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October 26, 2010

Hon. Tani Cantil-Sakauye, Chair
Advisory Committee on Financial Accountability and Efficiency
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: AOC Compensation Issues

The Alliance of California Judges objects to the recommendation of the Advisory Committee on Financial Accountability and Efficiency for institution of discretionary salary step increases for AOC employees retroactive to July 1, 2010.

First of all, we recognize the hard work that AOC employees devote to their jobs. This same recognition applies to court employees throughout the trial court and appellate court system.

However, the recommendation is, at best, ill-timed. Throughout 2009- 2010, our trial court employees suffered financial reversals due to mandated court closures which imposed unpaid furloughs. Although court closures are no longer mandated, many trial courts will be compelled to implement furloughs in any case. Effectively, many of our trial employees will continue to suffer up to a 5% pay cut.

The recommendation of the Committee states that it is based on a staff report on compensation and personnel policy. As far as we know, that staff report has not been made public, and its conclusions cannot, therefore, be independently analyzed. If the staff report is available, we would request a copy.

The staff report concludes that trial courts kept step increases in place averaging 5.1 per cent. How was this number determined? It is unfair to use trial court step increases that are part of negotiated union contracts in past years as justification for this current action. Many courts are now in the midst of negotiating new union agreements, and there simply is no money in the trial court operations budget for salary increases. Many courts are operating at significant staff shortages. Most trial courts have therefore substantially reduced their overall payroll cost.

It is also inappropriate to use Executive Branch practices as justification, particularly without considering the impact of executive furloughs on overall costs.

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Before considering these step increases for AOC employees the Committee should provide additional public information. Has the AOC significantly reduced its overall payroll consistent with trial court practices, through attrition or otherwise? To what extent has the AOC used temporary employees or other practices to offset staff reductions, and what has been that cost? Has the AOC implemented furloughs without providing other vacation or compensated days off as an offset?

At the same time as this Committee will report this recommendation for pay increases, the Judicial Council will be recommending the new 2010- 2011 trial court budget to implement the enacted state budget that contains substantial shortfalls. The staff report on how these deficiencies will be accommodated is not yet available, as far as we know. Will these deficiencies be wholly absorbed by the AOC without impacting trial courts? Without this information, it is difficult to see how a recommendation for AOC staff raises can be considered.

To state that these raises are “not funded by the Legislature” seems incorrect. The AOC’s budget comes from the taxpayers, and is an approved appropriation in the state budget.

Finally, although we have no quarrel with hard-working AOC employees, we think that the Advisory Committee on Financial Accountability and Efficiency should step back and take a serious look as to whether the AOC has fulfilled its mission since state funding of the trial courts was implemented. The reasons given for state funding and consolidation were to achieve “economies of scale” efficiencies and to achieve better balance in funding between the trial courts.

Unfortunately, the goal of balanced statewide funding has yet to be achieved. For example, in 2005 the AOC found the Sacramento Superior Court “underfunded” by 4.9 percent. As of the last report (7/27/09) underfunding had grown to 28.87 percent, making the Sacramento Superior Court the fifth most underfunded court in the state. Many other trial courts suffer similar disparity in funding. Those joining Sacramento County in the 10 most underfunded trial courts are San Bernardino, San Joaquin, Glenn, Tulare, Placer, Fresno, Tehama, Yuba, and Kern County. Los Angeles County is now considered an underfunded court.

Furthermore, The Alliance believes that the initial goal of increased efficiency by centralized financial control has been frustrated by problems in AOC management of the branch: lack of transparency in communication and reporting, duplication of effort, organizational aggrandizement, political justifications instead of economic justifications, isolation of decision-makers, slow response, and inertia (resistance to change).

The AOC seems to have lost its way. It is for these reasons that the Alliance continues to propose legislation that will implement a Trial Court Bill Of Rights, and a Trial Court Advisory Group elected by judges to provide greater independent judicial oversight of AOC functions. We hope that the Committee on Financial Accountability and Efficiency will consider a broad re-

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evaluation of AOC practices, including the possibility of reducing its size substantially and transferring many functions to the local level.

At a minimum, we request that this proposal be deferred until there can be further review and input into the proposal.

We intend to ask to reserve to make comments upon this proposal and the budget allocations at the Judicial Council meeting for this Friday, October 29, 2010.

