

The Superior Court
OF THE
State of California

SAN DIEGO

JULIA CRAIG KELETY
Judge of the Superior Court

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July 9, 2012

Attn: Invitations to Comment
Justice Douglas Miller
Administrative Office of the Courts
455 Golden Gate Ave.
San Francisco, CA 94102

Dear Justice Miller:

I am writing to comment upon the Strategic Evaluation Committee ("SEC") report and to urge the Judicial Council to take immediate action, not only to implement its recommendations, but also to undertake a complete restructuring of the Judicial Council and the Administrative Office of the Courts (AOC). I know that many others will be writing to you on this subject, and I debated whether my views would be redundant. However, I think it is extremely important that you hear from judges who have no political ax to grind, whose only concern is the strength and independence of the judiciary. I count myself among that group, and for that reason I am writing today.

When I was appointed to the San Diego Superior Court in 2003, I heard rumblings and grumblings about the AOC and its imperiousness in working with the courts. I had no experience or perspective to draw upon, and I discounted these comments. Further, I was fully involved in the process of learning to be a judge, and striving to be an excellent judge, and I had little time to concern myself with politics.

However, little by little, I became increasingly aware – and increasingly concerned – about the conduct of the AOC and the Judicial Council. My dawning realization that there was a problem likely began when the issue of mandatory court closures was before the Council, I believe in 2008. On one hand, to resolve the pending budget problems, it seemed that a court closure might be a reasonable and necessary step. However, on the other hand, I was deeply troubled by the way professional colleagues (whom I did not personally know) were treated by the Council and AOC. In court, we judges are bound by law and ethical considerations to give courteous due process to the most unpleasant self-represented litigant. And yet I learned that Judges who wished to

address the pending issues before the Judicial Council faced almost insurmountable issues even to be heard; and then members of the Council derided their concerns with contempt.

Those reports awoke in me an awareness and concern about what was occurring in San Francisco.

Other issues increasingly fueled my concern, among them the AOC's management of the CCMS project.

I have been involved with CCMS since approximately 2008, when I was assigned to the Probate Department in which I still preside. The Probate division uses CCMS V-3 as its case management system. In addition, I was one of the judges who traveled to Santa Ana on a number of occasions to work with the development of V-4. As a result, I have a better understanding of the pros and cons of CCMS than many of my colleagues across the state.

The good news is that, as a result of San Diego's early commitment to CCMS, our Probate Division now images all cases; and within the year, we will have implemented E-filing (which may help to mitigate the staff reductions that are coming our way as a result of this year's catastrophic budget). I feel as though our division slipped in "under the wire" to achieve a level of technology that will not be available to other courts in the state for the foreseeable future.

But the bad news is that CCMS was and is a problematic product. Yes, the courts statewide needed a case management system; yes, it made sense for it to be a standardized system; and yes, today in Probate we now have a system that enables imaging and E-filing. However, I can tell you that the CCMS system we have reminds me of the old toilet in my hall bathroom: to work properly, you must push the handle down with just the right amount of pressure; and if that doesn't work, you need to jiggle the handle; and if that doesn't work, you need to lift the cover and pull up the plunger; and then you need to stand there and make sure the plunger falls back down into the correct position. I can make it do its job; but that's not really the best way for a toilet to work.

The same applies with CCMS. I can look up a case or publish a tentative ruling. But just like the hall toilet, I have had to learn how to work around its deficiencies, to flip between screens filled with useless buttons and inscrutable instructions. Very little is intuitive and less is user-friendly or accessible in V-3. The year before I arrived in Probate, when V-3 went "live", the whole project was so unworkable that the probate court literally closed for a week while my predecessors and staff tried to figure out how to make the system print an intelligible calendar. Through heroic efforts of staff, we were able to learn the work-arounds to make CCMS work for us, and now our staff uses CCMS daily for case management. We all know what needs to be jiggled and how to work the plungers.

