



# CALIFORNIA JUDGES ASSOCIATION

*The Voice of the Judiciary*

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July 19, 2012

Chief Justice Tani Cantil-Sakauye  
Chair, Judicial Council  
455 Golden Gate Street  
San Francisco, CA 94102

RE: SEC Report Public Comment:

Chief Cantil Sakauye:

The California Judges Association (CJA) with 2,600 dues-paying members, represents 75% of the state's sitting justices, judges, referees and commissioners. It also has a substantial contingent of retired jurists. CJA is the largest dues-paying association of judicial officers in the United States. We are pleased to take this opportunity to comment publicly on the May 2012, Strategic Evaluation Committee (SEC) report.

After receiving the SEC report, CJA's board of directors immediately read it and prepared an analysis of it for members. The purpose was to encourage CJA's constituency to forward to the board any specific thoughts about the SEC recommendations, as well as encourage bench officers to contribute to the dialog around branch governance.

CJA believes the SEC report is an important contribution to branch governance conversations. CJA congratulates Chief Justice Tani Cantil-Sakauye for launching this initiative last year. For the first time since its creation in 1960 the AOC is being examined critically, with an eye towards improving its service to the courts, and the public, and making the organization more efficient, accountable and transparent. The Chief's continued, demonstrated leadership in undertaking this difficult, important process is to be commended.

Also, the branch – everyone in it – owes a great debt of thanks to the judges and the SEC committee for working tirelessly over 55 weeks, reviewing the AOC and writing this outstanding analysis. CJA thanks the committee for its work.

At the outset, CJA, like the SEC, observes “[t]he AOC is a legal and necessary component of the judicial branch, performing certain mandated and core functions,

and it employs many dedicated employees.” The efforts of the hard-working people at the AOC over the years have been indispensable in helping manage branch activities. CJA thanks them for their long service. The comments that follow, therefore, are not an attack but an important look at the AOC’s structure and management. Based in large part on AOC managers’ and employees’ descriptions, the report reflects what we have all come to see: Previous management decisions and attitudes hurt the AOC (and its important mission) as well as the branch.

Several observations are worth making at the outset. First, the SEC found the AOC to be both “oversized” and “unwieldy.” The SEC recommends the AOC be “downsized” or “right sized.” Unfortunately, given a 30% cut in the branch budget over the past 5 years, courts are not being “right-sized,” rather the branch is being undersized. The AOC will need to be undersized as well to fit the new fiscal reality.

CJA’s second observation is a consequence of the first. While not emphasized in the report, the AOC provides critical support to the Supreme Court and Courts of Appeal. This is in addition to support provided to the trial courts and the Judicial Council. Cuts to the AOC cannot imperil the functioning of these branch entities. As discussions proceed, obviously, we need to guard against those reductions to the AOC which would hurt unduly the appellate, trial court and Judicial Council support functions.

This leads us to a third important point. The report’s premise is that where there is constitutional or statutory authority for an AOC function, by definition those duties are “mandatory” or “core.” Throughout the report, but primarily in Chapter 7, the authors take great care to tie AOC functions to a constitutional, statutory or rule of court underpinning. While CJA has no quarrel with the SEC’s view, CJA advocates a different approach: In our branch discussions we should be looking to describe what an ideal AOC looks like making those selected activities the core and mandatory functions. For instance, it could be determined that in these tough fiscal times the AOC’s key duties are 1) administrative, legal, fiscal, human resource and other support for the Supreme Court, Court of Appeal, Trial Courts, and Judicial Council; 2) Government outreach (legislative advocacy for the Judicial Council); 3) Buildings and facilities construction and maintenance. Beyond that, perhaps, other functions are not “core” or “mandatory.” CJA’s approach allows for more flexibility in restructuring the AOC and more opportunities to reduce the AOC’s size and budget without imperiling what branch participants would characterize as core mission activities (e.g. support of the appellate and trial courts as well as the Judicial Council.)

Finally, the many SEC recommendations are not prioritized, either within subject areas or across subject areas. CJA interpreted this as intentional on the part of the authors: What the final changes should be to the AOC and when and how they are implemented will be a product of the on-going discussions over the next months. It will take all branch stakeholders working together to determine what should be done, in what order and how.

CJA supports the proposals made by the SEC and urges their swift adoption and integration. What follows is our analysis of the report and our specific recommendations.

### **The Proposals:**

The first 3 chapters of the SEC report describe the background against which the Chief asked to have the AOC examined.

In 1926, the Judicial Council was created by constitutional amendment. Proponents of the Judicial Council amendment observed, “[o]ne of the troubles with our court system is that the work of the various courts is not correlated, and nobody is responsible for seeing that the machinery of the courts is working smoothly.” The purpose of the amendment was to make the branch’s management more business-like.

It is not until 1960 that the Legislature created the Administrative Director of the Courts position. This was done to give the Council the resources it needed to fulfill its mission. The AOC Director was “to perform functions delegated by the Judicial Council or the Chief Justice” apart from creating rules of court. The Legislature also appropriated funds to create the Administrative Office of the Court. The Council’s 18 employees then shifted over to the newly-created AOC.

The SEC notes these key dates in the development of our branch and the AOC:

- 1965: Department of Finance (DOF) transferred to the AOC “all fiscal support responsibilities for the Judicial Council and appellate courts.”
- 1980’s-1990’: AOC focuses on long-range planning to enhance the administration of justice.
- 1997: Lockyer-Isenberg State Trial Court Funding Act passed; transfers from counties to state primary fiscal responsibility for trial courts.
- 1998: Proposition 220 passed; municipal and superior courts merged into a single-level trial court.
- 2000: Trial Court Employment Protection Act (TCEPA) passed; shifts employment of approximately 20,000 county court workers to the state courts.
- 2002: Trial Court Facilities Act passes; transfers from counties to state approximately 500 court facilities.<sup>1</sup>

As a result of these profound legislative changes the AOC found itself with new human resource, IT, fiscal and other responsibilities. While the AOC’s growth (225 employees in 1992 to 1,100 in 2012) was partly explained by these sweeping modifications to the branch, much of the AOC’s growth was attributed to another factor: Lack of oversight by the AOC executives and managers, or the Judicial Council, of the AOC’s internal management process.

Indeed, expansion came quickly and without real direction rendering the AOC an organization described by its own employees as one with poor internal decision making procedures (described in more detail later) and an insular executive style. As trial courts sank under the weight of extreme budget cuts, the AOC seemed to float above the problem, protected from the fiscal chaos impacting the appellate and superior courts. Even as appellate and local court employees were laid off or furloughed it was hard to see the same reductions at the AOC. And revelations in this report explain that phenomenon. This added to already existing strains between the AOC and the trial courts. To be sure, and as CJA has stated, the AOC provides critical and important support for the Supreme Court, Courts of Appeal and trial courts. But even AOC advocates felt the relationship stressed over the last several years.

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<sup>1</sup> Reportedly the largest real estate transaction in US history.

It is in this context the Chief asked the SEC to review the AOC and to provide recommendations making the AOC more efficient and transparent. The SEC's work was exhaustive, done without staff support. Non-scientific surveys were conducted along with many interviews, with AOC Division Directors often providing the most critical observations. As of May 2011, in the SEC's view, six themes emerged (covered in detail in subsequent chapters): 1) The AOC should focus on its mandated and core functions; 2) the AOC is top-heavy and unwieldy; 3) the AOC's internal management structure is deficient; 4) the AOC is oversized and needs downsizing; 5) the AOC has developed a culture of control, diminishing its service orientation; 6) the AOC must restore its credibility to stakeholders. Finally, the responsibility for this process begins and ends with the Judicial Council. The Council must take steps to ensure that processes are changed and new programs instituted to modernize the AOC.

### **The Judicial Council's Proper Role.**

Chapter 4 addresses the Judicial Council role in overseeing the AOC. The SEC noted the mission creep of the AOC, particularly over the past 15 years since the passage of the 1997 trial court funding bill. The SEC wrote: "The AOC's organizational culture has drifted from an orientation toward providing services to the courts to one of greater control." The SEC commented that not one organizational chart provided by the AOC showed the Judicial Council anywhere on them. The recommendations made are to clearly establish the Judicial Council at the top of the organizational structure making clear the AOC is simply to provide support to the council and the courts.

Recommendations:

Recommendation No. 4-1: The Judicial Council must take an active role in overseeing and monitoring the AOC and demanding transparency, accountability, and efficiency in the AOC's operations and practices.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 4-2: The primary role and orientation of the AOC must be as a service provider to the Judicial Council and the courts.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 4-3: In exercising its independent and ultimate governance authority over the operations and practices of the AOC, the Judicial Council must demand that the AOC provide it with a business case analysis, including a full range of options and impacts, before undertaking any branch-wide project or initiative. In exercising its authority over committees, rules, grants, programs, and projects, the Judicial Council must demand that the AOC provide it with a full range of options and impacts, including fiscal, operational, and other impacts on the courts.

CJA response: Endorse the principle and recommend adoption if feasible.

