

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: Hon. Brenda F. Harbin-Forte **Title:** Judge

Organization: Alameda County Superior Court

Commenting on behalf of an organization

General Comment: RE: Item SP 12-05
Strategic Evaluation Committee Report
Comments from Hon. Brenda F. Harbin-Forte, Alameda County Superior Court

My name is Brenda F. Harbin-Forte, and I am a judge of the Alameda County Superior Court. I write with both a sense of urgency and despair, and I ask the Judicial Council to put a halt to what appears to be a rush to bow to political pressure to implement all of the recommendations of the Strategic Evaluation Committee (“SEC”).

As an African American judge, I am very concerned that blind adoption of the recommendations will negatively impact efforts to improve diversity on the bench and ensure fairness in our court system. Some of the recommendations could have serious implications for the ongoing diversity and access and fairness work occurring in the California courts and on behalf of court users from diverse communities. Among the recommendations are items that would eliminate programs focusing on procedural fairness and public trust and confidence in the courts and that could have the effect of

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reducing staff expertise and other resources for ongoing access, fairness and diversity programs.

The consequence of implementation of such recommendations will be a denial of access to the courts and fair outcomes for African American litigants and other litigants of color. In a state that is almost 60% people of color, and more than 50% women, the fairness and wisdom of any overhaul of the Administrative Office of the Courts will be called into question if it fails to take into account the issues and concerns of these demographic groups. As the Judicial Council weighs my request to slow its pace and take a different approach to this hot-button task, I hope you will pause to reflect on the words of Dr. Martin Luther King, Jr.:

"On some positions cowardice asks the question "is it safe?" Expediency asks the question "is it political?" And vanity comes along and asks the question "is it popular?" But conscience asks the question "is it right?" And there comes a time when one must take a position that is neither safe, nor political, nor popular, but he must do it because conscience tells him it is right. "

A rushed, wholesale adoption of the recommendations may well be safe, politic, and even popular if one were to judge popularity by the number of people urging immediate adoption of all of the recommendations, but such a move would not be in good conscience because it simply would not be the right thing to do.

The first step in the process of deciding which recommendations to implement should be the appointment of a more ethnically diverse evaluation committee. Although there are approximately 130 sitting African American justices and judges, approximately 160 Latino justices and judges, and more than 100 Asian/Pacific Islander justices and judges, there is no African American judge or Latino judge to be found among the published names of judges who have been tapped to assist the Council's Executive and Planning Committee in prioritizing and implementing the recommendations. Moreover, there is only token representation of Asian/Pacific Islander justices and judges, the ex-officio participation of Chief Justice Cantil-Sakauye notwithstanding. Nor is there an African American or Latino judge on the Executive and Planning Committee.

The omission of sufficient numbers of ethnic judges from the process is troubling, especially as to the absence of African Americans. A 2005 report on public trust and confidence in our courts revealed that all ethnic groups – Caucasians, Latinos, Asian/Pacific Islanders and African Americans – perceive that African Americans have worse outcomes in court than any other ethnic group. The omission of Latinos should cause every fair-minded person concern, because Latinos comprise the largest ethnic group in our state, and it thus stands to reason that members of that community are more likely than other ethnic groups to be in the majority of court users.

Before any further steps are taken to implement any of the recommendations, Chief Justice Cantil-Sakauye should add four Latino judges, three African American judges,

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and two Asian/Pacific Islander judges to the group appointed to assist the Executive and Planning Committee in its task of prioritizing and implementing the SEC recommendations. The ethnic minority judges appointed should be ones who have demonstrated leadership and commitment to access to and fairness in our courts, who can withstand both subtle and overt pressure to shy away from asking the hard questions and raising the uncomfortable issues, and who can stand up to the political pressure to adopt the agendas of insular and short-sighted groups. The need to ensure fairness and justice in our court system demands no less.

I also note that there was no Latino judge on the Strategic Evaluation Committee, and there was only one African American and one Asian/Pacific Islander judge. Perhaps had a more diverse committee been appointed at the outset, recommendations preserving the Judicial Council's commitment to access and fairness would have emerged. Perhaps, too, the recommendations would have demonstrated an understanding of the distinction between "equal access to justice" and "access and fairness" issues, initiatives and needs. The oversight in appointing an inadequately diverse strategic evaluation committee can now be ameliorated by the appointment of an expanded and more ethnically diverse review committee to assist the Judicial Council in prioritizing, rejecting, and implementing the recommendations.

I make the request to appoint a more diverse committee based not on the assumption that the current group cannot be fair, but on the same rationale that former Chief Justice George stated in explaining the need for a more diverse judiciary:

"I strongly believe that any judge should be able to fairly hear and decide any case, no matter who the parties and regardless of the racial, ethnic, religious, economic or other minority group to which they belong. Nevertheless, it cannot be questioned that a bench that includes members of the various communities served by the courts will help instill confidence in every segment of the public that the courts are indeed open to all persons and will fairly consider everyone's claims." Chief Justice Ronald M. George (Ret.), 2007 remarks at Senate Judiciary Committee's Public Hearing on the Judicial Selection Process

A more diverse evaluation and implementation committee will likewise instill confidence that the reform process considered everyone's claims and concerns, and will ensure that the needs of a diverse group of court users -- such as, for example, the need for interpreters -- are addressed.

