



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 "L" Street, Suite 700 • Sacramento, California 95814-3393

Telephone 916-323-3121 • Fax 916-323-4347 • TDD 800-735-2929

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

August 24, 2010

Hon. Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: AB 939 (Committee on Judiciary) – Request for Signature

Dear Governor Schwarzenegger:

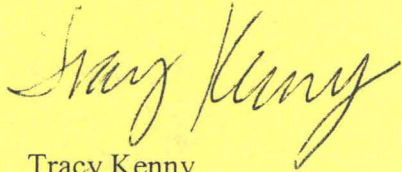
The Judicial Council is pleased to support AB 939, which would implement many of the key reforms proposed by the Judicial Council's Elkins Family Law Task Force, because it will improve the ability of the court to provide due process to litigants in family law matters. The Elkins Family Law Task Force was appointed in 2008 as a result of a recommendation in a California Supreme Court opinion in a case concerning a local rule of court that required family law litigants to present their cases and establish the admissibility of all evidence to be introduced at trial via written declarations filed with the court in advance of the hearing. The Court in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 struck down this rule, finding that it was inconsistent with the traditional concept of a trial and violated the hearsay rule. Given the complex challenges facing courts in these matters, the Court recommended to the Judicial Council that "it establish a task force, including representatives of the family law bench and bar and the Judicial Council [Family and Juvenile Law] Advisory Committee, 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." The Elkins Family Law Task Force (EFLTF) was appointed in response to this recommendation.

In its final report to the Judicial Council on April 23, 2010, the EFLTF asserted that implementation of its recommendations would make the handling of family law cases "more

Hon. Arnold Schwarzenegger
August 24, 2010
Page 3

For these reasons, the Judicial Council requests your signature on AB 939.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tracy Kenny", written in a cursive style.

Tracy Kenny
Attorney

TK/yt

cc: Hon. Mike Feuer, Chair, Member of the Assembly

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

August 4, 2010

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 3146
Sacramento, California 95814

Subject: AB 939 (Committee on Judiciary), as amended August 3, 2010 - Support

Dear Assembly Member Feuer,

The Judicial Council is pleased to support AB 939, which would implement many of the key reforms proposed by the Judicial Council's Elkins Family Law Task Force, because it will improve the ability of the court to provide due process to litigants in family law matters. The Elkins Family Law Task Force was appointed in 2008 as a result of a recommendation in a California Supreme Court opinion in a case concerning a local rule of court that required family law litigants to present their cases and establish the admissibility of all evidence to be introduced at trial via written declarations filed with the court in advance of the hearing. The Court in *Elkins v. Superior Court* (2007) 41 Cal.4th 1337 struck down this rule, finding that it was inconsistent with the traditional concept of a trial and violated the hearsay rule. Given the complex challenges facing courts in these matters, the Court recommended to the Judicial Council that "it establish a task force, including representatives of the family law bench and bar and the Judicial Council [Family and Juvenile Law] Advisory Committee, 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." The Elkins Family Law Task Force (EFLTF) was appointed in response to this recommendation.

In its final report to the Judicial Council on April 23, 2010, the EFLTF asserted that implementation of its recommendations would make the handling of family law cases "more efficient and effective while addressing the significant barriers to justice that now exist." AB 939 is intended to implement many of the key EFLTF recommendations in order to ensure that the work of the Task Force can begin implementation as expeditiously as possible. Two of the most significant EFLTF recommendations that are included in AB 939, concern the use of family centered case resolution and the use of live testimony in family law proceedings.

Under current law, family court litigants may not be required to participate in case management plans unless both parties stipulate to such participation. As a result, if litigants wish to prolong and delay these proceedings, the court has little ability to ensure that individual cases do not consume disproportionate amounts of court resources. The EFLTF recommended that legislation be pursued that would allow judicial officers in family law matters to implement case management without the stipulation of the parties. AB 939 would re-characterize case management in family law matters as "family centered case resolution" and authorize courts to implement family centered case resolution plans without the stipulation of the parties. This change will greatly enhance the ability of the court to better manage its resources and ensure that cases are not unnecessarily delayed without jeopardizing the due process rights of the litigants.

On the issue of live testimony, which was so central in the Elkins case itself, the EFLTF recommended that Judicial Council adopt a rule of court requiring that, absent a stipulation or a finding of good cause, courts be required to accept live, competent testimony that is relevant and within the scope of the hearing, at a hearing on an order to show cause or a notice of motion brought pursuant to the Family Code. AB 939 adds the language of the proposed rule as set forth in the EFLTF final report to the Family Code and directs the Judicial Council to adopt a rule of court to implement the requirement. While this is a slightly different approach to this issue, the resulting change is the same as that proposed by the EFLTF and will greatly enhance the perception of procedural fairness for litigants in family law matters. As the EFLTF noted in support of their recommendation:

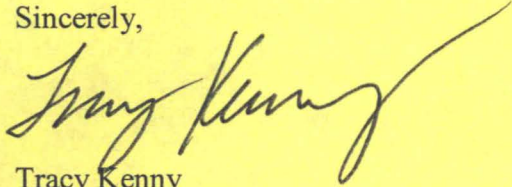
Making decisions based on declarations regarding issues fundamental to the case while prohibiting litigants from testifying or from proposing to present additional evidence deprives litigants of their day in court and frequently increases workload for attorneys and judicial officers.

Improving public trust and confidence in the fairness of our judicial system is a critical strategic objective of the Judicial Council, and the council is confident that AB 939 will significantly enhance that objective while providing courts with the tools they need to manage their caseloads efficiently and effectively.

Hon. Mike Feuer
August 4, 2010
Page 3

For these reasons, the Judicial Council is in support of AB 939.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Kenny", with a long, sweeping flourish extending to the right.

Tracy Kenny
Attorney

TK/yt

cc: Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research