

**Written Comments Received for
June 21–22, 2012, Judicial Council Meeting**

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1. Hon. Beth Labson Freeman, Presiding Judge	Superior Court of California, County of San Mateo	Endorsement of the recommendations and implementation of the Strategic Evaluation Committee Report	June 11	4
2. Hon. Frederick Paul Horn, Chair of the Court Security and Emergency Response Task Force	Superior Court of California, County of Orange	Final Report of the Court Emergency Response and Security Task Force	June 6	5-9
3. Hon. Laurie M. Earl, Presiding Judge	Superior Court of California, County of San Sacramento	Endorsement of the recommendations in the Strategic Evaluation Committee Report and support for an implementation plan	June 14	10-11
4. Hon. Ronald B. Robie, Chair and Joanne Caruso, Vice Chair	California Commission on Access to Justice	Comments on the Strategic Evaluation Committee Report	June 14	12-16
5. Hon. Michael G. Bush, Presiding Judge	Superior Court of California, County of Kern	Endorsement of the recommendations and implementation of the Strategic Evaluation Committee Report	June 15	17
6. Hon. Judith D. McConnell, Presiding Justice	California Court of Appeal, Fourth District, Division One	Concerns regarding the Strategic Evaluation Committee Report	June 18	18-19

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7. Hon. Kathleen E. O’Leary, Presiding Justice	California, Court of Appeal, Fourth District, Division Three	Comments on the Strategic Evaluation Committee Report	June 18	20-23
8. Hon. Richard Scheuler, Presiding Judge	Superior Court of California, County of Tehama	Comments on the Strategic Evaluation Committee Report	June 18	24-27
9. Ms. Martha L. Passalaqua, business owner of Stanislaus County	On her own behalf	Opposition to a reduction of the court fund balance and emergency reserves for the Superior Court of California, County of Stanislaus	June 18	28
10. Mr. Roldon P. Sutton, Jr., citizen of Stanislaus County	On his own behalf	Opposition to a reduction of the court fund balance and emergency reserves for the Superior Court of California, County of Stanislaus	June 18	29
11. Ms. Pamela L. Sutton, citizen of Stanislaus County	On her own behalf	Opposition to a reduction of the court fund balance and emergency reserves for the Superior Court of California, County of Stanislaus	June 18	30
12. Hon. Lee Smalley Edmon, Presiding Judge	Superior Court of California, County of Los Angeles	Endorsement of the Strategic Evaluation Committee Report	June 19	31-32

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13. Mr. Michael A. Fischer, Attorney at Law	Retired Senior Attorney, Administrative Office of the Courts, Office of the General Counsel	Comments on the Report of the Strategic Evaluation Committee	June 19	33-37
14. Hon. Ronald B. Robie, Associate Justice and Chair and Hon. Robert L. Dondero, Associate Justice and member	Center for Judicial Education and Research Governing Committee	Comments on the Strategic Evaluation Committee Report with reference to judicial branch education	June 20	38-39
15. Ms. Leslie Starr Heimov, Executive Director	Children's Law Center of California	Strategic Evaluation Committee Report with reference to the court appointed counsel program	June 20	40-41
16. Mr. J. Clark Kelso	On his own behalf	Recommendation for the Strategic Evaluation Committee Report	June 21	42-44



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

HALL OF JUSTICE
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REDWOOD CITY, CALIFORNIA 94063

BETH LABSON FREEMAN
PRESIDING JUDGE

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June 8, 2012

The Honorable Tani Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

On behalf of the judges of the San Mateo Superior Court, I write to express our gratitude for your bold move last year to create the Strategic Evaluation Committee and to appoint judges to the SEC who have demonstrated a firm commitment to the administration of justice in California. We especially appreciate your foresight in charging the SEC with full responsibility for evaluating the current functioning of the Administrative Office of the Courts without limitation.

The Report issued by the SEC is a landmark document. It carefully and candidly articulates a clear assessment of the current functioning of the AOC. The Report provides the Judicial Branch with a roadmap to achieve success in the administration of the courts over the next decade and beyond. The detailed recommendations for improvement are especially important for the Judicial Branch's future success as we come to terms with the dramatic reduction in our revenue. Trial and Appellate courts need a fully functioning, credible and transparent Administrative Office of the Courts now, more than ever.

We urge the Judicial Council to implement the recommendations of the SEC. Having carefully read the entire report, I endorse all of its recommendations and request that the Judicial Council move quickly to publically accept the evaluation as accurate and to implement the SEC's recommendations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Beth Labson Freeman".

Beth Labson Freeman
Presiding Judge



CHAMBERS OF
FREDERICK P. HORN
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Superior Court of California County of Orange

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June 5, 2012

Hon. Douglas P. Miller
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, California 92501

Re: Final Report of the Court Emergency Response and Security Task Force

Dear Justice Miller:

Thank you for taking the time to speak with me regarding the recent release of the report of the Strategic Evaluation Committee (SEC) and how it relates to the work of the Court Emergency Response and Security Task Force, which I chair. The task force and I wanted to share with you, at the earliest moment, some background about the task force and the work that the task force has conducted over the past five years. Our intent is to provide you with preliminary information that may assist you and the Executive and Planning Committee as you determine the process for the Judicial Council's consideration of the SEC's report and recommendations regarding court security. We look forward to meeting with you later this month to discuss these important issues, and would also like to offer to you, the Executive and Planning Committee, and the Judicial Council any assistance the task force can provide relative to determining how court security should be implemented in the judicial branch.

