

**From:** Borack, Jerilyn  
**To:** Invitations  
**Subject:** SEC Report  
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**TO:** Honorable Tani Gorre Cantil-Sakauye, Chief Justice of the Supreme Court of California and Chair of the Judicial Council

**FROM:** Jerilyn Borack, Judge of the Superior Court of California, County of Sacramento

The Strategic Evaluation Report is a complex document which is the result of countless hours of research and thought. Although I have read it all, there are many areas that I do not feel qualified upon which to comment. However, in the ten years that I have been on the bench I have worked closely and extensively with the Center for Families, Children, and the Courts (CFCC). I have had the privilege to serve on the Family and Juvenile Law Advisory Committee since 2003, and was co-chair for the five years between 2005 and 2010. I continue to work on other projects staffed by CFCC as a member of the Domestic Violence Practice and Procedures Task Force, the Elkins Task Force, and the Tribal Court/State Court Forum. It is clear in reviewing the recommendations as they are specifically applied to CFCC that the members of the SEC have heavily relied on perceptions and concerns. This is not necessarily a criticism. It is indeed difficult to know and understand everything about everything, and this is especially true in the area of family and juvenile law, one in which few judges ever have the opportunity to develop any expertise. Indeed the SEC report reflects the committee's recognition of this and is replete with admonitions to the Judicial Council to "review", "consider", and only after that, to take "appropriate action". I hope in my comments to illuminate some misperceptions that may assist the Judicial Council in its review and analysis of the report and its recommendations especially as they pertain to the CFCC.

First, the report accurately recognizes that CFCC, unlike any other division of the AOC, is dedicated to a substantive area of the law, that area dealing with juvenile and family law. Unlike other areas of law, family and juvenile law require, by statute, a multidisciplinary approach. Unique to those areas is the interplay of law and social science. As such the family and juvenile courts require an expertise that facilitates a positive dialogue between these two disciplines in a problem solving approach, as opposed to the more traditional trial court, adversarial process. This expertise and knowledge which has been developed in CFCC is more than likely the reason that

CFCC has been called upon to administer other programs such as specialty courts having to do with substance abuse and mental health, and programs involved with self-represented litigants and access to justice. All one has to do is review the list of programs for which CFCC is responsible to understand the magnitude and critical nature of the tasks that that division administers. However, the Judicial Council should not forget the important function of CFCC in providing legal services support to the Council's Advisory Committee and to trial courts when considering the implementation of the recommendations of the SEC in reorganizing the AOC. I would suggest, because of its unique task, that CFCC touches Judicial and Court Administrative Services as well as Court Operations Services. To place it only under one or the other might hamper its effectiveness.

Further, the report recognizes that CFCC is able to attract federal, state, and foundation funding to support judicial branch directives and objectives. It correctly states that the increase in staff positions has been (1) a reflection of additional responsibilities causing the transfer of employees from other AOC divisions, and (2) to monitor compliance with grant funding requirements. Curiously however, the SEC seems to criticize CFCC for their work in acquiring and appropriately managing over \$200 million additional dollars that were made available to trial courts. The report enumerates concerns expressed by trial courts, yet, aside from the analysis of the work required under the mandates of Welfare and Institutions Code Section 366.24, there is little analysis and no mention of the benefits experienced by the trial courts and the public as a result of the work of CFCC. I urge the Council, for example, to contemplate the complex interplay of federal foster care funding and the required language contained in judges' findings in juvenile court proceedings when considering the comments of the SEC concerning whether certain functions can be performed by non-attorneys, and the countless hours saved in trial court administration by the task performed by CFCC staff.

Justice O'Leary in her comments addressed the work of CFCC as it relates to access to justice and self-represented litigants. I wish to comment on other aspects of the work of CFCC as it relates to the Recommendations No. 7-4 to 7-8.

*Recommendation 7.4:*

I agree with the SEC that any reorganization or downsizing of CFCC must continue to allow for reasonable servicing of the diverse programs mandated by statute and assigned to this division.

*Recommendation 7.6, Rules and Forms and the Family and Juvenile Law Advisory*

Committee:

The Family and Juvenile Law Advisory Committee (FJLAC) has in its membership not only judges but court administrative personnel and representatives from the diverse group affected by the work of the committee and the law. While CFCC is responsible for providing staffing to the committee, the committee and its membership is established by the Judicial Council, not CFCC. The inference in the report that judges and other members of FJLAC permit staff to set the agenda for revision of rules and forms without appropriate oversight is disappointing. It negates the countless hours spent on a weekly basis by FJLAC members reviewing drafts, making comments, and holding telephone conferences. Each year the committee faces the daunting task of dealing with new case law and legislative directives in new or amended laws necessitating the development of new rules which in turn require revised forms. The work is complex and staff is required to have an understanding that only comes with a law degree. In my tenure on FJLAC we have had to deal with major revisions in the law such as the Domestic Partnership Act and the extension of foster care funding to non-minors under AB12. It would be impossible to timely meet legal requirements without the expertise of the astute and dedicated staff that assist the committee.

I am painfully aware of the perception of the judges who are assigned to family and juvenile courts and their court administrators that FJLAC and/or its staff offer up new rules and forms each year just for the fun of it, or just to keep themselves busy. Nothing could be further from the truth. The family and juvenile court judges and other members with whom I have been privileged to work on FJLAC are tireless, extraordinary individuals who after completing a full day of crowded calendars, trials, and file review spend time reviewing proposals for changes made necessary by changing law. Each week, sometimes twice a week, they gather at 4:30 in the afternoon on the telephone to discuss proposals and redraft language. This work is done before drafts are distributed for comment and again after comments have been received. Were it not for the ability of staff to gather, document, and provide analysis of the law and the comments received, completion of the required task would be impossible. Each proposal is carefully reviewed by committee members prior to making recommendations to RUPRO and the Judicial Council. The process is anything but willy-nilly or unsupervised. The Judicial Council is fortunate to have devoted staff, judges and other committee members who have a common understanding of the job that needs to be accomplished and the ability to work well together. As others on advisory committees have commented, FJLAC would be crippled by severe cuts to staff, and in turn, trial courts would be unable to comply

with the law.

I thank the Judicial Council for the opportunity to comment on this important area of the SEC Report. The SEC Committee has appropriately recognized the mandatory nature as well as the important function of the work performed by the Center for Families, Children, and the Courts. It has called on the Judicial Council to carefully review the mandates and functions of this division and consider what changes are necessary to create efficiencies while not hampering the division's ability to carry out its appointed tasks. I support this thoughtful approach.

Sincerely,

Jerilyn Borack