



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

Title	Agenda Item Type
Elkins Family Law Task Force: Final Report and Recommendations	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
To Be Determined When Specific Recommendations Are Approved and Implemented	N/A
Recommended by	Date of Report
Elkins Family Law Task Force Hon. Laurie D. Zelon, Chair	March 18, 2010
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Executive Summary

The Elkins Family Law Task Force recommends that the Judicial Council receive and accept its final report and recommendations and direct the Administrative Director of the Courts to prepare an implementation plan. When approved and implemented, the recommendations will increase access to justice for all family litigants; ensure fairness and due process; and provide for more effective and consistent family law rules, policies, and procedures in California's family courts.

Recommendation

The Elkins Family Law Task Force recommends that the Judicial Council:

1. Receive and accept the final recommendations of the Elkins Family Law Task Force;
2. Direct the Administrative Director of the Courts to develop a plan that includes key milestones for implementing the recommendations; and

3. Direct the Administrative Director of the Courts to provide a report on implementation to the council by December 2010.

Rationale for Recommendation

The Elkins Family Law Task Force, chaired by Associate Justice Laurie D. Zelon of the Court of Appeal, Second Appellate District, Division Seven was appointed in May 2008. The task force was asked to conduct a comprehensive review of family law proceedings and make recommendations to the Judicial Council that would increase access to justice for all family law litigants, including self-represented litigants; ensure fairness and due process; and provide for more effective and consistent family law rules, policies, and procedures.

The formation of the task force followed a suggestion by the California Supreme Court in *Elkins v. Superior Court*¹ that the Judicial Council establish a task force to

study and propose measures to assist trial courts in achieving efficiency and fairness in marital dissolution proceedings and to ensure access to justice for litigants, many of whom are self-represented. Such a task force might wish to consider proposals for adoption of new rules of court establishing statewide rules of practice and procedure for fair and expeditious proceedings in family law, from the initiation of an action to postjudgment motions. Special care might be taken to accommodate self-represented litigants. Proposed rules could be written in a manner easy for laypersons to follow, be economical to comply with, and ensure that a litigant be afforded a satisfactory opportunity to present his or her case to the court.²

In *Elkins*, the Supreme Court reviewed a local court rule and a trial scheduling order in the family court that required parties to present their cases and establish the admissibility of all the exhibits they sought to introduce at trial by declaration. Mr. Elkins's pretrial declaration failed to establish the evidentiary foundation for all but 2 of his 36 exhibits, and the court excluded the 34 remaining exhibits. Subsequently, the court divided the marital property substantially in the manner requested by Mr. Elkins's former spouse. In August 2007, the California Supreme Court found that the local rule conflicted with existing statutory law and deprived litigants of meaningful access to the courts, and it held that marital dissolution trials should "proceed under the same general rules of procedure that govern other civil trials."³

The Supreme Court recognized that family courts were underresourced and that the increasing numbers of self-represented litigants present unique challenges to the courts' ability to provide meaningful access to justice. The court emphasized that if trial courts do not have adequate

¹ *Elkins v. Superior Court* (2007) 41 Cal.4th 1337.

² *Elkins, supra*, 41 Cal.4th at p. 1369.

³ *Elkins, supra*, 41 Cal.4th at p. 1345.

resources for family law cases, they should seek additional resources instead of putting efficiency ahead of fairness. The court noted that in streamlining the process, family law litigants “should not be subjected to second-class status or deprived of access to justice.”⁴ It held that family law litigants should have the same due process protections of adversary trials conducted using the established rules of evidence as litigants in other types of civil cases.

The Elkins Family Law Task Force was appointed in May 2008. Its charge was to propose measures to improve efficiency and fairness in family law proceedings and ensure access to justice for family law litigants. More than 200 people applied for membership on the task force; 38 people were appointed. The 38 members included appellate court justices, judges, court commissioners, private attorneys, legal aid attorneys, family law facilitators, self-help center attorneys, court executives, family court managers, family court child custody mediators, court administrators, and legislative staff. Members had extensive experience in all aspects of family law and represented courts and diverse cultural and economic communities throughout the state.

During the past two years, the task force has conducted a comprehensive review of California’s family courts. The task force held seven in-person meetings and numerous working group conference calls between May 2008 and February 2010. The task force engaged in extensive outreach to family court stakeholders, including judicial officers, court staff, private and public attorneys, and family law litigants and asked for their views on the state of family courts and their suggestions for improvements. The task force received thousands of comments through e-mail, letters, surveys, focus groups, and testimony at meetings and public hearings. The tremendous interest in the task force’s work reflects the important role that family courts play in the lives of so many California families and the extent to which people’s lives are affected by decisions made in family court every day.

