

## 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](http://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](mailto:invitations@jud.ca.gov)

Please include the following information:

**Name:** Kathleen E. O'Leary    **Title:** Presiding Justice

**Organization:** Fourth District Court of Appeal, Division Three (Orange County)

**Commenting on behalf of an organization**

*General Comment:* I have read the SEC report in its entirety and considered each of its recommendations. Having done so, I welcome the opportunity to comment. I apologize at the outset for the length of this comment, but reasoned analysis of a 221 page report unavoidably results in a lengthy comment.

In reviewing the comments on the SEC report that have been submitted thus far, I was struck by the brevity of a significant number of the comments. Many of these missives are short emails that simply repeat a rote mantra urging the complete and immediate adoption of all of the SEC recommendations without any reasons stated or reference to a particular recommendation. The length of the SEC report and the breadth of its recommendations require more than an unsupported general comment. In considering the comments, I would urge the council to not just count the number of comments on the opposing sides, but consider the weight of the reasoning behind the comments.

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My comments focus on the SEC report and its recommendation in the context of the Judicial Council's constitutional mandate to improve the administration of justice, the role of the AOC, the performance of the AOC, and the implementation challenges presented by many of the recommendations.

#### Constitutional mandate

Under Article 6, section 6, of the California Constitution, to improve the administration of justice, the Judicial Council is required to 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. Article 6 further provides that the council may appoint an Administrative Director of the Courts to perform functions delegated by the council or the Chief Justice. And it is these delegated functions that define the mission and scope of the AOC's work.

The SEC report primarily focuses on the services the AOC provides to the courts, and especially the trial courts. I agree that one of the primary roles and core functions of the AOC is providing service to the courts. But it is not only the courts the constitution contemplated as beneficiaries of the AOC's work. The constitutional charge to the council is to improve the administration of justice. Thereafter, the constitution describes the tasks the council must perform in carrying out its mission to improve the administration of justice. The implicit beneficiaries of the constitutional charge are the people who seek access to justice through the California courts.

The SEC report emphasizes the role the AOC must play in relation to the council and the courts. (Recommendation No. 4-2: The primary role and orientation of the AOC must be as a service provider to the Judicial Council and the courts.) The report presents a lengthy critique of AOC operations as it pertains to the services it provides to the courts. It makes numerous recommendations as to how services to the courts can be improved and how the AOC can become more efficient in its operation. Its recommendations are categorized in the report as pertaining to Judicial Council Oversight, Organizational Structure, Management Structure, Systems, and Processes, AOC Divisions and Specialized Offices, AOC Budgets, Staffing Levels, and Other Issues.

There is no category that addresses the needs of the people of California. Arguably any improvement in the efficiency of the AOC could benefit the people we serve. But the fact the SEC report concentrates almost entirely on the perceived court service deficiencies of the organization and the failure of the AOC to embrace its role as a service provider to the courts, is alarming. It suggests the committee may have lost sight of the broader mission of the AOC. In addition to serving the courts, the AOC must assist the council in carrying out the council's constitutional directive to improve the administration of justice.

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I know and respect many of the members of the committee, and I have personal knowledge of their commitment to increasing access to justice. So I assume the exclusion of recommendations intended to more directly improve the administration of justice must be due to a belief that the committee's charge was limited. If the purpose of the report was limited to pointing out operational deficiencies in the AOC primarily from the perspective of the courts, it is in this context that we should view the SEC report. Unfortunately many of those who have commented suggest that the SEC report is conclusive. Without greater input from other critical stakeholders in our justice system such as members of the bar, legal services organizations, community leaders, and others, no report on the AOC could be complete, accurate, or conclusive.

It is then incumbent on the council to view the SEC as an operational critique of the AOC and consider the SEC recommendations in the larger context of its constitutional and statutory mandates. To suggest the council should immediately and completely adopt the recommendations in the SEC report and implement all of the recommendations without further consideration is not only irresponsible, it urges the council to abdicate its responsibility under the constitution.

#### The role of the AOC

Although perhaps not stated as such, an obvious conclusion of the SEC report is that the AOC has become a rogue organization. If the Chief Justice and the council conclude the AOC has exceeded the authority delegated to it by the council, the Chief Justice and the council must take appropriate action.