Background

On August 15, 2007, Chief Justice Ronald M. George (Ret.) established the Judicial Council's Court Emergency Response and Security Task Force, appointing me as its chair. In forming the task force, the Chief Justice brought together representatives from existing statewide advisory groups that had been formed to address security and emergency planning in the trial and appellate courts.

The charge of the task force requires it to:

- Evaluate emergency planning, continuity of operations, court security, and personal security issues and develop recommendations for the Judicial Council to manage, maintain, and improve security in

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the courts through statewide systems and progressive initiatives to increase efficiency, effectiveness, and cost-saving measures in California;

- Provide an interim report to the Judicial Council after 18 months; and
- Provide a final report of recommendations to the Judicial Council at the end of its term.

The task force was originally scheduled to complete its work and report to the Judicial Council by August 2010; that deadline was extended first to December 2011 and then to June 2012. These extensions were due to the significant changes in the funding of court security due to the intervening realignment legislation. In light of our conversation today, the task force will delay finalizing the report, so that it can work with you and the Judicial Council to determine the best approach to completing a report that best addresses the crucial security needs of the branch.

For the past five years, the task force has been working on recommendations to improve security in California. Examples of recommendations include:

1. Determining how best to provide comprehensive court security to judges, courts, staff, and the public we serve;
2. The preparation and review of (1) court security plans, (2) emergency plans, and (3) continuity of operations plans;
3. Providing education to judges and court staff concerning personal and court security;
4. Developing a branchwide threat and incident program;
5. Reviewing and evaluating branchwide staffing and service standards; and
6. Establishing a standing Court Security Advisory Committee to provide oversight on these efforts and continue to review and evaluate court security and advise the Judicial Council.

The SEC Report

The task force has reviewed the recommendations of the SEC. The task force agrees with the SEC overarching recommendations of limiting the AOC's functions to the charge of the organization, eliminating redundancies, and performing services with the greatest amount of efficiency and transparency. However, the task force preliminarily takes issue with several of the specific SEC security-related recommendations described below.

Recommendation No. 7-54: The SEC suggests that there is no need for a stand-alone Office of Emergency Response and Security (OERS). The task force respectfully disagrees. Most of the functions of the current OERS require specialized training and experience that cannot be performed effectively by administrative staff personnel untrained in judicial security and law enforcement

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techniques. Physical security recommendations, building design, threat assessments, and privacy protection techniques should appropriately remain the responsibility of OERS.

Unlike virtually any other institution in our society, the judicial branch has the authority to compel citizens to attend court, involuntarily, as jurors, witnesses, or parties in connection with civil, family, criminal, dependency, or other cases that are pending. The task force submits that with this authority comes a moral responsibility to provide a civilized environment uncorrupted by threats and avoidable risks to those who enter the courthouse. In the view of the task force, a stand-alone OERS appropriately placed within the organizational structure is crucial to optimizing the delivery of a secure environment.

Recommendation No. 7-55: The SEC suggests that the functions of the OERS should be refocused and limited to those reasonably required by statute or by rules of court. At this time, without addressing the suggestion to limit the functions of OERS, the task force respectfully agrees that OERS should continue the most important core functions of assisting in the preparation and review of court security plans for new and existing facilities; emergency plans; and continuity of operations plans; as well as providing support concerning court security equipment, if requested by the courts.

Recommendation No. 7-56: The SEC recommends elimination of online protection functions. The task force respectfully disagrees.

In the highly specialized world of dignitary protection and threat assessment, experts agree that privacy protection, namely the ability to “hide in plain sight,” is the first line of defense for judicial officers. Judicial threat assessment studies undertaken by the U.S. Marshals Service and others make it clear that judges are most vulnerable away from the courthouses where their security provider is located. Once a judge leaves the building, he or she is not normally assigned a protective detail.

To put this in historical context, in the last century, 34 judges were killed by non-family members, 13 were killed at the courthouse (most of which were killed before weapon screening procedures were instituted), another 21 were killed away from the courthouse. Of the judges killed away from the courthouse 10 were killed in transit and 11 were killed at home. In addition, 4 spouses were also killed. It is beyond dispute that judges are most vulnerable at home.

Protecting home address information has become critical to improving a judge’s safety. The California Legislature has specifically recognized that danger and provided California Public Safety Officials with home address privacy protection tools not generally available to other members of the public. (See Gov. Code sections 6254.21 and 6254.24; Elections Code section 2166.7; Vehicle Code sections 1808.2, 1808.4, and 1808.6)).

