

Comments regarding the SEC report: by Judge Barbara A. Kronlund, San Joaquin County, submitted in my individual capacity

(17 years on the bench as commissioner and judge)

I first want to acknowledge Chief Justice Cantil-Sakauye and tell her how proud of her I am for her vision, courage and leadership in establishing the Strategic Evaluation Committee and commissioning this report. The Chief's action demonstrates that it is no longer "business as usual" at the Administrative Office of the Courts (AOC), and it's a new day. I feel hopeful that the tenor of Judicial Council meetings will now be centered around debate, discussion, and independent thoughtful analysis of issues. I feel hopeful that there will be intolerance of disrespect directed at those who voice opposition or question authority, and that an atmosphere of respect and civility will foster a stronger branch, thereby reinforcing public confidence in the judicial branch and judiciary as a whole.

I commend the Chief in choosing a Committee that appears in all respects to be fair and impartial, and dedicated to the Committee's charge to perform an in-depth review of the AOC with a view toward promoting transparency, accountability, and efficiency. I thank the Committee for their hard work and dedication to the branch, and in following what appears to be a fair process in compiling their report. That's significant because it is clear that the Committee was interested in obtaining as much information from as many sources as possible, in order to make appropriate recommendations that were responsive to the Chief's charge to the Committee. I join Judge David Rubin, president of the California Judges Association (CJA), who suggests that the first order of business should be to define the ideal, mandatory, core mission of the AOC and start the reorganization process. It's a logical way to break the recommendations into more manageable pieces that are not so overwhelming to consider.

I generally agree with the SEC report's major theme that the AOC needs to be down-sized, with a significant reduction in staff. However, I join Judge David Rubin in his comments wherein he urges the Judicial Council to reduce the staff down even lower than the 680-780 discussed in Recommendation 9-2, as that range still seems high in light of their proposed reduction to make the agency "right-sized". After all, the branch is no longer "right-sized", particularly after my Court laid off 42 full-time staff in the fall of 2011 and closed down one and ½ courthouses. Other courts are similarly situated, laying off staff and closing courtrooms and courthouses throughout the state. I don't believe the AOC should be able to maintain the "right-size" when the rest of the branch is feeling the down-sizing pinch and having to do more with less, even to the point of cutting essential services. I urge the Judicial Council to consider even greater staff reductions than those suggested in the SEC report, to be more commensurate with branch-wide cuts.

I agree with the SEC report that functions should be consolidated in a number of areas within the AOC; vacant positions should be eliminated; telecommuting should be eliminated or severely curtailed; and under no circumstance, should circumventing the hiring freeze be tolerated. Although the report did not provide many details about an attorney who telecommutes from Switzerland full-time, I really can't imagine how this was permitted. With over 100 attorneys employed by the AOC, was an attorney who lives in Switzerland *really* needed for their *unique, one of a kind expertise*? I seriously doubt it.

I agree with the SEC report that there needs to be a restructuring of the top-heavy management at the AOC to a more efficient model that will realize significant cost-savings and eliminate duplication of work. It is noteworthy that the AOC chart on page 47 of the report fails to note that the Judicial Council is over or superior to the Administrative Director. The corrected, cleaned up and less cluttered recommended organizational chart on page 54 of the report corrects the omission with the Judicial Council noted at the top of the organizational chart. It's not surprising that the old chart failed to list the Judicial Council since the Council really didn't seem to exercise its authority over the AOC. Rather, the relationship was upside down, with the Administrative Director, akin to an executive director, exercising authority over the Council, akin to a Board of Directors. This phenomenon occurs from time to time where an administrator of an organization has been permitted to exercise authority that should be held by the Board members; in essence, the Board cedes their authority to the administrator. It's very difficult to correct the situation when that type of problem has occurred, absent terminating the administrator and starting over. Lucky for the branch, the AOC is presently searching for a new Administrative Director, so this is a golden opportunity to start fresh and direct the new administrator to follow the rules and be held accountable early on and consistently for carrying out the directives of the Judicial Council. As Judge Charles Wachob, SEC Chair stated in his comments to the Judicial Council on 6/21/12, "The AOC needs to be trimmed, and the new Bill Vickrey needs to understand that it works for the courts—not the other way around".

