

**COMMENTS OF THE LOS ANGELES SUPERIOR COURT IN
RESPONSE TO THE JUDICIAL COUNCIL’S REQUEST FOR
PUBLIC COMMENT ON THE REPORT AND
RECOMMENDATIONS OF THE STRATEGIC EVALUATION
COMMITTEE**

EXECUTIVE SUMMARY

When Chief Justice Tani Cantil-Sakauye began her tenure some twenty months ago, the judicial branch faced many criticisms from judges, legislators, the media and others. Responding to this, the Chief Justice created the Strategic Evaluation Committee (SEC) to examine the AOC from “top to bottom.” (Video Statement of the Chief Justice, March 22, 2011.) The SEC has proved itself to be a truly meaningful and fully credible agent for change. After fourteen months of work, the SEC has produced a Report that is thorough, honest, independent and, most importantly, responsive to the legitimate criticisms of the Judicial Branch. While implementation of the SEC Report recommendations will take hard work, dedication and courage, it is incumbent upon the Judicial Council and the Administrative Office of the Courts to fulfill this promise of change and implement these reforms to the fullest.

The Chief Justice, as Chair of the Judicial Council, and the Judicial Council should not hesitate to take the next step. The Branch is at a turning point. The Judicial Council must now affirmatively endorse the recommendations of the SEC and move the Judicial Branch forward without delay to implement them. Consigning the Judicial Branch to more studies and unnecessary delay will serve only to cause more internal dissension and foster second-guessing from the other Branches of our State government.

The fact that a new Administrative Director will soon be in place does not excuse or justify further Judicial Council delay in endorsing the SEC Report. The most significant AOC failures identified by the Report are, at bottom, failures of the Judicial Council to appropriately exercise its supervisory responsibility to oversee the AOC. Waiting in hopes that the AOC culture will eventually change for the better with a new Administrative Director abdicates the Council’s essential leadership role.

The Judicial Council must now mandate change without regard to who the new Administrative Director might be. The process for selection of the Administrative Director should be designed to seek a person who can be successful in meeting the goals set forth in the SEC Report. Performance of the Administrative Director should be evaluated by the Judicial Council against those goals and recommendations.

The Judicial Council's fundamental task now is far more than simply giving a new Administrative Director an “opportunity” to make unspecified changes. Rather, the Judicial Council’s duty now is to fulfill its leadership role, as never before, to demand change from the AOC, and to require that change with sufficient specificity in writing so the new Administrative Director will know from the very beginning what is expected.

The starting point for appropriate and effective Council leadership and direction of the AOC is for the Judicial Council now to endorse the SEC Report in whole and without delay. In addition, the Judicial Council should assign to the judicial members of the SEC the task of regular and public reports to the Council regarding implementation and monitoring of the SEC recommendations.

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COMMENTS OF THE LOS ANGELES SUPERIOR COURT

I. The SEC Report Is the Result of a Process Initiated by the Chief Justice to Restore Lost Credibility to the Judicial Branch

Soon after assuming the office of Chief Justice and Chair of the Judicial Council, Chief Justice Tani Cantil-Sakauye recognized that there was a crisis of confidence within the Judicial Branch, and that this crisis already had affected the Judicial Branch’s relationship with the Legislature. The Chief Justice sought to understand the extent and nature of the crisis, initiating a new atmosphere of openness by asking judicial officers to provide their views about Judicial Branch governance and the work of the Administrative Office of the Courts (AOC).

The views of the judiciary demonstrated the depth of concern and the potential scope of the problems of Judicial Branch governance. However, these anecdotal comments were insufficient to formulate a reliable analysis

of the nature and extent of the problems and to identify potential solutions. Research was required to gather and analyze the facts.

In the face of these mounting concerns, the Chief Justice appointed the Strategic Evaluation Committee (SEC). The composition of the SEC guaranteed that its work would be independent and would not be directed toward a predetermined result.

