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The Elkins Family Law Task Force
Judicial Council of California
455 Golden Gate Avenue, San Francisco CA 94102

RE: Elkins Draft Recommendations

Dear Elkins Task Force Members:

Attached please find Fathers & Families' comments on the Task Force draft recommendations. We thank the Task Force for its work, and believe that many of the problems the Task Force cites have long merited reform.

Fathers & Families is a national family court reform organization with offices in Los Angeles and Boston, Massachusetts. We believe that children are greatly harmed by high-conflict divorce cases and our current family law system. Too often children lose one of the two people they love the most—their fathers or sometimes their mothers—because our system fails to protect the loving bonds children share with both parents. We believe that the draft recommendations are a good start to address these issues.

We are concerned, however, that many of the draft recommendations are lacking in substantive detail. Nevertheless, we will withhold judgment until we see the final report, which will contain the detailed and specific language that will become actual legislative draft proposals.

In closing, we want to thank you in advance for your consideration of our comments and recommendations.

Sincerely,
Elizabeth Barton, AM, PhD
Board Member, Fathers & Families
University of California at Irvine
Irvine, CA

**Judicial Council of California
Elkins Family Law Task Force
Draft Recommendations
Response Form**

Thank you for reviewing the Elkins Family Law Task Force Draft Recommendations. The Task Force will review all comments and suggestions. Please indicate which recommendation you are referring to below and include any comments or suggestions in the space provided. All comments submitted become part of the public record.

Recommendation Number 1 Page Number 12 Title Right to Present Live Testimony

- Agree with the recommendation
 Agree with the recommendation subject to modifications as described below
 Do not agree with the recommendation

Comments:

Name Elizabeth Barton, Ph.D. Title Board Member

Organization Fathers & Families

Commenting on behalf of an organization

Address 8335 Winnetka Ave., Suite 109

City, State, Zip Winnetka, CA. 91306-1630

Please write, fax, or respond using the Internet to:

The Elkins Family Law Task Force
Judicial Council of California
455 Golden Gate Avenue, San Francisco CA 94102
FAX: 415-865-7217 Email: elkinstaskforce@jud.ca.gov
Internet: <http://www.courtinfo.ca.gov/jc/tflists/elkins.htm>

Deadline for Comment: Friday, December 4, 2009 at 5:00 p.m.

Your comments may be written on this Response Form and attached to an email or included in a letter. If you are not commenting on this form, please remember to include contact information on your document. Thank you.

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 2 Page No. 14 Title Expanding Legal Representation

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

RE: Attorney Fees (B) Early needs-based awards:

Add clear language for sanctions against the needs-based party and or their attorney if it can be shown that the needs-based party or their attorney is using the availability of the needs-based award to drive unnecessary/frivolous litigation for the sole purpose of increasing the other party's costs.

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Recommendation No. 3 Page No. 17 Title Caseflow Management

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

We certainly agree with the provision to sanction attorneys themselves. We believe this is long overdue, and we welcome the Task Force's recommendation on this.

While this case title mentions default orders, it lacks language to address California's serious problems with bad/poor service process. This poor service leads to a high rate of default orders. This is a very serious issue which needs to be addressed.

**Judicial Council of California
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Recommendation No. 4 Page No. 23 Title Provide Clear Guidance

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Recommendation No. 5 Page No. 25 Title Children's Voices

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Elkins Family Law Task Force
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Recommendation No. 6 Page No. 29 Title Domestic Violence

- Agree with the recommendation
 Agree with the recommendation subject to modifications as described below
 Do not agree with the recommendation

Comments:

While we agree with the recommendations in principle, the recommendations sidestep the serious problem of many litigants using the TRO and RO process as a tactical weapon in child custody cases. FLEXCOM wrote in their Vol. 27, Number 4, 2005 newsletter:

"The primary concern of the Family Law section of the State Bar was that these protective orders are increasingly being used in family law cases to help one side jockey for an advantage in child custody and/or property litigation and in cases involving the right to receive spousal support."

"While clearly these protective orders are necessary in egregious cases of abuse, it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes rather than from the true need to be protected from a genuine abusive batterer."

The Task Force's recommendations should also include clear language for serious sanctions against any person using TROs or ROs as a tactical weapon.

Whether this is addressed in this recommendation or in number 14 ("Enhancing Mechanisms to Handle Perjury"), this serious problem shouldn't be ignored.

