court, each judicial officer assigned to the family law bench who is not a certified family law specialist must be required to complete at least four to six full weeks of rigorous family law continuing education. Once assigned to family law, each bench officers must receive at least 40-60 hours continuing education in family law annually. Nothing short of that can provide the kind of in-depth introduction to family law that children and families have the right to expect their judges to have mastered. We recognize that this Comment represents a complete rejection of the current paradigm. But even if we had the number of family law judges we need, it still would be unconscionable to require that they experiment on California's families until they learn their jobs – or that the parties be responsible for training the bench through memoranda of points and authorities on even the most basic family law issues and procedures.	The Task Force recommends elevating Standard 5.30 to a Rule of Court, which would require judges that have a separate family law department to serve at least 3 years in the family law assignment. The Task Force made recommendations about a variety of issues that should be addressed through education and noted "While a wide range of educational programs have 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 adjudicated in family court." This comment provides specific suggestions about educational content and length of programs providers and budget for educational programs will be referred to the implementation process.

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	We do not believe that the AOC should be the sole or even primary source for judicial education. Bench officers should be paid for at least five full days of CLE attendance each year, and have a budget for travel and lodging for such programs. Diversity in CLE providers is important to avoid group think. Each new bench officer newly assigned to the family law bench should be paired with a mentor who has many years of family law bench experience. Minor step-ups in judicial education will not suffice. Family law is too complex, and the decisions made in family law courts are too important for the public to tolerate a model that expects the litigants and their counsel to educate the judge on a case-by-case basis. Families cannot afford to pay their lawyers to teach judges the basics. Many lawyers appear to think it is pointless to develop family law expertise since the judge won't know the difference. Judges cannot take the time to gain the in-depth knowledge they need for many of the issues that come before them when they have back-breaking caseloads. No matter how well-intended and intelligent the judge may be, we cannot afford one bad outcome, much less the year or two of bad outcomes that result while new assignees try to figure it out. By the time a new family law judge begins to learn the job, he or she is transferred elsewhere. We agree that Standard of Judicial Administration 5.30 is more often ignored than followed, and that it should be adopted as a Rule of Court. We recommend expanding the minimum assignment from three to four years. We should invest significant resources in developing family law bench officers and then retain them in the assignment so that the public enjoys the benefit of that investment.	Regarding the suggestion that an experienced family court judge mentor a newly assigned judge, he Task Force does recommend "The court should have a range of resources, <u>including a mentoring program,</u> referral to educational programs, self-study, and a program for observing experienced family law judicial officers, to ensure that all judicial officers receive the professional support they need. Presiding judges should accommodate the time away from the bench that family law judicial officers need to receive appropriate education and professional development, including training to better handle the stress associated with family law assignments."

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	Family Court Services personnel, facilitators, and court-connected CDR providers all need equivalent levels of expertise and continuing education or excellence will forever be outside our grasp. Completing the No-Fault Revolution – Not Every Party Who Comes to Family Court Must Be a Litigant The State has a monopoly on terminating marriages and establishing parentage. We do not propose taking divorce and parentage out of the courthouse and relegating these cases to an administrative agency. We are appalled by that prospect. But, the court need not impose the adjudicative model automatically on each case. Cases must move flexibly between CDR and adjudication. Parties, not case managers, must be empowered to decide when they want to access CDR resources, when they need a court hearing, and when they want a time out or time to work towards solutions outside the Court. CDR and courtroom resources should be available to them "on demand" rather than the Court determining the pace of each family's matter. Self-determination rather than top-down case management should be the rule, with individualized judicial case management reserved for "problem" cases. 1. Notices to parties at checkpoints, offering services and resources; 2. Voluntary administrative case management; 3. Voluntary judicial case management; 4. Mandatory judicial case management for good cause.	Completing the No Fault Revolution - Agree that CDR is an excellent alternative for many litigants. Expanding resources for CDR is a key part of implementing these recommendations.

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	It is far less expensive to offer quality CDR than quality adjudication. Unless we beef up our CDR services, we will need more courtrooms than any society could afford. On the other hand, it is important CDR has some disadvantages as well as benefits. CDR moves at the pace of the slowest participant. CDR only results in an order if an agreement is reached, while adjudication almost always results in a decision. CDR often isn't practical in an emergency. A party can gain various forms of advantage by prolonging the CDR process. Superficial admonitions from the Court in support of CDR can signal parties that the Court wants them to settle cases even where the settlement is unwise or unsafe. Judges must demonstrate respect for the complexity and importance of these life decisions to the parties and their children, not just urge them to go out in the hall and settle. Threats from the Court about the consequences of failing to settle also can pressure parties into unwise settlements. The Court should offer high-quality, professional CDR services that complement the more expanded services available from the private sector. Other than FCS mediations, most courthouse CDR is either provided by attorney volunteers, or by judges conducting mandatory settlement conferences. Delivering The Fundamental Right to Live Testimony Live testimony is essential if decisionmakers are to understand the stories about their lives and their children's lives that parties bring to our courts, and if they are to assess the credibility of witnesses, judgment and decisionmaking of parents. Live testimony is necessary not just to help litigants feel heard – it is necessary so that they are	Agree that it is important for judicial officers to be careful about communications about CDR. Delivering The Fundamental Right to Live Testimony The Task Force agrees that live testimony should be the standard.

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	truly, fully and meaningfully heard. Hearing parties through the filters of attorney-drafted declarations or checkboxes on Judicial Council forms dramatically diminishes the quality of information that the court hears.	
	We are heartened by the recommendations protecting the right to live testimony. This promise is not "deliverable" until the courts achieve the three critical priorities we discuss above. Since live testimony is an essential element of fundamentally fair adjudications, family courts cannot be fair, and cannot produce wise outcomes for families until those priorities are realized. It is not enough to say this over and over again – the family justice system must deliver adjudicative services that include live testimony as the norm, not the exception.	The Task Force agrees that the decision about whether or not to allow live testimony should not be based on where in the court process the request for the order was made, but on the subject matter of the issues involved.
	The appellate courts' repeated reversals of family law trial courts for due process violations have done little to secure fair procedures for the average family law litigant. Moreover, few family law litigants can afford recourse to appellate review, so the essential checks and balances element of our legal system works imperfectly in family law. The second-class status of our family law departments has allowed the real holding of Reifler to be lost and the case quickly came to stand for a proposition that is significantly at-odds with its holding. Only a judge who has substantial family law expertise, and considerable information about the particular case can exercise meaningful discretion regarding the value and scope of live testimony. Only a judge who has enough time to hear the testimony has the real-world option of permitting it without acutely prejudicing the other cases waiting for the court's attention.	The recommendation has not eliminated the use of declarations. This issue needs to be addressed in detail during the drafting of implementing rules.

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	Hybrid Model Using Declarations, Offers of Proof and Live Testimony at All Stages As the Supreme Court recognized in Elkins, and in Montenegro v. Diaz (2001) 26 Cal.4th 249, the artificial procedural divide between pre-trial, trial, and post-judgment proceedings in family law doesn't reflect the importance, duration or impact of decisions made at each stage of a case. In particular, pre-trial and post-judgment custody, support and domestic violence OSC's are as important as trials. The absolute right to cross-examination is indispensable – as the case law recognizes time after time, but our overburdened family courts must ignore if they are to get through the daily calendar. Dependency courts struggle with the same pressures, leading the Court of Appeal to remind us that cross examination is not just the "Hail Mary pass" of a desperate attorney; it is a recognized method of challenging adverse witnesses, one protected by fundamental notions of due process of law and fundamental fairness. Petitioner is entitled to his day in court. David B. V. Superior Court (2006) 140 Cal.App.4th 772, 775 Even with adequate trial court funding, the only workable solution is a hybrid model for pre-trial, trial and post-judgment proceedings that uses a combination of written and oral testimony. This model structures family law hearings and trials so that a party is normally expected to meet his or her initial burden of proof through declarations and offers of proof – augmented by the testimony of subpoenaed witnesses and evidence. Each party should be permitted to augment the declarations with live testimony that allows the Court to meet and interact with the witness, and includes updated information and rebuttal testimony.	With respect to live testimony, the Task Force received input from attorneys and the public-at-large that basing decisions on declarations alone was not only unfair but often inefficient, particularly on substantive issues. The Task Force has also heard from a number of family law judicial officers that conducting a brief hearing on such matters is far more efficient than handling the often excessively long declarations containing hearsay statements or other inadmissible matter, and ruling on the resulting motions to strike. The Task Force has heard from many courts that judges are able to take brief testimony from the parties at the time of the hearing without creating any disruptions to the flow of their calendars. The issue of training and experience of family law judicial officers is considered in the section on Judicial Education.

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	Interim orders based on declaration pending fuller hearing must be permitted if such orders are reasonably necessary provided that the matter must be heard within 30 days of the first hearing. Cases that began with ex parte orders must be flagged so that court personnel can do triage when the file arrives in the assigned department. Live testimony is expensive because it is time-consuming – for the parties and for the court itself. A right that is too expensive to exercise is no right at all. While our statutes and case law mandate the use of live testimony, exercise of that right entails persistence, aggressive advocacy, and inordinate delays. Family courts simply cannot deliver on this right until we adequately fund family courts, staff them with expert judges, and professionalize and fund CDR alternatives. Even with fully-funded courtrooms and expert family law judges, not every litigant will be able to afford live testimony, and live testimony will not be the wisest option for many cases and issues. Prudent lawyers and litigants will have to make the cost-benefit analysis on a case-by-case basis. It should be their choice to make. The facts in family law cases are dynamic. Live testimony will often be necessary so that the Court gets the most current information. Live testimony is often necessary for rebuttal evidence. When evidentiary objections to written testimony are sustained, live testimony must be available to lay a more complete foundation, authenticate an exhibit, or reframe the question so that the answer is admissible. The criteria that the Task Force has identified for the use of live testimony are wise. But in order for a court to apply those criteria in a meaningful fashion in any particular case, the judge must know a great	The Task Force concluded that the right of the parties to present testimony at their hearings is fundamental to due process in family law. The standard should be live testimony and not dependent on a request by the parties. The Task Force anticipates that attorneys and self-represented litigants will be on notice that the parties will be allowed to testify, and the judge to ask questions, at any OSC/Motion hearing, particularly on substantive issues where there are material facts in controversy. The Task Force anticipates that should relevant material facts arise at a hearing during the testimony of the parties, judges will use their discretion to allow for a reasonable continuance sufficient for preparation and response, and make any necessary interim orders. The scope of testimony should be limited to the issues raised in the pleadings. The Task Force anticipates the use of reasonable continuances when necessary to provide adequate notice and opportunity to prepare a response

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	deal about family law, and a great deal about the case itself. Otherwise judges will be just checking the boxes, without making informed, thoughtful, individualized determinations. We propose that the forms setting matters for hearings and trials require each party to indicate whether that party requests live testimony – and set forth time estimates and witness lists. Self-help centers, modest means panels, and court appointed counsel are essential to help parties draft declarations, authenticate exhibits and subpoena witnesses and evidence. Each case has its own unique facts and issues. While templates for declarations may be of some assistance, they could well have the unintended consequence of diverting parties from stating facts that don't fit into the template. Forms send a strong message about what is important and what is not. However, the case law develops in a bottom up process. In other words, holdings in decisions like In re Marriage of Lamusga (2004) 32 Cal.4th 1072 derive from the evidentiary presentations made in the trial court. Flexible, Party-Centric Case Management Learning From the Food Service Industry Case management models designed for fast-track processing of civil litigation should not be imported into the family law system. Family law cases are qualitatively different from civil matters and require a very different approach. Family courts should offer services using an on-demand model for case	to facts arising in the testimony of the parties at the hearing. The Task has modified the proposal to include the requirement of adequate notice by way of oral or written offers of proof and time to prepare responses when witnesses other than the parties are involved. Flexible Party-Centric Case Management- Agree that civil and family law case types are different. The Task Force is mindful that judicial

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	management. [Family law cases should follow the revolution in food services, which] provides an excellent metaphor for the transition from linear case management to the self-determination that best serves parties in family law. One case may need immediate adjudication and temporary custody and support orders to stabilize the family, while parties to another case are considering reconciliation, using collaborative or mediation services, waiting for a house to sell, a family member to recover from an illness, or are exchanging records and negotiating a settlement. Herding them all into the courthouse to wait in line is neither feasible nor desirable. Families must be empowered to control the pace of their own matters and move flexibly between CDR and adjudicative services without pressure from the court. That empowerment includes expanded access to legal advice and educational outreach from the court in the form of literature about options, and reminders at checkpoints. Administrative case management to help select options should be offered and available upon the request of a party. Judicial case management should be reserved for "problem" cases, and available on the motion of a party or the court's own motion upon a showing of good cause. Recent proposed family law case management legislation (AB 939, the Family Access to Justice Act) appropriately authorizes use of this approach, rather than restricting it to stipulation or expanding it to govern most cases. Our experience is that one side is unwilling to stipulate to case management in many of the cases that need it the most. However, we are afraid of judicial case managers who do not have a realistic understanding of family law practice, and of family law itself. Most parties to family law cases will never have to come to court –	officers will need to tailor case management orders to the needs of the families. However, experience has demonstrated that self-represented litigants, which make up the majority of family law litigants, have a difficult time completing their case without case management by the court. Cases where both parties are effectively represented by counsel may not need to have the same number of check-ins as those where the parties do not have that assistance.