- Three Committee members either currently serve or previously have served as voting members of the Judicial Council.
- An Administrative Presiding Justice served as SEC Chair during the Committee's formative stages.
- Eight Committee members either currently serve or previously have served as presiding judge or assistant presiding judge of a trial court.
- Judicial officers who serve in small and large trial courts were included.
- Members ranged in seniority from relatively new judges to retired judicial officers.
- Committee members had substantial experience in service on Judicial Council Advisory Committees and Working Groups.
- Committee members and advisory members had impressive and wide-ranging experience in court administration, executive branch administration, and as high-level legislative staff, including service as:
 - President of the National Center for State Courts;
 - Chair of the Board of Directors of the American Judicature Society
 - Secretary of the California Department of Corrections;
 - California Labor Commissioner
 - Deputy Chief of Staff to a former Governor;
 - Cabinet Secretary to a former Governor;
 - Chief Fiscal Policy Advisor to Senate Pro Tem; and
 - Chief Deputy Director of Finance.

The Chief Justice gave the SEC a broad charge, requiring the Committee both to identify problems and to recommend solutions. As stated in the press release of July 19, 2011, the SEC was asked by the Chief Justice, "to conduct an in-depth review of the organizational structure,

methods of operation, and budget of the AOC; to assess the AOC's mission and priorities; to examine how the AOC is operating and whether it is efficiently meeting appropriate goals and mandates; and to determine whether changes should be made to the structure and operation of the AOC to ensure that it fulfills its core functions in an appropriate, beneficial, cost-effective, and transparent manner."

II. The Recommendations of the SEC Report Are Sound and Should be Accepted Without Hesitation

A. There Is No Need to Second-Guess the Strategic Evaluation Committee

The results achieved by the SEC, embodied in its Report, are fully consistent with the charge given by the Chief Justice. The Report reflects both the independence and competence of the members of the SEC. Moreover, the Report constitutes the *unanimous* judgment of the distinguished members of the Committee.

The Report does not in any respect denigrate the importance of the work of the AOC in service to the courts, nor does it fail to recognize the importance of the courts' goals of providing access and fairness to all Californians. Rather, the recommendations of the Report, if fully implemented, would strengthen the ability of the AOC to efficiently provide service to the courts, consistent with public accountability.

B. The Fact-Gathering Done by the SEC Committee Was Comprehensive and Reliable

As discussed in their report, the SEC's analysis was based upon extensive and robust fact gathering. The Chief Justice allowed them access to the many concerns she received from presiding judges in response to her March 2011 solicitation of their views on current judicial branch governance and AOC operations. As noted in the Report, the Committee obtained information about the AOC's functions, structure, budget, staffing, and operations, including statutory mandates and Judicial Council directives about AOC functions, services, and reporting requirements.

The members also reviewed administrative offices of courts in other states; articles about best practices; and theories of effective organizational

governance and operation. They had the assistance of the President of the National Center for State Courts.

The Committee conducted extensive surveys of a broad range of persons in the Judicial Branch, including employees of the AOC as well as justice partners who interact with the AOC . In addition, over 3,500 surveys were sent to every state judicial officer and clerk administrator of the trial courts, the Courts of Appeal and the Supreme Court.

They conducted personal in depth interviews with the clerk administrator of the Supreme Court, the administrative presiding justices and clerk administrators of the Courts of Appeal, and the presiding judges and court executive officers of the Superior Courts to gain additional insights on the functions, structure, and methods of operation of the AOC.

They made personal site visits to all AOC offices, including the AOC's Office of Governmental Affairs in Sacramento. During these visits they met with employees and observed them in their work environments.

Finally, the Committee members brought their own knowledge based upon their own personal dealings with the AOC.

The results and unanimous recommendations of the SEC are not, as some have suggested, based on anecdotal evidence. The recommendations of the SEC Report flow logically and inexorably from the comprehensive fact-gathering of the Committee. As stated by Judge Charles Wachob, Chair of the Strategic Evaluation Committee, "any reasonable cross section of a dozen judges in California, when confronted with the same information that we were given . . . would have come to probably 95 percent of the same recommendations." In short any argument the fact gathering process was cursory, biased or flawed is specious.

