

April 13, 2009

Impressions from the April 6, 2009 Elkin’s Family Law Task Force meeting in San Francisco

By an unnamed long time member of the California Men’s Center who wishes to go unnamed, since he “...need(s) to keep a low profile to avoid being stereotyped one way or another.” He has already received many kudos’s from the legal community and not one negative comment from what follows...

Layout:

The setting was a large auditorium in the Judicial Conference Center, with the panelists on stage and tables/chairs/microphones set in front of them with seating for five members of the public to speak at a time. It reminded me of a Senate hearing.

Task Force:

The Elkins Task Force put together a panel of around 15-20 members (Justices, Judges, and attorneys). The panel was presided by Appellate Justice Laurie D. Zelon. The panel was very courteous and attentive to all the speakers. The discussion was informal and the panel made it clear that it valued the input of the public.

Speakers:

Each speaker was given 7 minutes to speak and 3 minutes to answer questions. In addition speakers were allowed an additional 7 minutes to make a video recorded statement that would be reviewed by the Task Force. Speakers were not allowed to talk about their particular case with any specificity.

About 25 members of the public spoke to the panel. The speakers were primarily parents, with a higher percentage of mothers. The speakers also included attorneys, health professionals, and at least one team from an advocacy organization. Several parents identified themselves as having advanced degrees. There were at least three speakers from San Diego and several speakers identified Marin County as having many problems. To an extent, but not always, the speakers appeared to be more aligned with a "mom's perspective" or a "dad's perspective". However, very interestingly, very often "both perspectives" came to the same conclusions and there appeared to be significant overlap between the two "perspectives"

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Topics:

"Follow the Substantive Law"

The number one topic raised across the board was the perception that the courts do not follow "the Law", or the substantive law. There was a general consensus the statutes and the Legislative intent was "good", however, once it gets interpreted by the courts, it stopped looking like what was written.

"Flexibility in Procedures"

Next, a number of speakers complained that the courts administer procedural law over-rigidly. They felt that, as pro-se litigants, there should be more flexibility afforded on procedural matters. Interestingly, the same speakers wanted greater adherence to "the [substantive] law". The panel, in particular, Justice Zelon picked up on this.

"Video the Proceedings"

Another popular topic was the recording of proceedings. Most of the speakers requested that proceedings be videotaped. When asked why the transcript was not sufficient, the responses were: it would be inexpensive to get a copy of the proceeding; and that it would aid litigants in preparing orders, requesting limited sections of the transcript, and determining whether or not to appeal. In addition, several speakers spoke of body language not captured by the transcript such as judges rolling eyes, tapping fingers, and even sleeping. There were a couple of speakers who claimed to have experienced having the transcript modified after the hearing. The general consensus was that video would set everything straight. Some speakers claimed that videoing is already practiced in some other states. The panel was interested in how videoing would be handled in the event it was approved. The response was that it would include three pictures integrated in one screen (i.e., the Petitioner, the Respondent, and the Judge), it would be provided at cost, and that it would be used as an aid, however the Reporter's Transcript would remain the controlling document.

"Prosecution of Perjury"

There was an uniform belief that 1) perjury is never prosecuted in family court, 2) this encourages false testimony, and 3) that perjury should be prosecuted were it can be proven.

"Domestic Violence vs. False Allegations"

Competing views were presented that 1) the court does not protect against false allegations of DV and 2) the court often does not protect persons with legitimate and severe DV claims.

"Parental Alienation Syndrome vs. Parental Alienation"

Competing views were presented that 1) the court should not consider Parental Alienation Syndrome (PAS) as it is not a recognized disorder, and 2) the court should protect against Parental Alienation (PA) as it is a very real and occurs frequently. One solution offered was that the court officially distinguish between PA and PAS. One panelist asked an opponent of PAS whether, if the term "PAS" stricken from the lexicon of the court, should the court still be able to consider when one parent is talking bad about the other parent to the kids.

"Too Much Discretion"

There was a common feeling that the judges were given too much discretion to decide matters. This was especially the case for appellate review.

"Excessive Costs"

There was a general consensus that the family court process is outrageously expensive. For example, several speakers volunteered that, over the course of their case, they had already spent \$60k, \$150k, \$500k, \$1.2M, and \$1.5M. Interestingly, none of these speakers appeared wealthy.

"Judicial Accountability"

There was a general consensus that family court judges should be somehow held accountable when "the [substantive] law" is not followed. However, none of the speakers was able to articulate metrics or standards of practice from which judges could be measured.

"Hard Cases"

Throughout the day, numerous litigants gave generalized accounts of very difficult sounding cases having harsh results. Two litigants brought their children, one of which (a teenager) addressed the panel directly expressing his desire to be heard.

"Minor's Council"

There were numerous accounts of problems with minor's council. In particular, there was a perception that the minor's council served more as an advocate for the "chosen" parent rather than the child. Also, there were complaints of excessive costs associated with minor's council.

"Corruption"

Some speakers referred to varying degrees of corruption within "the system".

"Foreigners"

Two parents coming from foreign countries identified a perceived favoritism for Americans over foreign parents. They also expressed difficulty functioning within "the system".

"2009 Child Support Guideline Review"

This topic was raised previously at the February meeting, and again in San Francisco. The panel asked what should be done in the Review. The response was that the Review should include input from those listed in Fam. Code 4054(f), and should address each policy listed in Fam. Code 4053(a)-(l).

"Misc"

There were numerous singular topics, but these were the reoccurring themes that I recall.

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As you can see this was a very full day, but the Elkins Task Force stuck it out. It appeared that the Task Force was very interested in what they heard and expressed sincere appreciation for all the speakers who made the time and effort to contribute to the process. April 6, 2009 Elkins meeting in San Francisco