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	particularly if they are represented. We cannot set up a schedule for CDR and litigation, and expect the parties and families will all move through the process in the same order at the same pace. The Court needs to let parties know what is needed to finish their cases, and what resources are available to assist them. We should not fill courtrooms or administrative offices with parties coming in for case management conferences that no one has requested. Judicial and administrative staff time would be better directed towards responding to the litigants who request services. Families adjust the pace of their litigation based upon events in their lives. Since the Courts are unable to provide adequate services to the litigants seeking hearings, the last thing we want to consider is pushing more cases towards judicial case management hearings that they don't want or are not ready for. Each case management conference takes the parties away from jobs and children. Each case management conference takes the judge away from adjudication. Just as the exercise of discretion regarding the value of oral testimony in a particular case requires a judge who has family law expertise, and detailed information about the case itself, case-sensitive judicial case management requires family law expertise and familiarity with the details of the case. Effective judicial case management takes time, and should be reserved for those cases that need a hands-on approach. In today's economy, those missing work or having to pay for child care to make unnecessary court appearances can profoundly destabilize fragile family economics and children's welfare while eating up judicial	It seems unlikely that an annual checkpoint even if personal appearance is required by the court due to concerns about the case will significantly impact on the litigants' time with their families. If significant progress in a case is not made within a year, it does seem reasonable to have some sort of check-in. Most litigants complained that their case took too long – not that it proceeded to quickly. Agree that thoughtful judicial attention is important. Particularly for those cases where one party is being particularly difficult

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	time. In today's courthouse, we need our judges to spend their time most productively, and to respect the time of the parties and their lawyers and witnesses. Long experience with families has also taught us that moving quickly from separation to judgment is not wise for many families. The emotional dynamics of divorce impair perspective, judgment and decisionmaking in the period immediately following separation. The trauma of separation may also trigger depression, and frequently leads to temporary impaired parenting. Many divorcing and separating parties need the experience of living separately to understand the economic and human realities of their changing family structures. In custody cases, it is usually impossible to determine whether high conflict at or near the time of separation will be temporary or chronic. Once the family is stabilized through early orders for temporary custody, support and attorneys' fees, many families need considerable time to get their bearings. Increasing the stress on those families is simply inhumane and unwise – even if the resources existed for global case management. Preparation of Orders and Judgments We agree there is a need to expedite preparation and entry of orders after hearing and judgments. Some orders are a sentence or two long. Others require five or ten pages of careful drafting and review of the transcript. This problem cannot be remedied by requiring same-day entry of all orders. We have some suggestions 1. Requiring or encouraging the party requesting relief to append proposed orders to the moving papers. Those proposed orders can be hand-edited on the spot. Some of us also bring laptops and electronic	Preparation of Orders and Judgments Certainly orders that require significant drafting are unlikely to be able to be accomplished on the same-day. Rules regarding review of those orders should be considered as part of implementation. These suggestions should be considered as part of implementation of these recommendations.

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	copies. Many courthouses make computers and printers available to counsel and all of them should do so. 2. Employment of facilitators, staff attorneys and law clerks to draft orders after hearing; 3. Expediting preparation of transcripts; 4. Employing sufficient staff to process submitted orders on a one-week; turnaround. In many counties it takes months to get an OAH or judgment entered. 5. Walk-through procedures for orders that need immediate enforcement; 6. Use of temporary judges to process December judgments necessary for end-of-year changes of status for tax, health insurance or other purposes. 7. Deadlines and reminders for submitting orders after hearing. Accountability and Sanctions Your decision to incorporate a section on sanctions as a part of case management caused us considerable debate. We all would like to see lawyers held to the highest standard of excellence. Each one of us could think of cases where opposing counsel deserved sanctions. But we also see many situations in which resort to sanctions requests are problematical, at best. We are not satisfied with the Task Force recommendation and think the issue needs more careful study. We don't think sanctions are the best way to improve the performance of the family law bar. Every tool can be transformed into a weapon. We have seen many abuses of requests for sanctions against counsel, and worry that expanding the role of sanctions will further reduce collegiality and encourage cutthroat approaches to family law litigation.	Accountability and Sanctions The recommendation will be further refined as part of drafting implementing rules.

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	[W]e realized that there are many tensions and conflicts that come into play if the court must decide during the proceedings whether the conduct of the case is sanctionable, and whether the bad actor is the party or the lawyer. When lawyers fail to meet deadlines, it is often because the client has failed to cooperate. During the course of the litigation, we cannot require waiver of attorney-client privilege to allow attorneys to point their fingers at the litigant. Considering whether the lawyer's approach to the case is primarily for delay or to create billing opportunities requires an intimate knowledge of the case, access to privileged information and a high level of sophistication about the practice of family law. In many communities local norms do not reflect best practices. We worry that some excellent practitioners may be sanctioned because their more careful work stands out as unusual. In re Marriage of Adams (1997) 52 Cal.App.4th 911 authorizes the award of Code Civ. Proc. §128.7 sanctions against family court counsel for delay. There is adequate authority for such sanctions when warranted by the facts. Family Code §271 is directed at delay caused by either client or counsel. We don't see a need for more authority for sanctions. We suggest sweeter carrots rather than bigger sticks. We note that Rule 2.30 is not directed at delay -- it focuses on violation of court rules and statutes. Many of the rules of court and some statutes are subject to multiple interpretations. In view of the fact that the Court itself is unable or unwilling to follow many court rules and statutes, we see expansion of the rule as troublesome. We are at the point where If all of the rules and statutes were actually followed, no case would ever get resolved. The problem is that we never know which rules and statutes are actually going to be applied – and that kind of uncertainty is	

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	deadly in a court process. Much of the delay and neglect attributable to "problem" lawyers is only possible because the caseloads in the family law courtroom are so large that it is easy to exploit opportunities for delay. VII. Children's Voices and Safety (Recommendations 5 and 7) Protecting Children's Privacy Interests We urge the Task Force to take further actions to protect children's privacy. Children's identities, their addresses, and the most intimate details of their family lives, and their mental and physical health are part of the public record when their parents divorce. Children whose fates are decided in family court should receive the same privacy protections that children in dependency court and family law parentage cases enjoy. Policy Addressing Children's Issues Must Be Grounded In Greater Understanding of the Social Science The issue of how to incorporate children's perspectives into the process by which decisions are made about their lives is far more complex than the Task Force recommendations reflect. We see no need for additional statutes or court rules. We see a great need for policy to be grounded an in-depth understanding of the social science. The draft recommendations suffer from a failure to consider and employ the	Children's Voices Privacy Interests The Task Force is aware of existing law requiring that recommendations and reports involving child custody be filed in the confidential portion of the family law court file and be made accessible to a limited list of persons described in the relevant statutes. Additionally, amended and new forms became effective January 1, 2010, covering confidentiality in child custody evaluator reports that may address some of these concerns. Social Science The Task Force recommendations strive to cover the range of cases involving children that appear that family court and call on additional research and further clarification in this area as well.

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	research. Because the Task Force has such a huge purview, it simply did not have the time to give this issue the time, research and analysis necessary to transcend the oversimplified considerations reflected in the draft recommendations. Differences Between Family Court and Dependency Court Cases Require Different Rules and Procedures Importing the statutes and practices adopted for dependency court into family court would be very unwise. Family court is dramatically different from dependency court both in the nature of the issues presented, and in the resources available. A social worker has assessed every child in the dependency court system, and data obtained from children is interpreted in the context of an extensive social study – it does not stand alone. Family courts generally are not dealing with extreme abuse or neglect; they are assessing the nuances necessary for developing an individualized parenting plan for both parents' participation in childrearing. While there is some overlap, generally the purpose of the proceedings and the populations served are very different. While the government is the moving party in dependency court, family court proceedings are set in motion by the parents themselves. There is no Department of Children's Services screening the cases and only sending the allegations with apparent merit on to the courtroom. We also do not support the Unified Family Court movement that would consolidate family law and dependency courts – we think their missions are very different. We do think that the courts might consider whether moving guardianships from probate to family law would work out well.	The task force agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile court are parties and are provided with state-funded attorney representation so that their participation as parties whose rights are directly affected by the proceedings can be appropriately addressed. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court. Efforts undertaken in California with respect to Unified Family Courts have recognized the various options courts

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	Recent case law has approved awards of non-parent custody in family law court – despite the very different procedures and resources in the two forums. Family courts may well have greater expertise about children's care, while probate courts may be better suited to decisions involving minors' estates. Policy and Practices Concerning Children's Involvement Must Be Informed By Much Greater Expertise No professional should be interviewing children without extensive advanced training and supervised practice in interviewing children, and understanding the differences between children of varying ages and developmental maturity. Without that training, interviewers are unlikely to obtain accurate information, and the interviewing process is apt to change the child's subsequent reports. Few judges and few family law minors' counsel have the requisite training. Unfortunately, a number of FCS workers and private child custody mediators and evaluator don't have this training either. Decisions about the nature and extent of children's participation in the CDR or adjudicative process must be individualized. Those interviewing children should have a clear purpose in mind, and use an interview protocol designed to serve that purpose. Purposes can range from understanding the child as a unique individual, to learning some of the particulars of the child's life that might bear on a parenting plan, to listening to the child's views about what parenting plan the child would prefer. Some child interviewing is for the purpose of factual investigation or formal evidence of real world events.	might consider beyond consolidation including having procedures in place that provide the court with the ability to avoid issuing conflicting orders. The Task Force recommendations include providing training for judicial officers on hearing from children and for minor's counsel. The Task Force supports a case-by-case approach to children's participation.

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	Children's voices must be interpreted contextually – age, cognitive skills, history, relationships – and in recognition of direct and indirect influences. We are particularly concerned about the recent trend of judges ordering minor's interviews – directing a mental health professional to interview a child and provide decontextualized information from the child to the court. Without lots of contextual information, odds are that the Court will draw erroneous inferences from the child's statements. Children's views are highly variable and reactive to recent experience. Best practices require interviewing children more than once, and, in most cases, after the child has spent time in the care of each parent. Anyone who raised a child will tell you that depending on the day you asked, that child would say that Mom or Dad was the best or the worst parent in the world. Children also naturally gravitate to one parent and then the other in back and forth fashion during the course of childhood depending upon age, gender, stage of development, parental emotional availability, temperament and interests. Many children lack the cognitive skills to appreciate what life would really be like if their expressed wishes were carried out. Children who have limited contact with a distant parent often idealize that parent. Children who long for a closer relationship with an emotionally unavailable parent, for example, are heartbroken to discover that a change of custody doesn't transform that relationship. Over or underweighting children's preferences can prove disastrous. When parents think that children will influence the outcome of a custody case, parental behavior changes in an unconscious or conscious effort to influence the child. Thus a policy of involving all or most	

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	children can place children directly in the middle of the adult conflict. This can take multiple forms from over-permissive parenting to overt coaching or pressure. Some parents also retaliate against children – even if they don't know what the child actually said or didn't say (a huge due process problem), they will attribute an adverse outcome to the child's statements. Research shows that children who formally state an opinion in a custody case become far more rigidly wedded to that opinion. This is especially risky when the child is having tensions with one parent --- what would ordinarily be a transient episode can become an entrenched belief leading to long-term estrangement from a parent. Child Custody Proceedings Replace the Terms "Custody" and "Visitation" With "Parenting Plan" ACFLS enthusiastically supports revision of our statutes to replace the hierarchically weighted terms "custody" and "visitation" with references to "parenting plans," as the State of Washington has successfully done. We note that any statutory scheme must provide language that allows California parenting plan orders to be applied under the Uniform Child Custody Jurisdiction and Enforcement Act's provisions for differential treatment of custody and visitation. Similarly, the Hague Abduction Convention and its enabling legislation (ICARA) are premised upon the concept of rights of custody. Revision of our statutes must ensure that California children and parents interests are protected in interstate and international cases and that existing case law is considered when these sections of the Family Code are rewritten.	Child Custody Proceedings Custody and Visitation The Task Force agrees that changes in this area must be considered carefully given possible implications in related areas. The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.

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	Separate Confidential Mediation From Brief Assessments and Recommendations We were pleased to see the Task Force adopt our view that mandatory custody mediation should be confidential and separate from brief assessments (often misleadingly called "recommending mediation") The term "recommending mediation" is an oxymoron that has caused great angst in California's family court communities. Mediation facilitates self-ordering. Assessment, screening and evaluation gather and analyze information and result in recommendations.) that produce recommendations to the court. The state needs a uniform protocol that separates mediation (confidential) from brief assessments (resulting in recommendations). There is no need for more pilot projects. We have many recommending counties, many confidential counties, and many counties have developed brief screening and assessment models. Our initial report to the Task Force (at p. 15) detailed the steps we think are minimally necessary for a valid and reliable assessment resulting in a recommendation for custody. It is not sufficient to chat with the parents for an hour or two and then kick out a recommendation – and such superficial and scientifically invalid procedures place many children at risk. Parties to contested custody disputes should receive education about parenting plans and co-parenting. Every county should offer the following FCS services in contested custody-visitation cases 1. Confidential mediation of custody disputes – including cases in which there is no family law action pending. 2. Same-day emergency screenings for high risk cases. 3. Prompt, brief assessments with recommendations for cases or issues	Separate confidential mediation Recommendation in this section is for pilot projects to be established voluntarily by those courts seeking to provide a range of services. Services in contested child custody cases The Task Force agrees that providing a range of services to meet the needs of families in contested child custody cases is appropriate.

