

**Oct 27 – 28, 2014
California Judicial Council Meeting**

**Statement of Public Concerns Re:
Failure of the Judicial Branch To Ensure
Court Access & Fairness, Integrity of Branch Records,
& Judicial Accountability**

1. **Judges and others refuse to follow the law.** The number one problem presently reported in the California Judicial Branch is that judges, court administrators, and court experts and appointees are refusing to follow the constitutional, case and statutory law, rules of court, and rules of professional conduct. Litigants have no effective recourse.
2. **Official court records don't exist or are being tampered with.** Proving branch misconduct to oversight entities or the Court of Appeal requires an accurate court record.

Courts have eliminated court reporters that provide an official record of substantive court proceedings, notwithstanding Commission on Judicial Performance (CJP) concerns and recommendations about the need for an official record for the protection of the public, as well as the bench.

Additionally, there is a failure to ensure the integrity of branch records. Litigants report improper recordkeeping, file tampering, document loss/destruction, falsification and backdating of court documents, and withholding of court records by judges and court personnel.

3. **The writ/appellate process is broken.** The writ/appellate process is expensive and out of reach for most litigants, 85% or more of whom are unrepresented at the family law trial court level. Even if a litigant is able to file a writ, 95% of writs are summarily denied. Appeals are expensive and drawn out, particularly with respect to child custody and visitation, a) the trial court's discretion is so vast that appeals are rarely

effective, and b) the damage to children resulting from an improper custody order is done by the time the appeal is decided.

4. **No effective oversight by CJP or others.** The Commission on Judicial Performance (CJP) is underfunded and overworked; it very rarely acts on litigant complaints, often refuses to act while a case is “ongoing” (and family law and juvenile cases can be ongoing for years—from birth to the age of majority of a child), and the process is drawn out for months or years, leaving litigants twisting in the wind as they are forced to repeatedly subject themselves and the welfare of their families to the jurisdiction of biased, corrupt or compromised judges. Many of these same complaints hold true for other oversight entities (Board of Behavioral Sciences, Board of Psychology, etc) that are reviewing complaints about court experts and appointees, for example custody evaluators, minor’s counsel, therapists and others.
5. **CCP 170 et seq abuse.** Litigants who request disqualification of biased or corrupt judges pursuant to the legislative protections found in Code of Civil Procedure section 170 et seq. often find that the process backfires, making the situation worse. Problematic judges against whom disqualifications for cause are brought often routinely strike the requests themselves, trapping the objecting party in their courts, and then subject them to retaliation. The only remedy is to file a writ with the Court of Appeal within 10 days of service of the Notice of Entry of the order denying or striking the disqualification request, but most litigants don’t know what a writ is, do not know the time limitations within which to act, cannot find or afford an attorney to bring a writ, cannot get a fee award from the judge they have challenged, and even if they could find and afford an appellate lawyer to file a writ, *over 95% of writs are summarily denied by the Court of Appeal without a ruling on the merits.*
6. **Pay to Play:** Skyrocketing court costs, fees and penalties, and denial of affordable legal aid and adequate fee awards, are operating to deny financially disadvantaged litigants access to the courts. Further, once entering the court system, family law litigants with children are bankrupted as they are forced for years on end to bankroll a kaleidoscope of “services” for therapists, co-parenting counselors, custody evaluators and other court experts, minor’s counsel, and more.
7. **Improper delegation of judicial power.** Judges are improperly delegating judicial power to myriad court appointees and “experts” whose reports are rubber stamped and adopted by judges notwithstanding patent violations of laws, rules of court and standards of practice. These appointees and experts are not held accountable for their failures; instead they are protected by quasi-judicial immunity at the expense of the public. In some cases, court employees, appointees and experts are actually encouraged to violate laws and standards of practice (Emily Gallup).

8. **Abuse of ex parte procedures.** Litigants report that judges are having secret non-emergency hearings with one side of the case, and issuing secret non-emergency orders withheld from the other side of the case, thereby repeatedly denying basic due process rights to notice and an opportunity to be heard by an impartial decision maker, and equal protection of the laws.
9. **Thwarting of legislative investigative and oversight efforts.** Branch personnel at all levels are failing to keep proper records in the first place; and once an audit or investigation is announced, branch members (with Judicial Council approval) block investigative access while participating in the destruction or alteration of relevant information and/or elimination of key personnel, thereby minimizing the availability of incriminating information.
10. **Abuse of the assigned judges program.** Retired judges are being “temporarily” assigned by the Chief Justice for years on end, thereby depriving the public of the constitutional right to elect their judges, and have them subject to review by the Commission on Judicial Performance. Local presiding judges ignore litigant complaints about the assigned judges, as does the Judicial Council. Another abuse of this program occurs when counties enter reciprocity agreements, such that two county courts agree to hear disqualification requests brought against the other. This creates a situation where each county will want to protect the other, for future goodwill purposes.

All of the above problems – and other problems-- contribute to the devastation of court users and their families on a regular basis. **Unfortunately, misconduct in family law courts can and does result in severe physical or psychological damage to –and in some cases the death of— California children.**

Branch members are paid by the public to serve the public. As set forth in Exhibit “A” attached hereto and incorporated herewith, the Chief Justice and Judicial Council are supposed to be surveying judicial business and reporting to the legislature to ensure access, fairness, and sound judicial administration. For years, the Judicial Council has been advised by legislators and its own experts to implement judicial performance evaluations and court performance surveys completed by court users. But the past and current chairs of the Judicial Council and other Judicial Council members have shown little interest in hearing from the public or addressing public concerns such as those enumerated above. In fact, some of the worst branch offenders are being appointed to the Judicial Council or Judicial Council committees by the Judicial Council chair.

Suggested Fixes for Consideration

Fixes for the above problems exist. First and foremost, the Judicial Council should grant the current request for a public hearing at which members of the public and branch users from all over the state would be invited to attend and report concerns about the branch. The Judicial Council should then undertake to address those concerns in the following ways:

1. Ensure the availability of an official court record as recommended by the CJP;
2. Implement judicial performance evaluations and court surveys completed by court users as recommended by legislators and its own experts;
3. Endorse legislative reform of the CCP 170 et seq. statutes such that a) no judge may deny a disqualification request brought against him or her, and b) all appellate disqualification decisions, including writ decisions, must be in writing and on the merits;
4. Endorse increased funding of the Commission on Judicial Performance;
5. Support requests for democratization of and representation of the public on the Judicial Council and Judicial Council committees; and
6. Make the granting of meritorious appellate writs regarding child custody orders a priority.

So much can and should be done, but the first step is a public hearing at which the Judicial Council can, in one or two days, be apprised of the needs and concerns of court users, by court users themselves.

Thank you for your consideration of these concerns, and we look forward to hearing from you in the near future to arrange a public hearing to address these concerns.

Sincerely,

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