C. The SEC Report is Premised on Sound Values that are a Prerequisite to Public Confidence in the Judiciary

It is manifest that the public will lose confidence in policies developed secretly or by the unelected or unaccountable. One of the most persistent criticisms of the Judicial Branch is the Council's lack of oversight of the AOC and the staff-driven method by which policy is made. Surveys of members of the California Judges Association and of presiding judges show

a clear dissatisfaction with the Council's oversight of the AOC. The Council's lack of oversight led to unflattering news reports about AOC compensation, hiring practices, contracting irregularities, and other reports of mismanagement. Issues of poor oversight, transparency, and accountability eventually manifested themselves in reports from outside the Judicial Branch. The audit report of CCMS by the California State Auditor cited lack of oversight and transparency as major issues (February 2011, Report 2010-102, p. 6.) Even the report of the Office of the State Chief Information Officer -- a report dedicated to CCMS' more technical "objectives, activities and costs" -- found that issues of governance and lack of collaboration with the trial courts hampered the project ("Review of the California Court Case Management System" February 2010, p.6.) As a result, the Branch's reputation as a good steward of the people's money has been severely damaged.

It is with this background that the SEC promulgates its first and perhaps most important recommendation, that "[t]he Judicial Council must take an active role in overseeing and monitoring the AOC and demanding transparency, accountability, and efficiency in the AOC's operations and practices." (Report at p. 44, Recommendation 4-1.) Other recommendations stress the governance primacy of the Judicial Council and seek to alter the culture of allowing the AOC to make policy while the Council plays only a tacit, symbolic or reactive role. (See Recommendations 4-2, 4-3, 4-4, 7-5, 7-6, 7-28, 7-77, 7-79, 7-81, 8-7, 8-8 and 8-10.)

The SEC begins its discussion of these issues with a simple observation: "The AOC serves as the staff agency to the Judicial Council." Even more fundamentally, the Judicial Council, as prescribed by the constitution, is primarily made up of persons elected to the judicial branch by the people. Public confidence in the administration of the branch will only return if those so elected fulfill their obligations of oversight.

It must be clear and unequivocal to all judicial officers, our justice partners, the other branches of government and to the people of California that these values of oversight, transparency, accountability and efficiency -- so forcefully articulated by the SEC -- are not mere words, but are the commitment of the elected members of the judicial branch. This moment is critical. The credibility of the branch is at a low ebb and the SEC has provided a strong and evident path forward. Failure to embrace these

recommendations or equivocation in their implementation may seal the Branch's reputation for many years to come.

D. The Report Embraces a Mission of Service for the AOC– This Mission is Not Debatable

Some have argued that the role and function of the AOC is debatable. The SEC Report is unequivocal on this point. Recommendation No. 4-2 states: “The primary role and orientation of the AOC must be as a service provider to the Judicial Council and the courts.”

The SEC gave careful consideration to defining the role of the AOC, particularly in Chapter 3, beginning at page 33. On this, as on all points, the SEC was unanimous in its conclusions, which were derived from the legal mandates of the AOC and the Judicial Council. The Report concludes: “[T]he AOC’s role must be limited primarily to those functions and duties reasonably flowing from the Constitution and statute, and to those core functions inherent in providing requested or needed assistance and services to the courts and to protecting the interests of the branch.” (SEC Report at p. 35.)

This conclusion reflects a consensus within the Branch. In appointing the SEC, the Chief Justice stated that the Committee was charged with reviewing “all aspects of the AOC” in order to “reset goals and focus on *core services to the courts.*” (Judicial Council press release, March 29, 2011 (emphasis added).) Current AOC staff management also has agreed with this principle. At page 19 of the “Comparative Overview of SEC’s and AOC’s Own Internal Reorganization Recommendations,” AOC staff states its agreement with the statement that: “The primary role and orientation of the AOC must be as a service provider to the Judicial Council and the courts.”

The Judicial Council should not hesitate to confirm this axiom, by adopting the SEC Report’s recommendation that the AOC’s role is to serve the courts and to support their core function of adjudicating cases.

E. The Report Reflects Best Practices in Public Administration

The SEC Report convincingly makes the case for urgent reform of the AOC's many dysfunctional, often counterproductive, business practices. The SEC Report is, moreover, a clarion call for Judicial Council oversight of AOC business practices and the results they produce.

In 2006, following a detailed and lengthy study of AOC business practices, KPMG produced a similar call for reform. For all practical purposes, the Judicial Council and the AOC ignored the KPMG Report, and the consequences of that mistake have been devastating. The Judicial Council must not make the same error again.