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	that are not resolved in mediation. In other words, after co-parenting education, the parties in each contested custody-visitation case should go on to confidential parenting plan mediation. Where the parties fail to resolve all or some issues, they should move on to a brief assessment and recommendations by a different FCS staff member before the matter is adjudicated. Same day screening should be available for emergencies – such as safety or abduction risk issues. Waiting times for appointments for mediation and brief assessments need to be very short – the long delays at this stage of custody cases are damaging to children and destabilizing to families. While we have many concerns about the reliability and validity of brief assessments, we recognize that some professional input when a court is framing temporary orders is better than none at all. We think that same day emergency screenings should be available in the courthouse for high-risk cases. We caution that recommendations arising from this kind of brief assessment model should not substitute for a full custody evaluation – they merely bridge the gap until an evaluation can be conducted. Mediators are not engaged in a systematic process of gathering and assessing data for the purposes of making recommendations. Either they compromise mediation or their recommendations are an afterthought. Mediating parents behave differently when they think their bargaining will influence a recommendation. The draft recommendations fail to address how the courts will address	Full custody evaluations in relocation

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	the mandates for full custody evaluations in relocation cases. See In re Marriage of McGinnis (1992) 7 Cal.App.4th 473, and In re Marriage of Seagondollar, supra. It may be helpful for the Center for Families, Children and the Courts to develop a uniform curriculum for the co-parenting education programs, and to make on line classes available. Many parents cannot afford childcare or time off work for these programs. Others are out of state or out of the country. It would be helpful to offer these programs in many languages. The programs could also have various modules addressing children of different ages, long-distance parenting and relocation issues, domestic violence and child abuse, and special needs children. The Task Force fails to address the Parenting Plan Coordinator/Child Custody Special Master (PPC) voluntary model of CDR that has developed in California over the past 15 years and spread to many other jurisdictions. The PPC model is a hybrid that includes elements of parent education, mediation and arbitration. Santa Clara County pioneered use of Parenting Plan Coordination in the early 1990's and saw an immediate savings of courtroom time. There is a need for enabling legislation and rules of court governing this model to be developed and adopted in California. Other states and AFCC have paved the road for the development of California's PPC statutes and rules. Minors' Counsel The unavailability of funds for screenings, brief assessments and full evaluations in child custody cases, coupled with the reality that many	cases The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Co-parenting curriculum development should be considered as part of implementation. Parenting Plan Coordinators The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations.

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	family court bench officers feel ill-equipped to decide difficult custody matters led to an unfortunate expansion of the use of minors' counsel. That phenomenon explains the reasons why the Task Force felt compelled to caution that the analysis of minors' counsel is not a substitute for a child custody evaluation. Experienced, highly trained minors' counsel can make important contributions to the resolution of child custody disputes both through CDR and in the courtroom. Minors' counsel often end up serving as "recommending" parenting plan coordinators (child custody special masters). Minors' counsel educate parents about custody norms and options. They marshal community resources for children and their parents. Minors' counsel protect children and child witnesses in the litigation process, and exercise children's legal rights and privileges. They provide a method by which children's perspectives can be heard and understood by parents and judges. Unfortunately, the present experience and education requirements are woefully inadequate, and the majority of the lawyers appointed to represent children lack the expertise and experience to do more good than harm. Moreover, the existing environment within which minors' counsel work tends not to attract the most qualified candidates. We are troubled by how these concerns are framed in the draft recommendations. We propose 1. While minors' counsel do not make "recommendations," they do make requests for orders on behalf of the children they represent. They also argue about the risks and benefits associated with requests for relief made by the parents and other adult parties. Where minors' counsel has not filed a request for orders, minors' counsel should serve	Minor's Counsel The Task Force recommendation does not preclude submission of a report but recommends that any results of counsel's investigation or fact gathering be presented in the appropriate evidentiary manner and

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	and file a Statement of Issues and Contentions at least five days before each hearing at which the court will consider making orders. The parents should not be surprised by minors' counsel's positions, representations, evidence or offers of proof at the time of a hearing. 2. Selection of the facts that are relevant to development of a parenting plan (or any element of a parenting plan) requires analysis. The notion that minors' counsel play a purely investigative role devoid of thought, analysis and advocacy on behalf of the child's best interest is naïve and potentially harmful to children. 3. Existing law suffers from a failure to define the concept of the Statement of Issues and Contentions, and a failure to clarify the evidentiary import of the report. The best practice is for the SIC to serve as a combined offer of proof and analysis. In many cases, the parties will not have the resources for a full evidentiary hearing in which all of the data sources upon which the offer of proof is based are presented through direct evidence. But this approach preserves the right of parents to an evidentiary hearing. We agree that many bench officers without substantial family law experience tend to over-rely on minors' counsel. 4. To the extent that minors' counsel is a percipient witness, the statute should be amended to permit cross-examination regarding his or her observations. Minors' counsel is not obligated to assert the privilege with respect to everything that the child tells him or her, any more than a parent's lawyer is prevented from relating facts learned from the client. Minors' counsel uses discretion to determine when the child's best interests require asserting the privilege with respect to a particular communication between child and counsel. In other words, minors' counsel is charged with determining which statements by the child client to the child's lawyer should be kept confidential in order to	that any position counsel will be taking be presented in writing to the parties prior to a hearing on the matter. The Task Force heard from many members of the public who were concerned that the Statement of Issues and Contentions in some cases contained recommendations and, because counsel could not be called to testify, parties and children did not have the opportunity to challenge those recommendations directly. 4. Minor's counsel and cross-examination The Task Force recommends that minor's counsel's role be that of an attorney for a client. Cross-examination of an attorney in a case is not generally recognized as an appropriate practice.

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	protect the child's safety and best interests, just as minors' counsel decides to waive or exercise a child's other privileges. The child is not always, if ever, in a position to weigh and balance the risks and benefits of disclosure – this assessment is an adult responsibility. Although California uses the words "counsel" and "client," the role of minors' counsel is a hybrid role that incorporates elements from the advocacy and the guardian ad litem models. 5. Requiring minors' counsel to collect fees directly from the parents creates a real and prejudicial conflict of interest. We are aware of cases that have been stayed under the disentitlement doctrine, because of the failure of a party to comply with orders to pay minors' counsel. We are aware of parents who say that they have been threatened by minors' counsel that counsel will recommend a change of custody if minors' counsel's fees are not paid. The Court must protect families against this kind of conflict. Minors' counsel must be paid directly by the court. Minors' counsel's rates should be set by the court, and the court should approve each bill and determine the amount to be paid and respective responsibility between the parents. The Court is an institution with established collection mechanisms for fines and other charges -- private practitioners are not. Moreover, the many challenges associated with enforcing fee orders deter many good lawyers from accepting this work. We are puzzled by the reference to directly billing parents. Until the Court takes over the role of paying minors' counsel and billing the parents, minors' counsel should make a fee motion, and the court should determine the amount to be paid and respective responsibility between the parents.	5. The Task Force agrees that existing statewide rule of court (5.241) regarding fees should be fully implemented as well as the additional recommendations on costs in the section on Children's Participation and Minor's Counsel. The Task Force is aware of the resource constraints that could prevent courts from being able to pay for minor's counsel which could result in minor's counsel not being appointed when needed.

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	6. Most minors' counsel training is organized locally, and much of it is very poor quality. We believe that the courts must develop a statewide curriculum in consultation with experts. We also believe that completion of that curriculum should be augmented with excellent programs offered by AFCC and other groups. 7. Increasing the expertise requirements, training requirements and compensation for children's lawyers will dramatically reduce complaints about performance. Many of the current complaints are extremely well-founded. Complaints about minors' counsel should be directed to the judge who appointed minors' counsel. Parents also have an unrestricted right to make a disciplinary complaint to the State Bar. There is no need for another forum for grievances. In most cases, the wisest course is for the party to present evidence and argument to win the case on the merits. Occasionally there is a case where minors' counsel should be removed by the judge for cause. 8. Minors' counsel, like other court-appointed neutral dispute resolution professionals, are protected from civil liability by the litigation privilege. Amending the Family Code to expressly state that the litigation privilege applies would spare minors' counsel and their insurance carriers the costs of defending civil actions and securing dismissal. Orders appointing minors' counsel also should include provisions recognizing the existence of civil immunity, thereby discouraging litigation against these court-appointed neutrals. 9. Courts should issue detailed appointment orders when appointing minors' counsel, [name of commissioner] has developed an excellent form appointment order that should be adopted as a Judicial Council form. 10. Minors counsel with less than five years experience in complex, contested child custody matters require supervision by more	6. Consideration should be given to development of statewide curriculum as part of implementation of these recommendations. 7. The Task Force recommends a statewide approach to handling complaints be developed with local implementation. The Task Force recommendation includes having the Judicial Council develop rules, forms, information sheets, and other resources to assist with these procedures. 8. Civil immunity The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. 9. Forms as described should be considered as part of implementation efforts. 10. Existing rules of court address experience and training needed for

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	experienced minors' counsel who are paid for supervision services. New minors' counsel (even with substantial custody experience) need supervision or mentoring through their first few cases. Minors' counsel also need a method to obtain consultations with mental health professionals about issues arising in their cases.	minor's counsel and the Task Force recommends full implementation of those rules.
	11. Compensation for minors' counsel, in those counties that pay them at all, currently ranges from $50 to $125 an hour. Lawyers don't even break even after overhead at those hourly rates unless they accept a high volume of cases. There is no method by which minors' counsel can bill for the services of paralegals, law clerks or other support services. Current rates of compensation do not attract the best lawyers, encourage minors' counsel to carry heavy caseloads, and do not generate sufficient income to support even minimal overhead – not to mention the specialized library, publications, memberships and continuing education necessary for quality work. Supervising Family Law judges should monitor the number of active cases each minor's counsel is carrying and may impose restrictions if attorneys are carrying too many minor's counsel cases to be effective. Representing children's best interests in the most difficult custody matters the court hears is not a job for beginners.	11. Compensation The Task Force recommends review of bills and costs and that courts consider caps on fees and limiting the time minor's counsel may be involved in a case so as to more effectively address many of these issues. Additionally, full implementation of existing statewide rules of court on minor's counsel is recommended.
	12. Families are not well served by development of firms or practices in which all or the majority of the caseload is minors' counsel work. Experience has taught us that we become much better lawyers with a much broader perspective when we learn from the experience of representing mothers, fathers, stepparents, grandparents, and children.	12. Existing statewide rules of court include experience requirements that support a broad range of case-related experience for minor's counsel.
	Expanding Legal Representation The theme of this section is consistent with our initial report to the Task Force. Efforts to meet the needs of self-represented parties have	Expanding Legal Representation The rates of self-representation do not appear to be significantly different

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	attracted more parties to self-representation – often to their extreme detriment. Simplification often is a trap for the unwary that has costs that exceed the benefit. The purpose of fee awards in family law is to ensure the level playing field that is necessary for just outcomes. Early, needs-based fees are essential to access to justice. In re Marriage of Hatch (1985) 169 Cal.App.3d 1213 Family law bench officers must be regularly reminded of this policy. Where one party is under-represented, the Court is unlikely to reach a just result. The private bar cannot be expected to finance legal services – we are professionals, not banks. We also need to revisit the issue of fee awards to lawyers who are substituted out for services performed. In re Marriage of Borson (1974) 37 Cal.App.3d 632 and In re Marriage of Kelso (1998) 67 Cal.App.4th 374 usually leave prior counsel unpaid while the family's funds are distributed elsewhere. Unless lawyers are better protected, quality lawyers will simply be unwilling to represent one party in cases where it is likely that the other party will have primary responsibility for fees and costs. Another vexing issue is cases where grandparents, new mates and others are financing one party's litigation. The playing field is inevitably tilted in these cases, and therefore justice is significantly compromised. The law should be reformed to permit the court to consider a party's access to other financial resources for purposes of awarding attorneys' fees and costs, where a third-party is financing one side of the litigation. We worry about where the money will come from	than in states that provide many fewer resources to litigants than California. This trend appears to be primarily based upon financial realities of representation, rather than on increased services.

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	to carry out many of these goals for increasing representation. Representation (full and limited scope) is a high priority if we are organizing a court that is designed to produce wise outcomes. We are delighted by the passage of AB 590 (Civil Gideon bill) with its promise of funding for court-appointed counsel for parents and children in family court. All of the concerns and recommendations that we set forth in section IX of this report have equal application to this section. We also think that existing non-profit family law legal services programs need funding for significant expansion. The Task Force should be expanded to address implementation of AB 590. The success of this program will require that considerable thought be directed to criteria for appointment of counsel; training, expertise and experience requirements; compensation; supervision and mentoring; scope of appointment; and preservation of the independence of appointed counsel to determine the scope of services. In addition to expanded use of limited scope representation, we think it is critical to develop modest means panels comprised of attorneys who have sufficient expertise and experience to competently represent family law litigants. We also suggest that lawyers who typically earn higher hourly rate are likely to be willing to accept one or two limited scope cases per year on a sliding fee scale. We concur with the need for appellate representation for family law litigants. We propose that law schools be invited to develop family law appellate advocacy clinics. We also suggest that Public Counsel's appellate project is an excellent model that should be expanded in Los	

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	Angeles County and emulated throughout the state. One option for recruiting members of the private bar to provide trial court and appellate court representation at reduced rates would be the formation of legal clinics that employ lawyers on a salaried or hourly basis and provide group health insurance. Affordable group coverage would provide a huge incentive to many solo and small firm practitioners. Appellate review provides an essential check and balance ensuring trial court accountability. The law itself also benefits when the cases in appellate courts more accurately represent the issues and circumstances of most family law litigants. Current case law is skewed by atypical cases because only the affluent, lawyer litigants, and parties whose lawyers provide full or partial pro bono services bring their cases to the appellate courts. Expanding the availability of appellate representation on a sliding fee scale would help California develop case law that more accurately reflects the circumstances of most parties to family law matters. Please change "should" to "must" in paragraph 5(d) and consider deleting the word "local." Judicial education should include training in limited scope. We also note that the rules of court authorizing limited scope representation do little more than offer the forms – they need fleshing out. Domestic Violence We agree with most of the recommendations regarding domestic violence, and we have some comments and suggestions. Much of the discussion in the draft recommendations is vague. DV and family court judges, DV volunteers and legal services providers, minors' counsel, and FCS personnel need advanced training in the research concerning	Domestic Violence Many of the details associated with these recommendations need to be developed during implementation.

