

Commissioner-Judge System Does a Big Disservice to All

By Fred Silberberg

In the family law system, there are two types of judicial officers that preside over cases — judges and commissioners. Nearly every family law department utilizes both types of judicial officers, and commissioners have the same powers over matters as do judges. Why do we have two classes of judicial officers, and why is it so common in family

law as commissioner or judge. If they are fit, then the cases should be distributed evenly. Also, if everyone on the bench was a judge, caseloads would be distributed more equitably.

There are other inequities in the commissioner-judge system. Parties or counsel can disqualify judges without cause by filing an affidavit of prejudice. Each party is allowed one affidavit in the life of a case in front of a judge. And once it is used, a

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law? The answer must be economics. A commissioner is paid 85 percent of a judge's salary. That, however, should not be a reason to maintain this system.

Having two classes of judicial officers does a disservice to members of the bench and litigants. Instead, since our governor trusts commissioners with judicial responsibility, they should have the title and benefits that accompany it.

This caste system is problematic for many reasons. It fosters an undesired negative image of some judicial officers, sends false messages to litigants about the type of judicial officer presiding over their cases, inadvertently places litigants in two different classes, causes court delay and congestion by promoting forum shopping and defeats the goal of direct calendaring.

Litigants don't understand why they are assigned to a commissioner while their best friend has a judge. There is no explanation other than that it was a random assignment. Litigants who unwittingly stipulate to a commissioner often, in fact, want a judge.

The distinction in titles is also problematic. It insinuates that some litigants are treated differently from others and sends a message to the commissioner that he or she is not seen as worthy of holding the title of judge. Yet, in reality, the powers are the same as those of a judge once the parties have so stipulated.

Most of the cases heard in divorce court consist of parties that have no attorneys. When these people arrive at their designated courtrooms, a commissioner stipulation is thrown at them and they are told to sign it. No one explains that they need not sign it and that the case will be reassigned if they don't. Unwittingly, therefore, they typically sign it. Parties with counsel, however, are told their options and advised regarding whether the stipulation is in their best interest. Commissioners therefore hear a disproportionate number of in pro per cases, which fosters the notion that justice is for the rich.

If certain bench officers are not fit to be on the bench, they should be removed regardless of their sta-

party cannot change judges, absent proving actual prejudice, which is nearly impossible.

Cases assigned to a commissioner, however, get two bites of the proverbial apple. First, the litigants can refuse to stipulate to the commissioner. That litigant can then use an affidavit to disqualify the judge to get a third assignment. The current system thereby promotes forum shopping.

In counties that employ direct calendaring, the problem is more pronounced. At the hearing on an ex parte application scheduled before the first scheduled hearing, the commissioner doesn't require a stipulation in order to hear the matter. The point of direct calendaring was to have one judicial officer hear the case from beginning to end, to promote case familiarity. When the matter returns for a regular hearing after the ex parte proceeding, however, a party unhappy with the results of the ex parte application could refuse to stipulate to the commissioner. This again promotes forum shopping. It also means that the case must be reassigned, resulting in a delay, and the judge receiving the case has no familiarity with it. The judge must now familiarize him or herself with a case already familiar to a commissioner.

This two-track system of judicial officers discourages an evenhanded administration of justice. It makes a bad impression on the public and demeans members of the bench. Family law courts do important work. If we are going to charge commissioners with the responsibility of deciding the future of children and families and place them in the emotionally charged arena of divorce court, they should enjoy the same benefits and status as do judges. If we cannot trust these individuals enough to call them judges, they should not be on the bench in the first place.

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