Family law touches the most central aspects of people’s lives: where, when, and how often a parent will see his or her child; personal safety; how much child and spousal support one person will receive and the other will pay; and how family assets will be divided between the separating parties. The thousands of cases heard every week in California’s family law courtrooms speak eloquently of the importance that families and the community place on the ability of the courts to resolve their disputes peacefully and with finality. The community relies on the courts to meet these needs, but courts often do not have enough resources to do so.

Faced with inadequate resources, crowded family law calendars, and increasing numbers of self-represented litigants, many courts have adopted local rules to more efficiently process the high volume of family law cases. Some of these rules have been innovative and have allowed the courts to process cases more efficiently while providing better service and due process to the parties. However, some of these rules and procedures have had the unintended consequence of creating barriers to getting their day in court for both represented parties and the self-represented.

⁴ *Elkins, supra*, 41 Cal.4th at p. 1369.

The task force's recommendations promote greater efficiency and consistency while ensuring meaningful access to the courts, fairness, and due process. Adopting effective, efficient, and consistent procedures will provide family law litigants with better access to justice and allow the courts to make better use of their limited resources. The task force's recommendations point to what courts can do to improve their family courts. The 21 main recommendations cover five different aspects of family court and include a number of specific recommendations for each one:

- Efficient and effective procedures to help ensure justice, fairness, due process and safety.
- More effective child custody procedures for a better court experience for families and children.
- Ensuring meaningful access to justice for all litigants.
- Enhancing the status of, and respect for family law litigants and the family law process through judicial leadership.
- Laying the foundation for future innovation.

The final recommendations can be found in the *Elkins Family Law Task Force: Final Report and Recommendations* (see Attachment 1).

California's families deserve a family court that ensures consistent and timely access to equal justice. The community relies on the courts to provide adequate resources to help families in crisis resolve their most sensitive and personal issues. Some improvements can be made now without substantial new resources. Many of these recommendations will produce more efficient procedures, resulting in a more effective use of existing resources. Some recommendations have little fiscal impact, focusing on how courts can better deploy existing personnel and resources. However, providing meaningful access to justice for all family law litigants will require additional resources for family courts.

The task force heard from many people who believe that existing court resources are not allocated to family courts in a manner commensurate with their share of the courts' workload. These people asserted that the current methodology for measuring workload does not take into account the unique nature of family court and all of the ancillary services that family courts are required to provide. The allocation and reallocation of resources based on workload is consistent with existing Judicial Council policy as expressed in the council's 2003–2004 and 2005–2006 operational plans. But using reallocation alone to provide family courts with their fair share of existing court resources will be difficult, given the current budget reductions that courts are experiencing, and will not provide sufficient resources. The courts will need to advocate for additional resources.

Although there are competing demands for scarce public resources, improving family courts must be a top priority. Most taxpayers' experiences with the courts occur through jury duty, traffic court, or family court. Most people in California will go to family court at some point in their lives, for example, to dissolve their marriage or domestic partnership, to obtain a restraining order, or to establish custody or support orders. Their experiences in family court shape their opinion of the courts. When people are given an opportunity to present their case and have it resolved fairly and in a timely manner, they are more likely to accept the outcome and trust the court system. But if people believe that they were not given adequate time to present their case, that procedures prevented them from fully explaining their side to the judge, or that they were treated unfairly, they are less likely to accept the case outcome and may lose respect for our justice system. Our courts need the public's support and earn trust and confidence only if people know that when they come to court, they will be given an opportunity to present their case in a timely manner and will be treated fairly and with respect.

Comments, Alternatives Considered, and Policy Implications

The task force engaged in extensive outreach to family court stakeholders in the development of these recommendations. It contacted presiding judges, judicial officers, court staff, attorneys, and court users and asked them what needs to be done to improve family courts. Nearly 600 attorneys responded to a survey designed to solicit attorneys' views of the family courts. Task force staff and contractors conducted 18 focus groups with family court users, judicial officers, attorneys, and court staff. The focus groups were conducted in conjunction with local courts in six counties, which were chosen to represent the wide range of California's local family courts. The task force received more than 800 e-mail messages and letters regarding potential recommendations. They also heard extensive public comments at task force meetings and at a public hearing in San Francisco in April 2009 that was dedicated to receiving input from family court users and court reform advocate groups. The task force reviewed and considered all of the information it received before creating draft recommendations.

The draft recommendations were circulated for comment from October 1 to December 4, 2009. In addition to being posted on the Judicial Council's Web site, the recommendations were sent to the courts and family court stakeholders. Task force members and staff made more than 20 presentations statewide on the draft recommendations to groups of judges, commissioners, family law facilitators, self-help attorneys, private attorneys specializing in family law, and child custody mediators. The task force held two public hearings in October 2009, one in Los Angeles and one in San Francisco that were devoted to public input on the draft recommendations.

The Family and Juvenile Law Advisory Committee met in November 2009 during the public comment period to review the draft recommendations. (Several members of the Elkins Family Law Task Force also serve on the Family and Juvenile Law Advisory Committee.) There was a lengthy discussion about the draft recommendations, and members of the advisory committee were generally supportive of the proposed recommendations. Implementation of the recommendations will directly affect the advisory committee's work. Committee members provided feedback on the draft recommendations for the task force to consider.