One of the collateral impacts of an effective entry weapons screening program is that it forces potential stalkers and attackers to focus their efforts to attack judges away from the courthouse. In the Internet age, obtaining home address information online can be very easy IF the judge does not take early affirmative steps to block or mask that information.

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Many of the solved cases in the last several decades wherein suspects have stalked, harassed, or killed a judge involve pre-planning and research on the part of the suspect, primarily through Internet searches and public records checks and NOT by physically following the target, which would expose the stalker to potential detection.

The SEC report suggests that the OERS online security function may be better left to local courts or to judicial officers themselves, citing a recent California Judges Association arrangement with a private vendor to submit opt-out demands of Internet data vendors for an annual fee. The task force respectfully disagrees with the SEC's suggestion because leaving the responsibility to the individual judges will likely mean it will not be done by judges who do not have the skill set to do it. It is also counter-productive to pull judges away from their judicial functions in order for them to sit at their keyboards and try to figure this out individually.

Moreover, the release of an outsourced list of home addresses and telephone numbers of all of our judicial officers should never be entrusted to a private vendor who has not undergone a law enforcement background check. The loss of this information could be disastrous to the judicial branch.

In addition, the expense of hiring an outside vendor to perform the Internet opt-out demand (See Gov. Code section 6254.21 (c), et seq.) would be far more expensive. The current cost for most private online privacy protection services is more than \$100 per person. There are 2,044 judicial officers and approximately 3,400 additional family members currently served by the OERS Judicial Internet Opt-out Program. The expense in outsourcing this task would be much more costly than doing it in house.

Having one trusted, background-checked OERS employee handling all statewide judicial opt-out demands is much more effective and cost-efficient than training 58 local court administrative staff members or 2,000+ judicial officers to perform the same task.

Lastly, OERS uses the updated current national list of Internet data vendors published by the California Office of Privacy Protection (COPP). Many of the private online protection services do not make opt-out demands of the major Internet data vendors on the COPP list. A judge using a private online opt-out service which does not cover all of the major Internet data vendors would be given a false sense of security and still be exposed.

The task force strongly recommends that the OERS judicial Internet opt-out program remain intact.

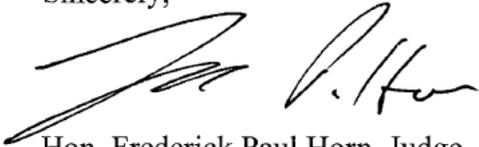
Finally, the task force also recommends that if the Judicial Council chooses to follow or implement the SEC recommendations relating to court security functions, that it allow the task force or the proposed Court Security Advisory Committee to provide input regarding future judicial branch security-related issues.

June 5, 2012

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We look forward to meeting with you later this month at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "F. P. Horn". The signature is fluid and cursive, with a large initial "F" and "H".

Hon. Frederick Paul Horn, Judge
Superior Court of California, County of Orange

FPH/lg

By e-mail

cc: Jody Patel, Interim Administrative Director of the Courts
Curt Soderlund, Interim Chief Deputy Director



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

LAURIE M. EARL
PRESIDING JUDGE
DEPARTMENT 47

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June 13, 2012

The Honorable Tani Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Strategic Evaluation Committee Report

Chief Justice Cantil-Sakauye and Members of the Judicial Council,

On March 9, 2011, in an effort to promote transparency, accountability and efficiency, Chief Justice Cantil-Sakauye created the Strategic Evaluation Committee (SEC) to conduct an in-depth review of the AOC and its organizational structure. The committee was comprised of 14 judges both sitting and retired, from various sized courts and with varying judicial experience. In addition, the committee was served by four advisory members with impressive credentials: David Caffrey, Cabinet Secretary to Governor Deukmejian and Deputy Chief of Staff to Governor Wilson; Diane Cummins, Chief Fiscal Policy Advisor to Senate Pro Tem and Chief Deputy Director of Finance to Governor Wilson; Mary McQueen, President, National Center for State Courts; and James Tilton, former Secretary of the California Department of Corrections. The Chief Justice should be commended for creating this committee, and for the strength of its members. The creation and charge of the committee demonstrates a commitment to the Judicial Branch's successful administration of justice.

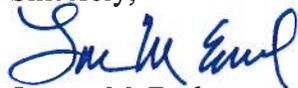
As Justice Arthur Scotland, former Chair of the SEC represented in his January 10, 2012 report to the Judicial Council, the responsibility of the SEC was to undertake a thorough, conscientious, inclusive and objective examination and evaluation of the role, functions, organizational structure, methods of operation, and staffing of the AOC, and to make findings and recommendations regarding whether changes should be made to ensure that the AOC performs only essential functions in an appropriate, beneficial, cost-effective, and transparent manner. I appreciate that the work of the SEC members was exhaustive and exhausting and applaud them for their commitment to justice as well.

