

LITIGATION

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Traffic Jam

By Fred Silberberg

We are now entering the third month of court reform under Family Code Section 217 (commonly known as the "Elkins Commission Recommendations"), and while many would argue that it is "too soon to tell" whether the return of oral testimony improves the administration of justice, there is one glaring problem. While the intent behind the recommendations issued by the task force were to restore a sense of due process to family law proceedings that had been sorely lacking for almost 20 years now, there is an administrative issue which, it seems, some local county court systems in California are refusing to address. As a result, what is happening in our courts is akin to driving on the 405, attempting to get from the Los Angeles International Airport to the San Fernando Valley: You can't get there without an awful lot of stress and wasted time.

Just as there are more cars on the freeway than space to handle them, there are more cases in family law court than judges to handle them. When there is a fender-bender or a stalled car on the freeway, traffic comes to a standstill. Traffic also comes to a standstill in family law court when there is a domestic violence case or an interpreter case. That is because the people who administrate our court systems in several counties have decided that those cases take priority. So, while you may be in the middle of your contested evidentiary hearing, a right you have pursuant to Family Code Section 217, that hearing may get interrupted innumerable

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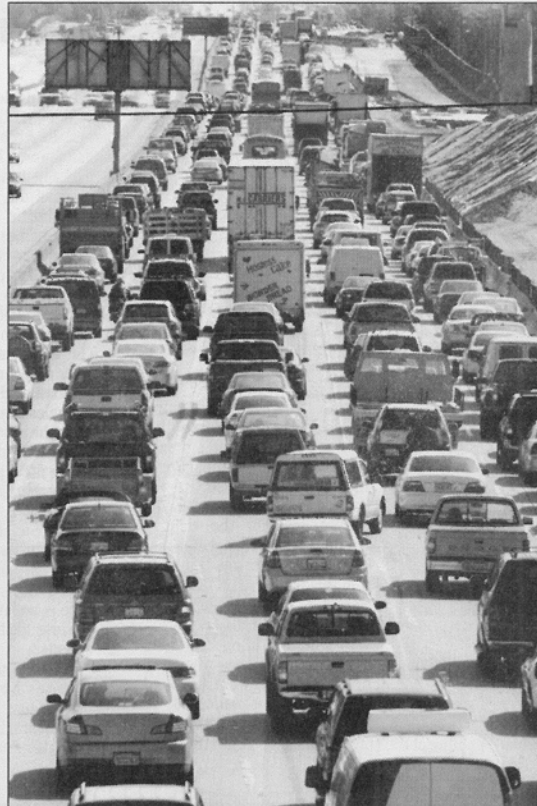
times in order to accommodate domestic violence and interpreter cases.

As far as the domestic violence cases are concerned, no one is advocating that persons who are in danger, or in abusive relationships, should have to wait to get their cases resolved. There are ways to give those cases the time and attention that they require, while still allowing the rest of the cases to be processed through the court system without interruption. The most obvious way to do this is to assign them all to one or two departments in the courthouse that handle only those cases. This way, a judicial officer is available to hear the cases throughout the day, and the other departments that are engaged in trial will not be interrupted. This idea is not all that novel of a concept, yet it continues to be met with resistance in some of our county court systems. In some states, there are actually separate courthouses that deal only with domestic violence cases. Take, for example, the Circuit Court of Cook County, Ill., which covers the Chicago metropolitan area. That court system has a separate domestic violence courthouse for restraining order and domestic violence hearings, and where the county provides facilitators to assist victims of domestic violence and their families.

Granted, we are continuing to face a severe budget crisis in California, and the resources to establish a separate court system do not exist. At the same time, however, there is no reason that specific departments within each county court system cannot be assigned as domestic violence departments. In truth, prior to the change to the family court system 20 years ago, which the Elkins recommendations have attempted to remedy, the Los Angeles County Superior Court had one courtroom staffed by a commissioner who spent the entire time handling domestic violence



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cases and ex parte applications. With the need to make time available now to hear cases again by live testimony, it only makes sense to assign these hearings to a specific department to keep the traffic moving forward in the other family law departments.

The second problem involves cases requiring an interpreter. The court requires that its own interpreter be used to assist non-English speaking litigants in arguing their cases. However, the court does not have enough interpreters available to meet the demand that exists in our court systems. While one may question why it is that the court has to accommodate people in their native languages, this is an issue for another discussion. The problem now is that there are only a few interpreters who float through the courthouse going to different departments. If the interpreter shows up in the middle of your hearing, you can bet that you will be interrupted and asked to step back so that the interpreter matter can go forward. In other words, if you don't speak English, you get ahead of those who do. And if you happen to be unlucky enough to get assigned a court date when there may be multiple matters requiring the interpreter, be assured that you will be required to sit back and wait while the court hears the interpreter cases, ahead of the cases where the parties speak English.

Similar to the domestic violence problem, this could also be solved by setting the interpreter cases in specific departments where the interpreters themselves would always be assigned. This way, interruptions to other ongoing cases would be avoided, and the interpreters themselves would not be running all over the courthouse, but rather would be stationed in one courtroom all day so that the court could call one case after another.

The Elkins Task Force Recommendations were long overdue. Litigants are entitled to their day in family court just as they are entitled to their day in civil or criminal court. However, if the implementation of the recommendations is to be successful, it only makes logical sense to do what is necessary to stop the traffic jams from affecting each individual family law department. Our courts exist to serve the people who come to them. With certain adjustments, traffic can start to flow more freely through our family courts, and they can be courts that serve all of the litigants that come before them, as opposed to giving priority to two classes of litigants at the expense of all others.