Very truly yours,

Directors of the Alliance of California

Cc: Members of the Judicial Council

LAW OFFICES OF
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October 28, 2010

The Honorable Tani Cantil-Sakauye
Judicial Council of California
Advisory Committee on Financial Accountability
And Efficiency for the Judicial Branch
455 Golden Gate Avenue
San Francisco, CA 94102-3688

RE: Illegal Destruction of Marin Family Court Child Custody Evidence

Dear Justice Cantil-Sakauye:

My name is Barbara Kauffman, and I am a family law attorney with a practice based in Marin County. I understand that on Friday, October 29, 2010, you are planning to recommend that the Judicial Council accept the document entitled "Investigation Report: Destruction of Family Court Mediator Working Files" generated by the Administrative Office of the Courts ("AOC") concerning the Superior Court of California, County of Marin.

I am the attorney who requested that Chief Justice George investigate the 2009 destruction of Marin Family Court Services child custody evidence a) at the direction of Judicial Councilmember/Marin Court Executive Officer Kim Turner; b) while current custody cases involving those files and a Joint Legislative Audit Committee ("JLAC") audit of the Marin Family Court were pending; and c) while the AOC and Turner were blocking the state auditor's access to family court records and personnel. At the time I made the request for an investigation I had no idea that the AOC was intimately involved in the Marin child custody evidence destruction or that the AOC would be assigned to investigate *itself* and issue a report finding *itself* innocent of any wrongdoing.

The purpose of this letter is twofold. First, I want to confirm that you and your Judicial Council colleagues have received and had ample opportunity to review a copy of the September 15, 2010 "Request for Criminal Investigation Regarding the Destruction of Marin Family Court Evidence While Custody Cases are Pending, And During a Legislative Audit of the Marin Family Court" with attachments 1 through 8 that was hand-delivered to the FBI, the CA Attorney General, and the Judicial Council on September 17, 2010. The Request for Criminal

Investigation has been jointly made by the Center for Judicial Excellence, the California Protective Parents Association, and JusticeCalifornia. A copy of the 4-page September 15, 2010 Request (without the attachments) is transmitted herewith.

Second, I urge you to delay your recommendation and the Judicial Council vote regarding acceptance of Mr. Judnick's cursory AOC report pending the type of *comprehensive investigation* and *professional legal briefing* that the serious issues presently facing the Judicial Council and trial courts statewide deserve. The fact is, **top court leadership** (a Judicial Councilmember, and the Judicial Council's administrative agency) purposefully effected the destruction of Marin Family Court Services evidence relevant to pending Marin child custody cases (many of which involve allegations of domestic violence and child abuse) and a state audit that was approved based in part on complaints of Family Court Services mediation misconduct.

The "Report to the Judicial Council" on the California Courts website introducing Mr. Judnick's AOC report states that "*acceptance and publication of audit reports will enhance accountability and provide the courts with information to minimize financial, compliance, and operational risk.*"

In other words, acceptance and publication is intended to induce trial court reliance on published AOC reports.

If the Judicial Council "accepts" Mr. Judnick's *legal analysis and opinion* that what the AOC and Judicial Councilmember Kim Turner did was perfectly legal, it is inviting misplaced public and trial court reliance on what is in reality **an incomplete legal opinion crafted by someone who does not appear to be either a lawyer or a professional investigator**. Mr. Judnick's investigation was cursory at best, and purposefully incomplete and misleading at worst. He failed even to interview Leo Terbieten, the Marin Family Court Services Supervisor who took part in the evidence destruction and resigned immediately thereafter, or Verna Adams, Marin's 2009 presiding judge who participated in the evidence destruction, and whose controversial child custody cases are among those that are subject to review by the state auditor. Further, Mr. Judnick essentially limited his purported "legal analysis" to issues related to the two legal provisions mentioned in my communications with Justice George; namely Government Code section 6200 and Family Code 1819. The AOC's Office of General Counsel must know those two provisions are the tip of the proverbial legal iceberg regarding evidence destruction (what about CA Government Code section 14755, Ca Penal Code sections 135, 96.5, 182, etc. for starters?).

