



THE STATE BAR
OF CALIFORNIA

Council on Access & Fairness

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July 17, 2012

The Honorable Tani Cantil-Sakauye
Chief Justice, California Supreme Court and
Chair, Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Attn: Invitations to Comment
Administrative Office of the Courts

RE: **Item SP 12-05**
Strategic Evaluation Committee Report
From the State Bar of California, Council on Access & Fairness
General Comments and Specific Comments on Recommendations
7-4 (Committees and Task Forces)
7-12 (Procedural Fairness and Public Trust and Confidence Programs)
7-20 (reduction in educational division)

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

The State Bar of California Council on Access & Fairness (COAF) is submitting these comments in response to the Strategic Evaluation Committee (SEC) Report on the Administrative Office of the Courts (AOC) issued May 25, 2012 and presented to the Judicial Council of California on June 21, 2012.

COAF was created in 2006 to serve as the State Bar's diversity "think tank". The COAF is the only entity in the State Bar that assists in the implementation of the Bar's access, fairness, diversity, and elimination of bias strategies and goals. The State Bar's commitment to and support for diversity appears in its Strategic Plan, Goal 2 (Administration of Justice): *Undertake activities to enhance the diversity of the legal profession and to eliminate bias in the practice of law.* In this capacity, COAF focuses on issues and initiatives along the full diversity pipeline: Early Pipeline (preschool to high school), College and University (undergraduate, law school, and bar exam), Legal Profession (recruitment, employment, retention and advancement in the legal profession); and the Judiciary (diversity of the judicial applicant pool and appointments).

One of the major COAF goals is to achieve diversity in the legal profession and judiciary that reflects the statewide diversity. For the State Bar, diversity encompasses racial and ethnic groups, women, LGBT, persons with disabilities and older attorneys. The 2010 U.S. Census figures show that California is close to 60 percent people of color and close to 51 percent women. However State Bar data show that the legal profession is only 20 percent racial-ethnic minorities and only 39 percent women. The California judiciary is only slightly over 27 percent minority and 31 percent women. These statistics show how far the legal profession has to go before it reflects the diversity of the population.

Another of our goals is to ensure access and fairness and impartial treatment for court users. As you know, Judicial Council surveys of court users show that the failure to have a diverse legal profession and judiciary severely impacts the public's confidence and trust in the legal system. The public's perception of fairness in the court process is directly related to the level of diversity at all levels of the judicial system.

We acknowledge the importance of the SEC's charge to conduct a "thorough and objective examination of the role, functions, organizational structure and staffing of the AOC" and the extensive work that went into its deliberations and preparation of its report and recommendations to address areas of concern. We note that the SEC did not make specific references to diversity-related issues and functions in its report, which raises concerns about whether the SEC considered the impact of its recommendations on diversity. It is clear that, if adopted, many recommendations contained in the report would have a negative effect on achieving the critical goals of improving the diversity of the bench and ensuring the fair treatment of people from underrepresented groups who interact with the court system.

We strongly support the Judicial Council's Access and Fairness Advisory Committee for its ongoing efforts to assist the Council in implementing and supporting Goal 1 of your Strategic Plan focusing on diversity, access and fairness in the courts and justice system. We also support the ongoing fairness education and training by CJER for judges, attorneys and the State Bar Commission on Judicial Nominees Evaluation (JNE) and note that JNE bias training is now mandated by legislation [Govt. Code 12011.5(b)]. We ask for the Council's continued support for this critical work.

Goal 1 of the Judicial Council's Strategic Plan 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 backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents."

COAF supports the initiatives listed under Goal 1, including the elimination of all barriers to access; facilitating access to and trust and confidence in the courts; preventing bias and the appearance of bias in the judicial branch; achieving procedural fairness in all cases; increasing access to legal assistance; collaborating with justice system partners to identify, recruit and retain diverse judges, commissioners and referees and a judicial branch work force that reflects the state's diversity; collaborating with the State Bar and other entities to achieve diversity in the legal profession; achieving diversity on the Judicial Council; implementing and expanding multilingual and culturally responsive programs; ensuring access to court facilities for all court users and accommodations for persons with disabilities; and increasing access to court information and services.