The point is that there appeared to be no one at the state level monitoring what was being developed and delivered to the courts for V-3 in any intelligent fashion. (After V-3, it seemed that there was a heightened awareness by the AOC that judges and staff should be involved in the development of V-4, but by then the damage had been done.) It seemed that the AOC had very little idea of what the courts needed, and its hired developer had even less. It was also clear that the Judicial Council had abdicated any real oversight of the project to the AOC. As a result, an extremely expensive undertaking has been largely wasted, and now any good has been thrown out with the bad, setting the courts back for years.

The failure to control the development of CCMS is among the most prominent of the failures of the Judicial Council and AOC, but beyond its price tag, it is just one of many examples of the Judicial Council's abdication of control to the AOC, which then acts without much concern for what the courts want or need.

An example was the media project undertaken a few years ago by AOC. I am not aware that any court asked for the help of the Judicial Council in dealing with requests for access by the media. I don't know whether the Judicial Council asked the AOC to develop a media policy. What I do know is that the AOC assembled a large committee, filled with media representatives, and created a new policy that would have transferred power away from the courts, without any articulated court need or reason for such a change. Fortunately, the proposal was dead on arrival, but the entire exercise demonstrated to me that the AOC chose priorities itself and did not serve the interests of the judicial branch.

I was also troubled by what appeared to me to be the reaction of the AOC and the Judicial Council to the increasing questions about the statewide management of the courts. I would have expected forthright and balanced responses. Instead, the responses were defensive and hostile, and factual assertions were unreliable. Further, I learned from a neutral and reliable source that after a well-known and respected Judge raised issues about AOC conduct, he was blackballed from serving on CJER faculty, although he had done so for years prior. With such reports, it is no surprise that a number of judges have expressed fear of retribution if they speak up about their concerns.

The examples I note above were among many other events over the years that led me to the reluctant conclusions that the Judicial Council was not a deliberative body, but instead a rubber stamp; and that the AOC was an uncontrolled bureaucracy whose prime directive was its own expansion. If an objective outsider like me would be drawn to these conclusions, there is little wonder that others (first individual judges, then the Alliance, then the Legislature) have done so as well.

When our Chief Justice took office in 2011, she inherited all these problems. She created the Strategic Evaluation Committee to evaluate the polarized positions that were no doubt bombarding her from her first moments in office. That Committee has now rendered a report that is extremely comprehensive and fair, establishing conclusively that

the AOC, as an institution, lacks credibility, and that the Judicial Council, as a body, has failed in its duty to oversee the AOC.

After the SEC report, the credibility of the Judicial Council and AOC is in tatters. Recent legislative action confirms this. To ignore the report or to make a few half-hearted gestures towards implementing its reforms cannot be an option.

For this reason, I conclude not only that the Judicial Council should implement the recommendations of the SEC; but also that the Judicial Council should completely reformulate itself and restructure the AOC, to address both its relationship with the courts that it is supposed to serve, and with the AOC, which it is supposed to oversee in the course of that service.

This important moment for the courts of California brings to mind the Constitutional Convention in 1787. Under the leadership of George Washington, the Convention did not merely adjust some of the provisions of the Articles of Incorporation; it threw the Articles aside and established a completely new form of government.

In the same way, today, California's courts do not need a revised version of the same old thing. To restore credibility with the legislature, the public, and, arguably most important, with judges like me, and to ensure that the Judicial Council can properly meet its constitutional charter without the disastrous results we now confront, a completely new Judicial Council must be established, as a representative and deliberative body. By the same token, the AOC must be completely restructured, so that it becomes a body that works for the Judicial Council rather than for itself.

Of all the decisions that Chief Justice Cantil-Sakauye will make during her tenure on the California Supreme Court, her response to the SEC report will be her most important legacy.

Respectfully submitted,



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San Diego, California

Cc: Chief Justice Cantil-Sakauye