I have conferred with a number of respected lawyers who disagree that the shredding was permissible, ethical, and/or legal. The consensus of opinion is that the issues raised are terrifically complex and require expert comprehensive legal research and writing. State and federal spoliation/record destruction/color of law/delegation of judicial authority issues may be involved, and even more important, the due process rights of parents guaranteed by the state and federal constitutions have been compromised. I respectfully refer you to *McLaughlin v. Superior*

Court (1983) 140 Cal.App.3^d 473. Unlike other judicial branch employees, recommending family court mediators are required to gather important evidence in undertaking to make child custody recommendations which are routinely rubber-stamped by family court judges. The mediators interview parents, children, doctors, therapists, teachers, witnesses, relatives and more. (See California Rules of Court 5.210 and 5.215). They are provided reports and photos of domestic violence and child abuse injuries. Family Court Services mediators are routinely and predictably called as trial court witnesses when their custody recommendations are challenged, and the mediation files are routinely and predictably subpoenaed and referenced when mediators testify in court.

If the AOC and Judicial Council are going to undertake to *render official legal advice* by telling the public and the trial courts that it was perfectly legal for Marin County to engage in the wholesale destruction of child custody evidence while active child custody cases and a state investigation of alleged mediation misconduct was ongoing, shouldn't it solicit the services of professional criminal investigators (perhaps from the U.S. Dept. of Justice?) and top-notch lawyers with an expertise in the subject matter presented? For heaven's sake, the AOC hires expensive private counsel such as Meyers Nave (the same firm advising the City of Bell) to defend Marin Family Court Services mediators during routine cross-examinations in child custody cases, but when dealing with child custody evidence destruction by top court leadership during a state audit the matter was delegated to an AOC in-house *non-lawyer*.

If the Judicial Council "accepts" this AOC report, no one has to guess what will happen. You need only look at what *has happened* in Marin County. To wit:

On October 12, 2010, sixty to eighty protestors from around the state gathered outside the Marin Superior Court to demand a criminal investigation of the Marin Family Court regarding the Family Court Services child custody evidence destruction. In anticipation of the protest, the Marin Superior Court had signs posted inside the civic center inviting the public to obtain information about the Marin Family Court at a table set up on the court floor, just outside the elevators. The table was staffed by two Marin lawyers, namely Marin County Bar Association president Beth Jordan, and Kris Cirby of the Marin Family and Children's Law Center. One of the documents they were passing out was dated October 7, 2010, printed on Marin County Bar Association letterhead, and signed by Jordan. It claimed to "*set the record straight*", and stated unequivocally that there was "*a full investigation*" by the Administrative Office of the Courts, and "*there was nothing illegal about destroying mediator working files and notes, as they are not considered court records as defined by statute or the California Rules of Court*". Another was an unsigned Marin County Superior Court Family Mediation Services "Fact Sheet". This document tells litigants and the public that "*Once the [mediation] report is submitted to the Court, the mediator working file is no longer needed, as all of the information the mediator found to be relevant to the recommendations about child sharing is contained in the report*", and further, that "*there are no California laws or other rules that require trial courts to retain family mediator working files. In fact, the law is silent on these records because they are not considered official court records*". Finally, "*The Administrative Office of the Courts, staff agency to the*

Judicial Council of California, has confirmed that the Court did not engage in any unlawful or unethical practices. Destruction of mediator working files is lawful and not contrary to any public policy.”

I don't mean to be jaded, but I daresay this is precisely the reaction the AOC hoped for in having Mr. Judnick create that cursory AOC report. But Mr. Judnick is not a lawyer, and is not qualified to give the public and trial courts legal advice, is he?

Does the Judicial Council-- which is comprised of many distinguished legal professionals-- really want to issue what amounts to an official Judicial Council/AOC legal opinion that it is perfectly legal and acceptable for trial court child custody mediators to gather evidence, write reports based on what the MEDIATOR believes is relevant, and then destroy all the evidence, thereby rendering it unavailable for review by the court and the litigants? Can the Judicial Council ever imagine allowing such a thing in a criminal case? Would it be acceptable for a police officer to gather evidence of a crime, write a report including only what he or she thinks is “relevant”, and then destroy all of the evidence so it is unavailable to the victims, witnesses, jury, court, experts, and /or others investigating the crime, or claims of police misconduct? Of course not. Or, if a police officer was accused of misconduct, would it be acceptable for the police officer to investigate his or her own misconduct, and then write an “official” report summarily concluding he had broken no laws and was innocent of wrongdoing? Of course not. But that is precisely the type of conduct the Judicial Council and AOC are proposing is acceptable with respect to the destruction of child custody evidence by the AOC, Judicial Councilmember Kim Turner, former Marin Presiding Judge Verna Adams, and Marin Family Court Services personnel.