Recommendation No. 4-4: The Judicial Council must conduct periodic reviews of the performance of the Administrative Director of the Courts. These reviews must take into consideration input submitted by persons inside and outside the judicial branch.

CJA response: Endorse and ask for immediate adoption.

Other CJA Comments: With changes in the branch structure over the years the Judicial Council now operates as a quasi-board of directors of a \$3+ billion organization. The suggestions made in this chapter regarding the Judicial Council's role seem non-controversial and "best practices" in any event. The Chief is clear her vision of the AOC is as a "service" organization, not a "control" organization. CJA agrees with her. Over the last 12 months, the AOC's prerogative in bringing initiatives to the Council has been curtailed. Anything the AOC wants done at Council must come through a Council member. Taken in conjunction with chapter 7, the "mission creep" and "scope creep" of the AOC includes its leadership role and the influence it has exerted over the last 20 years.

Chapter 5 addresses the AOC's organizational structure. While recognizing this alone cannot make any organization effective and efficient, the SEC recommended a fundamental restructuring of the AOC. The report noted: "From the very outset of the review, a clear and consistent message emerged that the AOC's organizational structure needs to be reworked and that the organization is dysfunctional in various ways. This input has come from virtually all quarters, often from the very leadership and employees of the AOC, as well as from many other persons inside and outside the judicial branch of government."

After examining the current organizational structure of the AOC, the report concluded "the AOC's current organizational structure stands in the way of meeting the objectives of transparency, accountability, and efficiency. The report then goes on to make specific recommendations designed to improve the organization's ability to function with transparency, accountability, and efficiency.

Recommendations:

Recommendation No. 5-1: The AOC should be reorganized. The organizational structure should consolidate programs and functions that primarily provide operational services within the Judicial and Court Operations Services Division. Those programs and functions that primarily provide administrative services should be consolidated within the Judicial and Court Administrative Services Division. Other programs and functions should be grouped within an Executive Office organizational unit. The Legal Services Office also should report directly to the Executive Office but no longer should be accorded divisional status.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 5-2: The Chief Operating Officer should manage and direct the Judicial and Court Operations Services Division, consisting of functions located in the Court Operations Special Services Office; the Center for Families, Children and the Courts; the Education Office/Center for Judicial Education and Research; and the Office of Court Construction and Facilities Management.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 5-3: The Chief Administrative Officer should manage and direct the Judicial and Court Administrative Services Division, consisting of functions located in the Fiscal Services

Office, the Human Resources Services Office, the Trial Court Administrative Services Office, and the Information and Technology Services Office.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 5-4: Other important programs and functions should be consolidated within an Executive Office organizational unit under the direction of a Chief of Staff. Those functions and units include such functions as the coordination of AOC support of the Judicial Council, Trial Court Support and Liaison Services, the Office of Governmental Affairs, the Office of Communications, and a Special Programs and Projects Office.

CJA response: Endorse and ask for immediate adoption.

Recommendation No. 5-5: The Chief Counsel, manager of the Legal Services Office (formerly the Office of the General Counsel) should report directly to the Administrative Director, depending on the specific issue under consideration and depending on the preferences of the Administrative Director.

CJA response: Recognizing that the body of the report indicates that “[i]t is expected that the ultimate reporting relationship of a repositioned Legal Services Office will be determined by the Administrative Director,” endorse and ask for immediate adoption.

Recommendation No. 5-6: The Chief Deputy Administrative Director position must be eliminated. If the absence of the Administrative Director necessitates the designation of an Acting Administrative Director, the Chief Operating Officer should be so designated.

Proposed CJA response: Endorse and ask for immediate adoption.

### **The AOC’s Management.**

Chapter 6 addresses six internal AOC management systems and processes determined to be significantly deficient because they are inconsistent, unclear, unknown, or ill-defined: (1) decision making process; (2) program/project planning and monitoring; (3) human resources (HR) systems (personnel policies, position classifications and compensation); (4) fiscal processes; (5) rule-making process; and (6) grants process. The SEC notes several significant shortcomings in these areas, including: decision-making based on favoritism, a breakdown in the AOC’s service orientation to the courts, abuse of the employee classification system to provide certain employees with higher compensation, over-compensation of employees, lack of discipline for under-performing employees, and inaccessible and unreliable information about current and historical budgets and staffing levels.

The six deficient systems or processes are enumerated below with their related recommendation(s).