Rather than curtail the role of the AOC, some of the SEC recommendations suggest an expansion of the authority of the AOC in the area of rule making. Recommendation No. 7-6, calls for "a review of the AOC's rule making process." Under the constitution, the council may not delegate the adopting of rules of court administration, practice and procedure. To suggest the AOC is making rules is inconsistent with the constitution. It is also inconsistent with practice. As the SEC acknowledges, proposed rules are referred to appropriate advisory committees and put out for public comment before they are presented to the council. There is no AOC rule making process. Rather the AOC gathers information to inform the council in its rule making process.

Recommendation No. 7-6 also suggests that legislative "proposals generated through [CFCC]" be limited to those required by court decisions. Are legislative proposals made by advisory committees and task forces staffed by CFCC viewed as "proposals generated through [CFCC]?" If that is the SEC's view, such a recommendation would clearly infringe on the right of any judge on an advisory committee or task force staffed by CFCC to propose legislation that he or she believes improves the administration of justice. As an independent constitutional officer, judges have the right to propose legislation aimed at improving the administration of justice. An advisory committee or the council may choose not to support such any legislative proposal, but to constrain a judge from making the proposal because it is "generated through [CFCC]" is just plain wrong.

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Recommendation No. 7-9 recommends combining resources for self-represented litigants. I agree with the recommendation because it is consistent with what the Self-Represented Litigants Task Force has recommended to the council in the past and what is being done in courts throughout the state presently. My objection is with the inference that the decision to restructure services to self-represented litigants is an AOC function. It is not. Any decision in this regard is one for the council, guided by input from the courts and appropriate advisory committees and task forces.

Recommendation No. 7-57 states: The AOC must seek the fully informed input and collaboration of the courts before undertaking significant projects or branch-wide initiatives that impact the courts. Again, the substance of the recommendation regarding input from and collaboration with the courts is appropriate, but the inference that the AOC has the authority to undertake significant projects or branch-wide initiatives without the approval of the council is wrong. Under the constitution, the AOC must take its direction from the council.

These are just a few examples of how the SEC report fails to clearly recognize the authority of the council and define the limited authority of the AOC.

#### Performance of the AOC

The Chief Justice appointed and directed the SEC committee “to conduct an in-depth review of the AOC with an eye toward improving” the AOC. Although it considered input from a small number of AOC employees, the SEC report is essentially a performance evaluation of the AOC from the perspective of the courts – in large part the trial courts.

The report demonstrates the committee did indeed conduct a major review of AOC operations and the organizational structure. One of the first significant steps the committee took was the survey that was sent to sitting judicial officers, retired judicial officers, court clerks, administrators, some justice partners, and others. I was one of the many judicial officers who responded to the survey. I was asked for personal demographic data such as current position, tenure on the bench, etc. I was then asked to describe the AOC services that my court received and asked to evaluate the quality of those services. I responded with praise for the AOC on some services, but offered constructive criticism on others.

I was not asked to offer a critique or any suggestions as to the organizational structure of the AOC. Having served more than 30 years on the bench and having served as a presiding judge of the Municipal Court, Superior Court, and the first unified trial court in my county, a judicial council member, a chair and member of various council advisory committees, I would have appreciated an opportunity to comment on any plan to dramatically restructure the AOC. I also would have liked an opportunity to comment, not just on the services my current court receives, but on the statewide services the AOC provides to the branch past and present.

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I appreciate the design of a survey rarely satisfies all of the participants. So although I wish the survey had provided more avenues for input, I applaud the committee for sending out the survey. It would be very helpful to have the responses to the survey compiled and reported in a fashion similar to the compilations produced by the AOC when an issue is sent out for comment. In this case it may be appropriate to do so without identifying the respondent.

The SEC report provides valuable information, but it should not be used as a blueprint to restructure the AOC. As the committee indicated, it “remains mindful that its ultimate task is simply to provide recommendations it believes will make the AOC more transparent, accountable, and efficient.” The committee recognized its limitations. The SEC surveys were not intended “to form the basis for a scientific or quantitative analyses.” No staff support was provided to the committee other than assistance by a Regional Director in gathering information. The SEC was not provided with resources “to conduct employee workload studies, detailed program analysis, extensive fiscal analysis, or comprehensive classification and compensation studies.”

Without the benefit of employee workload studies, classification studies, or compensation studies the SEC recommends a number of positions be eliminated, others be reclassified, and proposes compensation levels for particular positions. A chapter of the report is devoted to staffing levels. There are even recommendations regarding the names that should be assigned to the various component parts of the AOC. (Recommendation No. 7-64: The [Office of Court Construction and Management] should be renamed the Office of Court Construction and Facilities Management Services.) Without the benefit of “detailed program analysis,” the SEC also recommends the elimination of various programs.