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	different patterns of domestic violence and its implications for child custody. There is a lot of research and expertise available in this area, but little of it trickles down into the courtrooms despite mandates for DV training. Those mandates do not address the quality of the training. Trainings and policies are too often shaped by the advocacy community rather than research findings.	
	Custody and visitation orders obtained in a brief, simplified process should not become permanent other than by stipulation. Parents should be advised and assisted in obtaining permanent orders by stipulation or judgment in a parentage or dissolution action.	Custody and visitation orders Existing law allows courts to issue custody and visitation orders in Domestic Violence Prevention Act cases. The Task Force recommends clarification survival of custody and visitation orders issued in Domestic Violence Prevention Act cases.
	Obstacles Faced By Parties to DVPA Proceedings We note that there are many practical obstacles parties face in using the DVPA procedures. One simple one is parking. The Court must validate parking for indigent litigants in courthouse lots if we are to achieve our access to justice goals. Another critical issue is child care – in another recent case a mother's DVPA hearing went off-calendar because the bailiff had sent her to the hallway when her infant cried, and no one located her when the case was called. She had to start the entire process all over again. DVPA courtrooms need a waiting room area – since infants cannot be left in the day care facilities, and not every court has day care facilities.	Obstacles Faced By Parties to DVPA Proceedings The Task Force recommends in Court Facilities that children's waiting rooms be established to address this and related concerns.
	A large number of the Petitioners who obtain ex parte restraining orders	The Task Force agrees that efforts to identify obstacles to accessing the

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	do not return on the day of the hearing and the cases go off calendar. We need to study that group to determine why they don't return, identify the obstacles to their returning for their hearings, and provide supportive services to help them complete the process. We also need a way to safely assess whether Petitioners who appear and request to withdraw their cases are making that decision without coercion or duress. It is common to see Petitioners who alleged fairly horrific incidents of domestic violence at the ex parte sitting at the counsel table with the Respondent and requesting that the matter be dismissed. We need trained FCS staff to interview those Petitioners privately, assess whether the withdrawal is free and voluntary. In cases where the Petitioner seeks to dismiss, but the moving papers suggest that a child may be at risk, the matter should not be dismissed until minors' counsel has been appointed and determines whether to request further protection for the child. Practical Suggestions Many DVPA cases are filed by parents on behalf of children (often teenagers) who are DV victims. There is no place on the forms for an application for guardian ad litem status, and there are no form orders for appointing the parent as a GAL in DVPA cases. Current law allows a guardian ad litem to seek DVPA orders to protect a minor child, and also allows children age 12 and above to seek such orders without a GAL. Code Civ. Proc. §372. The Judicial Council forms fail to carry out this statutory provision with a simple mechanism for appointing a GAL. Fairness and Due Process In DVPA Courtrooms We are concerned about long-term custody and visitation orders being	courts in this area should be researched and better understood. Such efforts should be undertaken as part of implementation and in consultation with related advisory groups such as the Domestic Violence Practice and Procedure Task Force and the Family and Juvenile Law Advisory Committee. Practical Suggestion This suggestion should be considered as part of implementation and referred to the appropriate Judicial Council advisory group. Fairness and Due Process The Task Force recommendations for

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	made in an abbreviated process without full child custody evaluations. Family Court DV-custody cases require a careful differentiated analysis, and individualized assessment of the family. We see children who are direct and indirect victims of serious DV who are inadequately protected, and we also see use of DVPA proceedings as a tactic to gain an advantage in custody disputes. We have concerns about the potential for unfair procedures in abbreviated DVPA proceedings. Litigants should be offered opportunities for extensions of time to respond to last-minute pleadings or testimony. We are also concerned about maintaining a level playing field in DVPA services – so that legal and support services are offered to both parties. Parties responding to DVPA claims should not come into courtrooms filled with volunteers and literature directed primarily at victims. Some legal services programs represent both DVPA petitioners and respondents, while in other locations legal services are only regularly offered to petitioners. When a DVPA petition is served, it should be accompanied by information about available legal services for the responding party. Each court needs a statewide computer cross-check for other case numbers at the time of filing – before orders are issued. Until we have fully scanned case files available on line, at least the same county must be cross-checked. The court considering the claims in a DVPA petition in a case in which other family law matters are pending, needs to see the entire file to consider the DVPA application in context. Oftentimes the issue raised in the DVPA proceeding has already been considered in	resources, judicial assignments, case management, and other areas are designed to address the issue of providing appropriate court and court-connected services time for cases to improve decision-making and issuance of orders. Services The Task Force agrees that all information about domestic violence services available in a particular community should be provided to litigants. The AOC has developed brochures and information sheets for petitioners and respondents on domestic violence and how to access services, available in multiple languages in easy to print format on the self-help Website. Statewide Computer Check The Task Force is aware of efforts underway to provide this type of information to the courts.

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	the other proceeding. We are also seeing litigants who are already represented by counsel in family law proceedings come in self-represented for additional DVPA remedies without counsel for either party knowing about it. In some of these cases the DVPA proceeding allows a party to make an end-run around orders made by the judge hearing the existing matter. Training for judges and pro tems hearing DVPA proceeding needs to include information about factors to consider in making a genuine individualized determination of good cause to waive notice, and for determining when to include kids as protected parties. It is also not uncommon for applicants to try to get all household members shown as protected parties. The cases heard in DVPA proceedings include many with risks of lethality. These courtrooms must be staffed by highly trained bench officers who understand the lethality research, and the caseloads must be manageable. In every county, DVPA restraining orders should be served by the Sheriff at no cost, and failsafe systems to ensure that the proof of service is in the file at the time of the hearing must be put in place.	Training The Task Force agrees that training and judicial assignments in this area must be appropriate for the subject matter and types of cases that come before the court. Recommendations in Judicial Branch Education and throughout the report reflect this concern. Sheriff and service The Task Force endorses the recommendations of the Domestic Violence Practice and Procedure Task Force which includes the following "Each court should collaborate with law enforcement and processing services to ensure timely and effective personal service of process of restraining orders and entry of proof of service into DVROS. (now CARPOS)."

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	Establishing Parentage in DVPA Proceedings We support using DVPA proceedings as an opportunity to assist parents in establishing parentage, but we have a number of concerns about the use of voluntary declarations of paternity. First, many of the parties signing voluntary declarations do not fully understand the significance – they are thinking of the birth certificate – but do not consider custody, support, inheritance or other rights that are associated with paternity. In order to obtain a judgment of paternity that is not subject to attack, all putative parents must be joined as parties. But that is not the case with voluntary parentage declarations. Simplified procedures cause injustice where the facts are more complex. We are seeing cases in which there are multiple putative parents, where two of them sign a POP-Dec. For example, we are seeing cases in which A married woman signed a POP-Dec's without the knowledge of her husband and then raised the child with her husband but the court is ordering blood tests; A lesbian mother and a medical insemination sperm donor signed a POP-Dec, but the lesbian mother's domestic partner was the intended parent and became a Fam. Code §7611(d) presumed parent, and Cases like the recent decision in Kevin Q. Where a POP-dec was signed by the mother and a man who had no social relationship with the child to defeat the de facto father's established social father-child relationship – even though he was a Fam. Code §7611 presumed father. Any procedure to establish paternity in a simplified setting must ensure that all putative parents are joined, and receive notice. Before accepting a POP-Dec, the Court must ascertain that the mother is unmarried, and	Parentage The Task Force agrees that all appropriate procedures need to be followed in these cases and recommends that related details be addressed during implementation.

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	that there are no other putative second parents. Long Cause Trial and OSC Calendaring We support the draft recommendations, with the following additional comments. When an OSC is on calendar for hearing, the file and the docket should be tagged to reflect whether or not the hearing was set following an ex parte application for emergency orders or an order shortening time. Cases so set must have priority on the short cause calendar. Cases should not be continued by clerk on the day of the hearing without the court looking at the file, and without giving counsel an opportunity to tell the judge whether there is something urgent that requires attention. Direct calendaring is essential to avoid duplication of judicial time reviewing the file, and to ensure contextual decisionmaking in family law cases. In re Marriage of Seagondollar illustrates the magnitude of cumulative procedural unfairness that results when the judge hearing each request is not making decisions with the big picture of the case firmly in mind. Time estimates for trial double or triple if a case is to be tried by a judge who was not the pendente lite judge. Although the Family Code mandates priority for trial of custody issues, that statute is rarely implemented. There also needs to be a mechanism for early determination of conflicts of interest and transfer of cases so that urgent matters do not get continued because the judge recused him or herself on the day of the	Long Cause Trial and OSC Calendaring The Task Force anticipates that implementation of effective caseflow management can address some raised by the commentator. Caseflow management provides the infrastructure that facilitates contested cases moving forward without interruption, or undue delay to other cases set for hearing and trials. Caseflow management staff should be able to identify the issues raised handle many of the issues identified, such as identifying and planning for out or state appearances, prioritizing of cases, adjusting judicial assignment when appropriate (See Case Management). The Task Force agrees that the issues of time estimation, communication to judges about case status with respect to settlement, calendar management and cases entitled to priority are all critical issues to be addressed during implementation of this

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	hearing. When a case that is set for hearing must be continued, there needs to be meaningful review to determine whether interim orders should be made. Calendaring needs to reflect priorities and the urgency of the matter. The statutory requirement to give child custody trials priority is rarely followed – there needs to be an effective mechanism to implement that statute. Time estimates for trial should be calculated in actual hearing hours, not days. They should include ample time for cross-examination, rebuttal and resolution of various procedural issues that arise during trial. Every case set for trial or long cause hearing should have pretrial orders governing exchanging and marking of exhibits (and preparation of exhibit books), motions in limine and requests to take witnesses out of order, and related matters should be heard in advance of the trial itself – perhaps at a readiness conference. Continuances and delays are extremely costly – particularly for out of town parties, witnesses and counsel. Technology is making it easier for parties and witnesses to testify via webcam at very moderate cost. Los Angeles County has that technology available, although it has not publicized it. One of our committee members has taken days of testimony from a party and witnesses in Beijing in an international custody case. Family law courtrooms need to be modernized to take advantage of this time and cost-saving technology. Litigant Education Implementing the Litigant Education recommendations immediately	recommendation. Litigant Education Agree that partnerships with law and public libraries are important to

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	would result in significant savings. Providing materials and equipment is less costly than staff time. Each family law courthouse should have a multimedia library stocked with parent education videos, Judicial Council forms, model parenting plans, the Nolo Press family law books and forms in pdf and paper form, computers, printers, internet access and a research librarian. Where Nolo or other commercial products do the job well, we should stock them, lend them (and sell them) rather than use CFCCA budget to re-invent the wheel or create duplicate resources. Law libraries are searching to preserve their relevance in the internet era, family courts should build alliances with law libraries to coordinate and unify self-help resources. AOC has done an excellent job with the prize-winning Courtinfo website. That site should be maintained and kept current, but probably does not need significant expansion. In this time of huge budget cuts, significant resources need to go back into the courthouses. Each courthouse should maintain referral lists for ADR providers, legal services providers, modest means and unbundled legal services, and parent educators. It is challenging for members of the public to find professionals with the skill sets they need. Another way to get these materials to the public would be in partnership with public libraries. Many public libraries also have meeting rooms that could be used for clinics and for parent education programs. Lawyers also need access to computers with court forms, printers, and the internet in the courthouse. We frequently need to prepare Orders After Hearing, or receive email and faxed documents to expedite court proceedings.	provide these resources.

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	CDR (ADR) As noted above, it is time to use the term Consensual Dispute Resolution, rather than Alternative Dispute Resolution. Most cases are settled – not tried. It is actually adjudication, not self-ordering, that is the "alternative" process. We discussed the role of CDR at some length as part of our first three priorities. We have some additional comments. We are concerned that this section ignores collaborative family law. Collaborative family law interdisciplinary groups have formed all over the state. The Legislature has recognized the model. The Task Force Recommendations should be amended to give serious weight to collaborative family law. At p. 45, your draft reads, "Given the wide range of issues and case types arising in family court, educational materials and information should avoid a bias that supports settlement over litigation; those litigants who are unable to settle and may require court assistance in resolving their matters for any number of reasons should be provided with information about proceeding through…" As we discussed earlier, the CDR and adjudicative models each have alternative risks and benefits. We share the Task Force's concern over "happy talk" lectures about settlement or "gun to the head" admonitions that minimize complexity and importance of issues in a fashion that is disrespectful of parties and their serious concerns. Education about options should stress the role of careful, informed decisionmaking in both CDR and adjudicative processes. Declarations of disclosure should be required before court-connected mediation of economic issues. But parties who are using private CDR	CDR The Task Force has incorporated the term consensual dispute resolution.

