

From: McCormick, Kevin
To: Invitations
Subject: RE: SEC Report Corrected version . . .
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I have already provided my public comments to the Strategic Evaluation Committee report within the deadline provided by the Judicial Council. I respond separately to express what I and many fear is the pursuit of the Judicial Council and its appointed committee to continue to postpone, delay and defer any significant reform or implementation of the Strategic Evaluation Committee report until they conjure up enough support to dilute the import of the purported "Bible" for reform. This concern is based not only upon the history leading up to this public comment period, but also based on the discovery that the closure of the public comment period set by the E & P Committee and displayed on the AOC web site as July 22 at 5 p.m. has proven to be meaningless.

As of July 24, 2012 at 5 p.m., 471 comments appeared on the Council website. This is undoubtedly the largest turnout for any public comment period in Council history with roughly 1/4 of the states bench officers making their feeling known again. The 400-plus judges who responded shed anonymity and openly stood behind their statements critical of "business as usual". The results are nothing short of a resounding and emphatic demand for implementation of reform and an unambiguous expression of the exasperation of judges to the endless excuses for delaying long overdue reforms. In what has evolved into a predictable pattern, the pursuit of still further input is now being sought. What has become apparent is that the Judicial Council and its committee seem devoted to soliciting input until they find a path to sufficiently obfuscate the need or immediacy for the reforms set forth in the SEC report. It appears they are awaiting or seeking some basis or input which allows them to pursue the closest possible measure to the status quo.

The need for reform of the AOC is not something that has suddenly and unexpectedly arisen out of nowhere. The need for reform was expressed in the "*Statewide Administrative Infrastructure Initiatives Review Final Report*," delivered to the Judicial Council in 2006. Then, again, in 2008, a report authored by four members of the Judicial Council-- Judges Carolyn Kuhl, Michael Welch, Jamie Jacobs May and Charles McCoy again warned of the need for reform or the significant consequences of ignoring that plea. In February 2011 the State Auditor issued a scathing report that excoriated the Judicial Council and the AOC for what is appropriately characterized as malfeasance at best or incompetence at worst. Later in 2011 a survey by the California Judges Association provided a warning sign of a branch in crisis and the need for swift and decisive corrective measures. Still later in 2011 the Chief Justice issued her own separate survey through the 58 presiding judges where AOC malfeasance and dysfunction was repeated yet again.

With each request for input the message was delivered with resounding clarity: the AOC is an out of control, bloated, control-oriented, wasteful and unguided bureaucracy and the Judicial Council had abdicated it's fiduciary responsibility to the

taxpayers and branch by failing to sufficiently oversee and control it. Unfortunately, the Judicial Council has consistently failed to address these problems, and that failure has not gone unnoticed by the Legislature, State Auditor, the vast majority of California's judges, the press and the public at large.

While I and many other judges are mindful of and sympathetic to the assertion that sufficient time to address the difficult issues facing the judiciary are appropriate, I am also aware that the current Chair of the Judicial Council has been a part of that body since September 15, 2008. These issues, given the numerous times and consistent theme with which they have been brought before the Judicial Council both with her as a member and the Chair, has provided adequate opportunity for action.

The result of all of these warnings and pleas was inaction, deferral, delay, and ultimately rejection of any meaningful reform.

There can be no doubt of the Judicial Council's failure to adequately oversee the AOC after reading the State Auditor's report. Any reasonable interpretation of that report would lead even the most cautious individual to recognize the reckless abandonment of fiscal oversight responsibility by the Judicial Council. Unanimous votes on financial matters without even a modicum of inquiry into the escalating diversion of trial court funds to a poorly conceived, cumbersome, overpriced, unsound, and unusable computer project are a prime example. There was also the lack of sufficient inquiry, analysis, interest, or discussion of the exorbitant and irresponsible cost per square foot projections for planned courthouse projects. Add to that courthouse maintenance spending that was unnecessary, inordinately expensive, seemingly without oversight, and that used impermissible bundling to further deplete trial court funds and it is absurd reforms have not been implemented.

