

## BACKGROUND PAPER

### Informational Hearing of the Senate Judiciary Committee

#### *“Family Law Courts: Budget Cutbacks and Access to Justice”*

March 11, 2014  
1:30 p.m.  
State Capitol, Room 112

---

#### **Background**

Family law affects the most critical aspects of a person’s life including child custody, personal safety, how much child and spousal support one person will receive and the other will pay, and how assets will be divided between separating parties. These decisions have significant and lasting impacts on the lives of the parties involved. The thousands of cases heard every week in California’s family law courtrooms demonstrate the importance that families place on the ability of the courts to resolve disputes fairly and expeditiously.

Traditionally, California’s family courts have struggled to make effective use of available resources while still meeting the changing needs of families. However, while the number of cases filed in the family law courts have steadily increased, the resources devoted to processing and hearing those cases have not. In many cases this lack of resources has resulted in unfairness to litigants. In 2007, the California Supreme Court commented on the quality of family law proceedings in *Elkins v. Superior Court* (Cal.4th 1337, 1368).

In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. Litigants with other civil claims are entitled to resolve their disputes in the usual adversary trial proceeding governed by the rules of evidence established by statute. It is at least as important that courts employ fair proceedings when the stakes involve a judgment providing for custody in the best interest of a child and governing a parent’s future involvement in his or her child’s life, dividing all of a family’s assets, or determining levels of spousal and child support. The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings.

Those observations prompted the creation of the Elkins Family Law Task Force, which conducted a comprehensive review of family law proceedings and published a report (Elkins Report) that included a number of recommendations to the Judicial Council of California aimed at increasing access to justice for all family law litigants, ensuring fairness and due process, and providing for more effective and consistent family law rule, policies, and procedures.

The Elkins Report highlighted the funding problems family courts face in ensuring fairness and access to litigants, especially self-represented litigants, and the limited resources available to these litigants in the community. Implementation of the recommendations has been less than uniform for a number of reasons, but has stalled in large part because of the budget cutbacks resulting from California's recession.

As a result of the recession, State General Fund support for the Judicial Branch has been reduced from 56 percent of the total branch budget in 2008-2009 to just 25 percent in 2013-2014. Those cuts have resulted in court closures, reduced availability or elimination of self-help services, and other cost cutting measures that directly impact the ability of the courts to serve the public.

#### **I. Limited availability of judicial and legal services disproportionately affects family law litigants**

In most counties, courts have attempted to distribute the impact of the budget cuts by reducing funding across the board. In no area have the cuts been felt more deeply than in the area of family law, which has traditionally been underfunded and where the vast majority of litigants are self-represented. As self-help and family law services are decreasing, courts continue to report increases in the number of litigants requesting assistance with case filings. The reductions in services have led to significantly increased wait times for all litigants, with many self-represented litigants unable to obtain any assistance at all. For these individuals, many of whom must take unpaid time off work and drive long distances to the nearest open facility, the increasingly limited availability of courts, self-help centers, and family law assistance services is particularly devastating. The following examples demonstrate reductions in services counties have been forced to make. Even though only three counties are listed here, all California counties and courts have made significant changes in the services they offer to the community.

- Alameda Superior Court has eliminated self-help services at two court locations and reduced hours in providing services at another court.
- Riverside Superior Court decreased family law facilitator assistance in order to provide more civil self-help services. Additionally, one of the court's justice partners reduced by half family law assistance at two court locations and eliminated self-help assistance at another location.

- Sacramento Superior Court reduced domestic violence workshops from five to three days per week, eliminated trial setting and notice of motion workshops, and closed the computer room where litigants prepared child and spousal support calculations, prepared legal forms, and obtained family law and probate information due to reduced resources.