Further, is the Judicial Council really going to accept without question Judicial Councilmember Kim Turner's explanation that the child custody evidence was destroyed immediately after the state audit of the Marin Family Court commenced, while the AOC and Turner were blocking the auditor's access to Family Court Records and personnel, to “make space” rather than render the evidence unavailable to the auditors -- although the stated prior practice of the court was to keep the records for five years?

Given the significance of the issues (destruction of child custody evidence regarding child custody/domestic violence/abuse cases) and the important “legal” precedent/policy this Judnick AOC report proposes to set, **I am requesting that the Judicial Council provide official legal opinions, explaining the factual and legal basis for said opinions, regarding the following:**

1. After reviewing the information referenced in the September 15, 2010 Request for Criminal Investigation, other relevant information available to the AOC and the Judicial Council, and ALL applicable state and federal laws, is it the Judicial Council's official legal opinion that a) “*there was nothing illegal about destroying mediator working files and notes*” while the state audit, and active child custody cases, were ongoing, and/or b) neither the Marin Superior Court

nor the AOC engaged in any illegal or unethical practices?

2. Is it the official, legal position of the Judicial Council that Trial Court Family Court Services mediation evidence historically, routinely, and predictably gathered and utilized in a) making family court child custody mediation recommendations; and b) challenging family court child custody mediation recommendations may be destroyed after the recommendation is written, while child custody cases involving the mediation evidence are ongoing?

3. Is it the official, legal position of the Judicial Council that it is safe, ethical and professional for court custody mediators to destroy their child custody mediation files and evidence after writing their recommendations although it undermines the mediators' ability to review their notes and evidence at trial or lay a proper foundation for their mediation recommendations by explaining what they did, who they talked to and what was said, in the course of making their custody recommendations?

4. Is it the official, legal position of the Judicial Council that the destruction of child custody mediation files and evidence after the mediation recommendations are written does NOT interfere with a parent's due process right to cross-examine the mediator and present evidence, and/or the Court's ability to determine whether the mediation report is fair, balanced, thorough, reliable, and performed in a professional manner consistent with state law and the rules of court?

5. Assuming for the sake of argument that the destruction of the Marin Superior Court mediation files was illegal, what is the Judicial Council's official legal opinion as to which law enforcement entities have the jurisdiction to prosecute, and in which court should the crimes be prosecuted?

Justice Cantil-Sakauye, I do not intend to be impertinent, I intend to be provocative, so that if you and the Judicial Council "accept" Mr. Judnick's "report", you all do so with your eyes wide open, aware of the obvious consequences. I fear that you and the Judicial Council are being urged to take an action which will be viewed as self-serving, ethically and legally improper, misleading to the public and trial courts -- *and which ultimately will endanger tens of thousands of California families and children for years to come.*

Respectfully,



BARBARA A. KAUFFMAN

BAK/m



CENTER FOR JUDICIAL EXCELLENCE

**REQUEST FOR CRIMINAL INVESTIGATION
REGARDING THE DESTRUCTION OF MARIN FAMILY COURT EVIDENCE
WHILE CHILD CUSTODY CASES ARE PENDING, AND
DURING A LEGISLATIVE AUDIT OF THE MARIN FAMILY COURT**

September 15, 2010

To Whom It May Concern:

We are writing to request a comprehensive criminal investigation regarding the destruction of Marin Family Court Services mediation child custody files (and perhaps other files as well) by Judicial Council Member & Marin Court Executive Officer Kim Turner; 2009 Marin Superior Court Presiding Judge Verna Adams; the California Administrative Office of the Courts (AOC); various Marin Family Court Services personnel; and unknown others, while child custody cases involving those mediation files, and a state Joint Legislative Audit Committee (hereafter "JLAC") Investigation of the Marin Family Court (including Marin Family Court Services mediators) were ongoing.

The Marin Family Court's current claim is that a wholesale purge of Marin Family Court Services child custody files was undertaken just weeks after the JLAC investigation commenced in order to "make space" rather than to destroy evidence relevant to the JLAC investigation. However, the facts illustrate that Presiding Judge Adams, Judicial Councilmember Turner, Marin Family Court Services personnel, and the AOC have known for years a) about litigant and advocate allegations that Judge Adams, the Marin Family Court, Marin Family Court Services personnel, and Marin Family Court appointees were violating state mandated family laws and procedures, and b) that litigants and advocates repeatedly have sought all kinds of investigations (including criminal) of the Marin Family Court.