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	services such as collaborative family law should have flexibility – provided that declarations of disclosure precede formal agreement on financial issues. We are concerned about the notion that anything other than advice of counsel can adequately educate people about the legal issues in their case. The Court should offer referrals for legal services, modest means panels, unbundled legal services rather than giving oversimplified, general information that may not fit an individual's situation and needs. Streamlining. Families, and the issues that they bring to court are very complicated and individual. Generally, we think that California has reached the point of diminishing returns (and perhaps entered the zone of unintended negative consequences) with respect to simplification and the use of plain language on court forms after at least a decade of work on that project. We think it is time to focus on expanding legal services, rather than continuing to try to simplify situations in which the facts and issues are complex, and the particulars for each family matter a great deal. The historical distinction between an OSC (request for substantive orders such as restraining orders, child custody, fees, or support) and a noticed motion (procedural issues) has been lost through variant local practices. Either that distinction should be restored and the forms should be clarified to reflect it, or we should move to the unitary Request for Order that the Task Force proposes. In that regard, we note that some courts like Los Angeles direct all motions to court research attorneys for workups, while the OSC's go directly to the judges. As we recommended above, we think that use of research attorneys should be	

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	expanded, along the lines of the probate court model. Practicing attorneys should participate in developing a workable "request for orders" form. Parties and counsel should be encouraged to attach proposed orders to the request for order form. That practice provides the best notice of the exact relief requested, and facilitates immediate entry of an order after hearing if the request for orders is granted. Page limitations on declarations are inconsistent with due process, and fail to take into account the complexity of cases and the parties' burdens of proof. Differential treatment of self-represented litigants and represented litigants in this regard would violate due process and equal protection rights. Model or form declarations may lead parties to ignore critical facts unique to their cases while providing information that the court does not need. People come to court for lots of reasons seeking lots of different relief. Also, written testimony tells us a lot about credibility and provides a lot of individual information. If parties are just checking boxes, the Court ends up with less relevant information, not more and little idea what weight to give to contentions. Providing topic outlines for declarations might be useful, but essentially having every litigant's story reduced to a few multiple choices is a bad idea. Facilitators need more information about burdens of proof, and need to advise parties who are being helped in preparation of moving papers about their burdens of proof. Frequently parties come to court seeking support increases, for example, that allege that the moving party thinks the other party is making more money. The facilitator needs to assist the party with procedures for requiring exchanges of income and expense declarations, discovery, or subpoenaing evidence, rather than	

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	send the party to court to lose. There is no need for additional forms and laws governing discovery, with the possible exception of a production request. The problem is not that the existing discovery process is unworkable, it is that those who won't cooperate and follow that process are not punished in a way that produces compliance. Discovery must be tailored to the individual case. In any but the most basic case, it is unreasonable to expect litigants to successfully do this when self-represented. It cannot be simplified and remain meaningful. This is an area where legal services and limited scope assistance are essential. Current law governing Declarations of Disclosures create huge obstacles – largely because the law does not set firm deadlines and clear consequences for failure to provide them. Unresponsive parties can create significant challenges and delays for their spouse who wants to end the marriage and secure a judgment. We support the idea of forms for stipulated judgments (Los Angeles, Sacramento and other counties have carefully developed forms for this purpose that could be emulated). We also support expanding summary dissolution – with an adequate disclosure about spousal support rights, there would be no need to limit this procedure to short marriages. If changes or clarifications are to be made with respect to post-judgment notice there must be a requirement to ascertain the responding party's current address. We cannot expect parties to serve and file notices of change of address for years or decades after entry of a family law judgment. Perjury.	Perjury This recommendation has been

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	We oppose the recommendation regarding perjury. The fiduciary duty and other statutes address this problem. We believe that cross-allegations of perjury will escalate the adversarial nature of family court litigation, increase the economic and emotional costs of the family court process, but will not produce any real changes of behavior. This recommendation appears to be designed to address the complaints from focus groups. It is important to remember that the litigants who choose to spend time a public hearings and focus groups are unlikely to be truly representative of the family court population. They turn up at focus group events because they are disgruntled litigants. Much of the testimony that a party may claim is fraudulent is essentially opinion testimony – such as a party's estimate of the value of an asset. Human recall is imperfect. This proposal offers no differentiation based upon the nature and significant of the factual testimony and it would be impossible to draft a statute with sufficient focus to actually work fairly and wisely. There appears to be no evidence that witnesses in family law cases knowingly and maliciously lie to the courts any more than other witnesses. To some extent this complaint is more reflective of the psychology of being a family law litigant than of a real problem in family court. People get caught up in the drama of these events in their lives – their beliefs and perspectives shape their interpretation of events, their testimony and their assessments of the testimony of others. Oversimplified, that phenomenon leads each party to believe that the other is lying. Often the truth is somewhere in between. The problem is compounded by Reiflerized, abbreviated hearing processes in which the judge assesses credibility on the fly and never gets to know the parties	significantly modified in response to comments. The Task Force heard from attorneys, litigants and judges throughout the state about their concerns that perjury is a serious issue.

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	as individuals, observe their demeanor or follow the family over time. The outcome of these perjury hearings would turn on judicial assessment of credibility. Ample research that shows that judges have no more ability than anyone else to determine credibility – it is still a coin toss. Subjecting people to the stress and costs of relitigating issues when one party wants to persuade the Court that the other was not truthful will prove neither wise nor productive. Giving disgruntled litigants yet another tool to prolong disputes strikes us as risky. Decisions are already subject to set-aside for actual fraud. As a practical matter, when the Court disbelieves a litigant, that litigant is unlikely to get favorable rulings. We think it unlikely that piling on other disincentives that can just as easily be misused and abused will change litigant behavior. Miscellaneous Other Recommendations Default and Uncontested Proceedings) We support expediting and standardizing order entry and default proceedings. We have discussed many elements of this issue in earlier sections. We note that most of the issues presented by family law default and uncontested cases still require consideration and weighing of evidence to reach just results and prevent overreaching. Interpreters We generally support these recommendations. We add the following thoughts 1. The report contains no mention of sign language interpreters – who are needed in courtrooms, CDR proceedings, meetings between minors' counsel and families, and a variety of other settings. The ADA may	Default and Uncontested Hearings No response required. Interpreters - 1. Agree to include sign language interpreters.

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	require lawyers to provide sign language interpreters for clients at our own expense. This is impractical for most small law firms. A court-connected service that interprets for deaf litigants and our clients would improve access to justice. 2. A computer-based listing of court-approved interpreters for each language in each county would be extremely helpful – particular one that automated advanced booking. 3. Children should be protected from family law litigation, and not expected to interpret for parents. 4. Every judicial Council form requesting a court hearing should have a check box to indicate whether an interpreter will be needed, and the language to be interpreted. 5. In calendaring, courts should recognize that interpreter matters are likely to take more time than other cases, and adjust the calendar and caseload for a particular day accordingly. In some courts it may be feasible to aggregate a number of cases involving the same language for the same day. Care should be used in settings where there are many	2. Courts currently have access to a list of court certified interpreters. Advanced booking is part of the design of the California Case Management project. 3. Agree that children should not be used as interpreters. 4. Agree that the Judicial Council should consider adding a checkbox to forms requesting a hearing to indicate that an interpreter will be needed and the language spoken. Agree that interpreter matters generally take longer and that this should be factored into the calendar. Prior notification of the need for an interpreter will assist in this process. Agree that care should be taken to avoid segregation of individuals of particular ethnicities. 5. Specialized training regarding family law terms is a very interesting idea that should be considered as part of implementation.

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	family law departments, such as the Stanley Mosk courthouse, to ensure that individuals of particular ethnicities don't get segregated into particular courtrooms to facilitate interpreter services. 6. Interpreters working in family court should receive specialized training with an emphasis on vocabulary used in family law cases. Even common terms can cause problems. For example, a half day of testimony had to be done over when it was discovered that a Korean interpreter substituted the word "child" for toddler, thus eliciting answers about the needs of children in general to questions that focused on the parent's understanding of the developmental need of children between the ages of 12 and 36 months. Public Information and Outreach 1. AOC's award-winning website does a great job. Many counties have excellent, user-friendly websites. We particularly appreciate access to civil registers on line in family law cases, and would like password access to the registers in parentage cases. 2. People's direct experience in family court is the biggest influence on their perception of the courts. Improving the quality of that experience is what matters most. 3. As noted above, expanding courthouse self-help and reference resources, clinics and community education programs to public libraries would improve access – especially for those who do not live near their courthouse. 4. Education about the justice system and the relationship between individuals and courts should begin in junior high and provide information to children about how courts actually work. The adults we see pro bono, as well as the doctors and developers have one thing in common – an over idealized view of what courts can do. The primary	17. Public Information and Outreach Recommendation has been modified to including making information available on the AOC and local court Web sites, as well as through public libraries and law libraries. With respect to educating children about the court system, the Task Force believes this should be a branch-wide effort and not limited to family law. The AOC has been involved in programs to educate students about the court system.

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	sources of information now are television and films. Those sources present inaccurate views and rarely show family court. We need to educate our residents to be better consumers of court and legal services. We also need to teach CDR skills to children, beginning in elementary school, so that people develop the skills to prevent the need for litigation as they grow up.	
	Judicial Branch Education – This issue was one of our top three priorities, so we have discussed it extensively at the beginning of these comments. We reiterate that the recommendations of the Task Force are insufficient to give judicial officers the tools they need for even minimal competence in a family law court room. None of the other reforms will have any positive impact unless the judge in family court is a true family law expert. The work is simply too complex and nuanced to continue with the current model, even with the minor enhancements that have been proposed. Excellence in family law courts cannot be achieved without a complete transformation of the judicial selection and education process and standards. The practicing family law bar, and the top divorce researchers should participate in developing the curriculum – particularly practitioners in various subspecialties.	Judicial Branch Education See response above.
	Unless a newly-elected or appointed judge is a CFLS or has the equivalent experience or expertise, he or she should not be assigned to a family law department until that judge has completed three years in a civil courtroom. When an experienced family lawyer is appointed or elected to the bench, he or she should go directly to a family law	The Task Force recommends that judges generally have two years of judicial experience prior to taking a family law assignment, but the recommendation has been revised based on public comments to give the

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	assignment. Sending family lawyers to other assignments while staffing family law courtrooms with judges who don't know family law is a huge drain on court resources and produces unfortunate outcomes. The practice is a waste of resources that the families and the courts cannot afford. We cannot measure success by the number of orders entered or files sent to storage – we must also consider the quality of outcomes. There must be incentives to retain seasoned family law judges in family law assignments, mentors for newly assigned family law judges, and binding four year commitments (after a three-month trial period) to the assignment. Only judges who request the assignment should be assigned to family law. Presiding judges should be empowered to transfer judges from family law where there are many 170.6's filed, or other indicia that the assignment is a poor fit. We agree that Cal. Standards of Judicial Admin., standard 5,30 should become a Rule of Court – with some real world method to ensure compliance. We reiterate that we think one way to accomplish this would be to reorganize the Court so that there are dedicated family law seats, and candidates seek appointment or election to those seats based upon their expertise for that assignment. We fear that the anticipated increase in caseloads will drive even more experienced family law judges into retirement and private judging, or deter them from accepting family law assignments. We cannot imagine what courtrooms will look like if the calendar increases any more. Research agenda Research must be targeted at the things we really need to know to organize the courts so that the CDR and adjudicative models produce	Presiding Judge clearer discretion to assign a judge to family law who has fewer than two years of judicial experience, based on all characteristics or qualities that make judges well suited for the assignment, including the expertise of the judge. Family Law Research Agenda Many of the data elements suggested are subsumed under broader headings in the existing recommendation. Agree

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	good outcomes for families in a fair and reasonable fashion. The research agenda should be looking at each stage of the process, the relief people are requesting, and how the court responds to those requests for relief. What is the wait time for mediation or evaluation? How long does it take for a pendente lite custody and support OSC to get resolved on the merits? What percentage of long cause matters are tried on consecutive days? How much time passes from the time the parties request a trial until the trial begins? Ends? Judgment is entered? How many different judicial officers work on a case from filing to resolution? What impact do post-judgment proceedings have on the caseload? These questions focus on the data we need to know whether our family courts are doing their job, and how to best allocate resources. Court Facilities We agree with these recommendations. Families need family courts and services open outside business hours – including resource centers, CDR programs, parent education programs, clinics, and courtrooms. Family courthouses need to be comfortable, safe, decently maintained, and accessible. They need private space allocated for informal attorney-client conferences, and settlement talks. They need facilities designed for CDR. They need classroom space for in-service training for court personnel, CLE programs for the bar, continuing education programs for court-connected private professionals, and for programs directed at parties and the public. Leadership, Accountability, and Resources We agree with these recommendations. We note that the loss of the commissionership model is eliminating the primary path by which	that the number of different judicial officers who work on a case may be an important element to track and should be considered in the implementation process. Court Facilities No response required. Commentator's concerns are addressed through existing recommendations. Leadership, Accountability, and Resources To address the issue of relatively few experienced family law attorneys

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	experienced family lawyers become judges. Family lawyers work as sole practitioners or in small firms. Particularly in larger counties, the costs of running for elective office are prohibitive. Family lawyers are unlikely to have the political connections to secure appointments by the governor. Family lawyers interviewed for possible appointment come back reporting that they were quizzed about their jury trial experience. The commissioner system also allowed each jurisdiction to expand and contract the number of family law courtrooms based upon need, without waiting for judicial vacancies to be filled by appointment or election, and without waiting for the legislature to create new seats. Commissioners often developed a real commitment to family law and remained in those assignments for many years. While we agree that there should not be a two-tier ranking of bench officers, we are troubled by the failure to consider and rectify the adverse consequences for family courts resulting from winding down the commissioner system. Until the California Courts stop viewing judges as interchangeable and realize that excellence can only be achieved through specialized assignments, our family courts will be unable to earn the respect and confidence of the public and the bar, and will be unable to meet the needs of the children and families they serve. As noted, we think it is unwise to administratively treat juvenile and family courts together. They not only need separate leadership in the courthouse, but the Judicial Council should have separate family law and juvenile advisory committees, separate staffing and separate administration. Although both departments work with families and children, that is where the similarity stops. There are dramatically different purposes, procedures, needs and court cultures. We observe that juvenile court always gets the priority, but many families would	seeking judgeships, the Task Force recommends further changes to the judicial appointment process and application to encourage applicants with family law experience. The Task Force also recommends proving information to the State Bar and JNE, and encourages Commissioners to apply for judgeships. Family and juvenile court role within trial court governance structure The Task Force is recommending assessing the viability of consolidating the juvenile and family court departments under a single judge. The assessment will address how to implement any proposed changes, and the concerns noted here will be forwarded to the

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	not end up in juvenile court if family courts were serving their preventative function. We have a number of concerns about the expansion of the role of private judging. We agree with former Chief Justice Rose Bird that private judging creates a two-tier legal system. The wealthy can choose who judges their cases, schedule proceedings at their convenience, and have matters heard in the comfort of a private conference room. The public scramble for the attention of an overworked public judge, who may not know much about family law – and often sits in a run-down and underequipped facility. This disparity in the experience of family court justice concerns and dismays us. We worry that the disparity will further impair the public's perception of the legal system and promote disrespect for the courts. We also recognize that the availability of private judging frees up courtrooms for litigants who cannot afford the private judge option. But something about litigants being able to buy their way out of the courthouse rankles. We are increasingly advising our clients of the option to engage a private judge, and we are negotiating with opposing counsel to engage private judges for our upper middle class clients, because the delays and lack of competence associated with the public courts make private judging often appear to be a better option for a given case. Some of our members are developing flourishing practices as private judges. We also see lucrative private judging opportunities luring some of our best family court judges away from public service. We also have seen judges who had no prior interest in family law, suddenly spend a year	implementation process. The Task Force did not address issues of private judging. The concerns noted here will be forwarded to the implementation process.