I agree with the report that the AOC must keep service to the courts (and to the Judicial Council), and provision of *mandatory services* a top priority. It is clear that mandatory services have taken a back seat to discretionary projects, programs, and tasks. This is evident in the lack of responsiveness to the local courts, even to the point of ignoring their protests over implementing the CCMS program. If someone had just listened and looked into the criticisms and complaints early on, this whole CCMS fiasco could have been averted. Now, the judiciary looks like we can't manage our own affairs or take care of our business which has provided an open invitation to another branch stepping in which is what has now occurred with CCMS funding. I personally feel embarrassed over this issue, and I know from discussions with other judges that a number of others feel the same. This whole thing has made our branch look incompetent, and even more so, the AOC is **perceived** to have intentionally misled everyone involved in CCMS.

My court was one of the early courts to sign on to CCMS, including donating staff to test and develop the program to be used as our case management system for San Joaquin County. We are out of pocket \$2.5-\$3 million dollars of our court's funding due to CCMS expenditures and we are now in a mess, and we're not alone. A number of other courts invested their money into CCMS as well, and also worked on its testing and development like we did. I have to post my civil tentative rulings using the CCMS program and one of the very first things I complained about upon using it was that there was no "Back" key function. There is a key, but if you press it, you are kicked out of the system and have to start all over by logging in your password again! My court clerk repeatedly complained about no Back key, and a myriad of other inherent problems. I voiced concern because how could anyone who knows even the tiniest bit about what we do as judges and court clerks possibly expect us to use a program for case management without a Back key? This simple observation made me believe that whoever we were

working with on CCMS did not understand the reality of what we do since this very basic need was not met. It follows that those who cannot be trusted in small matters certainly cannot be trusted in bigger, more important matters. And now I'm stuck with this program as is my court, and a number of other courts.

I hope the logical next step will be that the significant savings realized by downsizing the AOC will be allocated to the trial courts. In this way, disparate funding of the courts can be rectified finally, per the RAS model, discussed infra, based on number of judges as indicted by the Judicial Needs Study, or number of employees, per weighted filings. But most definitely funding should not be allocated to the courts or reductions made on a Pro Rata basis when there is such disparity in funding based on the most up to date RAS Model Estimates 3-Year Average Filing from FY 07/08 to 09/10 compared with the AOC's California Judicial Officers and Court Employees Map which includes FY 11-12 7A FTE court budget data:

• Staff - Over RAS Standard	12 Courts	21%
• Staff - 31% Under RAS Standard	6 Courts	10%
• Staff - 20% to 30% Under RAS Standard	16 Courts	28%
• Staff –11% to 19% Under RAS Standard	14 Courts	24%
• Staff – 1% to 10% Under RAS Standard	10 Courts	17%

As the report states on page 112, when the funding of the trial courts moved from the counties to the state in 1997, the Finance Division of the AOC involved itself in assessing and evaluating the priorities for funding for the trial courts. The Finance Division made recommendations on allocation of funds to the 58 trial courts in light of the policy goals of the Lockyer-Isenberg Trial Court Funding Act of 1997, including planning for judicial branch needs on a state-wide basis and attempting to **ensure equal access to justice by reducing the disparity of funding because of local and regional differences**. This goal was never achieved. And it is now understandable, given the SEC report which details how inept the AOC has been in regard to its on-the-fly decision-making in pretty much everything it does, that the legal requirements of the 1997 legislation to equalize court funding were ignored. The report outlines extreme competency issues at the management or decision-making level which speaks volumes. Instead of fairly and adequately funding the courts as the Lockyer legislation of 1997 mandated, the AOC arbitrarily determined to embark on costly, non-essential functions, programs and projects, many of which were opposed by the courts and judges of this state. The AOC previously turned a blind eye to the needs of the underfunded courts in this state while favoring the courts with staff above the RAS standard by ensuring their continued excessive funding was not disturbed.

