

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: David R. Lampe **Title:** Judge

Organization: _____

Commenting on behalf of an organization

General Comment:

Public Comment of Judge David Lampe re: SEC Implementation; SP12-05

July 5, 2012

Dear Justice Miller, Justice Cantil-Sakauye, members of the Judicial Council and the Strategic Evaluation Committee:

My name is David R. Lampe. I am a judge of the Kern County Superior Court. I am a founding Director of the Alliance of California Judges.

I urge the Executive and Planning Committee, the Chief Justice, and the Judicial Council to immediately implement every recommendation of the Strategic Evaluation Committee. The AOC must be reduced, as set forth in the SEC recommendations, to its core statutory functions. Further, these organizational reforms must be accompanied by a demonstrated understanding by the Council of its proper and legal role, and its

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

All comments will become part of the public record.

determination to see to it that the AOC exists to foster that role, not frustrate it. Reform of the AOC will undoubtedly fail without a concomitant affirmation by the Judicial Council of the limitations on its own authority.

The California judiciary has lost its way. Over the past fifteen years the Judicial Council, under the leadership of former Chief Justice George, took it upon itself to fundamentally reshape the California judiciary. This was done under the banner of insuring a stable and adequate source of funding. The argument was made that uniformity and forced acquiescence to broad policies to be articulated solely by the Council and carried out by the AOC would result in efficiencies and accountability. The further argument was that this endeavor was necessary for the Legislative and Executive branches to recognize the Judiciary as a co-equal branch.

Along the way, judges were told to sacrifice their voices as independent constitutional officers, and instead speak with one voice--that of the Chief Justice and his alter ego, the appointed Council. Murmurs of discomfort were characterized as "declarations of war." To our discredit, judges obediently sat silent while the Council seized for itself the title and role never given to it by any legal authority, yet now emblazoned across its official documents: "the policymaking body" for the state's judges. The Council is no such thing.

The limits of the Council's powers are simply *and clearly* set forth in Article VI, section 6(d), as follows:

The limits of its powers are set forth in the California Constitution's Article VI, section 6(d) as follows:

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

Nowhere in this modest grant of authority can be seen an intent that the Council govern the trial courts. The very notion of Council governance is at odds with the provision's mandate that the Council be a *recommending* body. Nonetheless, the Council has for 15 years ignored this provision--though the former Chief Justice and AOC did try, unsuccessfully, to have it changed to give it express policymaking authority.

As the Council invented an extralegal role for itself, so did its administrative arm, the AOC, which in short order exercised powers on a par with (and arguably exceeding) those claimed by the Council. Along the way it grew from 250 employees to over 1100, and was allowed to operate with minimal Council oversight. As one AOC employee put it: "We wanted to be on the ground floor of an exciting opportunity: reshaping the judicial branch of California and being [able] to go home with pride in our minds in our hearts saying 'I did that.'" Just as the Council declared itself unbounded by the law, the AOC decided it would, and could do anything it saw fit, as long as it could even arguably be fit into one of the Council's extremely broad "policy" declarations.

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

All comments will become part of the public record.

While this unaccountable agency is the focus of the SEC report and this public comment period, we must remember that the AOC simply did that which the Council allowed, and even encouraged. The AOC takes no oath to the law, or to the constitution, but every member of the Council has done so, and now must give meaning to that oath by recognizing the limits of Council power set forth in the constitution, and by insisting that the AOC be no larger than required to carry out its core functions--to act as the Secretariat to the Council, and to perform functions mandated by statute.

Unless this substantial reduction takes place, we are in grave danger of losing the heart of what it means to be a judge. The value of our system lies in the idea that every judge is an independent decision-maker and an independent constitutional officer, deciding cases with courage, and with a careful view of the law. Our strength and power as a branch does not derive from money, but derives from our integrity. This integrity is enforced through the principle of neutrality, independence, and adherence to the principles of stare decisis in deciding only cases and controversies actually before us.

The current situation is at odds with this traditional view of justice. In addition to appearing to sanction efforts for full administrative control of the court system and fostering an insular organizational mentality, the AOC and Judicial Council subtly and increasingly appear to be moving in the direction of extra-constitutional authority over judicial decision-making, outside the process of normal appellate judicial review. This is happening in the form of centrally controlled and mandated judicial education, questionable legal opinions by the AOC's Office of General Counsel, and rule-making by the Judicial Council that has separation of powers concerns and turns judges into makers of policy. As judges are pressured to blindly accept the AOC's view of the law, and of the proper resolution of conflicts, we move ever closer to a judicial system where substantive law is interpreted and applied not by independent judges, but by unelected, unaccountable bureaucrats who control those judges, and whose actions are beyond public view, and beyond appellate review.

Yes, the AOC must be reformed, and the sooner the better. Every one of the carefully documented recommendations of the Strategic Evaluation Committee makes good sense, and the Council should step in and carry out its clear duty to implement them. If the Council delays, change will nonetheless come, but it will be change brought about by others and forced upon the Council.

Finally, the Chief Justice should move forward with an additional initiative to create a democratic Judicial Council selection process and structure which will guarantee that the constraints of Article VI are respected.

Very truly yours,

David R. Lampe

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

All comments will become part of the public record.