The Honorable Tani Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
June 13, 2012
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On May 24, 2012, the SEC delivered its final report to the Chief Justice and will formally present it to the Judicial Council at its June meeting. I have carefully read the entire report. It is detailed and revealing in its candidness. The report reflects what a large number of trial judges around the state feel, that the current relationship between the AOC, the Judicial Council, and the trial courts is fractured and repair will take real work. As branch leaders we should not shy from this task. In keeping with the Chief Justice's vision for accountability, we should welcome it.

I fully embrace the findings and recommendations of the SEC and I urge the Judicial Council to publicly do the same and immediately develop an implementation plan. In furtherance of transparency, I urge the Judicial Council to rely on SEC members, including those whom the Chief Justice recently appointed as incoming Judicial Council members and Presiding Judges to be actively involved in this effort. The ongoing success of the Judicial Branch is at a pivotal point. Change must occur. Trial courts and the public we serve are looking for your leadership in getting us there.

Sincerely,



Laurie M. Earl

*Presiding Judge of the
Sacramento Superior Court*

cc: Judicial Council Members
Hon. Charles Wachob
Hon. Brian L. McCabe

CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

c/o State Bar of California - 180 Howard Street - San Francisco, CA 94105 - (415) 538-2251- (415) 538-2524/fax

June 14, 2012

Hon. Tani Cantil-Sakauye
Chief Justice of California
350 McAllister Street
San Francisco, CA 94102

Re: Comments on the Strategic Evaluation Committee Report

Dear Chief Justice Cantil-Sakauye:

On behalf of the California Commission on Access to Justice, we are writing to provide some feedback and context for the Council as it considers the recommendations of the Strategic Evaluation Committee.

It is apparent that a significant amount of work went into developing this lengthy, detailed report. There are clearly some good recommendations that the Judicial Council should seriously consider, and we would welcome the opportunity to work with the Judicial Council and others as recommendations are being considered.

However, we urge the Council to avoid adopting recommendations prematurely without thoroughly studying their implications – and getting input from those who would be affected. There is a great deal of pressure to move quickly – both to respond to the report in a timely way and to deal with necessary budget cutbacks. But many of the issues highlighted in the report have evolved over several years as the AOC undertook a wide range of obligations to implement the statewide judicial system. Solutions may also take some time, as solutions are crafted very thoughtfully and the basis for the recommendations carefully studied before recommendations are adopted wholesale.

We believe the process you decide to follow in your consideration of these recommendations is especially critical. While many of the report's recommendations are already being addressed by the Council and the AOC, the process for considering the additional recommendations in this report is of prime concern.

We were disappointed that judicial branch stakeholders were not given the opportunity to provide input on a draft of this report before it was finalized, especially since the report complains that the AOC did not always seek input and dissenting views of courts and judges. Circulating a draft for comment would have helped avoid some of the mistakes that the final report contains. Seeking comment on a draft of the report would also have helped lower the level of rancorous discourse that has greeted the release of the report - reactions that now have nowhere to go but might have been funneled into a valuable vetting of the report through a public comment period.

The Commission is also concerned that the report is unduly negative; improperly complains about specific individuals rather than focusing on the organization; and does not address all the positive, valuable work done by the AOC. The negative tone and the lack of balance seem to undermine the value of the recommendations. Many positive comments and responses that we are aware were made to the Committee were not included in the report. In a report intended to promote transparency and accountability, exclusion of anything that would balance criticism seems inappropriate. Reports can have productive suggestions while also balancing those constructive criticisms with a reflection of the good work and the agency's important achievements.

For these reasons, we urge the Council to avoid a rush to judgment, but rather to establish a deliberative process that finds the right balance of identifying the recommendations that deserve serious consideration, and those that appear sound on first reading, but on careful examination are really not wise and should not be implemented.

Access Commission Collaboration with the AOC:

There are many ways in which the Access to Justice Commission has worked collaboratively with the AOC since the Commission's founding in 1997, given our shared goal of improving access to justice in California. These collaborations have made the work of the Commission and the AOC more effective, including the following projects that involved the Center for Children, Families and the Courts (CFCC); the Office of Government Affairs (OGA); CJER; and other units:

- Expanding Availability of Self-Help Centers in every county in the state, and through the award-winning self-help website;
- Improving Language Access for the high percentage of Californians with limited English proficiency;
- Implementing Shriver Pilot Projects to expand representation for those who are unable to self-represent, with the goal of achieving fairer judicial outcomes;
- Expanding access in rural areas, where resources are non-existent and the needs of low-income Californians is great; and
- Adoption of the Access Protocol by the Judicial Council, to ensure broad and thoughtful input on all proposals being considered to determine if they expanded or hindered access.

Comment on Specific Proposals:

The following specific proposals from the SEC Report are of particular concern to the Commission:

- Grants (P. 85) – The suggestion that CFCC and other areas of the AOC pursue grants that are not high priority, not approved through the correct procedures, or are not cost-effective will prove to be an illusory concern. The amount of funding CFCC has brought into the judicial system is staggering, and has tremendously benefited the courts and the people of California. We have been involved with several grants they were able to obtain over the years, and proper approval procedures were always followed. These grants help leverage significant resources for the branch, and the AOC and the Judicial Council are in an ideal position to help ensure that funding is provided across the state – funds that local courts could not have obtained on their own. (The comment that these grants are pursued to “provide a measure of job security to those in the division” is uncalled for and demeans the commitment of valuable staff to the goals of the judicial branch.)

