Elkins Family Law Task Force
Meeting Minutes
Judicial Council Conference Center
San Francisco, California
May 12, 2009

Members Present: Hon. Laurie D. Zelon, Ms. Tülin D. Açikalin, Hon. Sue Alexander, Hon. Lorna Alksne, Hon. Irma Poole Asberry, Mr. Richard F. Barry, Hon. Louise Bayles-Fightmaster, Hon. Jerilyn L. Borack, Ms. Linda D. Daeley, Ms. Julie Dodge, Ms. Patricia Foster, Ms. Ana María García, Hon. Michael J. Gassner, Hon. Barry P. Goode, Mr. José Octavio Guillén, Hon. Joan K. Irion, Hon. Mark A. Juhas, Mr. Lawrence E. Leone, Ms. Margaret Little, Ph.D., Ms. Judy B. Louie, Hon. Patricia M. Lucas (*joined afternoon portion of meeting*), Mr. Mark E. Minyard, Ms. Suzanne Clark Morlock, Ms. Sandra Joan Morris, Ms. Lorie S. Nachlis, Hon. Kimberly J. Nystrom-Geist, Hon. Vance W. Raye, Mr. Stephen B. Ruben, Ms. Caron Caines Smith, Hon. Nancy Wieben Stock, Mr. Hugh K. Swift, Hon. B. Scott Thomsen, Mr. Peter M. Walzer

State Bar Liaison: Ms. Sharon Ngim

Staff: Ms. Diane Nunn, Lead Staff, Ms. Charlene Depner, Ms. Bonnie Hough, Ms. Katie Howard, Ms. Rita Mah, Mr. Lee Morhar, Mr. Joseph Nguyen, Ms. Deana Piazza, Ms. Patricia Rivera, Ms. Gabrielle Selden, Ms. Julia Weber

Meeting commenced at 10:10 a.m. Chair Zelon welcomed all members and thanked everyone for all their recent work in developing the preliminary draft recommendations. The purpose of this two-day meeting is for the task force to review all the current draft recommendations. The meeting materials were made available to the public with the understanding that none of the materials have been approved by the task force and are still in preliminary draft form. The goal is for the task force to approve recommendations in August 2009, and release a written report with the recommendations for public comment by the end of September 2009.

The task force was asked to also consider information provided at the Litigant and Advocate Input Group meeting and the issues presenters raised that might not have been considered in the draft recommendations.

Members began discussion on rules, forms, and litigant education under Improving Access to Justice for Family Law Litigants by Providing Clear Guidance Through Each Stage of the Court Process. Members also talked about the need for legislation in matters of child custody, domestic violence, and restraining orders.

The task force also focused on parenting plan forms, the use of a standard parenting plan template, how to better prepare parents before mediation, and the importance of self-assessment tools. Members stressed the importance of preparation for the mediation process.

Litigant Education was the next topic. Litigant education is important with respect to the role of the court and legal processes. Basic educational information needs to be disseminated through a variety of available mechanisms. Access to technology is also important, but the court should take into account how many do not have this access. The task force recognizes that there are disparities among represented and self-represented litigants, and hope to reach both populations through educational literature.

Members stressed the importance of general introductory information towards an increased understanding. This should be offered in multiple languages, and in various formats.

Task force members recessed for lunch and reconvened to hear the public comment portion of the meeting at 12:45 p.m. Six people signed up to speak, but only three addressed the task force. They made suggestions on issues of domestic violence, how to address the economic disparity between opposing litigants, court accountability, made a request for examination of the 730 process, minor's counsel issues and hearing children's voices in the court.

Members then began discussion on Alternative Dispute Resolution, settlement and mediation, and early evaluation options before litigation. The discussion also included ideas for training, resources, and existent models of mediation.

The task force discussed contested custody issues. Members talked about scope of mediation available to parties, the possibility of a uniform reporting system, how to integrate custody issues within judicial education, and affording stability to families during tumultuous times in court. Members discussed the draft recommendation on the term "visitation" which can be problematic emotionally for some parents.

