



THE STATE BAR OF CALIFORNIA

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Date: October 14, 2009

To: Members of the Board Committee on Legal Services,
Pro Bono and Equal Access

From: Mary Lavery Flynn, Acting Director, Office of Legal Services
Sharon Ngim, Program Developer, Office of Legal Services

Re: Elkins Family Law Task Force: Overview of Recommendations

Introduction

The work of the Elkins Family Law Task Force of the Judicial Council has been discussed by the Board on two separate occasions in the past year. During the Board's January planning meeting, board members focused on possible improvements in family law as a key way to improve access to justice. As a follow up to that discussion, the Chair of the Judicial Council Elkins Family Law Task Force made a presentation at the July meeting of the Board Committee on Stakeholder Relations.

Now that the draft report has been circulated for comment and is the subject of widespread attention, the Chair of the Task Force, Justice Laurie Zelon, has agreed to be present at your November meeting to give board members an overview of the recommendations in the draft Task Force report and to discuss the possible future role of the State Bar.

Background on Elkins Family Law Task Force

In May 2008, the 38-member Elkins Family Law Task Force was appointed pursuant to a recommendation in the unanimous California Supreme Court opinion, Elkins v. Superior Court, 41 Cal. 4th 1337, authored by Chief Justice Ronald George. The charge of the Task Force is to conduct a comprehensive review of family law proceedings and recommend changes to increase access to justice, ensure due process and provide for more effective and consistent rules, policies and procedures.

Draft Recommendations Released for Comment

The Task Force has released its proposed recommendations for public comment, and comments are due on December 4, 2009. This draft report is attached, and the Family Law Section, the Standing Committee on Delivery of Legal Services (SCDLS) and the Access to Justice Commission will each providing specific comment on these recommendations.

The purpose of this update to the Board Committee on Legal Services, Pro Bono and Equal Access is to make sure that you are aware of the scope of these recommendations as well as to provide an opportunity to discuss their possible impact on the State Bar.

EXCERPTS FROM PROPOSED RECOMMENDATIONS

While not intended to be an exhaustive list of the areas of interest in the report, the following list identifies some of the recommendations that may be of particular interest to the State Bar, including sections that specifically mention the Bar and those that involve positions the Bar has adopted in the past. The excerpts indicate the section involved, the number of the recommendation and the page of the report at which you can find more detailed information on each item.

Part 2. Expanding Legal Representation and Providing a Continuum of Legal Services

2. Referrals to private attorneys. Local lawyer referral services should be encouraged to develop modest-means/low-income family law panels as well as panels of attorneys who offer unbundled legal services. [page 15]

3. Funding for legal services. There should be increased resources provided for litigants unable to afford private attorneys. [page 15]

- Increased funding for legal aid to assist with family law matters.
- Funding for representation.
- Expanding legal services programs for appellate cases.

4. Expanding self-help services. Self-help assistance is an important part of the continuum of services and should be expanded as a way to assist litigants who can effectively represent themselves in all or a part of their case. [page 16]

5. Availability of attorneys. Efforts should be undertaken to increase the number of attorneys who practice family law in California. [page 16]

- **Mentoring programs.** Courts should encourage local bar associations, professional organizations such as the Family Law Section of the State Bar of California, and local chapters of the American Academy of Matrimonial Lawyers and Association of Certified Family Law Specialists to implement mentoring programs for new attorneys in family law. Family law attorneys are mainly in small and solo practice, and providing adequate training can be challenging. [page 16]
- **Pro bono opportunities.** Pro bono opportunities should be provided to assist lawyers in enhancing their professional experiences.
- **Limited scope representation.** The state and local bar associations should continue to encourage limited scope representation by providing training for attorneys on offering those services appropriately and clearly identifying to the client and the court which services are outside the scope of the representation agreed upon by the client.” [page 16]

Part 9. Minor's Counsel [page 36]

3. Courts' responsibilities in ensuring accountability and transparency in appointment of minor's counsel.

- **Develop procedures.** As part of implementing these existing statewide rules of court, courts must develop procedures to ensure that minor's counsel are adhering to the following requirements:
 - a. Filing a declaration with the court indicating compliance with the education and experience requirements of rule 5.242 no later than 10 days after being appointed and before beginning work on the case (the Judicial Council form Declaration of Counsel for a Child Regarding Qualifications (form FL-322) or local forms may be used for this purpose); and
 - b. Notifying the court within five days of any disciplinary action taken by the State Bar of California, stating the basis of the complaint, result, and notice of any removal, probation, or suspension.**

Part 11. Litigant Education. [page 42]

1-A Introductory Information. Courts should provide introductory information to parties upon the filing of a petition or response in family law cases that describes the steps in the process. Courts should provide clearly written information in multiple languages about court policies and procedures, including how to access self-help center workshops, Web-based information, databases, and court calendars. Any additional resources that are available for self-represented litigants should be highlighted.

Parties should be provided with information about their procedural rights in family law cases. **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.**

Orientation information should be uniform statewide, made available online, and offered in a variety of languages. It should be presented in a variety of ways, such as informational handouts, flowcharts and checklists, a legal resource guide, and videos, audiotape, and multimedia presentations. To the extent possible, orientation resources should be developed and made available for statewide use.

Part 16. Interpreters [page 55]

- Expansion of availability of interpreters. Interpreters should be available in all family law matters involving litigants with limited English proficiency (LEP) so that they can participate meaningfully in their hearings and trials, mediation, and other services in which litigants must participate. [page 55]

Part 21. Leadership, Accountability, and Resources [page 69]

- 5. Judicial appointments and assignments.** Increase the experience and depth of family law knowledge on the bench by: [page 71]
- A. Judicial appointment process.** Suggesting further changes to the judicial appointment process and application to encourage family law attorneys to apply for appointment. The judicial application has been modified to attempt to draw attorneys with diverse practice experience to apply. However, many family law attorneys remain hesitant to apply for appointment because of the tendency of governors to seek lawyers with extensive trial experience. The application could be further modified to highlight the qualifications, characteristics, and experience that are important for family law judges.
 - B. Provide information to State Bar and JNE.** Suggesting that members of the State Bar's Commission on Judicial Nominees Evaluation (JNE), as well as the Governor's judicial appointments secretary, receive information about the qualifications, characteristics, and experience that are important for family law judges.
 - C. 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. 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.

Next Steps

Following the public comment period, the recommendations will be finalized by the Elkins Task Force and then submitted to the Judicial Council in the spring of 2010 for approval. Members of the Board of Governors will be provided with the final report of the Task Force.

Attachment A, Elkins Family Law Task Force Draft Recommendations

Attachment B, News Release, *Elkins Family Law Task Force Releases Draft Recommendations*