Judicial Council of California

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May 18, 2005

Honorable Joseph Dunn, Chair
Senate Judiciary Committee
State Capitol, Room 2080
Sacramento, California 95814

Subject: AB 104 (Cohn), as amended March 1, 2005 - Oppose
Hearing: Senate Judiciary Committee – June 7, 2005

Dear Senator Dunn:

I regret to inform you that the Judicial Council is opposed to AB 104, which would require that actions to dismiss protective orders issued under the Domestic Violence Prevention Act be heard by the judge who issued the order, because it unnecessarily intrudes upon the ability of the court to manage its calendar appropriately.

Our system of justice is predicated on the principle that every superior court judge is qualified to handle every matter that comes before the court. While many courts do send cases back to the Department that originally heard the matter, there are numerous situations that might lead to the case being handled by a different judge. Although amendments taken in the Assembly sought to provide some flexibility to the courts by making the requirement in AB 104 contingent on "feasibility", the language continues to leave open the possibility of litigation of the validity of the court's decisions where a judicial officer other than the issuing officer acts on a modification matter.

Many cases that come before the court involve issues that cover significant periods of time where background information is relevant (e.g., child custody and support, juvenile dependency, and mental health and conservatorship issues). Yet assignment of these cases is not governed by statute, and any attempt to do so would create significant problems for the courts with regard to calendar management. At a minimum, this requirement will force the court clerk to specially handle these requests, and determine whether or not it is feasible to assign them to the issuing judge. This additional process would be burdensome, and is not justified by policy concerns. All of the background that the court needs to consider in reviewing the case is available to the

judicial officer considering the dismissal motion through the court file and the papers filed by the parties. Furthermore, we have not been shown any evidence that there is a problem with the way that courts currently handle these motion.

Thus, because this legislation represents unprecedented and undue interference with judicial administration, the Judicial Council is opposed to AB 104.

Sincerely,

Tracy Kenny
Legislative Advocate

TK/yt
cc: Members, Senate Judiciary Committee
Hon. Rebecca Cohn, Member of the Assembly
Gloria Megino Ochoa, Deputy Chief Counsel, Senate Judiciary Committee
Mike Petersen, Consultant, Senate Republican Office of Policy
Karen Pank, Deputy Legislative Secretary, Office of the Governor
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