My despair stems from the observation that the SEC report failed to make specific references to ensuring commitment to Goal 1 of the Judicial Council's strategic plan. Goal 1 focuses on Access, Fairness and Diversity and states that

"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

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backgrounds. The makeup of California’s judicial branch will reflect the diversity of the state’s residents.”

The SEC recommendations, and the initial steps the AOC took to implement them, make it appear that the Judicial Council and the AOC have lost sight of this important goal. In its haste to begin preliminary housecleaning, it appears that the AOC has swept out employees who are overwhelmingly ethnic and overwhelmingly female. These voluntary and involuntary separations should not be further exacerbated. One position targeted in the SEC report and thereafter eliminated by the AOC was held by an African American female attorney who was an expert in the field of implicit bias, who had trained numerous judges on issues related to implicit bias, and who had provided mandatory training to members of the State Bar’s Commission on Judicial Nominees Evaluation “(JNE Commission”) on ways to identify and reduce implicit bias in the evaluation of candidates for judicial appointment. The AOC already had an appallingly low number of African American attorneys and other attorneys and employees of color. Now the agency has even fewer members of these communities. These first steps suggest that the Judicial Council has abandoned its commitment to diversity.

The following three specific recommendations further illustrate the foundation for my concern that access, fairness and diversity may be casualties of the Judicial Council’s rush to judgment in implementing the proposed reforms:

Recommendation 7-4: Recommendation to reduce the Center for Families, Children and the Courts (“CFCC”) staff including the reduction of attorney positions and/or reallocating them to nonattorney classifications. One of these attorney positions serves as staff liaison to the Access and Fairness Advisory Committee. Given the priority status of this area (Goal 1 access, fairness and diversity) and given the scope and nature of the diversity initiatives (issues impacting race and ethnicity, women and women of color, LGBT and disabilities) it is incumbent that the liaison for this area be an attorney who has the time and expertise to devote to the critical work of this advisory committee. It is also important that diversity functions not be merged with the work of other CFCC staff who focus on equal access, legal services and other support functions, as the diversity area is discrete and independently important to the bench, bar and public.

In addition, the CFCC assesses and implements initiatives designed to improve outcomes in our juvenile courts. Issues such as disproportionate minority representation in our delinquency and dependency courts, and innovative programs to address the school to prison pipeline via our juvenile delinquency courts, are issues that are important to the African American community and other communities of color. The treatment of women of color in the court system and in the legal profession is another issue of access and fairness in our courts. Tampering with the CFCC, without a full and fair consideration of the unintended consequences of adoption of this recommendation, would be both unjust and unwise.

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Finally, it has only been through the hard work of the Judicial Council's Access and Fairness Advisory Committee that has led to improved judicial education and training in addressing issues of bias and fairness in judicial decisionmaking. Implementation of any recommendation that would eliminate the Access and Fairness Advisory Committee, or that would dilute the important work of that committee by folding it into a committee with a historically different focus would not be the right thing to do.

Recommendation 7-12: Recommendations to reduce Promising and Effective Programs Unit Functions in the Courts Programs and Services, in particular the Procedural Fairness/Public Trust and Confidence Program. The rationale stated for elimination of this program was the lack of budget allocation for the program. This should not be sufficient rationale for deleting a program that clearly responds to and focuses on a primary area of concern for court users, in particular court users from diverse backgrounds. The failure of the AOC to provide sufficient and robust support for this program should be questioned and remedied; the program should not simply be eliminated.

Recommendation 7-20: As a former dean of our judicial college, I am particularly concerned about the recommendations to reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney position allocations and/or staffing of positions by reallocating them to nonattorney classifications, with specific reference to education specialist positions that are staffed by attorneys. Training of judicial officers should be of the highest quality and provided by trainers who are familiar with the courts and judicial system. Attorneys are in the best position to meet these standards. Further, the level of expertise of individuals in the education specialist positions should not be an issue, as these positions are not at the attorney classification. The mere fact that an attorney performs the education specialist function and is classified as an education specialist should not be a concern. Given California's increasingly diverse population, efforts should be made to increase staffing devoted to CJER, so even more training can be given to judicial officers in the areas of access and fairness, and the expert in implicit bias should be rehired.

There are other recommendations that cause concern, and each should be looked at carefully before they are implemented.

I applaud Chief Justice Cantil-Sakauye for her leadership and courage in accepting the SEC report. The judicial branch must now implement reforms in a fair and thoughtful manner, with the assistance of an expanded and diverse implementation committee.

Thank you.

Specific Comment - Recommendation/Chapter Number:

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