In other words, we believe that members of the California Judicial Branch and administration have purposefully thwarted the Constitutional 'checks and balances' function of the legislature to investigate constituent complaints about the Marin Family Court. We believe that in the process, they have endangered children, and deprived parents of evidence that is clearly relevant to their ongoing child custody cases.

We believe that this document destruction may violate many state statutes--for example Penal Code sections 135, 96.5 and 182 -- and perhaps related federal statutes as well.

In support of our request for a criminal investigation delivered herewith please find:

1. **A copy of the August 11, 2010 AOC report entitled "Superior Court of California, County of Marin, Investigative Report: Destruction of Family Court Mediator Working Files"**. The report admits that Judicial Council member/Marin Court Executive Officer Kim Turner, after ongoing consultation with and permission from the AOC, spent weeks in the Fall of 2009 destroying Marin Family Court Services mediation files while the JLAC-ordered audit of the Marin Family Court was ongoing. The report notes that prior to the destruction, the "general working practice" of the retention of such files was 5 years (page 5). The September 23, 2009 e-mail sent by Kim Turner instructing Family Court Services personnel to destroy documents was copied to then-Marin Presiding Judge Verna Adams.
2. **A copy of the April 2010 testimony of Family Court Services mediator Meredith Braden, describing the destruction of mediation files in the Fall of 2009**. This sworn testimony prompted the request for an investigation. This testimony makes clear that child custody mediation files relevant to **ongoing** child custody cases were destroyed, thereby depriving parents of the right and ability to subpoena child custody mediation files and properly question mediators about their child custody recommendations, and eliminating the mediators' ability to properly answer such questions.
3. **A copy of the March 2006 testimony of Family Court Services mediator Gloria Wu in Marin Superior Court case no. FL 995107, revealing the type of information kept in Family Court Services mediation files**. This cross-examination reveals that a child who had for years returned from visits with his father with bruises, told the Family Court Services mediator that his dad hit him, "sometimes for fun, sometimes he means it". The mediator, a mandated reporter, failed to investigate the child's claim, report it to anyone, or include the information in her mediation recommendation. The child's statement was discovered only after the mediator's file was subpoenaed, and the mediator was cross-examined. Family Court Services has confirmed that this mediation file is one of those that was destroyed in 2009.
4. **A copy of the June 6, 2008 Capitol Weekly article entitled "Lieber Seeking Audit of Family Court System"**, which states as follows:

"Judge Verna Adams—who is Presiding Judge in Marin County Superior Court and Supervising Judge of their Family Law Division—said that her court is already audited regularly by the Judicial Council of California. Adams, who presided over Diop's case, said she is confident an audit will find no major problems".
5. **A series of 2007 e-mails** involving FL 995107, to multiple individuals, including but not limited to: Marin Sheriff Robert Doyle, Commission on Judicial Performance director Victoria Henley, Daniel Harris of the Attorney General's office, Marin District Attorney Ed Berberian, the Marin Board of Supervisors, Beth Jordan—then chair of the family law section of the Marin County Bar Association, Marin Court Executive Officer Kim Turner, Marin Judge Lynn Duryee, Family Court

Services Supervisor Leo Terbeiten, and others, “**about the illegal behavior of Marin Family Court Services**”, and asking for “**a criminal, administrative, judicial and every other possible kind of investigation. . . to find out what the heck is going on up at the Marin County court.**”

6. **A series of 2008 e-mails** with Susan Reeves, of the AOC, sent with multiple attachments (which are not provided herewith but are available), about “**the fact that Judge Verna Adams and our court mediators and appointees are breaking California family laws with abandon**”, and including Susan’s assurance that she would “**pass the e-mails along to Chris Patton**” (attorney/AOC Northern Regional Administrative Director). The e-mails specifically refer to three high-profile Marin custody cases—involving Yupa Assawasuksant (FL 995107), Rama Diop (FL 064080) and Jonea Rogers (FL 12003).