- Attorneys Staffing Committees (P. 87) – Concern is raised about whether attorneys should be staffing Committees and Task Forces. While this concern may be warranted in certain circumstances and should be examined on a case-by-case basis, our experience is that the attorneys often provide input at a very high level, and that lower-level administrative tasks are often handled by other staff.
- Publications and Resources (P. 87) – The concern that the CFCC has provided too many publications and resources devalues the wealth of materials that the Center has provided to help strengthen local courts and legal aid programs serving their communities. And in recent years, those resources have been available in electronic format, making distribution more efficient and making the publications more accessible. The AOC’s award-winning self-help website is one key example of the value of the publications and resources provided by the Council and its staff. This website has thousands of pages of legal information, court rules and forms, and other key resources – also available in Spanish and many other languages – that are regularly used by self-represented litigants, lawyers, and court staff as well. Access to this kind of readily-available information helps avoid delays and leads to local courts operating more efficiently.
- Obtaining Input from Courts and Other Stakeholders (P. 26, 87) – Ironically, while not seeking comment itself and then complaining that the AOC developed proposals “in a near-vacuum”, also complains about all the input and information the AOC requests from local courts. In our experience, the AOC has sought input broadly from the Commission, the local bar, local courts, and other constituents – while also balancing how much input and information to seek. We have had discussions with AOC staff about the need to avoid requests that are burdensome to local courts and to ensure the collection of valuable information designed to quantify the need and clarify the impact of specific projects.
- Coordination – As mentioned above, the Report recommends improved coordination within CFCC. However, it is our experience that the impact of the high level of coordination within CFCC is readily apparent. This comment is another example of the need to very carefully review the report’s recommendations since they were written with a great amount of input, but not necessarily from individuals or organizations with the actual knowledge of how work was being done – problems that would have been resolved with the opportunity to comment on the draft.
- Language Access – While the report suggests that the involvement of the Office of Government Affairs (OGA) and the Office of General Counsel (OGC) with the language access program may not have been necessary, the Commission understands that OGA and OGC have been instrumental in assisting the Courts with implementation of the Interpreter Act, establishing a stable interpreter employment system, and coordination and efficiencies related to interpreter services and funding. The Court Interpreter Program carries out core functions to ensure compliance with statutory and constitutional mandates related to language access. This is a particularly important time to have the involvement of both OGA and OGC because the U. S. Department of Justice is pursuing efforts to ensure compliance with federal language access mandates. All federal funding of the judicial branch is at risk if the branch is out-of-compliance with applicable federal laws regarding language access.

- Government Affairs - the Access to Justice Commission has worked closely with the Office of Government Affairs on shaping legislation and policy in the Legislature and they have always provided invaluable insight and been supporters of efforts to ensure access to the judicial system.
- Kleps Awards - Kleps awards have been a central part of the AOC's efforts to highlight best practices that increase court efficiencies as well as programs that increase access to the courts for those most vulnerable. Although these awards have already been suspended as a cost-saving matter, we hope that that suspension is temporary, since the best practices reflected in these awards can help improve administration throughout the branch.
- Training – CJER has provided an incredible amount of judicial training over the years, and the Commission has worked with the AOC on judicial training since the inception of the Commission in 1997. While the Report suggests that a cost-benefit analysis needs to be applied to all training conducted by CJER, our concern is that not all valuable training will fare well in a simple cost-benefit analysis. Every year there are problems that arise in the court dealing with fairness and court procedures to which the simple solution is not a change in the rules but training on appropriate action - this is a much more cost-effective and more direct way to address the real problems that litigants face, while also avoiding extensive rules changes. However, it is difficult to measure the real impact of this solution in a straight cost-benefit analysis.

We have worked on training to help ensure that judges know how to interact with self-represented litigants, that court staff understand the difference between legal advice and legal information, and training to help judges and staff understand how to work with parties who have limited English proficiency. These trainings have helped improve access for vulnerable Californians and have improved the efficiency and effectiveness of court procedures. We hope that these kinds of valuable training events are not reduced or eliminated because a business analysis determines they are of lesser value than straight substantive training.

- Service orientation - The Access to Justice Commission has been impressed at how much the AOC has worked to improve services throughout the branch – including both appellate and trial courts – and with many other stakeholders, including the public at large. A strong service mentality has clearly been the driving mission in all of our dealings with AOC staff.

In closing, we acknowledge the thorough work and some very good structural ideas in the SEC report that should be seriously considered. We reiterate our offer to work with the Council on thoughtful consideration and implementation of appropriate recommendations in the report. But we caution against adopting recommendations too soon without studying their implications – and getting input from those who would be affected.