Ongoing support through the AOC entities is critical for the continuation of our collective efforts. Some of the diversity, access and fairness accomplishments of the Judicial Council, AOC and Access and Fairness Advisory Committee include the following:

- 1987 Judicial Council through the AOC established the Advisory Committee on Gender Bias in the Courts and later adopted all 68 recommendations of that committee to redress gender bias.
- 1991 Judicial Council through the AOC established the Advisory Committee on Racial and Ethnic Bias in the Courts.
- 1994 Judicial Council through the AOC established the Access and Fairness Advisory Committee charged with making recommendations for continued improvements in access and fairness in the courts in relation to race, ethnicity, gender persons with disabilities and sexual orientation.
- 1996 Access and Fairness Advisory Committee created guidelines for judicial officers to avoid the appearance of bias in the courts.
- 1997 Access and Fairness Advisory Committee conducted a survey of court users, attorneys and court personnel on public trust and confidence in the judicial system and access to the California State Courts.
- 2000 Access and Fairness Advisory Committee created guidelines for lawyers on eliminating gender bias in the legal profession.
- 2001 Access and Fairness Advisory Committee, Sexual Orientation Fairness Advisory Committee conducted a study and released a report on Sexual Orientation Fairness in the California Courts.
- 2001 Access and Fairness Advisory Committee created guidelines for judicial officers on disability fairness and avoiding the appearance of bias against persons with disabilities.

- 2002 Judicial Council through the AOC convened the First Statewide Conference on Race and Ethnic Bias in the Courts.
- 2002 Access and Fairness Advisory Committee coordinated bias training for the State Bar Commission on Judicial Nominees Evaluation (JNE) through the AOC's Center for Judicial Education and Research (CJER). (Note: Bias training for JNE commissioners is now mandated by Govt. Code section 12011.5(b)).
- 2006 Judicial Council adopted its Branch Strategic and Operational Plan with Six Strategic Goals, including Goal #1 (Access, Fairness and Diversity).
- 2006 Judicial Council through the AOC and in partnership with the State Bar of California held the First Summit on Increasing Diversity on the Bench.
- 2010 Access and Fairness Advisory Committee developed a resource guide and model prospective civil grand juror questionnaire with accompanying tip sheet for jury managers and commissioners to assist in recruiting representative grand juries.
- 2010 Access and Fairness Advisory Committee developed a guide for judicial officers to assist in addressing issues related to LGBT youth in the court system.
- 2010 Judicial Council, at the recommendation of the Access and Fairness Advisory Committee, promulgated Rule 1.100 (former Rule 989.3 effective January 1, 1986) providing a mechanism for persons with disabilities to request reasonable accommodations to participate in court activities, programs or services.
- 2011 Judicial Council through the AOC and in partnership with the State Bar of California Council on Access and Fairness convened a five year follow-up Summit on Diversity on the Bench.

As a critical public policy matter, we urge the Judicial Council to:

- Continue to support Goal 1 of its strategic plan
- Extend Goal 1 into the Council's new strategic plan
- Support the allocation of ongoing resources and qualified AOC staff to ensure the effective implementation of access, fairness and diversity programs and initiatives
- Maintain the full functions, appointed positions and activities of the Council's standing Advisory Committee on Access and Fairness.

General Comments:

If the bench and bar are to maintain the public's trust and confidence in the judicial system, we must devote resources to ensure that judges, attorneys, members of the public and court staff address the needs and concerns of our state's diverse population and continue to build the pipeline for diverse persons to enter the legal profession and judiciary. In this context, COAF offers the following general comments related to the SEC report:

We have serious concerns that the lengthy, detailed SEC report did not address the needs of court users, nor did it refer to maintaining ongoing efforts to meet Goal 1 of the Council's Strategic Plan, or any of the Judicial Council's and AOC's valuable work being done regarding diversity and fairness in the courts. In fact, the report recommended the elimination of key programs and reduction of staff and other resources without consideration of the implications for continued, effective implementation of Judicial Council priorities addressing one of its primary stated goals-- diversity, access and fairness in the judicial branch.