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	or two in family court, where they appear to curry favor with members of the bar whose clients can afford private judges. Some of us joke that the family law assignment often serves as "rent-a-judge" training and marketing. Another concern is that when the litigants with the greatest societal power and influence can outsource justice, they have no motivation to push the Legislature and the Governor towards adequate family court funding, and true family law reform. Consequently, allowing the powerful to avoid the hardships suffered by other family law litigants hurts all litigants. We need to make sure that the California courts devote resources to the two highest priorities – keeping courtrooms open and making sure they are staffed by bench officers with the highest level of experience and expertise. Many of the other recommendations seem like luxuries, when we cannot accomplish the basics. California's family courts simply cannot provide protection and justice as caseloads increase, resources for CDR and preventative measures vanish, and the bench lacks the expertise and experience to reach wise decisions. Many lives will be ruined, and some will be lost if we do not act quickly to address the top three priorities – enough courtrooms, enough expert judges and court personnel, expanded education, and expansion of high quality professional CDR programs. Our human, intellectual, political and financial resources must all be directed to those goals. The Task Force has the opportunity to be a powerful voice in this time	

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	of crisis. To do so, it must directly address the crisis, rather than make plans for what happens in the event that the crisis passes. Show Us the Money Two Possible Sources for Increased Family Court Funding Without more funding for family courts, none of the great ideas for restoring justice to family law are remotely feasible. Our committee came up with two ideas that may increase funding for California's family courts. First, we recommend emulating Texas's Universal Order statute, which resulted in all child support orders being part of the pool from which Title IV-D of the Social Security Act federal funding amounts are determined. We are told that Texas has dramatically increased the funds it receives from the federal government by adopting Universal order statutes. Second, we think California's family courts should aggressively seek out First Five tobacco tax funding. Universal Child Support Order and IV-D Funding California should consider a Universal Child Support order statute under which all new California child support orders must be treated as IV-D orders unless both parties decline IV-D services. Each order is maintained in a statewide child support registry, and recorded for collection in every county of the state. Essentially, this approach substitutes an "opt out" method rather than an "opt in" method for Department of Child Support Services collection of child support orders. California receives federal Title IV-D funds based upon successful child support collection by the state Department of Child Support Services. The more child support orders that are included in that pool,	Universal Child Support Order and IV-D Funding. California has previously considered the possibility of becoming a universal child support state, but found resistance from representatives of the private bar. This is an idea that can be considered as part of implementation. First Five (Tobacco Tax) Funding A number of courts already receive these funds for specific projects. Courts can certainly be encouraged to

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	the more funds that California will receive. A Universal Order statute would significantly increase the pool of child support collections from which federal funding is calculated. Some of the IV-D funds must go to the dedicated child support calendars, but a portion of those funds may be used for other family law funding. Texas has enacted a Universal Order statute (Texas Fam. Code Chap. 231) and is receiving significantly more federal funds than it did before. See Appendix II for the Texas statute. The Universal Order approach would immediately 1. Increase current support collection percentages, 2. Improve the collection to cost ratio for California child support collection, 3. Increase the bottom line amount of funds California receives from the federal government as an incentive for child support collection, 4. Improve arrears management (i.e. Deter arrearages), and 5. Help the state acquire critical information at the time an order is made to help in court order allocation decisions and minimize distribution errors for non-IV-D cases. Before Texas enacted the Universal Order "opt out" statutes for child support collection, only 50% of the child support orders issued in the state were considered for purposes of determining the amount of Title IV funds Texas receives. By 2007, after enactment of the Universal Order statute, 90% of the child support orders in the state are included. We are separately sending a copy of the 2007 Report summarizing the Texas experience. First Five (Tobacco Tax) Funding California's courts may be able to augment financial resources by	apply for these funds, but there is often significant contribution from other worthy organizations assisting children.

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	seeking First Five funding for child custody and child support programs. Parents of children ages 5 and under are the most likely to end up in family court. Proposition 10 created First Five Commissions in each county assigned to allocate tobacco tax funds to programs benefiting children five and under. First Five funds could contribute to custody mediation, evaluation, minors' counsel, child support determination and collection, parentage establishments and other programs vital to the welfare of California's youngest children.	
277. Dana Webb No county information provided	Case management is used in Riverside County to prevent litigants from filing their pleadings. Judges place a case under case management but only the in-pro-per litigants have to get permission to file their pleadings. They never get that permission. *Commentator raised concerns about financial costs associated with divorce and steps she believes the court took under "case management" that interfered with access to the courts. By allowing case management, you are allowing the corruption to continue. Commentator indicated that despite efforts to provide information to the court related to children, she believed a judge disregarded her concerns and the following The judges need to be video-taped. They are part of a criminal conspiracy and our children are their hostages to ransom the money from the parents.	This is not the model of case management that the Task Force is recommending. The Task Force recommends checkpoints and assistance for self-represented litigants to complete their cases. The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety.

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278. Irene Weiser Executive Director Stop Family Violence New York, NY Kim A. Robinson Esq. Attorney At Law Oakland, CA	*Stop Family Violence is a national organization with approximately 25,000 members nationwide. Our largest membership state is California, with approximately 5000 members. While we are located in New York, we have ties to California as well, since our fiscal sponsor, The Tides Center, is located in San Francisco. Stop Family Violence is the coordinator of the Family Court Reform Coalition - a coalition of over 200 legal and mental health professionals, national, state and local organizations and advocates, formed in response to the national crisis in the custody court system, where all too often judges order children to live with abusers and punish, silence, or jail the parent who tries to protect the children from harm. The FCRC's mission is to promote reform and accountability to ensure that victims of domestic violence and child abuse are protected from abuse in child custody determinations. Stop Family Violence writes to commend the Task Force on the exemplary work embodied in the Draft Recommendations. It is evident that you have listened well and taken to heart the serious problems in California's Family Court system and that you have thought creatively about needed reforms – not only legislative but also the kinds of administrative reforms that will help to change court culture. The problems in California Family Courts are not unique – Stop Family Violence regularly hears from protective parents all across the country with horrifying accounts of how the court has failed to protect their children. It is our hope that your recommendations will both inspire and guide other states in addressing this nationwide atrocity. Attached are our suggested modifications to the Task Force Recommendations. Thank you in advance for your continued efforts in reviewing and	

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	revising these much needed reforms to keep our children safe. Right to Present Live Testimony at Hearings AGREE WITH MODIFICATION Good Cause Exceptions. A finding of good cause not to receive live testimony should be made on a case-by-case basis. If the court makes a finding of good cause not to receive live testimony, it must state its reasons findings of fact and basis in law on the record or in writing. Written good cause exception must be issued within 10 days. In making a determination of good cause not to receive live testimony, the court must consider all of the following a. Whether the issues relate to substantive matters such as child custody, parenting time visitation, parentage, child support, spousal support, requests for restraining orders, or the characterization, division, or use and control of the property or debt of the parties; COMMENT We object to the use of the term parenting time, vs. the current statutory language of custody and visitation. Parenting time is not found in the family code. The distinction between who is the primary custodial parent versus the visiting parent is important in determinations both within and beyond family court. For example, the primary custodial parent has the right to claim the child as a dependent on tax returns, and to obtain public assistance benefits for the child. Under certain circumstances the primary custodial parent has a presumptive right to relocate with the child, and determining the custodial parent is necessary in Hague Convention cases. Schools need to determine who the primary custodial parent is in various situations,	Right to Present Live Testimony at Hearings The recommendation sets out the framework for the right to live testimony. The suggestion about a specific time limit for judges to prepare their good cause findings will be considered during the implementation process when drafting a rule. The Task Force agrees that the term "parenting time" should not be substituted for the term "custody" when making orders for the custody of children. In the section on Contested Child Custody, the Task Force has recommended that "parenting time" be substituted for the term "visitation" only.

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	and the list goes on…Replacing existing statutory language with the phrase "parenting time" will obscure the identity of and legal rights of the primary custodial parent. Also, in the case of abuse, "parenting time" will elevate the position of an abusive parent with limited visitation to a custodial status they do not deserve. Expanding Legal Representation and Providing a Continuum of Legal Services AGREE Caseflow Management AGREE WITH MODIFICATION Caseflow management beginning at case initiation Caseflow management should begin when the initial pleadings are filed and continue through any postjudgment motions. Cases should be assessed based on the type of case (dissolution, legal separation, domestic violence, governmental child support, and establishment of parentage.) They should also be assessed for procedural issues (default, default with agreement, contested), substantive issues (such as property, custody, visitation, child support, and spousal support), and individual case factors such as allegations of domestic violence, child abuse, alcohol or substance abuse, and other addictions including gambling and pornography; whether one or both parties is self-represented, whether one or more parties has limited English proficiency or has other challenges preventing them from accessing the court that necessitate ADA or other accommodation , and the parties' interest in alternative dispute resolution (ADR) to resolve their case. Case Flow Manager/judicial officer should assess cases at the	Expanding Legal Representation and Providing a Continuum of Legal Services No response required

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	beginning for the need for representation and appropriate award of attorney fees under Family Code Section 2030. Also at the beginning – parties shall complete a standardized form that answers basic questions about themselves, their work schedules, their history of caring for the child, special needs of the child(ren), and current ability to care for the child. Resources available for ADR. ADR should not be required in any case alleging domestic violence, child abuse or child sexual abuse. Additionally ADR, including family court services mediation, should not be permitted in custody/visitation proceedings if there are allegations domestic violence, child abuse, child sexual abuse, alcohol or substance abuse or other addictions including gambling and pornography. If allegations of domestic violence, child abuse or child sexual abuse arise during the course of any ADR proceeding, those proceedings shall be terminated and the case should be reclassified. Participation in ADR should be voluntary only. Stipulation to ADR shall not be coerced, and failure of a party to stipulate to ADR cannot be prejudicial to their case. ADR proceedings shall be non-binding and confidential, absent written agreement of the parties. Early Neutral Evaluation – same regulations should apply as with ADR, above. Cases requiring hearings and trial. Direct involvement and case management by a judicial officer is required in some cases with substantive and/or procedural issues and	

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	complexities. Effective caseflow management practices should increase the availability of judicial officers to hear those matters not suitable for resolution by default or agreement of the parties. For example, cases involving alleged child abuse or domestic violence should be scheduled with the goal of ensuring a prompt (15 days) evidentiary hearing before a judicial officer and minimizing the need for ancillary experts paid for by the parties. Flexibility in design. Attorneys used for caseflow management must be utilized for administrative matters only. Sanctions against attorneys. Any sanctions order shall be supported by a statement of decision detailing the factual and legal bases supporting the imposition of the sanction. Written orders after hearing. Once the timeline for preparation of orders is established the process should be monitored by the caseflow checkpoint system, and notices sent when appropriate. Providing Clear Guidance Through Rules of Court AGREE Children's Voices. AGREE WITH MODIFICATION Input from children. In appropriate cases, judicial officers should consider whether and how	Children's Voices Being given the same civil rights as in juvenile Being given the same civil rights as in juvenile The task force

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	a child might meaningfully participate in a given family matter. In appropriate cases, Judicial officers should/shall consider whether and how a child might can meaningfully participate in a given family matter. There are general legal and psychological, as well as case-specific, reasons to consider a, b, c, d – OK e. If the child desires to speak to the court s/he shall be permitted to do so. Children in family court must be afforded the same civil and human rights as children in juvenile court (W&I Code Section 349 et. seq.) to be given notice of hearings affecting them, a choice of attorneys if one is appointed, and the ability to speak directly to the court. Absent developmental or mental health impairment, the choice of appearing at a hearing and speaking to the judge should belong to the child not to the judicial officer. In cases with allegations of domestic violence, child abuse, child sexual abuse, substance abuse or pornography addiction, the judicial officer shall make every effort to elicit relevant information directly from the child regardless of the child's age. 3. Exercising discretion and finding the least traumatic method for child involvement. Involving other professionals and providing information. STRONGLY DISAGREE. Commentator indicated that section on children being given opportunity to speak with mediator or evaluator should be struck.	agrees that family court should consider the role of a child who is the subject of a child custody proceeding and recommendations in Children's Participation and Minor's Counsel reflect that concept. The Task Force does not recommend equating the role and experience of children whose parents are litigating in family court with that of children in juvenile court. Children in juvenile dependency court are under the jurisdiction of the juvenile court because the government has intervened. In order to assume jurisdiction, the court must find that the child has suffered abuse or neglect or there is substantial risk that the child will suffer abuse or neglect by the child's parent. Because the government is the petitioner, most children and parents in dependency proceedings are represented by state-funded attorneys. In family court proceedings, both parents are presumed fit. It is a parent that petitions the court to take jurisdiction – not the government. If the parents disagree about custody and/or visitation, the court makes a

