

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: Michael Vicencia **Title:** Judge of the Superior Court

Organization: Los Angeles Superior Court

Commenting on behalf of an organization

General Comment: My name is Michael Vicencia and I am a Judge of the Superior Court of Los Angeles County. I submit this comment for myself. I have been a judge for nine years. I served on the Judicial Council as an advisory member in my role as president of the California Judges Association. I have also served on several committees, task forces and working groups for my court, CJA and the Judicial Council.

I have read the report of the Strategic Evaluation Committee (SEC) as well as the comments posted to date. I endorse the recommendations of the SEC. As for the comments to the report, they show overwhelming support for the recommendations. I believe the few broad criticisms among these comments are misplaced attempts to maintain the status quo. Any attempt to fundamentally change an organization as large as the Administrative Office of the Courts is bound to meet resistance from those who have benefitted from their largess. But the status quo is proving disastrous for the branch. The Judicial Council must show great leadership and courage in resisting the entrenched voices who only seek to forestall needed change.

DEADLINE FOR COMMENT: 5:00 p.m., Sunday, July 22, 2012

All comments will become part of the public record.

As of the writing of this comment (July 22, 2012,) there have been 376 posted comments to the report of the SEC. Of the 376 comments, 327 (87%) have given an unqualified endorsement of the report and its recommendations. Almost all of those 327 comments urge the Judicial Council to “implement”, “adopt”, “enact” or “support” the SEC recommendations. Most ask that the action happen “immediately”, “without delay” or “now”. The supportive comments come from 30 of California’s 58 counties. All but three counties with ten or more judges are among these 30. Of the 30 counties, the largest (Los Angeles, San Diego and Orange) as well as some of the smallest (Calaveras, Mariposa, Sierra and Tehama) are represented. The overwhelming majority of supportive comments come from Judges elected to the Judicial Branch by the people of California.

Only 29 of the 376 comments (8%) can be fairly characterized as critical of the report and its recommendations, while 20 comments (6%) make other statements and do not comment directly on the report’s recommendations.

These lopsided percentages are not surprising. In creating an independent committee, free to make tough, necessary recommendations, Chief Justice Cantil-Sakauye ushered in a new era of openness to a Judicial Branch accustomed to pre-ordained decisions. The Judicial Council, under the leadership of Justice Miller, has followed suit with transparency reforms. Overwhelming, broad-based support for the recommendations of a Judicial Council committee on such a controversial issue would have been unthinkable just two years ago.

Now comes the hard part. In the 16th Century Machiavelli wrote “It must be considered that there is nothing more difficult to carry out nor more doubtful of success nor more dangerous to handle than to initiate a new order of things.” Recently, actress and indie songstress Zooey Deschanel put it more succinctly: “Change is hard.” According to Forbes Magazine, thousands of books have been written on effecting management change in organizations (Nudging Your Way to Real Change, Karl Moore, November 7, 2011.) Stopping change is far easier than implementing it since doing nothing is usually the path of least resistance. The advantage will always be with those who have a vested interest in the status quo. These ideas are clearly at work in many of the broad criticisms of the SEC report.

To be fair, several of the 29 comments critical of the SEC are simply cautionary or question the wisdom of particular proposals. Several legal aid organizations, for example, make identical suggestions that the Judicial Council be mindful of the AOC’s role in insuring access to courts, promoting trust and confidence, and diversity. They also suggest that a simple cost/benefit analysis is not always the most appropriate measure. Likewise, a few commentators caution the council to remain mindful of the branch’s Strategic Plan, specifically, Goal 1 with respect to diversity, access and fairness. Finally, a few of the 29 criticisms defend particular programs such as CJER or staff for advisory committees.

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Only about a third of these 29 comments can be considered broad attacks on the fundamental underpinnings of the SEC report. Not surprisingly, these commentators urge the Council to go slow, seek greater input, study, and wait for other changes to take place. Specifically, two commentators, Judge Curtis E. A. Karnow and Kenneth Babcock of the Public Law Center challenge the SEC's reliance on certain data. Mr. Babcock complains "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 proof, Mr. Babcock points to the fact that he did not personally receive a survey from the SEC. Of course, Mr. Babcock's personal experience is hardly proof of his assertion, but, more importantly, he has been able to share his views-- as have several other legal aid organizations-- through this comment process.