Respectfully submitted,

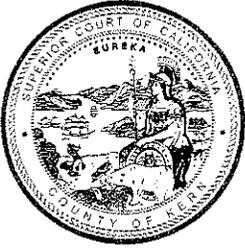


Hon. Ronald B. Robie
Chair
California Commission on Access to Justice



Joanne Caruso
Vice-Chair
California Commission on Access to Justice

Copies: Members, Judicial Council of California



**Superior Court
State of California**
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MICHAEL G. BUSH
Judge

June 15, 2012

Chief Justice Tani G. Cantil-Sakauye
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Chief Justice Cantil-Sakauye,

I am writing to express my support for the recommendations made by the Strategic Evaluation Committee in its recent Report On The Administrative Office Of The Courts and am requesting the Judicial Council begin the implementation of those recommendations immediately. This well thought out report is the product of over one year of work and study by a distinguished panel of judges and advisors. It is not a report that should be cast aside simply because it has been portrayed as a snapshot in time with assurances from the AOC that it is self-policing itself by making necessary changes in its operation.

Some may suggest that the type of changes recommended will take time to implement. While that may be true with some individual changes, many of the recommendations can begin to take place immediately. In addition, as evidenced by the swift response by the AOC to this SEC report, we know the AOC can complete tasks quickly when motivated.

Given the bleak budget times and the imminent selection of a new director of the AOC, this is the time for the Judicial Council to act to reinvent the AOC. With new AOC leadership and a new direction as set by the Judicial Council, the AOC can become an effective organization that serves the needs of the judicial branch of government. I am requesting that the Judicial Council, under your leadership, not allow this historic opportunity to pass without making significant changes to the AOC.

Sincerely,

MICHAEL G. BUSH
Presiding Judge
Superior Court of California
County of Kern

cc: Members of the Judicial Council



Court of Appeal

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750 B STREET, SUITE 300
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CHAMBERS OF
JUDITH McCONNELL
PRESIDING JUSTICE

RECEIVED

JUN 18 2012

June 15, 2012

CHAMBERS OF THE
CHIEF JUSTICE

Hon. Tani G. Cantil-Sakauye
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Strategic Evaluation Committee Report

Dear Chief Justice Cantil-Sakauye:

I understand the Judicial Council will be considering the recommendations set forth in the Strategic Evaluation Committee (SEC) Report and hope the council will consider some concerns I have about the report.

Preliminarily, I note the huge amount of work the SEC put into the report and the great detail with which it described many aspects of the work of the AOC. We are all grateful for the time spent by the committee members. However, as many of my colleagues will tell you, there are those of us in the judicial branch who have deep concerns about the omission from the report of significant aspects of the work the AOC performs for the Supreme Court, the Courts of Appeal and the Judicial Council itself. My focus at this time is the work the AOC does for the appellate and Supreme courts.

When the SEC conducted the survey of judges and court management, I sent a detailed response to the survey and itemized the many ways in which the AOC provides the infrastructure for the appellate courts. I also met with the SEC in San Francisco and reiterated some of those comments. However, the focus of the report is almost entirely on the work the AOC does for the trial courts and, to some extent, the Judicial Council and there is virtually no mention of the extensive support the AOC provides to our higher courts. Frankly, the cuts already made at the AOC reflect many of the recommendations of the SEC report and are already creating serious problems for our courts.

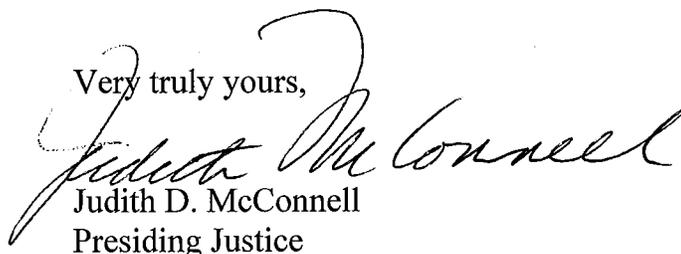
The AOC performs most of the administrative support for the courts of review, including payroll, human resources, accounting, information services, education, legal services, purchasing, legislative information and advocacy, security, court-appointed counsel and many other functions. Cuts to staff at the AOC have already had a dramatic effect since the Appellate Court Case Management System (ACCMS), which serves the Supreme and Courts of Appeal and has been an extremely successful program, has lost key staff support. Furthermore, the AOC supports all of our web-based service to the public and our early efforts to promote e-filing to expedite the appellate process.

By discussing the administrative support the AOC provides to the courts of review, I do not mean to minimize the important support the AOC provides to projects of the Judicial Council and the Chief Justice to enhance our service to the public. In my meeting with the SEC members, I discussed in particular the support given to improving civic education in California. It is well known that the public is woefully ill-informed about the important role the courts play as the third branch of government and these citizens are the same people who serve as jurors and litigants and demand and expect justice in a timely fashion. The role we are playing to enhance civic education, under your leadership as Chief Justice, is growing and is significant, and, while the staff support for this work is not extensive, staff support is critical to continuing the work. The Summit on Civic Education scheduled for February 28, 2013, in Sacramento and funded by the State Bar of California is planned as a launching pad for our push for significant changes in California. To drop staff support after the Summit, as the SEC suggests, would be devastating to the success of this work.