(1) Characterized as “ad hoc”, the AOC’s decision making process must be consistent and effective and the SEC recommends reducing the number of division directors and creating an Executive Leadership Team limited to four persons: the Administrative Director, the Chief

Operations Officer, the Chief Administrative Officer, and the Chief of Staff, who together will be responsible for primary executive leadership and management. (2) Noting the AOC’s failure to consider fiscal and other impacts to courts in undertaking programs and projects (i.e., CCMS), the SEC recommends instituting a formalized system that includes collaborative planning, with analyses of impacts on the branch, on workload, and identifying performance metrics for key programs. (3) Due to the AOC’s lack of compliance with internal HR policies and inconsistent application of classification and compensation systems, the SEC recommends immediate compliance with the AOC personnel manual, utilization of the at-will employment policy to address performance issues, and a comprehensive review—as soon as possible—of both the position classification and compensation systems. (4) Citing previously unknown or unclear fiscal processes, the SEC recommends that fiscal and budget processes be developed and publicized with a decision “calendar” and regular midyear budget reports with projections. (5) Concluding the judicial rule-making process has become unduly burdensome or impractical, the SEC recommends the AOC provide the Judicial Council with a proposed collaborative process that limits the number of proposals for new rules with a focus on those changes required by statutory changes and surveys judges and CEOs on the fiscal and operational impacts of rules. (6) Finally, the AOC should not pursue every grant; rather, the SEC recommends development of a process for determining which grants to pursue and that process must include a detailed impact analysis—on workload and resources of both the trial courts and the AOC— for every grant proposal.

Recommendations:

Recommendation No. 6-1: The Administrative Director, the Chief Operations Officer, the Chief Administrative Officer, and the Chief of Staff should be designated as the AOC Executive Leadership Team, the primary decision making group in the organization.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-2: The AOC Executive Leadership Team must begin to implement a formalized system of program and project planning and monitoring that includes, at minimum, a collaborative planning process that requires an analysis of impacts on the judicial branch at the outset of all projects; use of workload analyses where appropriate; and development of general performance metrics for key AOC programs that allow expected performance levels to be set and evaluated.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-3: The AOC Executive Leadership Team must order immediate compliance with the requirements and policies in the AOC personnel manual, including formal performance reviews of all employees on an annual basis; compliance with the rules limiting telecommuting; and appropriate utilization of the discipline system.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-4: With an appropriate individual employee performance planning and appraisal system in place, the AOC must utilize the flexibility provided by its at-will employment policy to address serious employee performance issues.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-5: The Executive Leadership Team must direct that a comprehensive review of the AOC position classification system begin as soon as possible. The focus of the review should be on identifying and correcting misallocated positions, particularly in managerial classes, and on achieving efficiencies by consolidating and reducing the number of classifications. The Chief Administrative Officer should be given lead responsibility for implementing this recommendation.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-6: The Executive Leadership Team must direct that a comprehensive review of the AOC compensation system be undertaken as soon as possible. All compensation-related policies and procedures must be reviewed, including those contained in the AOC personnel manual. AOC staff should be used to conduct this review to the extent possible. If outside consultants are required, such work could be combined with the classification review that is recommended above. The Chief Administrative Officer should be given lead responsibility for implementing this recommendation.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-7: The AOC's fiscal and budget processes must be transparent. The Executive Leadership Team should require the Fiscal Services Office to immediately develop and make public a description of the fiscal and budget process, including a calendar clearly describing how and when fiscal and budget decisions are made. The Fiscal Services Office should be required to produce a comprehensive, publicly available midyear budget report, including budget projections for the remainder of the fiscal year and anticipated resource issues for the coming year. The Chief Administrative Officer should be given lead responsibility for developing and implementing an entirely new approach to fiscal processes and fiscal information for the AOC.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-8: The AOC must develop a process to better assess the fiscal and operational impacts of proposed rules on the courts, including seeking earlier input from the courts before proposed rules are submitted for formal review. The AOC should establish a process to survey judges and court executive officers about the fiscal and operational impacts of rules that are

adopted, and recommend revisions to the rules where appropriate. The AOC should recommend changes in the rules process, for consideration by the Judicial Council, to limit the number of proposals for new rules, including by focusing on rule changes that are required by statutory changes.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 6-9: The Executive Leadership Team must develop and make public a description of the AOC's process for determining which grants to pursue. The process should mandate a detailed impact analysis for every grant proposal, including consideration of all anticipated impacts on the workload and resources of the courts and the impacts to the AOC as a whole. Only after such analysis should the Executive Leadership Team make a determination whether the AOC should pursue grant funding.

CJA Position: Endorse and ask for immediate adoption.

Other CJA comments: Not all of the significant issues raised in this chapter are directly addressed with specific remedies. Serious issues are identified in this chapter, and the Judicial Council should ensure concrete and immediate steps are taken to address them.