Self-represented or otherwise, all types of family law litigants and those serving them have felt the impact of the budget cuts. Although procedures differ from county to county, as a general rule, cases involving custody or allegations of domestic violence are given priority over other family law issues. Thus, cases without custody disputes or domestic violence are subject to even longer delays in setting matters for hearing or trial. Many couples have been forced to wait long periods for a divorce decree which impacts many aspects of their lives, including how taxes are filed, ability to remarry, and division of marital assets. Even in priority cases involving custody or domestic violence, individuals struggle to have their issues addressed by the court in a timely manner. In November and December of 2011, the State Bar of California, CalChamber, and the Commission on Access to Justice co-sponsored the "Hearings on California's Civil Justice Crisis." The following testimonies given at the hearings show how critically reductions in the justice system have affected Californians' lives:

- In Alameda County, the court centralized filings in domestic violence cases and reduced clerk hours. As such, domestic violence victims face delays in obtaining temporary restraining orders against their abusers. Many victims often arrive after the 2:30 p.m. clerk hours and must return the next day to file applications for restraining orders. They must then return to the court on the third day to find out if the restraining order was granted. If there are errors in the application, they must continue returning to the court because they cannot be told by fax or telephone of errors in the application materials they need to correct.
- A father in Placer County was trying to stay current with his child support payments, which were set at an amount based on his income before he became unemployed and subsequently hired at a job paying much less than his previous salary. He filed a motion to modify the child support order but had to wait months before the hearing was set. As a result of the delayed hearing, the father lost his apartment and thus had nowhere to visit with his special needs child who resides in another county.
- In Redwood City, a mono-lingual Vietnamese woman asked for help from the Temporary Restraining Order (TRO) Clinic in obtaining a TRO application against her boyfriend, who had forced her to have sex with him for four consecutive days. The court was not able to act on the application that day. Too terrified to return to the apartment she shared with her boyfriend, the woman and her two children stayed at a shelter for the weekend. The court issued the TRO the following Monday, with a permanent restraining order

pending. The court requested a Vietnamese interpreter for the next hearing. The court did not have an interpreter at the next hearing, so it was continued for two months. After a call to the court to confirm the interpreter, the court advised that an interpreter was unavailable, so the hearing on the permanent restraining order was delayed an additional two months.

## **II. Projected funding for the courts and ability to offer adequate services**

As noted above, State General Fund support for the Judicial Branch has been reduced from 56 percent of the total branch budget in 2008-2009 to just 25 percent in 2013-2014. To make up for lost funding to the branch and to mitigate debilitating impacts on access to justice, over the past five years counties have increased user fees and fines, local court fund balances were spent, and statewide project funds, including \$1.7 billion for courthouse construction were diverted to court operations or the state's General Fund.

In the 2013-2014 fiscal year California will reinvest \$63 million in the judicial branch, which will enable the courts to begin addressing impacts from recent cuts. The Governor's proposed 2014-2015 budget provides \$105 million to the judicial branch, of which \$96.3 million will go to trial court employee costs. Still, ensuring access to justice will require mitigation of the millions of dollars in permanent and ongoing reductions to the Judicial Branch since 2008-2009. The courts argue that "these ongoing reductions will increase by more than \$200 million in 2014-2015, given that there will be fewer resources available to the courts (such as trial court reserves) to offset them. This shortfall must be addressed. The \$105 million baseline adjustment in the Governor's proposed 2014-2015 budget is a positive step; however, additional funding is needed simply to maintain current service levels." (Judicial Branch of California, *Reinvesting in California's Justice System: A Three Year Blueprint for a Fully Functioning Judicial Branch* (2014) p. 3.)

In the wake of cutbacks, courts and legal services have been forced to create new efficiencies in an effort to provide access to justice for as many Californians as possible. Sacramento started a "one-day divorce" program, which assists self-represented litigants in economically simple divorces, in completing dissolution in one day instead of months. This program has helped clear these straight forward cases from the court's docket so that it might focus on more complex ones. Many counties' legal aid offices have ceased to provide one-on-one representation in family law matters and instead only offer clinics and workshops for self-represented litigants. Santa Clara County has created a system by which they conduct group case management conferences for self-represented litigants. The program has helped many parties resolve their cases in a timely manner without imposing extra burdens on the court, and has become a model for other counties like San Diego.

It should be noted that all cases cannot be treated the same in the name of efficiency, especially in family law where extreme power imbalances are often at play and vulnerable parties need the protection of the court. As a result, while budget cuts may

have been an impetus in creating new innovative programs, additional resources are still required to ensure access to justice for all litigants.