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 7 Page No. 31 Title Enhancing Safety

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 8 Page No. 33 Title Contested Child Custody

- Agree with the recommendation
 Agree with the recommendation subject to modifications as described below
 Do not agree with the recommendation

Comments:

We agree with this recommendation. However, the current mediation orientation materials being used by most if not all courts in California are outdated and are based on ideology rather than evidence-based research and data.

Mediation materials should also include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces and parental alienation have on children. It is our belief that better parent education in this regard at the beginning will reduce the number of high-conflict custody cases.

We would also request that the Wisconsin Supreme Court's "A Child Bill of Rights" and "Co-Parent's Bill Of Rights and Responsibilities," written by Frank Leek, Ph.D., be included in all mediation materials as guiding principles for all parents and mediators. Copies of both are immediately attached.

A Child's Bill Of Rights

Written By: Wisconsin Supreme Court

THE RIGHT TO:

1. A CONTINUING RELATIONSHIP WITH BOTH PARENTS.
2. TO BE TREATED NOT AS A PIECE OF PROPERTY, BUT AS A HUMAN BEING RECOGNIZED TO HAVE UNIQUE FEELINGS, IDEAS, AND DESIRES CONSISTENT WITH THAT OF AN INDIVIDUAL.
3. CONTINUING CARE AND PROPER GUIDANCE FROM EACH PARENT.
4. NOT TO BE UNDULY INFLUENCED BY EITHER PARENT TO VIEW THE OTHER PARENT DIFFERENTLY.
5. EXPRESS LOVE, FRIENDSHIP, AND RESPECT FOR BOTH PARENTS: FREEDOM FROM HAVING TO HIDE THOSE STATED EMOTIONS OR MADE TO BE ASHAMED OF SUCH.
6. AN EXPLANATION THAT THE IMPENDING ACTION OF DIVORCE WAS IN NO WAY CAUSED BY THE CHILD'S ACTIONS.
7. NOT TO BE THE SUBJECT AND/OR SOURCE OF ANY AND ALL ARGUMENTS.
8. CONTINUING, HONEST FEEDBACK WITH RESPECT TO THE DIVORCE PROCESS AND ITS IMPACT ON THE CHANGING RELATIONSHIP OF THE FAMILY.
9. MAINTAIN REGULAR CONTACT WITH BOTH PARENTS AND A CLEAR EXPLANATION FOR ANY CHANGE IN PLANS AND/OR CANCELLATIONS.
10. ENJOY A PLEASURABLE RELATIONSHIP WITH BOTH PARENTS, NEVER TO BE EMPLOYED AS A MANIPULATIVE BARGAINING TOOL.

Co-Parent's Bill Of Rights And Responsibilities

Written By: Frank Leek, Ph.D.

When parents decide to divorce, the law ensures that neither parent is at fault...the relationship could not be saved. After separation parents have certain rights that will permit them to work toward meeting the best interest of their children. Those rights are:

1. TO KNOW WHERE YOUR CHILDREN ARE.
2. TO KNOW WHO YOUR CHILDREN ARE WITH.
3. TO KNOW WHEN YOUR CHILDREN WILL BE RETURNED TO YOU.
4. TO KNOW THAT YOUR CHILDREN ARE SAFE.
5. TO KNOW THAT YOUR CHILDREN ARE RECEIVING STRUCTURE AND DISCIPLINE IN A POSITIVE AND LOVING WAY.
6. TO KNOW YOU WILL BE CALLED IMMEDIATELY IF YOUR CHILD IS SERIOUSLY INJURED OR BECOMES SERIOUSLY ILL.
7. TO HAVE APPROPRIATE TELEPHONE CONTACT WITH YOUR CHILDREN WHEN THEY ARE WITH THE OTHER PARENT.
8. TO HAVE INFORMATION ABOUT YOUR CHILDREN'S ACTIVITIES WHEN THEY ARE WITH THE OTHER PARENT.
9. TO HAVE CURRENT KNOWLEDGE OF SCHOOL AND EXTRACURRICULAR ACTIVITIES AND A SCHEDULE OF ALL MEETINGS IN WHICH YOUR CHILDREN WILL RECEIVE AWARDS AND HONORS.
10. TO RECEIVE REALISTIC AND USEFUL INFORMATION IF YOUR CHILD IS HAVING A PROBLEM, AND BE INCLUDED IN THE PROCESS OF CHANGE AND IMPROVEMENT.
11. TO ALWAYS KNOW IF YOUR CHILD IS BEING SEEN BY A THERAPIST OR COUNSELOR AND HAVING THE RESPONSIBILITY TO SHARE IN THE COST, TRANSPORTATION AND THERAPEUTIC ACTIVITIES.
12. IF YOUR CHILD IS IN THERAPY, TO HAVE A THERAPIST WHO FOLLOWS THE BASIC ETHICAL RULES OF TREATMENT, DOES NOT HAVE A PERSONAL OR PROFESSIONAL RELATIONSHIP WITH ANY OF YOUR CHILDREN'S CARETAKERS, AND WHO INCLUDES YOU IN THE TREATMENT PROCESS AS NEEDED.
13. TO BE APPROPRIATELY INVOLVED IN CURRENT AND LONG TERM PLANNING OF SCHOOL AND EXTRACURRICULAR ACTIVITIES, FRIENDSHIPS, RELATIONSHIP WITH FAMILY FRIENDS AND RELATIVES.
14. FOR YOU AND YOUR CHILDREN TO NOT BE SUBJECTED TO VERBAL, EMOTIONAL OR PHYSICAL ABUSE. TO KNOW YOUR CHILD WILL NOT BE SPANKED OR PHYSICALLY PUNISHED BY ANYONE OTHER THAN THE TWO PRIMARY PARENTS AND IF ONE PARENT IS AGAINST CORPORAL PUNISHMENT, NEITHER PARENT WILL USE SUCH PUNISHMENT.
15. TO HAVE YOUR PARENTING PLAN HONORED BY PROMPT EXCHANGES WITH EVERYONE ON TIME.
16. TO PRESERVE COPYRIGHT TO THE TITLES "MOM" AND "DAD".

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 9 Page No. 36 Title Minor's Counsel

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Recommendation No. 10 Page No. 40 Title Scheduling of Trials ...

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 11 Page No. 42 Title Litigant Education

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

Parenting education should be evidence-based. As in No. 6, materials should also include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces and parental alienation have on children. Evidence-based information on the importance of the involvement of both parents in children's lives should also be provided.

Also see comments for No. 8 Contested Child Custody and attachments to No. 8.

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Recommendation No. 12 Page No. 46 Title Expanding Services to Assist Litigants

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

**Judicial Council of California
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Recommendation No. 13 Page No. 48 Title Streamlining Family Law Forms...

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 14 Page No. 53 Title Enhancing Mechanisms to Handle Perjury

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

Perjury, including perjury by declaration, runs rampant in family courts and is seldom punished. We applaud the Task Force for making this recommendation. However, we believe that civil sanctions do not always provide the level of justice merited by a party who has been injured by perjury. Therefore, we believe reasonable criminal sanctions should also be added.

Also see comments for No. 6, Domestic Violence.

**Judicial Council of California
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Recommendation No. 15 Page No. 54 Title Standardize Default and Uncontested...

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

While we agree with the recommendation in principle, default judgments are routinely entered in out-of-wedlock child support and paternity cases, largely due to poor and unverified service process. California's default orders rate is still well over 50%, whereas other states' rates range from 10 to 20%.

We recommend that a provision be added for a review hearing in these cases once they're discovered. This would amount to the defaulted party having their day in court if they had never been properly served or served at a verifiable address.

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Recommendation No. 16 Page No. 55 Title Interpreters

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Recommendation No. 17 Page No. 57 Title Public Information and Outreach

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

**Judicial Council of California
Elkins Family Law Task Force
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Recommendation No. 18 Page No. 58 Title Judicial Branch Education

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

Judicial education should be evidence based, as opposed to ideological, in nature. As in parenting education above (No. 6, 8 and 11), materials should include a comprehensive section on the negative consequences and damaging affect that high-conflict divorces, false allegations and parental alienation have on children. Evidence-based information on the importance of the significant involvement of both parents, fathers and mothers, in children's lives, should also be provided.

**Judicial Council of California
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Recommendation No. 19 Page No. 62 Title Family Law Research Agenda

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Recommendation No. 20 Page No. 66 Title Court Facilities

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments:

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Recommendation No. 21 Page No. 69 Title Leadership, Accountability, and Resources

- Agree with the recommendation
- Agree with the recommendation subject to modifications as described below
- Do not agree with the recommendation

Comments: