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LAWYERS MUST REMAIN THE GUARDIANS OF AN INDEPENDENT JUDICIARY

by MARK E. MINYARD

In today's climate, nearly everything can be interpreted through a political lens. Yet one must ask: What genuinely patriotic Democrat or Republican could oppose the concept of the rule of law? The rule of law should not be a partisan slogan, nor should it be treated as a coded message for or against any ideology. It is a foundational principle of our Constitution and the bedrock of our democratic system. It transcends politics, serving as the essential safeguard of fairness, stability, and equal justice under the law for everyone.

An Engaged and Informed Bar Is Essential to Judicial Independence and Public Confidence

The rule of law should not be seen as an abstract ideal reserved for constitutional scholars or civics textbooks. It is a living, daily reality that plays out in courtrooms across America and in our local trial courts here in Orange County. Nowhere is this truer than in family law. Because of that, the public's trust in the judicial system—and in the fairness and integrity of those who serve on the bench—is essential. That trust is fragile.

As officers of the court and guardians of our legal system, attorneys have both a professional and civic duty to be informed, engaged, and willing to speak out when the judiciary is threatened—whether through recalls, politically motivated opposition campaigns, or attempts to remove judges for less than good cause.

Removing or replacing an ethical, experienced, and respected judge is an extraordinarily serious matter. An effort to remove a judge should not be supported except in the most extreme circumstances. Judicial recall and contested judicial elections should not

become tools for career advancement, score-settling, or intimidation, nor a substitute for appealing an unfavorable decision. That is not how our system survives.

The Critical Importance of Judicial Experience

Before a judge is appointed in California, that individual is carefully evaluated through multiple layers of scrutiny. Judges are not randomly selected or casually installed.

Judicial candidates are vetted by at least three independent bodies of lawyers and legal professionals: The Commission on Judicial Nominees Evaluation (JNE), The Judicial Selection Advisory Committee (JSAC), and the judiciary committees of local bar associations. The governor receives input from all three groups, conducts additional investigation, and only then makes an appointment. This procedure exists for a reason: the judiciary is too critical to our society to leave the selection to chance.

Yet, in contrast, any lawyer may decide to run for a judicial position without undergoing any formal investigatory process. A candidate is not required to meet with a commission,



or submit to a professional evaluation relative to background, intelligence, lack of bias, or judicial demeanor. Serving as a judge is not simply the next step for a lawyer. A person may be a stellar lawyer and still be deeply unsuited to the bench. Likewise, someone who was not a particularly prominent attorney may become an exceptional judge. Judicial service requires a unique combination of temperament, impartiality, decisiveness, humility, and the ability to manage a courtroom with fairness and authority.

To remove a sitting judge—through recall or election—and replace that judge with an unvetted lawyer who has never served on the bench is a serious gamble. It means replacing the known with the unknown. In family law, it means that the family law panel is losing the institutional knowledge that the sitting judge has acquired while on the bench. The same is true for the probate panel and, for that matter, all panels. There is no guarantee that the replacement will be as competent or as ethical as the known sitting judge. Replacing a judge this way guarantees the new judge will be in training for an extended period and the public will bear the cost of that person's learning curve and lack of experience.

Being opposed as a sitting judge in an election is also personally and professionally life-altering. The cost of running an election campaign can exceed \$150,000, including costs for:

1. Filing fees
2. Campaign consultants
3. Voter data and targeting software
4. Ballot statements
5. Direct mail, advertising, and digital outreach.

The annual salary of a superior court judge is a gross of \$244,727, before taxes. How many people earning a net monthly income of between \$13,000 and \$15,000 per month, could spend \$150,000 to simply fight to keep their job? A successful challenge of a competent and respected sitting judge could certainly cause many lawyers who aspire to serve the public as judicial officers to think twice about giving up their secure job to risk losing their judgeship in a contested election every six years.

Judges should not have to endure political warfare for doing their job ethically and independently.

Judicial Elections and the Risk of an Uninformed Public

Judicial elections raise additional concerns. Turnout in these races is often extremely low

which means the results can be influenced by a small number of votes, especially in the world of TikTok and Instagram. The vast majority of voters have no familiarity with the judge being opposed, do not know the challenger, and do not have meaningful access to the information necessary to evaluate judicial performance of the judge or the competence, reputation, and experience of the challenger.

Of utmost interest should be a challenger's reasons and motivations for opposing a specific judge in an election. If there is no reason, or if the reason is not substantial and verifiable, the motivations of the challenger should be carefully questioned.

In judicial elections, the outcome may turn, not on merit, integrity, or experience, but on superficial factors: a last name, race, ethnicity, or simple name recognition. The public good is not served when judicial elections become popularity contests or political campaigns driven by ambition rather than qualifications. Judges should not be removed simply because a lawyer has a desire to wear a black robe, build a career, or settle unrelated grievances. Allowing a competent, ethical judge to be removed in an election would likely result in more contested judicial elections. Imagine what our judiciary would look like if we ended up with courthouses comprised of sitting judges who were on the bench as a result of winning contested elections. What impact would that have on lawyers considering pursuing an appointment to the bench?

The Unique Burden on Family Law Judges

While judicial independence is significant in every area of law, it is particularly significant in family law for a number of reasons. It has always been difficult to persuade judges to accept assignments in family law. The workload is heavier and, in fact, many family law judges work nights and weekends to keep up with the burdensome caseload. Many cases are emotionally exhausting and the stress is constant. The threats of violence from unhappy litigants are more frequent than in other areas. Family law judges handle some of the most volatile disputes in the legal system, often involving children, restraining orders, and deeply personal conflict. In most trials, one side is happy and one side is not. In family law, it is not rare for both sides to leave the courtroom less than satisfied. The job of a family law judicial officer is difficult, to say the least.

Once appointed, even the most intelligent and fastest learners face a long and steep learning curve. This is especially true in

complex fields like family law and probate. The learning process for a judge serving in family law is often described as drinking water from a fire hose. Replacing a sitting judge with a new judge means that process starts all over, with the loser being the public.

There is long history of many family law judges leaving the family law panel in two years or less due to the burdens of the assignment. High turnover on the family law bench means that the public too often finds itself before judges who are new, untrained, and still navigating the steep learning curve. The heightened risk of being opposed in an election—or even recalled—makes family law assignments even less attractive. Knowing that your job is at risk from a recall or an election certainly can lower morale on the bench and provide yet another reason why judges decline family law assignments when they can.

Family Court: Where the Public Encounters the Judiciary

For most citizens, family court is the first and only point of contact with the judicial system. People may never sit through a criminal trial or a civil business dispute, but many will experience divorce, custody issues, or family law related legal proceedings. Family law judges make life-changing decisions multiple times every day. These rulings affect children, shape futures, and alter families permanently. That means the success of our entire judicial system depends heavily on public confidence in family courts. Removing a judge who has experience in this arena is not merely a political act—it is an injustice to our society and litigants who deserve knowledgeable, seasoned judicial officers.

Systemic Problems Should Not Be Blamed on Individual Judges

In my almost fifty years of practicing family law in Orange County, the family law courts have never been fully staffed. The Elkins Family Law Task Force, appointed by Chief Justice Ronald George, studied family law statewide for two years and made many significant recommendations, including that approximately 18% of all judges should be assigned to family court. That has never occurred in Orange County. To be fair, other departments also need additional resources, but not as desperately. Chronic underfunding and systemic overload are not the fault of individual judges, yet they are often blamed for long continuances and delays in court proceedings. One solution—that I do not expect to occur—would be for the California

legislature to allocate sufficient funding to appoint the number of judges necessary to meet the needs of the public.

A successful recall of judges because of systemic failures in family law courts is misguided and would fix nothing. Attempting to recall judges because of events that started during COVID-19 is also misguided. The successful operations of the Orange County Superior Court during COVID were amazing under the circumstances. Of course, there were problems for litigants. There were problems for everyone during that period.

Attempting to recall judges simply because of unhappiness with rulings is a total abuse of the recall process. To blame a judge for issues that occurred when a prior judge was presiding over a litigant's case is non-sensical. To blame a judge for the fact that a litigant's six-day trial was tried over a three-month period due to a lack of judicial resources is without merit. Likewise, to blame a judge for a case being continued because the judge was required by statute to handle a domestic violence case on a priority basis is simply uninformed. The law requires judges to limit the number of hours per day that they preside over cases. Judges cannot be blamed for not working earlier, later, or during the lunch hour—they legally cannot.