I hope you will share my concerns with the members of the Judicial Council and the Administrative Director. I appreciate the severe strain all of us are experiencing because of the dramatic budget cuts, but we must be sensitive to the ramifications of all the cuts being made at the AOC.

Thank you for your consideration.

Very truly yours,



Judith D. McConnell
Presiding Justice

JM:jrm

cc: Honorable Douglas Miller, Chairperson of Executive and Planning Committee
Jody Patel, Interim Administrative Director of the Courts of California



Court of Appeal

FOURTH DISTRICT, DIVISION THREE
601 WEST SANTA ANA BLVD.
POST OFFICE BOX 22055
SANTA ANA, CALIFORNIA 92701
(714) 571-2734
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CHAMBERS OF
KATHLEEN E. O'LEARY
PRESIDING JUSTICE

June 18, 2012

Honorable Tani Gorre Cantil-Sakauye
Chief Justice of the Supreme Court of California and
Chair of the Judicial Council
350 McAllister Street
San Francisco, CA 94102-4797

Re: Strategic Evaluation Committee Report

Dear Chief Justice Cantil-Sakauye:

Now that the Strategic Evaluation Committee (SEC) has delivered its report, the Judicial Council must commence its review and evaluation of the various recommendations included within the report. It is with respect to this process that I wish to comment.

As the current chair of the Task Force on Self-Represented Litigants (SRL Task Force), I urge the council to continue to support the critical work of this task force and the AOC's work to help the courts address the needs of the growing number of self-represented litigants. As staff support to the SRL Task Force, the Equal Access Unit of Center for Children, Families and the Courts (CFCC), provides critical services for the courts. This work includes maintaining and updating the statewide website for self-represented litigants, seeking and administering various grants (the proceeds of which are passed on to local courts to support self-help services), and providing technical assistance and education for self-help programs throughout the state. Additionally, CFCC assists the council and the task force in efforts to simplify court rules, court forms, and court procedures to make them more understandable to the lay public we serve.

Unfortunately the downturn in the state's economy has resulted in an ever increasing flow of self-represented litigants into our courts while at the same time trial court funding continues to shrink. Many courts have reported that statewide resources to

serve self-represented litigants are more critical now than ever. The SEC report recommends that to “maximize services, court self-help centers should collaborate with existing courthouse programs.” This approach was recommended by the task force in the Action Plan it submitted to the council in 2004. The plan was adopted by the council and the task force was charged with implementing the plan. This approach was again endorsed in the Guidelines for the Operation of Self-Help Centers in 2008.

The approach has been followed in funding for self-help services as well as educational events provided by the AOC. For example, in the 2011 Statewide Conference on Self-Represented Litigants that the SRL Task Force sponsored, and I attended, out of 44 workshops offered, only 7 addressed family law, domestic violence and child support. The small claims advisors made this conference their annual training conference. Law librarians and interpreters also attended as well as self-help staff and facilitators. A huge number of instructional materials in a variety of areas have also been made available on the AOC’s Equal Access website which shares self-help resources developed by self-help programs throughout the state so that other courts can review and adapt as they deem appropriate.

The SEC report states that “CFCC must discontinue investigating and responding to complaints from litigants about judicial officers who handle family law matters.” The SEC report correctly states that such matters are handled by other entities. I do not know what the genesis of this recommendation was. It may be that my actions as SRL Task Force chair have contributed to this recommendation.

The AOC’s Self-Help website is used by millions of self-represented litigants each year and I can only assume this website or some other source on the internet is where litigants obtain information about the task force and my role. When the AOC receives a letter from a self-represented litigant addressed to me personally as the task force chair or the task force, staff refers the letter to me. I review the letter and I draft what I believe is an appropriate response to the litigant. A typical letter complains about the outcome of a case and many reflect a fundamental misunderstanding of the legal system and a lack of understanding of the appellate process. I have never attempted to address a complaint about a specific family law judicial officer. I know that such a complaint is a matter for a presiding judge or the Commission on Judicial Performance. I have never asked staff to investigate a complaint or respond to a complaint, nor to my knowledge have they ever initiated an investigation.

During my tenure as chair of the Court Interpreters Advisory Panel (CIAP), I worked extensively with the Court Interpreters Program (CIP). I agree with the SEC’s conclusion that CIP is a core component of trial court operations. Prior to the AOC assuming responsibility for interpreter recruitment and testing, the State Personnel Board performed these functions. Before that courts would recruit and select interpreters

locally. I have seen the quality and competence of court interpreters continue to improve since the early days when local courts bore the sole responsibility for interpreters.

The SEC report indicates that the Office of General Counsel (OGC) and the Office of Governmental Affairs (OGA) often offer conflicting advice to CIP that may “hamper the smooth running of this program.” In my five years as the CIAP chair, there were times when OGC assisted with legal issues and OGA assisted with legislative issues, but I never witnessed the conflicts suggested in the SEC report.