This lack of meaningful oversight is at least partially attributable to a Judicial Council which is appointed rather than democratically selected. Democratization of the Judicial Council is obviously necessary in order to ensure more thoughtful, balanced, informed, and representative leadership of the branch. Broad and diverse perspectives would promote open and thoughtful discussion and lead to informed and considerate decision-making. Our branch would certainly benefit from this, rather than the failed oversight reflected in the reports from both the State Auditor and the SEC.

The lack of democratization has also created mistrust of the Judicial Council among a significant number if not a majority of judges and justices across the state. Questions about the policies, motives, and priorities of the Judicial Council arise due to the self congratulatory tenor of the meetings and the lack of any apparent consideration of insightful, deliberative, or innovative solutions to branch issues beyond those offered by the same administrative agency which was condemned by the state auditor, SEC, and judges across the state. There is concern in the branch that the insular nature of the current Judicial Council fails to properly represent the views of the judges and justices across the state and that the lack of oversight and failure to consider diverse options for solutions is a direct result of the autocratic selection process.

Another byproduct of the lack of leadership and oversight of the AOC by a hand-picked Judicial Council is the AOC's lack of responsiveness when dealing with judges. This dismissive attitude was addressed in the SEC report where it was noted that information provided by the AOC and its divisions was "incomplete or nonresponsive", they experienced "numerous delays in receiving some information", and the "AOC was controlling information that should be available to the judicial branch." Add to this the SEC findings that "the AOC has been dishonest in its discussions and public comments concerning staffing levels", "the organization has failed to adequately consider fiscal, operational, and other impacts of its programs and projects on the courts", and has failed to "collaborate meaningfully with the courts" and one can understand how the use of terms like dishonest, imperial, insular, out of control, bloated, control-oriented, wasteful, unguided and similar unflattering descriptions of our administrative agency persist.

Far from being the administrative body that the SEC report indicated exists with "one of its primary roles and core functions, being [to provide] service to the trial courts", the AOC is unresponsive and even indifferent to inquiries by judges into AOC affairs. My experience with the AOC and that of many of my fellow judges is consistent with the theme expressed in the SEC report. For nearly a month I have sought information about all staff including "all employees, 909, temp workers, contract workers or anyone else who earns income performing work for the AOC." This information should be readily available through a Human Resources Division which "apparently" has 41 employees. Similar information was sought for my submission to the SEC committee. In spite of the AOC being informed of the time sensitive nature of the request for this basic information it is, was and continues to be a question without any precise answer.

Rather than provide information in a timely fashion, judges' requests are relegated to the status of "public access requests" and subjected to the "rabbit hole" otherwise known as Rule 10.500. This rule is expressly and explicitly designed to apply to "Public access to judicial administrative records." I did not seek information as part of the public; I made the request for information from the administrative body designed, in part, to assist the trial courts. It is illogical that requests by the very judges and justices the AOC is in existence to support are handled in this fashion. The practical effect of relegating judicial requests to "public access" are significant delays occasioned for even the most basic information.

In all fairness, I am becoming more convinced the AOC actually has no idea the number of people who work for them or the broad range of the activities they perform which are wholly unconnected to their core functions.

The abdication of leadership by the Judicial Council and the paralysis that has existed in that body related to long overdue reform of the AOC must end. The poorly conceived method of selecting the Judicial Council must give way to democratization and thereby promote greater accountability and more diverse input, discussion and decision-making. Immediate control should and must occur or greater distrust and a more fractured branch will result. We already have a great deal of mending to do to restore credibility internally, with our sister branches of government and with the

public at large. It is time for responsibility to be acknowledged, reforms embraced and taxpayer dollars directed to the counties that provide justice to their respective communities.

Judge Kevin McCormick
Sacramento Superior Court