

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: Kenneth W. Babcock **Title:** Executive Director & General Counsel

Organization: Public Law Center

Commenting on behalf of an organization

General Comment: The Public Law Center, Orange County's non-profit pro bono legal services organization, joins in the comments to the SEC Report submitted by the California Commission on Access to Justice. We also join in the comments of the Legal Aid Association of California, of which we are a member.

While we join in all of the Commission's comments, I particularly want to emphasize one general comment: "we urge the Council to avoid adopting recommendations prematurely without thoroughly studying their implications – and getting input from those who would be affected. There is a great deal of pressure to move quickly – both to respond to the report in a timely way and to deal with necessary budget cutbacks. But many of the issues highlighted in the report have evolved over several years as the AOC undertook a wide range of obligations to implement the statewide judicial system. Solutions may also take some time, as solutions are crafted very thoughtfully and the basis for the recommendations carefully studied before recommendations are adopted wholesale."

It is particularly important that the Judicial Council not "rush to judgment" in its decisions regarding SEC Report implementation because I do not believe the SEC had before it the full range of opinions regarding the myriad issues it considered. The SEC

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Report states that as part of its information gathering process it distributed surveys to: “persons, firms, organizations, and entities with interests in the judicial system.” While the SEC may believe it has conducted a thorough survey of those interested in the judicial system, I respectfully disagree.

The first two sentences of the Judicial Council’s Strategic Plan state: “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.” California’s non-profit legal services programs, which regularly provide access to the courts for low-income litigants, are clearly “interested” in the judicial system. Despite the SEC’s view that it: “placed a premium on being as inclusive and thorough as possible in gathering information,” it does not appear that much, if any, information was gathered from the community of those who provide free legal services to low-income individuals.

As part of the SEC survey process neither my organization, nor I personally, received an SEC survey. I have served as the Executive Director of the Public Law Center, one of the two principal legal services organizations in the third largest county in our state, since 2000. Last year alone, our office provided over 52,000 hours of free legal services and handled nearly 5,000 cases – the majority of which involved proceedings in the state court system. I am the immediate past Vice-Chair of the California Commission on Access to Justice (and served in that position when the SEC was conducting its surveys). I served on the Council’s Civil and Small Claims Advisory Committee from 1999 to 2004. I have served on numerous other Council committees, task forces and working groups as well as numerous committees and collaborative efforts with the State Bar of California, the Orange County Superior Court and the Orange County Bar Association. I believe that I and my organization would qualify as “persons, firms, organizations and entities with interests in the justice system.” Inexplicably, our views were neither solicited nor considered by the SEC in preparing its report.

I believe the SEC missed the perspectives of the thousands of low-income California court users represented by legal services organizations like the Public Law Center. Had those perspectives been considered, I believe the SEC would have developed a different view of the Administrative Office of the Courts and its staff. To be sure, as with any organization, there are no doubt at the AOC structures which should be changed, personnel who are not meeting or exceeding performance expectations and processes which could be made more efficient. Yet I believe that the wholesale attack on the AOC and its staff embodied in the SEC Report is unfounded.

I have consistently found the staff at the AOC to be some of the highest quality public servants with whom I have worked. I particularly believe that the lawyers on the AOC staff with whom I have worked, whether in the Legal Services Office, the Center for Families, Children and the Courts, the Office of Governmental Affairs or elsewhere within the AOC, are some of the smartest, dedicated and hard working lawyers with whom I have ever worked. Rather than receive scorn, they should be applauded for their service to the public – the ultimate, and I submit the most important, customer of the judicial branch.

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Specific Comment - Recommendation/Chapter Number: Recommendation 6-8: This recommendation states that: “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.” I believe such a process already exists – namely the rule adoption comment process. During my tenure on the Civil and Small Claims Advisory Committee, we considered every single comment we received regarding every single new or revised rule or form we considered. Staff prepared detailed matrixes that included all of the comments we received. We took particular note of comments from bench officers and executive officers. While this process was extremely arduous and time consuming, I believe it enabled the Committee to propose to the Council better rules and forms that considered exactly the kinds of concerns which the SEC Report suggests should be considered.

Recommendation 7-8: This recommendation states that: “CFCC must discontinue investigating and responding to complaints from litigants about judicial officers.” I have no experience with any such alleged activities by CFCC staff. I do know, however, that during my tenure on the Civil and Small Claims Advisory Committee staff counsel from the Legal Services Office did on occasion contact specific trial courts whose procedures for addressing fee waivers were in clear systemic violation of the applicable provisions of the Government Code and/or the California Rules of Court to help educate those courts on the correct procedures for addressing requests for fee waivers. I believe it was the view of those on the Committee that it was preferable to try to informally resolve such issues rather than rely on litigation by legal services organizations against the courts or complaints to the Commission on Judicial Performance. I continue to believe that attempts to educate courts on proper procedures, rather than litigation or complaints to the Commission on Judicial Performance, is the preferable way to resolve such issues.

Recommendation 7-72: Among the many recommendations contained in 7-72 is the recommendation that there be reductions in the Legal Services Office positions dedicated to support of Council Advisory Committees and the recommendation that paralegals be hired in place of lawyers in the Legal Services Office. During my tenure on the Civil and Small Claims Advisory Committee, we considered a wide range of proposed rules and forms relating to subjects as varied as trial court delay reduction and putting small claims forms in language understandable by the public who uses those forms. It is utterly inconceivable to me that we could have conducted anywhere near the work that we did without the extremely able assistance of lawyers on the AOC staff. If the Council is interested in maintaining the high quality of the California Rules of Court, which I strongly suspect it is, the positions of the high quality lawyers on the AOC staff must be maintained. This work simply cannot be done by volunteers working with staff paralegals.

Recommendation 7-74: The cost and benefit analysis regarding attorney staffing which the SEC Report recommends the Judicial Council perform would be beneficial, as would be many of the other analyses suggested by the Report. In light of the significant reductions in the Judicial Council’s and the AOC’s budgets, many of these analyses may need to be phased in. Whenever conducted, however, the Council should take great care to ensure it receives input from all interested stakeholders so that it has the most complete

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picture possible of the costs and benefits of attorney staffing. A reader of the SEC Report could reasonably arrive at the conclusion that there are many costs but no benefits of the work of the attorney staff at the AOC. As my above comments indicate, I do not share that view.

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