Commentator	Comment	Committee Response
	COMMENTS To have a child's voice filtered through or interpreted by an external third party robs the child of her/his due process rights to speak directly to the court and runs the risk of ushering in all the problems this task force has noted exist currently with Minor's Counsel. Just as the Task Force has recommended that Minor's counsel not superimpose or filter their interpretations on the child voice neither should any mediator, evaluator or other third party be afforded that opportunity. Involving the child. In those contested custody cases that present the greatest challenge of finding a way to involve the child in the proceedings while protecting the child from feeling caught in the middle or experiencing other trauma, the court, should, on a case-by-case basis, find a balance between protecting the child, the statutory duty to consider the wishes of the child, and the probative value of meaningful input from the child. Courts should consider the following in determining the appropriate action to take Courts shall hear from children in 2 instances 1. If the judicial officer thinks the child could provide relevant information that would inform the court's decision-making. 2. If the child desires to speak to the court. Upon deciding to take the testimony of a child, the judicial officer should balance the necessity of taking the child's testimony in the courtroom with parents and attorneys present with the need to create an environment in which a child can be open and honest. Courts should	determination in accordance with the best interests of the child. Family court proceedings involve adult parties with opportunities for children to participate in mediation, evaluation, or court proceedings, and to have attorney representation, on a case by case basis, as may be deemed appropriate by their parents or by the court. Involving other professionals Given the range of cases, issues, and age and capacity of children involved in family court cases, the Task Force recommendations seek to support judicial discretion, and avoid creating blanket rules requiring that all children participate in one particular way or that children never participate in

Commentator	Comment	Committee Response
	consider the variety of possible settings for taking children's testimony, including an open courtroom; a closed hearing with only attorneys present; in chambers questioning without attorneys and parents present, using questions submitted in advance by the attorneys or the parties; in chambers questioning with attorneys present but with the judicial officer questioning the child; or in chambers questioning with only the judicial officer and court reporter present. Additionally the court should consider the option of the child being interviewed and/or examined at the county Child Advocacy or Family Justice Center. These centers shall provide the court an audio-visual recording of the interview and examination and will report their objective findings to the court. They are not to make custody or visitation recommendations. There shall be an audio-visual recording of all interactions between judicial officer and the child. In addition, there should always be a court reporter. The record should be made available to both parties unless the judicial officer has concerns that making such record available would result in physical harm to the child. If used, CASA volunteers must be independent from the court and not connected in any way with either party. The child must be able to dismiss the CASA volunteer if she or he does not represent their wishes to the court.	family court proceedings. The Task Force agrees that testimony from children to the court must be on the record and be made available to the parties. CASA volunteers in family court the Task Force recommends this be considered as part of any implementation efforts.

Commentator	Comment	Committee Response
	Domestic Violence AGREE WITH MODIFICATION Children's participation. STRONGLY DISAGREE Just as in cases involving abuse and neglect, the court must give appropriate consideration to the question of whether the child's point of view and the information the child has regarding the violence would be probative in determining the risk posed to the child and the ultimate decision regarding his or her best interest. In cases with allegations of domestic violence, child abuse, child sexual abuse, substance abuse or pornography addiction, the judicial officer shall make every effort to elicit relevant information directly from the child regardless of the child's age. Children in family court must be afforded the same civil and human rights as children in juvenile court (W&I Code Section 349 et. seq.) to be given notice of hearings affecting them, a choice of attorneys if one is appointed, and the ability to speak directly to the court. Absent developmental or mental health impairment, the choice of appearing at a hearing and speaking to the judge should belong to the child not to the judicial officer. Settlement processes. The court, in referring or ordering litigants to settlement processes,	Children's participation. The recommendations in Children's Voices (changed to "Children's Participation and Minor's Counsel) reflect existing law allowing for judicial discretion in hearing from a child and supporting the idea that if a child wants to speak directly to the court and the court finds the child is of sufficient age and capacity, it can be beneficial to the court and to the child to hear that child's testimony directly. Rather than pick a specific age at which the court would be required to hear from a child, the Task Force seeks to retain judicial discretion in this area in recognition of the variety of cases that come before family court judges and the developmental differences and needs among children. Settlement processes The Elkins Family Law Task Force

Commentator	Comment	Committee Response
	must consider whether domestic violence is an issue in the case and ensure that such orders include provisions for meeting separately with litigants so as to provide safe and appropriate services. Commentator restated ADR recommendations noted above. In any case where domestic violence, child abuse or child sexual abuse has been alleged, judicial officers shall make written findings of fact and conclusions of law as to whether or not there is evidence of domestic violence as defined in Family Code Section 6203 or child physical or sexual abuse as defined in Penal Code Sections 11165.1, 11165.3 and 11165.4, When there is a finding of domestic violence, child abuse or child sexual abuse, judges must comply with Family Code Section 3044. Enhancing Safety. AGREE WITH MODIFICATION Expedited handling. There should be expedited handling of cases involving serious allegations of physical or sexual child abuse, including emergency procedures so that the judicial officer can quickly analyze the situation and determine what orders are appropriate. There should be expedited access to the courts and special training for mediators, investigators, and judicial officers. The cases should move as quickly as possible to ensure child safety and access and fairness to all parties. Child welfare services. If used, CASA volunteers must be independent from the court and not	focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Penal Code and Family Law Sections. The Task Force agrees that existing law should be fully implemented. Expedited handling No response required. Child Welfare Services The Task Force recommends issues

Commentator	Comment	Committee Response
	connected in any way with either party. The child must be able to dismiss the CASA volunteer if she or he does not represent their wishes to the court. CPS substantiation of physical or sexual child abuse must be a sufficient basis for a finding of such by the family court, and enough to require the family court to protect the child from unsupervised contact with the abuser until the child both 1. reaches age fourteen (14) and 2. makes a formal request of the court that the visitation become unsupervised. Commentator provided the same comments on CPS as provided by those in 6 regarding CPS involvement. Contested Child Custody. STRONGLY DISAGREE COMMENTS There is strong and consistent evidence that the majority of contested custody cases involve allegations of (if not actual) domestic violence and/or child abuse. Commentator provided references on this point. The Task Force recommendations for addressing Contested Child Custody cases must first and foremost address the appropriate management of cases where there are allegations of physical, sexual, substance or pornography abuse. Mediation is inappropriate when there is a power differential between the parties. While shuttle diplomacy may help mitigate the fear a victim would experience in meeting face to face with her abuser, it cannot mitigate the coercive control the abuser exercises over her both inside and outside of the mediation session. For example, abusers commonly threaten that if he can't have the children no one will, or that he'll kill her if she doesn't let him have the children, or that she better agree to	related to use of CASAs in family court cases be addressed as part of implementation efforts. Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. The task force is aware that various approaches to handling contested child custody cases where domestic violence and related concerns are raised have been developed throughout the state.

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	50/50 custody because he doesn't want to pay child support. Of course, he would be unlikely say such within the mediation session, but his threats from outside the session will have a coercive effect on her decisions within the mediation. In the instances where there is contested custody without allegations of domestic violence, child abuse, substance abuse, or addictive use of pornography, ADR, including Family Court Mediation Services may be appropriate, as suggested below. We are in agreement with Elkins Task Force recommendations re mediation if applied in instances where there is no violence or abuse, except as noted below. We have also included a section with our recommendations for how contested custody cases involving allegations of physical, sexual, substance or pornography abuse should be adjudicated. SUGGESTED REVISIONS Commentator restated ADR suggestions from above and noted the following If the task force does not adopt our above strongly recommended revisions regarding mediation, then please ensure the following that the mediator gives their report to attorneys at least 72 hrs in advance of hearing	The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Giving report to attorney This recommendation should be considered as part of implementation.

Commentator	Comment	Committee Response
	Mediator not allowed to make recommendations when parties do not reach agreement.	
	Default resolution to primary caregiver. In contested custody cases without abuse, if the parties are not able to achieve resolution via ADR, primary physical and legal custody should be given to the parent who has historically been the child's primary caregiver. COMMENT The default primary caregiver standard will markedly reduce the burden contested custody cases currently impose on the court. The American Law Institute has recommended something similar (the approximation standard). We prefer the primary caregiver standard in that approximation standard aims to replicate the number of hours each parent spent with the child pre-separation. The primary caregiver standard goes a bit further, to see not just number of hours, but who is doing the real work of parenting and who is the child's primary attachment figure.	Default resolution to primary caregiver. Statutory law allows for judicial discretion in this area so as to most appropriate address the best interests of a child in a given case.
	Child custody language. Commentator suggests deleting this recommendation. COMMENTS The distinction between who is the primary custodial parent versus the visiting parent is important in determinations both within and beyond family court. For example, the primary custodial parent has the right to claim the child as a dependent on tax returns, and to obtain public assistance benefits for the child. Under certain circumstances the primary custodial parent has a presumptive right to relocate with the child, and determining the custodial parent is necessary in Hague Convention cases. Schools need to determine who	Child custody language The Task Force recommends that where appropriate, "parenting time" be considered instead of "visitation" but not instead of custody. No substantive legal change is contemplated with this recommendation and where such a change would cause confusion or affect legal rights, that change should not be made.

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	the primary custodial parent is in various situations, and the list goes on…Replacing existing statutory language with the phrase "parenting time" will obscure the identity of and legal rights of the primary custodial parent. Also, in the case of abuse, "parenting time" will elevate the position of an abusive parent with limited visitation to a custodial status they do not deserve. Commentator provided recommended protocols for sexual abuse cases as stated in 6 on this chart. Minor's Counsel HOORAY!! STRONGLY AGREE!! Minor's counsel's role Role definition. DISAGREE COMMENT This section seems to contradict all the other exemplary recommendations in the minor's counsel section. We disagree strongly with this section as written (or as we're understanding it) and question whether there was perhaps an error in editing? As we understand this section the recommendation allows the minor's council to contradict their client's wishes and inject their own subjective opinion of what is best for the child into the process. This is a stunning violation of the child's right to due process and zealous advocacy and contradicts the other recommendations in this section as well as the Task Force recommendations regarding the importance of hearing children's voices. Under no circumstances should minor's council be allowed to make custody or visitation recommendations that conflict with the child's	Minor's Counsel No response required Minor's counsel role The Task Force recommendations in this section are not designed to allow counsel to contradict their clients' wishes.

Commentator	Comment	Committee Response
	stated wishes. Acting within the scope of that role. STRONGLY AGREE Family Law Research Agenda AGREE WITH MODIFICATIONS A. Basic statewide statistical reporting. In addition to the data identified, we urge both aggregate and specific data collection per judicial officer on each of the following topics Aggregate and specific data on the intake, process, and outcome of cases that have allegations of physical, sexual, substance or pornography abuse – including but not limited to identification of alleged perpetrator as mother or father, to whom custody was given, and whether visitation was supervised or unsupervised. There MUST be judicial officer specific reporting as well, including but not limited to process and outcome data on cases involving abuse, including percentage of cases in which abuse is alleged, percentage in which abuse is found, and adherence to Family Code 3044 if there are findings of abuse. Data should also be collected to discern degree of randomness in assignment of court appointees. Studies to evaluate the effectiveness and replicability of court-connected programs or services. We recommend a specific study to assess the relative burden on the	Acting within the scope of that role. No response required Family Law Research Agenda Basic statewide statistical reporting - Basic statewide statistical reporting is intended to be limited to caseload and workload indicators that are readily available through case management systems. The suggested additional data elements would require extensive manual data collection from court files and some may not even be available in court files. With respect to judicial officer-specific reporting, the Task Force believes that research and statistical projects should be conducted separately from any quality control processes or performance monitoring. Methods of ensuring accountability are addressed in other sections of the recommendations. Studies to evaluate the effectiveness

Commentator	Comment	Committee Response
	court and the parties, in terms of time and money, with the use of an investigator vs. an evaluator.	and replicability of court-connected programs or services The recommendation was intended to be general to cover a broad range of possible evaluation studies. Specific projects will be determined in the implementation process.
	Expedited appeals in custody cases. In light of the need for timely decision-making in custody matters and for prompt resolution of issues that affect children's lives, the adoption of and resources required to implement an expedited appeal process in custody cases, with timelines and processes similar to those in juvenile dependency appeals (see Cal. Rules of Court, rule 8.416), should be studied.	Expedited appeals in custody cases No response required
	Comment Stop Family Violence cannot emphasize enough how important this provision is. We urge you to make it HIGH PRIORITY.	
	There MUST be a mechanism for immediate review when a child is endangered as a result of the failure of the court process to identify or believe the abuse.	
	Court Facilities AGREE WITH MODIFICATIONS Equipment and technology. All family court rooms and judicial officer chambers should be equipped with audio-video recording equipment and all proceedings should be recorded.	Court facilities The Task Force is not recommending videotaping of family law proceedings out of concern for parties' privacy and safety. Audio recording of court proceedings is addressed in another section of the recommendations.