The SEC Report recommends fundamental, common-sense reforms of the AOC's business practices. It does not require special training in business or public administration to recognize that the deficiencies identified by the SEC Report require immediate correction. Indeed, the sheer number of unacceptable AOC business practices is stunning. The deficiencies identified by the SEC include:

1. Insular, ad hoc decision making. (SEC Report at p. 63.)
2. An ineffective, unworkable and inefficient structure. (*Id.* at p. 45.)
3. A top-heavy, unwieldy organization. (*Id.* at p. 35.)
4. An outdated, inconsistent, often ignored and "abused" employee classification "system." (*Id.* at p. 68.)
5. Overlapping, duplicative staff responsibilities. (*Id.*)
6. Lack of standard performance reviews of employees and the Administrative Director. (*Id.* at p. 66.)
7. Refusal to utilize accepted business case analysis for significant projects and initiatives. (*Id.* at p. 65.)
8. Loss of service orientation. (*Id.* at p. 38.)
9. Violating and ignoring its own written personnel policies and procedures. (*Id.* at p. 122.)
10. An inconsistently applied employee compensation system. (*Id.* at p. 123.)
11. Failure to appropriately consider fiscal and operational impacts of AOC decisions on the courts. (*Id.* at p. 65.)
12. Inadequate budgetary planning and controls for major projects. (*Id.* at p. 149.)

13. Failure to openly disclose pertinent project information, and controlling fiscal and other information that should be made openly available to the Judicial Branch and ultimately the public. (*Id.* at p. 182.)
14. Lack of transparency in budgeting, staffing levels, hiring freezes and furloughs, large scale projects, and other significant matters. (*Id.* at p. 38.)
15. Shading information to make it appear more favorable to the AOC. (*Id.* at p. 191.)
16. Loss of AOC institutional credibility both within the Branch and externally. (*Id.* at p. 38.)

The SEC has recommended corrective practices to address the AOC's numerous deficiencies. (See, e.g., Recommendations 4-3, 4-4, 6-7, 7-21, 7-27, 7-28, 7-33, 7-35, 7-57, 7-58, 7-59, 7-60, 7-61, 7-62, 7-63, 7-65, 7-74, 8-1.) These recommendations are consistent with standard best practices in business and public administration, including use of basic human resources management tools; transparent financial planning; and insistence on a solid business case for major projects.

Now the Council must act immediately to require full implementation of these business practice reforms. Every day of inaction places the Judicial Branch more and more at risk of additional adverse consequences flowing from the many ongoing, dysfunctional AOC business practices.

F. The Report is Comprehensive

As discussed above, the SEC Report is premised on sound values that are essential to achieving public confidence in the judiciary and respect from the co-equal branches of our State government. The Report then defines the problems (themes) that characterize the AOC and its performance. Finally the Report comprehensively surveys the structure and business of the AOC, measuring performance against the values and the proper mission of the AOC, and makes specific recommendations for corrective action.

Thus, the SEC Report is a blueprint for reform. It answers the direction of the Chief Justice that the SEC should review the AOC from "top to bottom." The Judicial Council should direct the new Administrative Director to implement the comprehensive recommendations of the Report.

With that directive, the Administrative Director will understand the policy expectations of the Judicial Council.

It will be of benefit to the new Administrative Director that the SEC recommendations are specific, because the work of surveying, understanding, and evaluating the organization of the AOC has been accomplished. Should the Administrative Director believe, after study, that a specific recommendation can be improved upon (e.g., if he or she believes that a modification of the SEC's proposed organization chart is appropriate in light of the Administrative Director's experience), the Administrative Director can bring that issue to the Judicial Council for discussion and approval.

III. The SEC Report Must Be Embraced by the Judicial Council and Implemented Without Delay

A. This May Be the Only Opportunity to Unite the Branch and to Reestablish Credibility with the Other Branches of State Government

Unquestionably, the AOC has been the target of strong public criticism. In addition, the recent actions of the Legislature and the Governor indicate both a lack of trust and a lack of patience with the AOC and its stewardship within the Branch. The Legislature has had to direct with specificity how Judicial Branch funds are to be used in order to ensure that the AOC will not favor its own ideas and special projects at the price of reducing funds available for the core adjudicative functions of the courts. As the SEC Report observes, the Judicial Council must take steps to restore credibility.