Judge Karnow's criticisms are more precise. He claims the report's assertions that (1) judges are generally displeased with the AOC and (2) the CCMS project was a failure, are without evidentiary support. With respect to judges' views of the AOC, Judge Karnow points to the fact that only 15% of trial court judges responded to the SEC survey and those 15% are likely to be dominated by the dissatisfied. It must be acknowledged, however, that a CJA member survey, a survey of presiding judges, and this comment process show identical sentiments. It is unlikely that all four are the result of statistical anomalies or an unexplained mass refusal to participate by those satisfied with the work of the AOC.

Judge Karnow also takes exception to the SEC's assertion that "lack of acceptance" of the CCMS project is "well documented" (SEC Report at p. 27.) In fact, this assertion is well documented in reports from both the Executive and Legislative Branches (See audit report of CCMS by the California State Auditor February 2011, Report 2010-102 and the report of the Office of the State Chief Information Officer "Review of the California Court Case Management System" February 2010.) More importantly, the SEC report takes the AOC to task in a number of other areas in regard to CCMS. In particular, the failure of the AOC to secure a funding source for full implementation before going forward with the project. The notion that a project that cost hundreds of millions and has been cancelled with little to show for it is anything but a failure seems to defy reason.

Finally, a small number of commentators urge delaying implementation of the recommendations until a new Administrative Director is appointed or otherwise allowing the AOC to correct itself. Alexander B. Aikman states "New management can and will change the culture of the AOC..." and "[t]he new Administrative Director (AD) deserves the opportunity to study and make changes..." (See also the comments of Justice Richard Huffman and Judge Richard J. Loftus, Jr.)The comment of the California Commission on Access to Justice recommends no structural change without further study "under the direction of the Administrative Director." (For an excellent critique of Mr. Aikmen's comment, see the comment of Judge Kent Hamlin.)

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Remarkably, these commentators place great faith in a person whose identity is not yet known. More importantly, these comments reflect a fundamental question of governance primacy -- who should be responsible for setting policy for and overseeing the AOC? The SEC is of the view “[t]he Judicial Council, established by the California Constitution and chaired by the Chief Justice, is the governing body of the California courts. 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. The SEC is also of the view that a relaxed approach to setting policy and oversight is the root cause of the problems we face today. Despite the protestations of Judge Karnow, it appears judges agree with this assessment.

I am aware of the extraordinarily difficult task the Judicial Council has ahead. While many of the hundreds of comments supportive of the SEC report urge a “Just Do It” approach, the task will not be that simple. The stakes are high. If the Council is perceived as weak, failing to act or delaying reform, there will be dire consequences to an already beleaguered image among judges, the legislature, the executive branch, the media and the public. At the same time, the Council will be beset on all sides by powerful interests who wish to delay or stop implementation of the recommendations. The temptation to find weaker “middle ground” will be overwhelming, but such action will certainly betray the Council’s message of reform. The Council must be mindful of the effects of its actions on access, fairness and diversity. However, addressing these concerns must be accomplished without delaying implementation. Change is hard.

In my view, the Judicial Council should set a short timetable for a vote on implementation of the various recommendations. Special meetings should be convened to accommodate this schedule. Anyone wishing to speak in favor of or in opposition to a particular recommendation should be allowed to do so with appropriate time limits. This process will likely take a substantial amount of time, so Council members whose regular duties are affected should be accommodated with the use of assigned judges or other relief. All other Council business should be tabled until this process is complete. As recommendations are approved, members of the SEC should be appointed to oversee implementation and report back to the Council. This plan of action would allow the Council to make informed, intelligent decisions while sending a strong message that California’s Judicial Council is serious about reform.

Thank you for allowing me to make this comment.

Specific Comment - Recommendation/Chapter Number:

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