

**From:** Alliance Judges  
**To:** Invitations  
**Subject:** Comment on SEC Recommendations by the Alliance of California Judges  
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## Alliance of California Judges

July 19, 2012

Public Comment of The Alliance of California Judges re: SEC Implementation; SP12-05

July 19, 2012

Dear Justice Miller, Chief Justice Cantil-Sakauye, members of the Judicial Council and the Strategic Evaluation Committee:

This response is written on behalf of the Alliance of California Judges.

We urge the Judicial Council to immediately implement every recommendation of the Strategic Evaluation Committee.

The Judicial Council must vote without delay to implement all of the recommendations of the SEC, and direct the interim director now, and the new director when appointed, to immediately begin implementation of all recommendations with reasonable, deliberate speed. The Judicial Council must not wait to coordinate with a new director, nor should the Judicial Council "time-line" the recommendations. There is nothing to be coordinated or "time-lined." To restore the faith of the judges, the Legislature, the Governor and the public, the Judicial Council must act now, without qualification.

Almost all of the public comments posted to date in support of the SEC recommendations ask for exactly what we have proposed. This cry for immediate implementation is due to the fact that many commentators fear delay, exactly as we do.

Our concern is that the Judicial Council will likely delay the SEC recommendations by deferring action until a new director is appointed, under the pretext that the new director will need to evaluate and comment upon the recommendations. We are further concerned that the Judicial Council will also refer the recommendations to some committee for the development of a "timeline" for implementation. These "stalling" tactics would be perceived by judges, legislators, the Governor's office and the public for exactly what they would be: an effort to buy time to weaken the impact of the SEC Report. Frankly, we hope our concerns prove to be wrong.

The evidence that the Judicial Council will ignore the plea of the judges of this state is well founded. Judges asked that courtrooms not be closed. The Judicial Council ignored them and closed the courts in order to spend money on the failed CCMS system, acting by a unanimous vote. Judges pleaded that the CCMS system be stopped. The Judicial Council ignored them and voted to spend the money anyway, wasting over \$500 million of public funds. Judges sought a public audit of CCMS and were opposed. That audit revealed a horrible lack of oversight and planning of the CCMS project, and the Judicial Council minimized the outcome, arguing that the auditor's concerns had already been addressed and that CCMS worked. Judges urged the Judicial Council not to approve pay raises for the AOC in this time of crisis. Once again, these judges were ignored. Judges asked for a cooperative effort to reform the trial court funding statutes to ensure that trial courts had a balanced voice in the funding process as trial courts. That plea was ignored and the Council undertook a "no holds barred" opposition to reform. That reform has now been substantially enacted without Judicial Council support.

The immediate action we and many others propose is vitally necessary to restore the credibility of the Council in the eyes of judges, other constitutional officers and the public. Again, we hope the Council does not pursue delay, but we also fear that it will.

Many who propose delay mistakenly argue that the SEC recommendations fail to recognize the Council as the "policy-making" body of the Judicial Branch whose role it is to "improve the administration of justice." They contend that the AOC is charged with the responsibility to carry out this broad mandate as the administrative arm of the Judicial Council. In fact, the Council has seized for itself the title and role never given to it by any legal authority, yet now emblazoned across its official documents: "the policymaking body" for the state's judges. The Council is no such thing.

The limits of the Council's powers are simply *and clearly* set forth in Article VI, section 6(d), as follows:

*To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.*

Nowhere in this modest grant of authority is there any expression of an intent that the Council govern the trial courts. While section 6(f) requires judges to cooperate with the Council in its surveying authority, nowhere in the Constitution have judges abrogated their constitutional authority to govern their own courts within their communities or districts. The very notion of Council governance is at odds with the provision's mandate that the Council be a *recommending* body.

Nonetheless, the Council has for 15 years ignored this provision--though the former Chief Justice and AOC did try, unsuccessfully, along with many who now argue for such an expanded role, to have it changed to give it express policymaking authority. The arguments of these proponents of delay ignore the adjudicated limitations on the Council's authority. (See *California Court Reporters Assn. v. Judicial Council of California* (1995) 30 Cal.App.4th 15, 22.)

The Judicial Council previously invented an extralegal role for itself. The time has come for this Council to repudiate that action by immediate implementation of the SEC recommendations. The AOC takes no oath to the law, or to the Constitution, but every member of the Council has done so. The Council now must give meaning to that oath by recognizing the limits of Council power set forth in the Constitution, and by insisting that the AOC be no larger than required to carry out its core functions--to act as the Secretariat to the Council, and to perform functions mandated by statute.

The AOC must be reformed, and the sooner the better. Every one of the carefully documented recommendations of the Strategic Evaluation Committee makes good sense, and the Council should step in and carry out its clear duty to implement them.

If the Council delays, change will nonetheless come, but it will be change brought about by others and forced upon the Council.

Finally, we urge the Chief Justice to move forward with an additional initiative to create a democratic Judicial Council selection process and structure which will guarantee that the constraints of Article VI are respected.

Very truly yours,

David R. Lampe  
Director