As the report acknowledges repeatedly, the AOC has a serious credibility problem at this time. It's a real concern for judges. The AOC's irresponsible actions of continuing to surreptitiously hire more staff despite statewide hiring freezes and increasing their spending when everyone else in the branch faced cuts and most devastating, *courtroom closures for the first time in history*, have created an "Us vs. Them" mentality, with judges/courts pitted against the AOC. This infighting is harmful to the branch and weakens our position vis-à-vis the other branches of government. It is apparent that the legislative branch has serious misgivings about the credibility and competency of the AOC as well, as evidenced by

What these statistics illustrate is that the Judicial Council and the AOC have been derelict in their duties under the 1997 Lockyer-Isenberg Trial Court Funding Act. The problem is the AOC does not have a standard for funding. Now is the time to rectify this funding allocation problem, going forward. Access to justice should be assured to all Californians with a policy of keeping courts open- no matter where they happen to be located. This basic tenant is codified in Government Code section 68502.5(a)4, which states in pertinent part that the schedule of allocations shall assume that all trial courts receive funding for the minimum operating and staffing standards, as well as in Government Code section 68502.5(c)(1) which provides that “The Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts...in order to guarantee equal access to the courts.” The time has come for the Judicial Council to fairly and properly allocate funding to all courts in the state to ensure equal access to justice to all California citizens.

Moving on, while I generally support the Organizational Structural changes suggested in Chapter 5 of the report, I lack the personal knowledge to opine as to the details of the suggested restructure. If they make sense, and appear sound under traditional business practices, I would support them.

As far as Chapter 6, Management Systems and Processes, I have a general comment in support of the recommendations. The AOC needs to operate in a professional, business-like manner, keeping in mind its duty to safeguard and not waste public funds. The AOC must also keep in mind that its first order of business is support of the courts, with emphasis on providing service to the courts. Some of the problems noted under this chapter highlight that too many folks at the AOC simply had too much time on their hands; seeking out grants because they could, rather than because they should; seeking out Rules and Forms changes because they could, rather than because they were mandated by law. I think these problems were tied to the overstaffing problem and would not have occurred had the organization been lean and properly functioning.

In regard to Chapter 7 on the Education Division/CJER, I will start by saying that most of my personal experience comes from my dealings with AOC staff in the CJER Division as an instructor, as a student, and as a Committee member on a number of Committees over the years. I have always been very impressed with the high-quality of the work of this Division’s staff, as well as the dedication and competency of staff for CJER, at all levels. California has distinguished itself as a leader in the area of providing high-quality judicial education. I am concerned that paring down judicial education too much will result in an increase in judicial discipline. Educated judges are better and more competent jurists, and in turn, a qualified judiciary promotes public confidence in the system. As a QE-Mandatory Ethics instructor, I can tell you that having an AOC IT person on site at the training is helpful and I would not like to see that eliminated. Since this 3-year cycle of Ethics training is mandatory, as instructors, we need the IT to work properly and many of us instructors are ill-equipped to handle “technical difficulties” ourselves. Also, due to the ambitious curriculum that uses up the entire time slot for the 3-hour training, if time is spent trying to fix technical problems, I am confident that it would be close to impossible to get through all of the materials, since typically, every minute is used up even without experiencing computer problems.

I know there already is a review of all education for new judges to ensure that it is being provided in the most effective and efficient way possible. I am also aware of some discussions between CJER and CJA wherein CJA desires to undertake a greater role in the provision of education to judges. After all, we are dealing with the same pool of instructors for the delivery of judicial education to the same pool of recipients. Many judges who teach for CJER also teach for CJA. In the event CJER cuts back its delivery of education to reduce non-mandatory programs, CJA should be asked to fill the gap so there is no unmet educational need for California judges.