### **The AOC's Core and Mandatory functions.**

This chapter is one of the most important in the SEC report weighing in at over 100 pages and containing 87 different recommendations. This chapter defines the AOC's "mandatory" and "core" functions. In a thorough review, the SEC analyzed the AOC's Executive Office and the 14 divisions and specialized offices that report to it.

The reason the SEC spends almost half the report reviewing the AOC's constituent entities is to address the issues of over-spending and waste. After reviewing these AOC entities, the SEC makes recommendations in support of its re-organization plan from chapter 5: Stream-lining AOC operations by reorganizing the management of multiple divisions and specialized offices, reducing the personnel assigned to those offices, and eliminating two of the three Regional Offices. Eliminating these "stand-alone" divisions and offices should reduce management costs, reduce the duplication of services, reduce lease and office costs, and support the consolidation of functions to support the court operations.

The proposed reorganization is as follows:

The Executive Office/Chief of Staff would continue to manage the Office of Communications, Office of Governmental Affairs and the special projects assigned to the former Regional Offices. The report further emphasized that the Office of Communications needs to provide greater access and assistance to courts statewide, which need or request such help.

The Chief Operating Officer would be placed in charge of the following divisions: Centers for Families, Children and Courts; Court Programs and Services; Education Division; and, the Office of Court Construction and Management. This change should facilitate the reduction of personnel and staff, as well as the duplication of some educational services (such as course development). The Report recommends a full cost-benefit analysis of the Construction and Management Division, the elimination of temporary staff to circumvent the hiring freeze, and allowing local courts to control more small maintenance and construction projects.

The Chief Administrative Officer would be placed in charge of the following Divisions: Finance; Human Resources; Information Services; and, Trial Court Administrative Services. Again, this consolidation should reduce staff, and the duplication of services, such as allowing the Information Services division to be combined with a reduced CCMS Program Management Office. The Report also calls for the increased oversight and direction for the mission of the Information Services Office (and CCMS).

The Administrative Director should manage of the Office of the General Counsel (renamed Legal Services). The Report mandates the reduction of personnel in that office, the elimination of the telecommuting program (which violates AOC policy), and an increased effort to emphasize that the lawyers in that office serve the Judicial Council, rather than setting the policies for Judicial Council (rubber stamp) approval.

This chapter of the report also calls for the elimination of special consultants, the elimination of CCMS (or a drastic reduction in their work), and the closing of the regional offices in Burbank and San Francisco. Closing the offices will save rental/lease costs, and will allow the Sacramento office to remain open to serve those northern counties which most benefit from the services provided. The report also recommends the elimination of the Office of Emergency Response and Security. These functions can be absorbed elsewhere, in part because other than something truly catastrophic, most emergencies are local, where courts, police and fire departments are often better prepared and equipped to address any matter. Moreover, the office Emergency Response and Security Office is not big enough to provide the type of state-wide security that is necessary.

#### Recommendations:

CJA endorses and urges immediate adoption of the 87 proposals in this chapter (too numerous to list here.) However, the summary above encompasses many of the proposals. Additional recommendations include: stream-lining CJER (Rec. No. 7-20 et seq.), the formation of an Assigned Commissioner's Program (Rec. No. 7-17); and, allowing local courts to take a larger role in smaller maintenance projects (Rec. No. 7-66).

#### Other CJA Comments:

The general tenor of the Report is that the AOC has gotten too large and unwieldy. Chapter 7 emphasizes the need to prioritize services, with specific oversight of each function; reduce costs

and duplication/cross-over of administrative functions; and a reassessment of the people and resources necessary to conduct each function in a cost-effective manner. There are other recommendations (such as Nos. 7-76, and 7-77) that might facilitate a larger discussion on the impact of the Report. Those recommendations focus on having the General Counsel become more of an advisor to the Judicial Council, rather than a policy-setter.

### **Budget Process Analysis.**

Chapter 8 addresses the budget section of the SEC report comprises less than five pages, yet the recommendations are sweeping and based upon a decidedly critical premise:

*“Whether justified or not, there is currently a complete lack of faith in the fiscal information released by the AOC. It does not appear that management has made accurate and timely financial information a priority. For the AOC to regain credibility, it must make definitive changes in the way it tracks, implements, displays, and informs all stakeholders about the financial picture of the judicial branch.” (Page 184)*

The recommendations as a whole make for more transparency of the budget process. The 11 recommendations urge a major revamp of how money is spent, tracked, and audited. Further, it is proposed that the recommendations are “equally applicable to *any* fiscal work done by the AOC.” [Emphasis added] Below is a brief synopsis of each recommendation and CJA’s position on each.