We agree with concerns made in person during the Judicial Council meeting emphasizing the need to consider the input from court users, in keeping with prior Judicial Council and AOC surveys of court users that addressed public trust and confidence in the judicial system and the perception of fairness in court proceedings.

Further, the report does not make a distinction between "equal access to justice" and "access and fairness" and their respective issues, initiatives and needs. Testimony from Justice Zelon supporting the access to justice agenda was critically important; however the access, fairness and diversity initiatives are different and also critical to the effectiveness of the court system.

Among the SEC recommendations was the elimination of programming focusing on Procedural Fairness and Public Trust and Confidence in the Courts, which would have the effect of reducing staff expertise and other resources for ongoing diversity, access and fairness programs and initiatives. The report did not acknowledge that the continued existence of the Access and Fairness Advisory Committee would be jeopardized if these recommendations are implemented. We note that COAF maintains a regular partnership and undertakes joint activities with the Access and Fairness Advisory Committee to further our mutually shared diversity goals.

Finally, we have concerns that while the Judicial Council decided to post the SEC Report for a 30-day comment period and to consider comments prior to creating a timeline for implementation of any of its recommendations, the AOC management has apparently already initiated implementation of its own internal reorganization. See the AOC status report at http://www.courts.ca.gov/documents/SEC_aocstatusreport.pdf

Specific Comments:

We offer comments on specific recommendations as follows:

Recommendation 7-4: This recommendation would reduce the Center for Families, Children and the Courts staff including the elimination of attorney positions and/or reallocating positions to non-attorney classifications. COAF is concerned that the SEC recommendation will encompass attorneys who staff committees and task forces, such as the Access and Fairness Advisory Committee. Given the priority status of Goal 1 (access, fairness and diversity) and the scope and nature of the diversity initiatives, it is critical that the staff leader be an attorney who has the stature, time and expertise required to function effectively as liaison to the Access and Fairness Advisory Committee and related entities outside the bar. 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 warrants dedicated staff, given its high priority with the bench, bar and public.

Recommendation 7-12: This recommendation would 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. Programs that clearly promote efficient and effective methods of serving court users should be funded and retained.

Recommendation 7-20: This recommendation would reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney positions and/or staffing of positions with non-attorney classifications, with specific reference to education specialist positions that are currently staffed by attorneys. The stated concern by the SEC that an attorney was in a Senior Education Specialist classification was misplaced given the minimal possible cost savings. 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

We commend the Judicial Council and the AOC for the positive work it has done to promote and ensure support for and implementation of Goal 1 (Access, Fairness and Diversity) and other important goals for the judicial branch. We look forward to our continued partnership with the Council's Access and Fairness Advisory Committee to address our shared diversity goals and to our collaboration with Center for Judicial Education and Research (CJER) staff with ongoing fairness education and training. We offer our assistance to help build a diverse organization that will foster public trust and confidence and the perception of fairness in our judicial system.

In the words of former Chief Justice Ronald George at the first Judicial Diversity Summit co-sponsored by the Judicial Council and the State Bar of California in 2006:

“In my view, a diverse bench not only will maintain and enhance our state’s tradition of having an excellent judiciary, but will also serve to reinforce our guiding principle – that we are committed to making our justice system fair and accessible to all.”

Thank you for this opportunity to comment in response to the SEC report. If you have any questions or need additional information, please feel free to contact me at TCannon@wascsenior.org or at (510) 219-1977 or contact Patricia Lee, Special Assistant for Diversity & Bar Relations at patricia.lee@calbar.ca.gov or 415-538-2240.

Sincerely,

Handwritten signature of Teri Cannon in black ink.

Teri Cannon, Chair
State Bar of California, Council on Access & Fairness

cc: *Justice Douglas Miller, Chair, Judicial Council Executive & Planning Committee
Members, Judicial Council
Jody Patel, Interim Administrative Director, Administrative Office of the Courts
Jon Streeter, President, The State Bar of California
Sen. Joe Dunn, Executive Director and CEO, The State Bar of California
Patricia Lee, Special Assistant for Diversity & Bar Relations, The State Bar of California*