I have some comments about Judicial Council oversight. Obviously this is necessary, as it is with any Board which has a fiduciary duty to its membership and an Administrator running day to day operations. But, why would anyone on the Judicial Council ever think they were not being provided with complete, accurate, and essential information pertinent to their role? In hindsight it is apparent that there needs to be a change in the way business is conducted. A perception exists that in days past, Judicial Council members engaged in "Group think" or almost always reached unanimous consensus to avoid the wrath of the former Chief Justice or public berating by one of his defacto sergeant at arms. Now there is a change of culture with a new Chief at the helm of the Council that I hope fosters open, transparent, and respectful debate. Outliers and those with opposing or unpopular views should not be considered to be declaring war on the Chief, AOC, or the branch. Judicial Council members should be encouraged to ask questions, and frank and honest answers must be provided for members to adequately perform their duties. Vocal opposition, provided it remains respectful, should not be denigrated, as it is part of the democratic process and frequently leads to the best decisions and solutions to difficult problems.

I have concerns regarding the Internal accountability of the AOC. There were significant problems noted in the report, including AOC not using it's "at will" status of employees to terminate deficient staff, effectively wasting tax-payer money by keeping those employees on the government payroll. The AOC violated its own rules in a number of areas, resulting in arbitrary decisions relating to the telecommuting policy, the HR policy of employee reviews, classification of employees, and compensation of staff, as well as the employee discipline system. These numerous failings are unacceptable. What is particularly ironic is that if a local court is not in compliance with these basic HR policies, they will be admonished by the AOC. I concur with the recommendations in the report covering the Internal accountability of the AOC.

I want to note my high regard for virtually all AOC staff with whom I have worked with or had dealings over the past 17 years as a judicial officer. I believe the problems uncovered in the SEC report for the most part emanate from the prior administration and I would venture to guess that most AOC staff were either kept in the dark about much of the mismanagement occurring at the AOC or simply were not in a position to do anything about it. I make my next recommendations without knowing which staff will fall within my proposals. My suggestions for *immediate action* include terminating any staff (whatever you call them- employees, contract employees, temporary staff, "909 staff"), employed in violation or circumvention of the hiring freeze. Anyone in violation of the telecommuting policy should either be terminated, or required to comply with the policy. In the instances that the SEC report identified the elimination of positions, these should be so eliminated unless there is a compelling need shown to the

contrary, and this would include CCMS staff. The closure of the regional offices in San Francisco and Burbank should be effected as soon as practicable.

I believe in the long run, the AOC will better serve the judiciary if they move headquarters to Sacramento. In the present political climate, it is becoming more important for judicial leaders to be present at the Capitol, if there is any hope or chance to influence favorable legislation effecting the interests of the third branch of government. From what I hear, the state budget problems will take years if not a decade to right themselves, which makes it apparent to me that we need strong representation at the Capitol, and a physical presence there as well if we are to wield any credibility as a branch. With the notable disadvantage we possess as a branch of not holding the purse strings, we must do everything in our power to educate and persuade our legislators that a robust judicial branch is in all our interests, and in the best interests of a thriving economy, which will help turn this recession around. When courts are so poorly funded that they can only handle mandatory functions such as criminal cases, **civil courtrooms will close**. If civil courtrooms close, businesses will cease to do business in California as they must have a forum in which to bring their disputes and collect on or interpret their contracts or wind down their operations. To borrow from Judge Rob Trentacosta, presiding judge of the San Diego Court: "If businesses can't enforce their agreements, how are you going to do business in California? The greatest job-killing measure that the Legislature could do is to cut the judicial branch budget any further". Such a message that might be obvious to judges is not obvious to non-attorney legislators. They need to be educated about the issues affecting the branch, and this can best be done by being ever-present at the Capitol.

In conclusion, I want to express my sincere hope and optimism that Chief Cantil-Sakauye will not permit the SEC report to be ignored like the 2006 Consultant's report that documented much of the same problems identified here; if the 2006 report had been adopted, it may have eliminated the need for this SEC report. Thank you for this opportunity to be heard.