Recommendations:

Recommendation No. 8-1: All fiscal information must come from one source within the AOC, and that single source should be what is currently known as the Finance Division (to become the Fiscal Services Office under the recommendations in this report).

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-2: Tracking systems need to be in place so that timely and accurate information on resources available and expenditures to date are readily available. Managers need this information so they do not spend beyond their allotments.

CJA Position: Endorse and ask for immediate adoption

Recommendation No. 8-3: Information displays need to be streamlined and simplified so they are clearly understandable.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-4: The Finance Division (Fiscal Services Office) should track appropriations and expenditures by fund, and keep a historical record of both so that easy year-to-year comparisons can be made. This can be done by unit, division, or by program — whichever provides the audience with the most informed and accurate picture of the budget.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-5: Expenditures should be split into those for state operations and local assistance (funds that go to the trial courts) so it is clear which entity benefits from the resources. State operations figures should be further broken down as support for the Supreme Court and Appellate Courts. In most state departments, administrative costs are distributed among programs. The AOC should adopt this methodology.

CJA Position: Adopt with this clarification: The SEC's comment that "[i]n most state departments, administrative costs are distributed among programs," should not mean courts using AOC programs and/or internal AOC entities are billed for those costs. Such a procedure would work only to create an even greater bureaucracy.

Recommendation No. 8-6: The AOC should schedule its budget development and budget administration around the time frames used by all state entities. Assuming the budget for any fiscal year is enacted by July 1, the AOC should immediately allocate its budgeted resources by fund among programs, divisions, units. Management of the AOC, and the Judicial Council, should receive this information, which should be posted on the AOC website.

CJA Position: Adopt, understanding the recommendation does not address cash flow problems.

Recommendation No. 8-7: Requests for additional resources are presented to the Judicial Council at its August meeting. These requests identify increased resources requested and should be accompanied by clear statements of the need and use of the resources and the impact on the AOC, as well as the impact on the judicial branch, if any. A cost-benefit analysis should be part of any request, and there should be a system to prioritize requests.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-8: After the Governor's Budget is released in January, the AOC should present a midyear update of the judicial branch budget at the next scheduled Judicial Council meeting. This presentation should tie to the figures in the Governor's Budget so that everyone has the same understanding of the budget.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-9: Except for changes that must be made to comply with time requirements in the state budget process, the AOC should not change the numbers it presents – continual changes in the numbers, or new displays, add to confusion about the budget.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-10: The AOC must perform internal audits. This will allow the leadership team and the Judicial Council to know how a particular unit or program is performing. An audit can be both fiscal and programmatic so that resources are tied to performance in meeting program goals and objectives.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 8-11: As part of the reorganization and downsizing of the AOC, the leadership team should employ budget review techniques (such as zero-based budgeting) so that the budget of an individual unit is aligned with its program responsibilities. In the future, there should be periodic reviews of units and/or programs to make sure funding is consistent with mandated requirements.

CJA Position: Endorse and ask for immediate adoption.

Other CJA Comments: CJA is concerned that the SEC report utilizes the Governor's May Revise Budget Analysis to show spending and costs. There are challenges with this approach. For example, the Governor's May Revise numbers includes \$195,000,000 as an upward adjustment to trial court operations money. However, these funds are only for facilities maintenance and not available for court operations (see *Governor's Budget May Revision 2012-13*, pg. 72, fig. JUD-01, Adjustments to Trial Courts; reproduced at SEC report pg. 183.) Further, this table fails to reflect many variables, such as the transfer of construction funds and reserves belonging to the judicial branch to shore up support for programs in the other two branches. The trial courts have actually reduced their expenditures over the past three years, yet the Governor's charts show a 1.5% increase in the Trial Court "adjusted" projection of expenditures.

### **Staffing Levels.**

Chapter 9 discusses the AOC's staffing. The Report characterizes AOC as "oversized" and "should be downsized". A consensus within the branch *including* many AOC managers and employees believe there are "opportunities to consolidate and streamline and to implement efficiencies through improved management and work processes." The Report concludes that AOC staff grew steadily during the last 10 years while the trial courts' budget shrank.

The Report notes the difficulties in obtaining accurate data on staffing levels, due in part because neither the AOC's HR Division nor any other AOC Division properly maintained complete staffing information for any given time. This area was a moving target for the Committee as updates and information revisions were constantly forthcoming from the AOC on the staffing issue, making it particularly challenging for the Committee to accurately report on this subject. As reflected in the Report, "The charts in this report have utilized the best information the AOC has provided to date."