Discussion then focused on Enhancing Safety, and survival of custody orders – intended to address issues in domestic violence cases when restraining orders are denied or parentage is a concern. This matter may require a statutory change, and also needs to be discussed further by the task force.

The Task Force discussed the possibility of developing a new simplified stipulated judgment process for those litigants that do not meet the requirement of the summary dissolution process. The task force discussed how counties might establish a mechanism to alert litigants if additional steps need to be taken to complete their cases.

Overuse of an order to show cause (OSC) relative to notice of motion in family law was the next topic. Members deliberated on the proper use of an OSC and how to distinguish between it and a motion so self-represented litigants could easily understand the difference. They discussed submission of pretrial and post trial evidence only in the form of written declarations ("Reiflerizing"). All agreed that the quality and evidentiary content of declarations from both self-represented litigants and attorneys must be significantly improved.

The first day of a two-day task force meeting adjourned at 5:00 p.m. with members resuming discussion on their preliminary draft recommendations the following day: May 13, 2009.

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Meeting commenced at 9:00 a.m. with a 20 minute public comment period. Three speakers presented on a variety of concerns such as the importance of ongoing training for judicial officers, court appointed minor's counsel issues, protection from domestic violence.

The task force continued discussion about the draft recommendations including the concept of case management. The task force discussed whether "case management" is the best term for the concepts under discussion. Everyone agreed on the need for easy access to court resources for case resolution, a process to identify early on easy access and resolve them efficiently, court resources for assistance in court resolution of a case, and for priority in cases like domestic violence, custody issues, support and attorney's fees. Members emphasized the need to provide litigants with relevant information before appearing in court so as to decrease repeated visits and/or prolong cases.

Whatever system is set up, it should not be a barrier to litigants accessing the courts and seeing a judicial officer.

The task force then discussed the availability of interpreters in family law proceedings and the importance of having a record of family court proceedings.

The next issues related to adequately supporting self-help centers. Members also discussed court staff being available for financial and property settlement opportunities.

Members moved to discuss preliminary draft recommendations on Children's Voices. This area includes how to provide children an opportunity to get information about the process without having them to come to court, how the processes can consider their views, and ways to devise a manner in which the children's wishes can be conveyed to the court without putting the child at risk.

The task force recessed for lunch at 12:15 p.m.

The task force reconvened at 12:45 p.m. and began discussion on Minor's Counsel, how best to provide an opinion about the best interests of the children, and how the duties are different than that of a child custody evaluator. The issue is the scope of responsibilities, the appropriate role of the minor's counsel, and thus the need for education on their use for family law judicial officers. Ultimately, minor's counsel should not be a barrier to addressing children's needs.

To improve access to justice for family law litigants, members focused on ways to expand legal representation, and provide a continuum of legal services. The proposed preliminary draft recommendations included the need for statewide rules regarding what information needs to be provided to obtain attorney fees. The task force discussed ways that the court can encourage local lawyer referral services to develop modest means, low-fee family law panels. Family law is an area where people need representation.

Next steps were outlined – some items were identified for further action including *Reifler* issues, case management, children's voices, minor's counsel, as well as other items not yet covered and issues raised by litigants such as safety and domestic violence. Members were encouraged to volunteer for each of four additional discussion groups to work consider these topics.

The next item was judicial leadership with a concern that family law judicial officers have huge caseloads resulting in insufficient time to process complex legal and evidentiary issues. The goal of the task force includes improving court performance, improving transparency and accountability, getting courts the needed tools to help them ensure that local rules are consistent with statewide rules, and providing family law judicial officers and court administrators with the basic data required to make informed decisions about resource allocation and evaluation of effectiveness of new programs and services. Members talked about the appointment of judicial officers with expertise in family law, and the lack of resources for available training.

The Elkins Family Law Task Force meeting adjourned at 4:00 p.m.