To embrace and adopt recommendations that are admittedly lacking the foundation upon which such recommendations routinely and properly rely, would be unwise. The work of the committee was extraordinarily helpful in highlighting real and perceived deficiencies in the AOC’s performance. The report spots a significant number of issues that deserve attention, and in some cases need correction. But the process of resolving these issues should be supported by appropriate resources such as employee workload studies, detailed program analysis, extensive fiscal analysis, comprehensive classification and compensation studies, and the like.

Lastly, as part of its reorganization and downsizing, the SEC recommends the AOC employ budget review techniques such as zero-based budgeting. (Recommendation No. 8-11.) Zero-based budgeting is a well recognized and credible budget principle and should be implemented throughout the branch. It is not fiscally responsible to simply increase or decrease trial or appellate court budgets based on across the board percentages. The AOC and the courts should be required to build their budgets from the ground up. This is the only way the council will be able to ascertain areas of historic underfunding and historic overfunding. The time has come for the council to re-allocate resources based on need.

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## Implementation of recommendations

As the SEC states in the letter it sent accompanying the report, “It is the hope of the committee that the recommendations contained within this report provide a foundation for [the the Chief Justice’s] continuing efforts to enhance transparency, accountability, and efficiency of the AOC.” The committee’s conclusions that the AOC must refocus, restructure, down-size, and improve its internal processes may be reasonable conclusions. But I was struck by a comment from a judge who opined, “The reason for [the AOC’s] growth is not important, but the result of the growth is.” It represents an unfortunate mindset. I think the council should focus on how and why any deficiency within the AOC evolved so that the council will be better prepared to guide and oversee the AOC in the future.

Again, as the SEC recommends the council must “take an active role in overseeing and monitoring the AOC.” This would include a review and evaluation of all of the SEC recommendations. After deciding which of the SEC recommendations should be adopted, the council will then need to decide what priority to assign each of the recommendations in light of the current judicial branch fiscal crisis.

Recommendations that are approved and adopted by the council should be prioritized and implemented as soon as practicable. The cost-benefit analysis frequently suggested by the report should be employed where deemed appropriate by the council.

Those who suggest that all of the recommendations should be adopted by the council and immediately implemented overlook the current reality. Not only has the council and the AOC suffered unprecedented funding reductions, AOC staff has been dramatically reduced. Implementation of many of the SEC recommendations will be costly and labor intensive. (Examples of costly and labor intensive recommendations include: No. 6-5: recommends a comprehensive review of the AOC position classification system, No. 6-6: recommends a comprehensive review of the AOC compensation system, No. 6-7 recommends the AOC develop and make public a description of the fiscal and budget process, No. 6-8 recommends the AOC develop a process to better assess the fiscal and operational impacts of proposed rules on the courts, including seeking earlier input from the courts before proposed rules are submitted for formal review and establish a process to survey judges and court executive officers about the fiscal and operational impacts of rules that are adopted, No. 7-41 recommends a gradual, prioritized review of all HR policies and practices, No. 7-44 recommends a reexamination of technology policies in the judicial branch, No. 7-65 recommends a cost-benefit analysis of the entire scope of OCCM operations, and No. 7-66 recommends a consultant report as a necessary part of a reevaluation of the current facilities maintenance program.)

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Some suggest that further study, or even consideration and evaluation of the recommendations, would amount to a delay tactic. On the contrary, to adopt wholesale all of the SEC recommendations without meaningful review by the council would be irresponsible. We in the judicial branch have a tradition of deciding issues on the merits after all the evidence has been received. I would hope the council would proceed in a similar fashion in making decisions about the SEC recommendations.

#### Conclusion

The SEC report is unprecedented and comes at a critical point for the judicial branch. All of the information and recommendations provided in the report are worthy of consideration. We in the branch may differ as to the wisdom or efficacy of certain recommendations or the validity of some information or conclusions, but we must remember that the report is the culmination of a great deal of work by a group of dedicated judges assisted by qualified advisory members.

Some of the discourse that is evolving is troubling because it is so injudicious. Many of the comments read like battle cries, not reasoned critiques. While I find many of the SEC's recommendations unsound, question much of the information contained in the report, and disagree with numerous of its conclusions, I have attempted to express those views in a respectful manner. The council's consideration of my views would be greatly appreciated.

Although I can think of ways to have spent my weekend that would have been more fun, I thank you for the opportunity to comment.

*Specific Comment - Recommendation/Chapter Number:*

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