AOC had a staff of 225 in the 1992-1992 fiscal year and by 2010-2011, had a staff of 1121, for a 140% increase in staffing. The 2010-2011 year represents AOC's peak year for number of staff, with 1121. For reference, 2009-2010, starting in September, is when court closures were imposed on the courts as a budget reduction measure. AOC reached its peak as trial courts had to shut their doors to the public.

Presently, staffing has been reduced this FY to about 1,000 employees. The Report takes issue with the AOC hiring contract staff who performs regular and ongoing duties that otherwise would be performed by regular AOC staff members. Other temporary employees are hired by the AOC, and temporary employees and contract staff were hired during the AOC's hiring freeze which was put in place in 2008-2009 FY, thus effectively circumventing the hiring freeze.

Notably, the allotted positions authorized by the Legislature under its annual budget acts have never been filled completely since 2000-2001 FY to the present. The Report notes that temporary employees are kept on the AOC books for years at a time without sufficient explanation or justification for this practice. Temporary employees are more expensive than permanent hire staff, and the Report questions the necessity of using a high number of temporary staff in the first place, when it appears existing AOC staff could fill the role.

As overarching themes, the Report describes the AOC as “oversized” and “unwieldy,” and the Report strongly recommends the AOC be:

- (1) “downsized” (the organization is simply “too big” and “top-heavy”); and
- (2) “right-sized” (“fitting the number of staff to its mandatory and core functions.”)

The Report emphasizes that these two recommendations are not budget-driven, but rather designed to pull the organization back from having “strayed beyond its mandated and core functions.” A fundamental conclusion pervading throughout the Report is that the “AOC needs a major overhaul, not a minor tune-up.”

Recommendations:

Recommendation No. 9-1: The total staff size of the AOC should be reduced significantly.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 9-2: The total staff size of the AOC must be reduced significantly and should not exceed the total number of authorized positions. The current number of authorized positions is 880. The consolidation of divisions, elimination of unnecessary and overlapping positions, and other organizational changes recommended in this report should reduce the number of positions by an additional 100 to 200, bringing the staff level to approximately 680 to 780.

CJA Position: Adopt, in principal (see Rec. No. 9-1, above.) The specific number of employees will be determined by the conclusions drawn regarding core and mandatory mission of the AOC.

Recommendation No. 9-3: Vacant authorized positions should be eliminated if they have remained unfilled for six months.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 9-4: Employment of temporary or other staff to circumvent a hiring freeze should not be permitted. The Executive Leadership Team should immediately review all temporary staff assignments and eliminate those that are being used to replace positions subject to the hiring freeze. Temporary employees should be limited to periods not exceeding six months and should be used only in limited circumstances of demonstrated need, such in the case of an emergency or to provide a critical skill set not available through the use of authorized employees.

CJA Position: Endorse and ask for immediate adoption.

Recommendation No. 9-5: The staffing levels of the AOC must be made more transparent and understandable. Information on staffing levels must be made readily available, including posting the information online. All categories of staffing — including, but not limited to, authorized positions, “909” staff, employment agency temporary employees, and contract staff — must be accounted for in a manner understandable to the public.

CJA Position: Endorse and ask for immediate adoption.

Other CJA Comments:

This part of the SEC report was one of the most critical, notably because information that should have been easy to report was not. This supported the attack on the AOC’s credibility regarding budget and staffing. This lack of transparency is disturbing.

Although the Report recommends reducing staff at AOC to 680-780, first a discussion about what are the AOC’s core functions, followed by needs-assessment should be undertaken to find out objectively how many staff are needed. Depending on the results, perhaps a reduction of staff even further than that suggested by the Report will be warranted. Ideally, the Legislature and Governor’s Office would allow the branch to keep these savings for trial court operations.

As stated in the introduction, CJA agrees the AOC must be substantially downsized. However, the concept of “right-sizing” the AOC is optimistic. Currently, the branch is being downsized – not to the “right size” but something far smaller. As the Judicial Council’s staff the AOC will need to be smaller than “right size.” While the AOC has been engaged in illusory hiring freezes and repeatedly misrepresented its true staffing levels, massive budget cuts have forced trial courts to reduce their staffing well below “right-sized” levels; the AOC must follow the direction of its branch colleagues. While trial courts closed doors and laid-off staff, the AOC was adding to its payroll, providing misleading information as to its operations.

