

Item SP12-05 Response Form

Title: Strategic Evaluation Committee Report

The Strategic Evaluation Committee (SEC) was appointed by Chief Justice Tani G. Cantil-Sakauye in March 2011 to conduct an in-depth review of the AOC with a view toward promoting transparency, accountability, and efficiency. The Chief Justice received the report and recommendations on May 25. At its meeting on June 21, 2012, the Judicial Council accepted the report and directed that it be posted for public comment for 30 days. Comments received will be considered public and posted by name and organization.

PLEASE NOTE that all comments will be posted to the branch web site at www.courts.ca.gov as submitted by the commentator as soon as reasonably possible after receipt.

To Submit Comments

Comments may be entered on this form or prepared in a letter format. If you are *not* submitting your comments directly on this form, please include the information requested below and the proposal number for identification purposes. Because all comments will be posted as submitted to the branch web site, please submit your comments by email, preferably as an attachment, to: invitations@jud.ca.gov

Please include the following information:

Name: Steven K. Austin **Title:** Judge

Organization: Superior Court, Contra Costa County

Commenting on behalf of an organization

General Comment: I join and support the comments to the SEC Report that have been submitted by the Access to Justice Commission, Justice O’Leary and Justice Zelon. A central theme of these comments is that while the SEC Report is a valuable tool to consider when the Council determines the future course for the AOC, it was never intended to be used as the sole consideration in that process. The report notes that the charge of the SEC was to conduct a review of the AOC and its organizational structure to promote “transparency, accountability and efficiency” and to “make findings and recommendations to improve the efficiency of the AOC.” While greater efficiency is a laudable goal, to focus entirely on such a business model approach to the core functions of the AOC is misguided.

Among other important factors, such an approach ignores the important role that the AOC has played in helping the Judicial Branch shape and implement policies and procedures to ensure access and fairness in our courts. Efforts to increase access and fairness have long been a central tenet of our state’s judicial system. Our judiciary has valued these efforts so highly that we embodied them in Goal 1 in the current Strategic Plan for the Judicial Branch:

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“California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents.”

Over the years I have served as a member of the Access and Fairness Advisory Committee, Chair of the CJER Fairness Education Committee, Chair of the Access to Justice Commission and Chair of the Court Interpreters Advisory Panel. In these capacities I have worked closely with many AOC staff members and attorneys who have played an integral role in supporting judicial efforts to make our court system as fair, diverse and accessible as possible. In a large part due to their efforts, California is a national leader in the development of policies and practices to increase access and fairness in our courts. California courts, judges and court users are all better served as a result. In any effort to reshape the AOC, this core function of supporting judicial efforts to increase access and fairness must be a primary consideration.

Any real consideration of this core function is absent from the SEC report. The word “diversity” is not mentioned a single time. The word “fairness” is mentioned only a few times. When it is mentioned, it is in connection with the recommendation that the Procedural Fairness/Public Trust and Confidence program be eliminated. (Rec. 7-12). Similarly, the word “access” is used only twice in the report in the sense envisioned by Goal 1. Language access is mentioned in the relatively good review of the Court Interpreters Program. “Access” is also mentioned a second time in the following sentence on page 35: “The core purpose of the judicial branch is to provide access to all for fair resolution of legal disputes and issues.” The report then goes on to discuss the core functions of the AOC without including any discussion or consideration of the need for the AOC to continue efforts to support and assist our courts in this “core purpose.”

The absence in the SEC report of any consideration of the role of the AOC in supporting access, fairness and diversity in our courts is understandable given the SEC’s limited charge related to the promotion of transparency, accountability and efficiency. The SEC simply was not asked to consider access and fairness issues. However, consideration of the concepts of access and fairness embodied in Goal 1 are clearly within the charge of the Judicial Council as it approaches the difficult task of reshaping the AOC. I urge the Council to make sure that whatever form the AOC takes at the conclusion of this process of reexamination, it will continue to provide essential support and assistance to the courts in their efforts to increase access, fairness and diversity. To do so will require a dispassionate and reasoned approach to each of the recommendations in the report.

I have a few comments as to some of those specific recommendations. I want to echo the comments made by past Court Interpreters Advisory Panel Chair Justice O’Leary addressing the finding at page 97 of the report that the OGC and OGA “routinely” advise

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the director in a way that might “hamper the smooth running of this program.” While on occasion attorneys from the OGC have advised on legal issues related to the interpreter program and the OGA has been involved in legislative issues, their contact is not routine. In my experience, when they have been involved they have been extremely valuable in helping us steer clear of legal or legislative pitfalls.

Several of the recommendations involve calls for reducing the number of staff attorneys at the AOC and for a reexamination of job requirements to determine whether people with no legal training could fill specific positions, such as staff to Judicial Council committees. In my experience in working on numerous task forces, working groups and committees over the years, the assistance of experienced and knowledgeable attorneys working as primary staff support has been essential to any successful outcome. These groups often deal with complex legal and policy issues that require the support of staff attorneys. All of us who volunteer for these tasks have day jobs back at our courts. The presence of trained attorney support staff at the AOC allows us to do both jobs efficiently.

Thank you for the opportunity to comment.

Specific Comment - Recommendation/Chapter Number:

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