In addition to feedback received at meetings with judicial officers, court staff, attorneys, and others, the task force received written comments from nearly 300 individuals and organizations. Many of these comments were extensive and covered most of the draft recommendations. There was nearly universal praise for some recommendations, while others generated both positive and negative responses. On many issues in family law, there is general agreement that the process is not working well, but disagreement exists about how to make it work better. Many of the comments discussed specific cases. Each comment was carefully reviewed and responded to (see attached comment chart). Information provided about specific cases and information that identified any of the parties has been redacted.

The task force met in February 2010 and carefully considered all of the comments and other input on the draft recommendations. In many cases, the recommendations were revised to reflect a commentator's concerns or suggestions. Various alternatives were looked at when the task force was considering comments and recommendations to address specific problems. The final recommendations were the result of much study and discussion, and the rationale behind them is set forth in the final report.

The task force was specifically asked to recommend ways to increase access to justice for all family law litigants, including self-represented litigants; ensure fairness and due process; and provide for more effective and consistent family law rules, policies, and procedures. These recommendations are consistent with policies that the council has already adopted through the goals and objectives in the council's strategic and operational plans.

Implementation Requirements, Costs, and Operational Impacts

Some of the recommendations will require amending, revising, or adopting rules of court and forms. The council also would have to sponsor certain legislation. One of the task force's recommendations is that the Administrative Director of the Courts be directed to develop an implementation plan. The plan would identify specific steps, operational impacts, and costs associated with implementation.

While the task force was mindful of the unprecedented fiscal challenges California faces today, it believes that implementing these recommendations will significantly improve access to justice for those families who must come to family court to resolve their disputes. This will be an ongoing process, as the recommendation to establish ongoing innovations demonstrates. The current situation in the family courts has developed over many years; solving it requires an effort that must begin now but that will necessarily continue into the future.

Because it is unlikely that the courts will receive significant additional resources anytime soon, many of the recommendations call for using existing court resources differently, implementing policies that are already in place, or phasing in proposals over time to reduce reliance on new funds. Some recommendations have little fiscal impact, focusing on how the courts can better deploy existing personnel and resources. Those recommendations should be implemented first, while those that require additional resources can be phased in as resources permit.

The cost of implementing some of the recommendations will vary by court. Many recommendations were based on effective practices that some courts currently employ to process family law cases. Courts that already use the recommended processes would have no new costs, while courts that need to change their current practices may or may not incur new costs, depending on whether the new, more efficient procedures produce offsetting savings.

An implementation plan will identify the steps needed to implement each of the recommendations. It will highlight the potential effects on court operations and the resources needed to incorporate the recommendations into the family court process.

Relevant Strategic Plan Goals and Operational Plan Objectives

All of the Judicial Council's strategic plan goals are addressed by the recommendations of the Elkins Family Law Task Force, as follows:

Goal I, Access, Fairness, and Diversity. This goal is addressed by recommendations to increase self-help services and the availability of legal representation, make family law rules of court more comprehensive, streamline family law forms and procedures, and improve litigant education. These recommendations also would help achieve Goal I's operational objective 2a and 2b by helping trial courts achieve efficiency and fairness in family law proceedings and ensure access to justice for litigants.

Goal II, Independence and Accountability. The recommendations to develop and implement a family law research agenda, which would include workload studies and performance measures, would help the courts assess resource needs and improve operational decisionmaking concerning resource allocation.

Goal III, Modernization of Management and Administration. Implementing caseload management would help courts modernize the administration of family law cases. Increasing the availability of electronic filing, telephonic appearances, and electronic access to the courts are innovative practices that also address this third goal. These recommendations support objective 5 of the operational plan, as they would promote the fair, consistent, and efficient processing of cases in family court.

Goal IV, Quality of Justice and Service to the Public. The recommendations concerning live testimony and providing settlement assistance to self-represented litigants would improve the quality of justice in family law cases. The recommendation that courts should give community presentations on available court services, especially to communities that may be underserved by the courts, supports the goal of service to the public.

Goal V, Education for Branchwide Professional Excellence. A number of recommendations to improve judicial branch education programs, including the development of curricula, would allow courts to more effectively address children's needs. The education recommendations also support the underlying operational objective of providing judicial officers with relevant and accessible educational and professional development opportunities.

Goal VI, Branchwide Infrastructure for Service Excellence. The recommendations to improve court facilities and make them more responsive to the needs of family court users further the infrastructure goals.

Attachments

1. Attachment A: Elkins Family Law Task Force: Final Report and Recommendations
2. Attachment B: [Elkins Family Law Task Force – Draft Recommendations – Invitation to Comment](#)
3. Attachment C: [Chart of comments](#)