(NOTE: In September, 2009, at the time the document destruction was approved and undertaken, a custody appeal was pending in the Court of Appeal in FL 064080 (Diop); and a Petition for Review related to a custody appeal -- which squarely raised the illegality of Marin trial court and Marin Family Court Services procedures-- was pending in the California Supreme Court in FL 995107. Both cases had involved the same judge (Verna Adams) and the same mediator (Gloria Wu), and similar claims of systemic Family Court Services and trial court discrimination and irregularities. Judge Adams had been challenged pursuant to CCP section 170.1 in both cases, based on charges of unlawful and biased behavior. Both litigants had complained about the assigned Family Court Services mediator Dr. Wu, and asked for reassignment to a new mediator, but the request was summarily denied.)

7. **July 2009 newspaper articles** (Marin Independent Journal, The Recorder) announcing and discussing the scope of the legislative audit of the Marin Family Court.
8. **August 2010 E-mail exchanges** with Marin Family Court Services, confirming that the mediation files involving Yupa Assawasuksant (Marin Superior Case No. FL 995107) and Rama Diop (Marin Superior Case No. FL064080) have been destroyed. It is unknown whether the file in FL 12003 was destroyed.

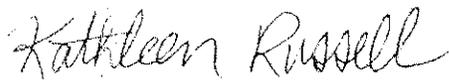
The above documents and information make it very clear that at the time of the Fall 2009 Marin child custody mediation file destruction, the Marin Court and the AOC were very well aware of allegations regarding and requests for investigation of illegal/incompetent behavior by Judge Verna Adams and other bench officers, Marin Family Court Services personnel, and other court appointees; and they were aware that the JLAC audit of the Marin Family Court –an audit that was based in large part on allegations of improper behavior by Marin bench members, Marin Family Court Services personnel, and court appointees—had already commenced. The August 2010 e-mails reveal that the mediation files of even the most controversial and high-profile pending cases were destroyed.

Only when an official state investigation was actually underway were the Marin records destroyed. This was contrary to the custom and practice of Family Court Services, and this was before a formal Marin record retention policy was in put in place.

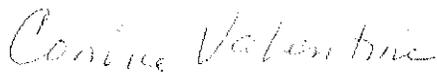
The extent of the record destruction is unclear. The last sentence on page 3 of the AOC report could be read as a red flag that other files--including what the AOC and Turner call actual "court records", may have been destroyed, but that the AOC believes the destruction was "in accordance with statute or CRC". It is imperative to get a complete list of the files that were destroyed since a) May of 2007 and b) most especially, in 2009-2010. It would appear from the new November 2009 Marin "Records Retention and Destruction Policy" that the Marin Court has set the stage for destruction of e-mails, correspondence, complaints, and/or other Family Court documents, although e-mails and correspondence to and from judges, administrators and court personnel such as mediators in some cases contain important information, relevant to the audit process.

Many, many other documents (e-mails, correspondence, pleadings, taped testimony) evidencing the California third branch's intimate knowledge of allegations of misconduct in the Marin Family Court prior to the coordinated destruction of record during the JLAC audit are available for review.

The JLAC Committee voted unanimously to pass this audit request because it involves longstanding concerns about the health, safety and well being of children in our state's family courts. We urge your immediate and swift action on this urgent matter.



Kathleen Russell
Center for Judicial Excellence



Connie Valentine
California Protective Parents Association



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March 18, 2010

Robert C. Buckley, Managing Attorney
Office of the General Counsel
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688

RE: Audit No. 2009-109

Dear Mr. Buckley:

We are sending this letter to you as counsel for the Marin County Superior Court and the Sacramento County Superior Court (Sacramento Court). As you know, over the past eight months, the Bureau of State Audits (bureau) has attempted to work with the courts to gain access to the records and individuals necessary for the audit of the California Family Court System approved by the Joint Legislative Audit Committee (JLAC) on June 24, 2009. During this time, we have listened to the concerns of the courts including, but not limited to, those related to our need to access case files that may contain confidential materials and the courts' concerns that the audit will "cherry-pick" cases to obtain certain results. We have attempted to alleviate the courts' concerns by providing information regarding our enabling statutes, the audit standards we must operate under, and the prohibitions that apply to the bureau's release of confidential information and documentation that we obtain during the course of an audit.