As we read in the report past criticisms of the AOC about its representations of its staffing are valid. Examples of misleading staffing levels include the omission of contract employees who actually performed the same services as permanent employees and a failure to fully disclose the number of employment agency temporary staff. The combination of these numbers is significant. Logic would suggest that motivation for such conduct was to secure continued additional funding and to create a stronger base of influence state-wide than trial courts. The harm is real and direct, in terms of branch credibility.

Obviously, CJA agrees with the SEC that oversight of the AOC by the Judicial Council must be strong, direct and continuing. At some point time commitments to the Judicial Council should be re-evaluated by the Chief Justice. This may result in the need to assign a temporary judge to help the court from which a Judicial Council member comes. The increased cost to the branch will be worthwhile in terms of AOC oversight and more efficient branch functioning.

### **Other AOC Issues.**

Chapter 10 concerned several miscellaneous observations about AOC functions and cost-saving opportunities. At present, the AOC leases office space in San Francisco (455 Golden Gate), Burbank (2255 North Ontario), and Sacramento (three locations). One of the recommendations of

the SEC (Chapter 7) is to eliminate regional offices and regional divisions, as an unnecessary layer of bureaucracy, and subsume their services into the Trial Court Services division. Consistent with this organizational recommendation, the SEC Report in Chapter 10 examines the existing office space of the AOC, and recommends that the Judicial Council consider closing the Burbank offices when the lease expires June 30, 2013, and reassessing space needs in Sacramento, as not all leased space is being utilized and less will be needed if the recommended downsizing of AOC is adopted.

The AOC headquarters is located in San Francisco since 1961. The AOC offices are in the same building as the California Supreme Court. The San Francisco AOC office space is more expensive than the other locations, at approximately \$4.27 per square foot versus \$2.00 to \$2.25 per square foot in Sacramento. Labor costs are also higher in San Francisco than Sacramento.

Presently, the AOC's annual costs for leased space is \$10.65 million for 207,845 sq. ft. in San Francisco, \$1.79 million for 71,209 sq. ft. in Sacramento, and \$1.42 million for 37,347 sq. ft. in Burbank, plus \$182,840 for storage space.

The SEC Report states that “[t]he importance of a strong political and legislative presence at the [Capitol] cannot be understated”, and suggests that a greater physical presence in Sacramento might help establish stronger ties with the other branches of state government.

On the other hand, the AOC is established in the San Francisco building, and “moving from this office would be problematic, since the AOC most likely would be required to negotiate a release” from the Department of General Services (DGS) (which manages the building) or have to find an acceptable sublessor.

The SEC Report recommends that a cost-benefit analysis be conducted, as part of the AOC long-term planning, to determine whether the headquarters should be relocated to a less expensive venue. Presently the Judicial Council (and thus the AOC) is located at the same place as the Supreme Court. The SEC Report references pending legislation to mandate that all state agencies and the judicial branch be relocated to Sacramento (AB 2501), and that if this occurs, then it might be prudent to consider moving the AOC headquarters to Sacramento as well.

#### Recommendations:

Recommendation No. 10-1: The AOC should renegotiate or terminate its lease in Burbank. The lease for the Sacramento North spaces should be reviewed and renegotiated to reflect actual usage of the office space. The AOC should explore lower-cost lease options in San Francisco, recognizing that DGS would have to find replacement tenants for its space.

CJA Position: Endorse and urge immediate adoption.

Recommendation No. 10-2: As part of its long-term planning, the AOC should consider relocating its main offices, based on a cost-benefit analysis of doing so.

CJA Position: Endorse and urge immediate adoption.

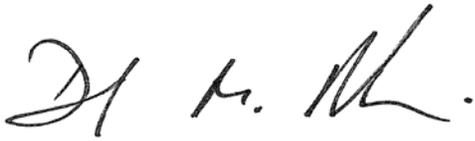
#### CONCLUSION:

The SEC report is the first time in 50 years that the branch has taken a critical look at the Judicial Council's staff agency, the AOC. The members of the SEC should be thanked for the important, successful review they conducted. It is now time for the branch to discuss the suggested changes.

The first order of business should be to define the ideal mandatory, core mission of the AOC. Once we have a working definition of that, the branch can start evaluating staffing levels, reorganization and how we want the AOC to look and function.

The SEC report is a significant contribution to branch discussions surrounding governance. The Chief Justice's decision to undertake this important modernization of the branch is to be commended. CJA is proud to play its part in the governance conversation as it goes forward.

Sincerely,

A handwritten signature in black ink, appearing to read "D. M. Rubin." The signature is fluid and cursive, with a large initial "D" and a distinct "R" at the end.

David M. Rubin  
President  
California Judges Association

DMR:gk