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	Leadership, Accountability, and Resources AGREE WITH MODIFICATIONS An independent and effective complaint process must exist and information on how to access and use it must be provided in writing to all parties, including to children over 10 years of age. Development of an anonymous tip-line for courthouse employees to report misdeeds that they have observed. COMMENT Stop Family Violence, on more than one occasion, has received calls from court personnel (clerks, reporters, etc) to inform us of problems within the courtroom.	Leadership, Accountability, and Resources This comment proposes details to be considered in the development of a complaint process. The suggestions will be forwarded to the implementation process
279. Tiffany Wells AAU Watsonville, CA No specific organization information provided	Commentator provided specific details and concerns related to case.	No response required.
280. Nicole Whyte Attorney, Partner Bremer Whyte Brown & O'Meara, LLP	On behalf of Bremer Whyte Brown & O'Meara, LLP We have had an opportunity to review the task force recommendations and would first like to applaud the thoroughness of the recommendations and the detailed attention to the needs of the family law bar, bench and litigants that the task force has accomplished. We note that while the implementation of all of recommendations would be ideal, we understand that the reality of the lack of resources and funding makes that unlikely. In light of this, it is our belief that the following recommendations should take priority in that they will universally affect the family law community and best accomplish the	

Commentator	Comment	Committee Response
	goals as set forth by the task force in the introduction to the recommendations. Case flow management We feel as though these are the most important of the recommendations in that it "hits the nail on the head," regarding the problems faced in family law litigation. We feel that early intervention, streamlining procedures, establishing check points and setting trial dates early to get case on a track toward resolution is of utmost importance. The setting of trial dates is what drives cases toward settlement. We feel that the importance of written orders is paramount in that it clarifies things for all parties. Additionally, we agree that sanctions against attorneys who deliberately thwart settlement are appropriate. We do note however that the time goals as set forth in this section number 15 seem to be unrealistic in that they may not allow enough time for complex matters. Providing Clear Guidance Through Rules of Court We feel that the standardizing of Statewide family law rules is very important and the elimination of "local, local" rules will aid family law practitioners and avoid unnecessary confusion and wasted time in attempting to navigate procedures in counties that are not our primary counties of practice. Minor's Counsel The defining of Minor's Counsel's role and education of same is of paramount importance and we strongly agree with the recommendations relating to minor's counsel. Litigant Education	Caseflow Management No response required – have revised timelines based upon comments. Providing Clear Guidance Through Rules of Court No response required Minor's Counsel No response required Litigant Education The Task Force agrees education is critical, but it cannot serve as a barrier to accessing the courts by requiring it

Commentator	Comment	Committee Response
	We agree with these recommendations and feel strongly that parenting classes should be mandatory for parents involved in a custody battle. We also strongly agree that parties should be given frequent and early settlement opportunities. Streamlining Family Law Forms and Procedures We strongly agree with the recommendations and specifically feel strongly that it would be helpful to have instructional manuals for preparation of Declarations of Disclosure. Expanding Legal Representation and Providing a Continuum of Legal Services We agree with these recommendations and strongly feel that the recommendations regarding attorney appropriate and necessary. Specifically, the proposed form to set out the requirements for attorney fees awards is necessary. We also strongly agree that early needs-based attorney fee awards are necessary. Judicial Education We acknowledge the fiscal impact of these recommendations but feel strongly that an educated and consistent bench is necessary and deserved by family law litigants. Leadership, Accountability and Resources We agree with these recommendations and feel that the recommendations regarding ensuring access to the record are necessary. We also feel strongly that a recommendation addressing “Chambers conferences” is necessary and appropriate. All too often family law matters are discussed and “resolved” in chambers and off the record. To	be mandatory. Streamlining Family Law Forms and Procedures No response required. Expanding Legal Representation No response required. Judicial Education No response required. Leadership, Accountability and Resources This comment should be considered as part of the implementation process.

Commentator	Comment	Committee Response
	address and supplement the recommendations re accountability, we feel strongly that there should be a recommendations stating that parties have the right to go on the record with their cases and should not be forced to participate in chambers conferences if they do not desire. We thank the task for their time and efforts and are hopeful that the work of the task force will result in real changes for family law litigants in California.	
281. John S. Wieben Family Law Attorney Wieben Law Monterey, CA	Commentator provided a copy of an email he sent to the Chairperson of the Family Law Executive Committee of the Monterey County Bar Association and described his experience practice family law since 1978. Additionally, he noted the following concern regarding the status of family court as reflected in the inexperience of judges routinely assigned to the family law court; the unmanageable caseload that one judge and one commissioner are expected to handle for the entire county; and the impossibility of getting consecutive trial days. After spending some time with the Elkins Report, I think there is much in it that deserves my support and willingness to try something different, no matter how daunting that may seem, particularly in the beginning. But beginnings are like that often confusing; sometimes mistaken; occasionally worthwhile; and, every so often, exhilarating.	No response required.
282. Phyllis Williams, MFT Mediator Family Court Services San Bernardino County	Children's Voices In cases wherein it is determined that children's interviews are necessary to render a ruling or decision in a child custody dispute it is recommended that the judge gives careful consideration as to whether	Children's Voices While the Task Force agrees that careful consideration is important in these cases, the Task Force

Commentator	Comment	Committee Response
	the children's statements be made confidential (for judge eyes only) or be presented in open court due concern over parental backlash based on minor's statement. Minor's Counsel Be required to receive training to improve their awareness. Regarding interviewing children, child developmental needs, family to increase/improve their capacity to represent a minor in a case & advocate for best interest of child. Case management authority.	recommends that whenever children testify, their testimony be conducted on the record and that those records be available to the parties. The recommendations in this area provide for various ways such testimony may be taken. The Task Force agrees and recommends such training be provided.
283. Lisa J. Wilbur Registered Nurse, Public Health Nurse Child Welfare Services Mountain View, CA	*Commentator provided specific information about a case and the following additional comments Need to instill Evidence Based Guidelines for CPS social workers – statewide – for all allegations of physical, sexual, or emotional abuse. Also specific to parental alienation syndrome. As having worked with CPS social workers since 4-17-00, I would like to keep in creating evidence based guidelines for family court cross reporting – volunteer work. It all starts with the judge – if the judge upholds the law – uses CPS to investigate child custody contentions – then fairness in the court begins. Thank you!	No response required.
284. Cheryl Wilson C4LifeSystemsInc. Adopting is for every one	Commentator raised concerns related to specific case.	No response required.

Commentator	Comment	Committee Response
Lancaster, CA		
285. Grace Kubota Ybarra Attorney Private Practice Campbell, CA	General Family Law Education. I agree that the judicial officers should be educated in family law. However, in Santa Clara County, the judicial officers are on a rotation and leave every two years. At the present time, there are a number of judicial officers who are sitting in Family Court who do not have a background in Family Law. Most often the judicial officers have been appointed from the County Counsel or District Attorney's Office. There are no judicial officers currently sitting in Family Court who have a background in Family Law and very few judicial officers have been in private practice. The lawyers who appear before them are more knowledgeable than the judicial officer. The fact that the judicial officers often come from other branches of the government and/or do not have family law experience have led to the breakdown of the Family Court in Santa Clara County. The lack of family law experience is apparent when requesting need based fees. There is one judicial officer who recently held that a party who was not represented by counsel at the time she signed the MSA had not expressly waived her right to request need based fees, but had "impliedly" waived her statutory need based attorney fees! This judicial officer's lack of understanding of need based fees and the law of express waivers is stunning. When wife's counsel questioned the court's analysis, he concluded the hearing by telling wife's counsel that if she didn't agree with his decision, she could take the issue up on appeal. Having denied wife any need based fees, wife's ability to take this issue up on appeal has been made difficult if not impossible. I suggest the following additions to the Elkins Commission Report	

Commentator	Comment	Committee Response
	1. Judicial officers who are assigned to the Family Court should have prior experience in Family Law; and 2. Judicial officers who are assigned to the Family Court should be assigned to the Family Court for more than two years; and 3. Judicial officers who will be assigned to the Family Court have notice of the assignment at least one year in advance so that they can enroll in Family Law seminars held annually for Family Law attorneys.	1. The Task Force encourages attorneys with family law experience to seek judgeships. With respect to judges who do not have family law experience, the Task Force recommends that judges generally have two years of judicial experience before taking a family law assignment. The Task Force also makes numerous recommendations for judicial education to ensure that judges are well prepared for the assignment. 2. The Task Force recommends elevating Standard 5.30 to a Rule of Court, which would require judges that have a separate family law department to serve at least 3 years in the family law assignment. 3. This proposal regarding notice of the assignment in advance will be referred to the implementation process.
286. Michael G. Yoder President Orange County Bar Association Newport Beach, CA	On behalf of the Orange County Bar Association Live Testimony Agree with the recommendation subject to modifications as described below Should also include procedure for uniform “offer of proof” to expedite direct testimony, either by adding CRC or providing specific Family Code statutory structure.	Expand Legal Representation

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
	Expand Legal Representation Agree with the recommendation Caseflow Management Agree with the recommendation subject to modifications as described below Written orders after hearing The court should not be preparing orders after hearing. Time standards Time standards have to take into account time for service of process and negotiations to be realistic. 20% within 9 months, 75% within 16 months, 90% within 24 months. Rules of Court Agree with the recommendation Children's Voices Agree with the recommendation Domestic Violence Agree with the recommendation Enhancing Safety Agree with the recommendation	No response required. Caseflow management The Task Force believes that it is important for courts to prepare orders in cases with self-represented litigants. Studies indicate that when orders after hearing are prepare, parties are 1/2 as likely to litigate the same issue as those who are asked to prepare their own order after hearing. Time standards Time standards have been modified in response to comments. Rules of Court No response required. Children's Voices No response required. Domestic Violence No response required. Enhancing Safety No response required.

Comments on Elkins Family Law Draft Recommendations

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Commentator	Comment	Committee Response
	Contested Child Custody Agree with the recommendation subject to modifications as described below Comments FC § 3183 (a) must be deleted to provide true confidential mediation and due process for the parties. Minor's Counsel Agree with the recommendation subject to modifications as described below Comments Ordering disclosure of child/client statements may disrupt the attorney client privileges held by minors counsel. "Ability to reason" is a judicial determination. Scheduling Agree with the recommendation Litigant Education Do not agree with the recommendation Comments Too expensive a proposition to provide education to litigants in all languages and at a level all litigants will understand.	Contested Child Custody The Elkins Family Law Task Force focused primarily on procedural changes to ensure access and due process in family law. This issue is a substantive policy area in which the Task Force did not choose to make recommendations. Minor's Counsel The Task Force recommendations reflect the important role minor's counsel plays when representing a child and the recommendations reflect the need for the court to have information that would allow it to determine how to best include a child in the process. Scheduling No response required. Litigant Education The Task Force does not anticipate providing education in all languages – rather in those most commonly spoken in California. The goal would be to make it understandable for all.

Comments on Elkins Family Law Draft Recommendations

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Commentator	Comment	Committee Response
		Expanding Services No response required.
	Expanding Services Agree with the recommendation	Streamlining Procedures No response required.
	Streamlining Procedures Agree with the recommendation	Enhancing Mechanisms No response required.
	Enhancing Mechanisms Agree with the recommendation	Standardize Process No response required.
	Standardize Process Agree with the recommendation	Interpreters No response required.
	Interpreters Agree with the recommendation	Public Information No response required.
	Public Information Agree with the recommendation	Judicial Education No response required.
	Judicial Evaluations Agree with the recommendation	Family Law Research Agenda No response required.
	Family Law Research Agenda Agree with the recommendation	Court Facilities No response required.
	Court Facilities Agree with the recommendation	Leadership, Accountability and Resources
	Leadership, Accountability, and Resources	No response required.

Commentator	Comment	Committee Response
	Agree with the recommendation	
287. Jason Young Victim of Family Law Case Valencia, CA	*Leadership, Accountability and Resources Please add a section to remove biased or incompetent judges overseeing a Family Law case. Commentator provided specific case information.	Leadership, Accountability and Resources The Task Force notes that these issues would be appropriate for referral to the Commission on Judicial Performance.
288. Rosalyn Zakheim Culver City, CA	The Elkins Family Law Task Force has done an excellent job in researching the area and compiling its report. In the past week, I have heard stories from self-represented litigants in family law matters who clearly could have had more favorable results had they been represented. Section 2 of the Report recognizes the problem. Hopefully, AB 590 will help provide funding for increased representation in these matters. Interpreters s Should be broadened to include sign language interpreters. (See also section 18.C) Judicial Branch education Would benefit from inclusion of a requirement for those involved in the family law courts of training in cultural competency involving same-gender relationships. I am especially concerned with LGBTQ youth in child custody matters. The concerns addressed in the Section 18 recommendations are important and need to be addressed.	Representation No response required. Interpreters Have added reference to sign language interpreters. Judicial Branch education The Task Force made recommendations about a variety of issues that should be addressed through education and noted “While a wide range of educational programs have been developed for family law judicial officers and court staff, it is important that educational content be

Commentator	Comment	Committee Response
		kept current and responsive to the types of cases and issues being adjudicated in family court." This comment provides a specific suggestion about educational content on cultural competency involving same-gender relationships and LGBTQ youth in child custody matters These suggestions will be referred to the implementation process.
	Leadership, Accountability, and Resources Finally, regarding Recommendation 21, the importance of adequate staffing of the family law courts is manifest. In these times of furloughs and budget cuts, I recognize the problems faced in requesting new judicial positions and allocating some of those positions to the family law divisions. However, such allocation and additional judicial positions would benefit California citizens in an important area of their lives and, for some, their only contact with the judicial system. Again, I want to commend the Task Force on its thoroughness and thoughtful recommendations.	Leadership, Accountability, and Resources No response required.
289. John A. Zorbas Director, Butte County Public Law Library Member, Self Represented Litigants Task Force Annette Heath,	Kudos to the Elkins Task Force for the reflective thought and organization put into this document. The California County Law Library Community is a significant additional resource – and in many locales (exemplified below) serves to expand self help services presently.	Law Libraries are an excellent partner in providing information to the public on legal issues.

Comments on Elkins Family Law Draft Recommendations

All comments are verbatim unless indicated by an asterisk (*).

Commentator	Comment	Committee Response
Director, Kern County Law Library Member, AB 1095 Task Force on County Law Libraries Kathryn B. Turner, Director, Yolo County Law Library Member, Council of California County Law Librarians Executive Committee	* Commentator provided background information on the AB 1095 Task Force. The California County Law Library Community is a yet-to-be-sufficiently-tapped Resource for fulfillment of the Elkins Objectives – most notably to bring to fruition accomplishment of the following Objectives Expanding Legal Representation and Providing a Continuum of Legal Services Expanding self-help services Self-help services expanded Commentator provided information and highlights about specific services for self represented litigants that are provided in the following counties Contra Costa, Fresno, Kern, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Mateo, Solano, and Yolo. Availability of attorneys A. Mentoring programs County Law Librarians, Butte and San Bernardino and Yolo are but three examples teach or have taught legal Research and Writing at California law schools and community colleges; former students who are now in practice come to County Law Libraries for a leg-up to meeting new issues. Court-based mentoring	

Commentator	Comment	Committee Response
	County Law Librarians, Butte and San Diego are but two examples, backup the Self Help Center and assist customers with Forms and Procedures that the Self Help Center is not staffed to provide. Limited scope representation	