If the Judicial Council hesitates to act to embrace the recommended reforms, the public and the other Branches of State government unquestionably will doubt that the Judicial Branch has the will and the fortitude to reform its operations. Moreover, a failure to act will ensure that dissension within the Judicial Branch will continue indefinitely. As our Presiding Judge stated in her letter of June 18, 2012 to the Chief Justice:

“One of the most significant observations of the SEC Report is that the AOC does not have the confidence of the judges of this State. The SEC concluded that our

fellow jurists do not believe that AOC employees are looking out for the best interests of the Court as a whole, of the trial courts or of the core adjudicative function of our court system. It is imperative that this problem be addressed. If the problem is not addressed, the AOC and the Judicial Council simply will not be able to lead our Court system. The best and most immediately effective way to address the lack of trust and confidence of the judiciary in the AOC is to endorse the SEC Report and to ensure judges that concrete steps will be taken to implement the SEC recommendations.”

B. Implementation Will Require Changes of Attitude – It Is Not a “Check the Box” Exercise

Within a few weeks after publication of the weighty and comprehensive SEC Report, the AOC published what it called a “Comparative Overview of SEC’s and AOC’s Own Internal Reorganization Recommendations.” There are two fundamental problems with this document. First, it assumes the AOC has authority to set new policies and priorities without involvement by the Judicial Council. Second, it proposes a “check the box” approach to monitoring institutional reform of the AOC. These problems with the “Comparative Overview” demonstrate a continuing denial by the AOC of the Judicial Council’s governance primacy over the AOC and the need for stricter oversight.

The AOC “Comparative Overview” states that the AOC itself has conducted an “internal organizational review process” and suggests that the AOC already is acting to implement the results of that process. (Comparative Overview at p. 1.) The Judicial Council has not reviewed or approved any such “organizational review process.” The AOC apparently believes that it has authority to set new policies for itself without review by the Judicial Council. In itself this attitude and assumption is an illustration of the “culture of control” within the AOC that is criticized by the SEC Report.

This AOC effort in fact demonstrates the need for the Judicial Council to act to recognize past mistakes and to set a new path forward. The document produced by the AOC illustrates that the AOC does not see the needed reform as fundamental or as requiring substantial, sustained effort.

The “check the box” approach to reform that is portrayed in the “Comparative Overview” demonstrates that the AOC has not yet taken reform seriously. One of the most troubling findings of the SEC Report is lack of transparency in financial reporting by the AOC. This finding points to a failing that is humiliating in a Branch of government committed to discovering the truth. Yet the “Comparative Overview” states that reform to make the budgeting process transparent is “in progress or completed.” (*Id.* at p. 6.) That conclusion certainly is not shared by the Legislature, which determined that it needed to specifically preclude the AOC from spending additional funds on the failed CCMS program. The AOC fails to realize the depth of the reform that is required.

Similarly, the AOC opines that the recommendation that the Judicial Council “take an active role in overseeing and monitoring the AOC and demanding transparency, accountability, and efficiency” is “in progress or completed.” (*Id.* at 19.) Again, this response to the recommendation illustrates a lack of understanding of the problem. How is it that the AOC believes the Judicial Council has embraced this responsibility when the Council has not acknowledged such action?

Implementation of the SEC reforms will require sustained effort that is monitored by the Judicial Council. We join in the recommendation of our Presiding Judge that the Chief Justice should ask the members of the SEC to monitor progress on implementing the SEC recommendations and report to the Council at regular intervals.

IV. Conclusion: The Judicial Council Must Accept Full Responsibility for the Future Oversight and Governance of the AOC

Now is the time. Trial judges and court employees around the state are waiting, along with legislators and members of the executive branch, to see whether the Judicial Council will reform the AOC.

Nothing short of a clear and unequivocal statement of the Council’s intent to follow through on all of the Report’s recommendations will restore the credibility of the AOC. Indeed, the ability of the Judicial Council to effectively lead the Judicial Branch may be further undermined if the

Council does not take prompt action to solve the many problems identified through the SEC's careful work.

No further studies are needed. No more fact gathering is necessary. The Council must, without further delay:

1. Fully assert its governance authority over the AOC;
2. Change the culture of allowing the AOC to make policy while the Council plays only a tacit, symbolic or reactive role;
3. Implement all of the recommendations of the SEC Report; and
4. Provide across-the-board oversight to insure the SEC recommendations are carried out and ask the members of the SEC to monitor progress and report to the Council at regular intervals.

The time for reform is now.