As you know, since July of 2009, we have made numerous attempts to exercise our statutory right to access the individuals and records of the courts that we determine are necessary to conduct the audit. As we have previously advised, our access statute specifically provides that "Any officer or person who fails or refuses to permit access and examination and reproduction, as required by this section, is guilty of a misdemeanor." (Cal. Gov. C. § 8545.2(c)). Yet despite the fact that our statutes clearly give our office access to the individuals and records we are seeking and make it a misdemeanor for the courts to fail or refuse to grant us access, it is now March 2010 and the courts are still refusing to fully cooperate. In view of the numerous delays and the apparent impasse we have reached, the State Auditor has directed me to issue subpoenas unless the courts agree in writing that our auditors will be provided full and unfettered access to the individuals and records that we determine are necessary to conduct the audit (see Cal. Gov. C., § 8545.4). Please be advised that if the courts fail to respond to our subpoenas, we intend to seek a court order to compel compliance with the subpoenas (see Cal. Gov. C. § 8545.4). To

Robert C. Buckley, Managing Attorney
Office of the General Counsel
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avoid the subpoenas, this written assurance must be received by the State Auditor no later than April 5, 2010.

The following chronicles the numerous good faith efforts we have engaged in with the courts to obtain the records and information that we need.

Our audit team first began meeting with the courts in July 2009. As is our standard practice, we made the courts aware of our access statute that provides "stand in the shoes" access authority and we also informed the courts of our obligations under the law to maintain the confidentiality of information and records of the courts to the same extent as it would apply to the courts. The following month, we began our preliminary work on the audit - our "scoping" phase. However, our auditors were denied access to some of the records that they needed during scoping to develop an appropriate audit plan. As a result, the audit team was left with many unanswered questions as to the information available in the courts' databases and the documentation necessary for us to complete an audit consistent with the Scope and Objectives approved by JLAC. As our audit fieldwork could not begin until these issues were resolved, on October 16, 2009, we sent a letter to the courts and the Administrative Office of the Courts (AOC) describing our access requirements and once again providing the courts with information regarding the statutes and standards governing the conduct of the audit.

On November 12, 2009, we received a response from Lynne Urman, an attorney with AOC. Although the letter stated that the courts and the AOC intended to fully cooperate with the bureau, the letter attempted to limit the bureau's access based on confidentiality provisions in statutes and rules applicable to child custody disputes. Over the next four weeks, our office attempted to work with Ms. Urman to identify the concerns raised by the courts and also to determine if we could alleviate those concerns while still obtaining access to the necessary individuals and records. We also informed the courts of the language in our access statute (Government Code, Section 8545.2) that states that "[n]o provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to [this section], unless the provision specifically refers to and precludes access and examination and reproduction pursuant to [this section]." Ms. Urman confirmed that the statute making certain information pertaining to child custody cases confidential does not include a provision specifically precluding the bureau's access. In a December 14, 2009 conference call with Ms. Urman, it became apparent that the courts' demands would impede the bureau's access to the individuals and documents necessary to meet the audit objectives and would therefore create a "scope limitation" under the audit standards we must follow. We requested that this matter be raised with Bill Vickrey, the Administrative Director of the Courts and Mary Roberts, General Counsel to the AOC. In the interim, I discussed the problems we were having with the courts with Ms. Roberts, and she indicated that the AOC would attempt to assist us in resolving the issues with the courts.

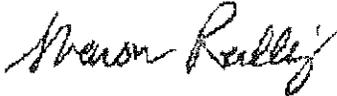
On January 15 of this year, at the request of Ms. Roberts, you visited our office to discuss these matters further. At that point, we believed that, within a couple weeks, critical discussions

Robert C. Buckley, Managing Attorney
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regarding electronic data would occur between our office and the courts. However, despite our efforts to move the audit forward, it was not until February 23, 2010, that we received notice that such discussions were agreeable to the courts. While you were scheduling meetings for those discussions to occur and with the belief that we now had the full cooperation of the courts after months of delay, we scheduled our first day of fieldwork at the Sacramento Court on March 4, 2010. Late on the afternoon of March 3, 2010, you contacted our office regarding the Sacramento Court's decision to cancel the first day of fieldwork until all the "unknowns" were clarified. The two unknowns that you relayed to us that afternoon on behalf of the court were that the scope of the audit needed to be confirmed in writing and that we had yet to agree on how to handle confidential documents. As the Scope and Objectives of our audit were approved by JLAC and are posted on our Web site, and as Government Code, Sections 8545, 8545.1, and 8545.2 specifically address our access authority and the prohibitions that apply to the bureau's release of confidential information and documentation, the court's decision to deny the bureau access constitutes an unreasonable delay.

As previously stated, if the courts wish to avoid subpoenas, please confirm in writing by Monday, April 5, 2010, that the courts agree to provide full and unfettered access to all of the individuals and records necessary for the completion of this audit.

