

From: Judge Susan Lopez-Giss
To: Invitations
Subject: "Public Comment re: Item SP12-05" and email it to the address above.
Date: Friday, July 13, 2012 9:25:58 AM

Dear Justice Miller

Initially I wish to commend our Chief Justice for the willingness to investigate issues that were raised early in her tenure. I also want to thank the SEC committee for its diligence and its thorough report. We, as judges, must recognize when errors occur and must take responsibility for correcting identified wrongs. The issues identified in this detailed report are important for this branch to address. I therefore urge the Judicial Council to endorse the SEC Report and to immediately begin the implementation of each and every recommendation contained therein. Further, the Judicial Council must publicly and immediately demand transparency, accountability and efficiency in all of the AOC's operations and practices. (SEC Report, p. 7)

I also ask that the Council assign members of the SEC the responsibility of assuring that regular and public reports are presented to the Council regarding prioritizing implementation and monitoring of the progress of the SEC recommendations.

It is very troubling that this report, which was prepared by a committee of judges appointed by Chief Justice Tani Cantil-Sakauye, is now the subject of criticism by a few individuals--mainly outside the judiciary--who argue for an expansive role of the AOC in the operation of our trial courts. It is clear from the numerous surveys and studies conducted in the past several years that the judges of this state reject that role, and instead demand that the AOC return to its proper role as a servant of the Judicial Council and this state's trial courts. I am a Los Angeles Superior Court Judge and a Director of the Alliance of California Judges. Prior to my election to the bench I was an Assistant City Attorney with the Los Angeles City Attorney's Office. I served in that Office for over thirty years. I retired as Assistant General Counsel for the Los Angeles Department of Water and Power (LADWP) the largest municipal utility in the country with assets and annual revenues exceeding \$10 billion. LADWP serves 666,000 water customers and 1.4 million electric customers.

I was responsible for the administration of the LADWP legal division which included over thirty attorneys and over fifty support staff. The legal division was responsible for advising the Board of Water and Power Commissioners, and the managers of the water and power systems; for providing legal representation for workers compensation matters for the nine thousand LADWP employees; tort actions involving actions for and against LADWP; energy and regulatory matters; contracts; water; and employment issues. I was also responsible for overseeing bond issuances and the outside counsel contracts. I have experience with issues the SEC Report raised specific to the Office of General Counsel.(OGC) that I wish to provide additional comment.

It is the obligation of the OGC to provide legal service and advice to the Chief Justice, to the Judicial Council, to the internal divisions of AOC, and to the trial and appellate courts. Furthermore, pursuant to the California Rules of Court, the Judicial Council has authorized OGC to act for it on claims against the trial courts, judicial officers, and court employees.

It has become apparent that the OGC has morphed from a legal office to a policy organization, and that the head of that division has carved out for herself, without Council

approval, a policymaking role. The SEC report documented this fact. As legal counsel to a governmental body, the OGC should not be producing publications, or establishing policy. It is OGC's responsibility under the Rules of Court to provide advice, NOT ORDERS.

The California Attorney General has guidelines for issuing legal opinions. Said opinions are based upon legal questions where statewide issues exist. Attorney General Opinions are not result oriented. An opinion from the OGC needs to be written for the judicial branch. If questions are raised as to the propriety of actions taken by the AOC AFTER THE FACT, a legal opinion by the OGC may be tainted. Therefore legal opinions should be written only after being requested by the Judicial Council, and only after guidelines for opinions are established by the Judicial Council. While various courts may seek legal advice on various issues, concern for consistency must be taken that disparate advice is not given. Therefore procedures to assure uniformity should be developed. Advice to a judge may not actually be a legal opinion. The distinction must be made. Finally, the legality of actions by the AOC not sanctioned by the Judicial Council, SHOULD NOT be the subject of a legal opinion for the AOC, but very well may necessitate the assistance of outside counsel. Since OGC is employed by the AOC, it cannot serve two masters.

Telecommuting is another area where mischief can occur. While there may rare occasions where, due to health or emergency situations, individuals need to work at home, there appears to be no basis to allow telecommuting of attorneys--or other employees--from long distances. Supervisors need to be in the office, or they are not supervising.

As to the retention of outside counsel, steps must be taken to insure that competent legal representation is assured to all courts requiring this assistance. Requests for Proposals, including scope of work, and requirements for bidding should be established to assure that costs are kept at a minimum.

The SEC report discusses the budget and staffing of the OGC and recommends significant reductions and reallocation of the personnel. Based upon my experience, comparing the magnitude of responsibilities for example of the legal division of the LADWP and the OGC on any level such as the scope of litigation, fiscal exposure, or workload, the current OGC budget and allocation of staffing requires an immediate reduction.

By choosing to specifically address certain areas of the report, I in no way suggest that less than a complete implementation of all of the SEC report's recommendations will be acceptable. The report is based on exhaustive research, and it is beyond time that the Council take the necessary steps to see to it that its recommendations are implemented.

Respectfully submitted,

Susan Lopez Giss
Judge of the Los Angeles Superior Court