The Recall Effort in Orange County

There is currently an effort underway to recall twelve Orange County Superior Court judges. There is much misinformation about this attempted recall and the reasons for it. Some have suggested that the recall efforts relate to criminal conduct, judicial misconduct, civil lawsuits, or hostility toward court employees or litigants. They do not. The recall efforts focus on beliefs by some that the judges made orders that were harmful to children and failed to protect their rights and safety. Interestingly, practitioners who are in the family law courtrooms daily have not witnessed or even heard of these complaints.

Under California law, recalling a Superior Court judge requires collecting qualified signatures equal to 20% of the votes cast in the last election for that office within 160 days. If the judge subject to the potential recall did not appear on the ballot in the last election, the 20% is calculated based on the countywide office that received the fewest number of votes in the most recent general election, such as a district attorney election. If sufficient signatures are gathered, a recall election will take place on June 2, 2026. In a recall election, voters are presented with a

binary choice: recall or do not recall. If the judge is recalled, the process of replacing that judge begins. In the interim, no judge sits in that courtroom, the courts have one less judicial officer, the overload of work on the judges is exacerbated, any systemic problems increase, and the loser is the public.

But replacing an experienced judge—who has been vetted, appointed, trained, and proven—should never occur on a whim. A recall is fundamentally a political process, not a legal one. It is not an appeal. It does not require criminal conduct. It does not even require legal “cause.” Recalls generally arise from three broad motivations: disagreement with specific rulings, concerns about accountability or temperament, or political or partisan dissatisfaction. Citizens have the right to pursue a recall, and that right must be protected. But the ramifications must also be understood.

Recalls Are Rare and Should Remain So

While there have been attempts to recall judges in Orange County, there has never been a successful recall of a Superior Court judge here. No Orange County recall effort has ever obtained the required qualified signatures to appear on the ballot. The fact that twelve judges are concurrently involved in this attempted recall suggests something about the recall effort itself. The recall appears to be primarily about the system, not the individual judges. If that is true, then the remedy is to deal with concerns through the legislature rather than in a recall. Could anyone seriously think that recalling twelve judges in the family law and probate courts and replacing them with twelve new and inexperienced judges will solve any systemic problems?

To be clear, the efforts to recall judges is a serious matter for another reason. If the effort were to be successful, the election would cost the citizens of Orange County approximately \$8,500,000 based on the cost of the last special election. Add to that the fact that the judges subject to the recall are incurring legal fees to address the issues. Again, judges are public servants and do not own a money tree.

Lawyers Must Lead in Defending Judicial Independence

The independence of the judiciary is a cornerstone of democracy. It is not a privilege that judges enjoy; it is a protection for the people. Judges must be able to rule based on law and evidence—not on fear of retaliation, political pressure, or personal vendettas. Judges should not be turned into

politicians, and the courts should not be politicized. Judges should not have to look over their shoulders and be concerned about keeping their jobs when weighing facts and evidence. Being a judge is not about being a crowd-pleaser. An engaged and informed bar is essential. With knowledge and position comes responsibility. Being a passive observer should not be acceptable to the bar. Speaking out has risks, but lawyers should embrace those risks.

Lawyers are frequently asked by non-lawyers about judges who appear on the ballot and for whom to vote. Many attorneys are not litigators or do not appear regularly in Orange County Superior Court and may have no firsthand knowledge of a particular judge. In that sense, they may share the same lack of specific information as the public. But what lawyers do have is knowledge of the system and knowledge of the integrity of the Orange County Superior Court and its judicial officers. Lawyers have a professional responsibility to support and defend the integrity of the judiciary when it is challenged without cause. We all have a duty to be informed and speak out in favor of a competent judicial officer who is being opposed in an election. We have the responsibility to guide the public.

Lawyers must speak out when judicial recalls or elections threaten to undermine independence, integrity, and stability of the bench. Speaking out does not require uniformity of opinion—it requires a shared commitment to constitutional principles and respect for the judicial position held by our judges. Public confidence depends on it. Recalls should remain a last resort, reserved only for the most extreme circumstances. Anything less risks turning justice into politics—and that is a price our community cannot afford.

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