Sincerely,

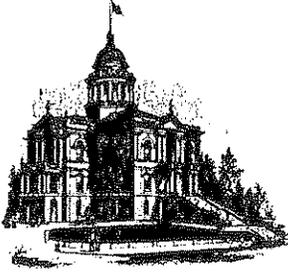


SHARON REILLY
Chief Legal Counsel

cc: Assemblymember Alyson Huber, Chair, Joint Legislative Audit Committee
Senator Roy Ashburn, Vice Chair, Joint Legislative Audit Committee
Assemblymember Joe Coto, Joint Legislative Audit Committee
Assemblymember Chuck DeVore, Joint Legislative Audit Committee
Assemblymember Noreen Evans, Joint Legislative Audit Committee
Assemblymember Curt Hagman, Joint Legislative Audit Committee
Assemblymember William Manning, Joint Legislative Audit Committee
Senator Dave Cogdill, Joint Legislative Audit Committee
Senator Denise Ducheneay, Joint Legislative Audit Committee
Senator Robert Dutton, Joint Legislative Audit Committee
Senator Alex Padilla, Joint Legislative Audit Committee
Senator Lois Wolk, Joint Legislative Audit Committee
Senator Patricia Wiggins, Joint Legislative Audit Committee
Senator Mark Leno
Senator Leland Yee
Assemblymember Jim Nielsen
Assemblymember Fiona Ma
Assemblymember Jim Beall

Robert C. Buckley, Managing Attorney
Office of the General Counsel
March 18, 2010
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Assemblymember Cameron Smyth
Honorable Stephen W. White, Presiding Judge, Superior Court of California, County of
Sacramento
Honorable Verna Adams, Presiding Judge, Superior Court of California, County of Marin
Mary M. Roberts, General Counsel, Office of the General Counsel, Administrative
Office of the Courts
Cameron Valdezama, Chief Consultant, Joint Legislative Audit Committee



Superior Court
of the State of California
In and For
The County of Placer
Roseville, California

In Chambers of
HON. ALAN V. PINESCHI
PRESIDING JUDGE
OF THE SUPERIOR COURT
DEPARTMENT 33
10820 JUSTICE CENTER DRIVE
ROSEVILLE, CALIFORNIA 95678
P. O. BOX 619072
ROSEVILLE, CALIFORNIA 95661
(916) 408-6230 FAX (916) 408-6236

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CHAMBERS OF THE
CHIEF JUSTICE

December 1, 2010

Hon. Ronald M. George
Chief Justice of California
Chair of the Judicial Council
350 McAllister Street
San Francisco, CA 94102-4797

Re: Jody Patel - Regional Administrative Director for the Northern/Central Office

Dear Chief Justice George:

We wish to make known our gratitude for the guidance, work, and assistance provided to the Placer County Superior Court by Jody Patel, the Regional Administrative Director at the Northern/Central Regional Office of AOC. We have been remiss in not acknowledging her superlative efforts on behalf of our court at an earlier point.

Briefly, you are aware that the Placer County Superior Court was faced with some critical challenges upon the departure of this court's previous CEO in 2009. The court was faced with some dire administrative and budgetary issues at that time. Fortunately, Jody was available to step in and provide immediate oversight as the court's interim CEO. She deftly handled necessary personnel changes and instituted necessary financial controls and policies. She was instrumental in recruiting and then mentoring our current CEO, Jake Chatters, who has worked diligently with Jody since June 2009 on several difficult budgetary, administrative, and labor issues confronting our court.

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Hon. Ronald M. George
December 1, 2010

We are pleased to say that our court's financial ship has been righted, for which we give Jody a large measure of credit. The court's financial position has improved to the point where statutory fiscal oversight by the Judicial Council may be ending soon. It is clear to us that Jody went well above the call of duty in helping our court. We often wondered how she was able to devote so much attention and skill to our court – while at the same time fulfilling her duties as a Regional Administrative Director. In our view, the Judicial Council and AOC are being well served to have Jody's experience, dedication and professionalism available to serve the courts and public.

Again, thank you for your efforts and attention in assisting the Placer County Superior Court.

Sincerely,



Hon. Alan V. Pineschi
Presiding Judge



Hon. Charles Wachob
Assistant Presiding Judge

AVP:CW:yy

cc: William C. Vickrey