In determining the future structure of the AOC, it is important to recognize CIAP and CIP focus on court interpreter issues and not on broader language access issues. The precursor to CIAP was the Judicial Council Advisory Committee on Court Interpreters. The advisory committee focused on interpreter issues **and** was responsible for proposing actions to the Judicial Council to provide non-English-speaking persons with increased access to the court system. The statutory charge of CIAP is limited to assisting the council in its statutory duties such as testing, certification, and other court interpreter issues. Accordingly, Government Code section 68565 sets out the membership of CIAP. “The panel shall include a majority of court interpreters and may include judges and court administrators, members of the bar, and others interested in interpreter services in the courts.”

The task of insuring and enhancing access to our courts for those who either lack English language skills or lack proficient English language skills must be addressed by the AOC. This effort must be broader than insuring competent interpreters in official proceedings in the courtroom. Currently much of this work is being done by staff in CFCC who work closely with CIP. Examples of that work include translating materials, sharing best practices for serving these litigants in self-help centers and other court programs where many litigants seek help, and assisting the trial courts in developing Limited English Proficiency Plans required of courts receiving federal funds.

Lastly, the report asserts the AOC “has lost its focus on one of its primary roles and core functions, which is providing service to trial courts.” I agree one of the AOC’s functions is to support the trial courts, but the lack of a similar affirmation that one of the AOC’s roles and core functions is to support the Supreme Court, the Courts of Appeal, and the council is puzzling. I would urge the council to continue to recognize the work AOC staff does to assist the Supreme Court and the Courts of Appeal as a primary role and a core function of the AOC.

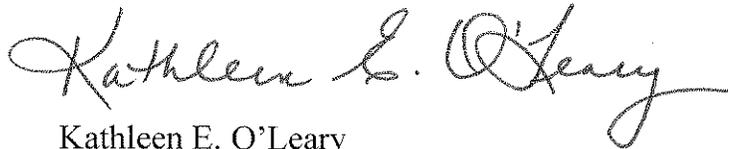
When I first began my judicial career in the trial court in 1981, the AOC was largely viewed as a support organization for the appellate courts. The report notes that the AOC’s “responsibilities, programs, and activities expanded as a result of the monumental changes to the judicial branch that resulted from legislative enactments in the late 1990s and 2000s.” It is my recollection that it was in the early nineties when the

Judicial Council completed its strategic planning under the leadership of Chief Justice Malcolm Lucas that the AOC began supporting significant statewide efforts. The AOC's role in trial court support further increased in the late 1990s and early 2000s as a result of the legislative mandates noted in the report. Clearly, the AOC's role in assisting the council meet its statutory mandates is another role and core function of the AOC and must be continued along with trial court services.

Service to the public must remain the foremost concern of the courts and the AOC must have the resources to support the courts in their public service efforts. As the council begins to determine how the AOC can meet the many critical needs of the Supreme Court, the appellate courts, the trial courts, the council, and the people of California who seek justice in our courts, I hope that anecdotal information will not be the determining factor. While the structure may need revision, the mission of the AOC remains the same. The AOC must support the courts throughout the state and the council as they strive to provide consistent, independent, impartial, and accessible administration of justice.

I would request that this letter be shared with members of the Judicial Council as you deem appropriate. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen E. O'Leary". The signature is written in black ink and is positioned above the printed name and title.

Kathleen E. O'Leary
Presiding Justice

cc: Honorable Douglas P. Miller,
Chair of the Executive and Planning Committee



**SUPERIOR COURT
OF CALIFORNIA**
COUNTY OF TEHAMA

June 18, 2012

THE HONORABLE

Richard Scheuler

*Judge of the Superior Court
Department 1*

633 Washington Street
P.O. Box 278

Red Bluff, CA 96080-0278

P (530) 527-0901; Option 5
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Chief Justice Tani G. Cantil-Sakauye
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Dear Chief Justice,

THE HONORABLE

Jonathan W. Skillman

*Judge of the Superior Court
Department 2*

445 Pine Street, 2nd Floor
P.O. Box 278

Red Bluff, CA 96080-0278

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You have appointed and are now considering the input from the Strategic Evaluation Committee. Thank you for your leadership. You made that report public immediately, and you have disclosed its conclusions and sought input from all. Thank you for the transparency. You have given us, as a branch, the opportunity to work together, regardless of our differences, to improve the judiciary and hopefully once more speak as a unified third branch of government. I am confident that you and the Judicial Council will take appropriate steps to assure optimal survival in these financially disastrous times. I ask only, while you are doing so, that you remember how vital the AOC is to the individual courts. Simply put, my court cannot duplicate what is provided by the Administrative Office of the Courts.

THE HONORABLE

C. Todd Bottke

*Judge of the Superior Court
Department 3*

445 Pine Street
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Red Bluff, CA 96080-1170

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I must respectfully take issue with any person who looks to the pre-AOC days as the good old days. I began the practice of law in 1974 when one of our Justice Courts was the small backroom of a local attorney's office. I tried cases in the cramped confines of our tiny law library, this because there were no courtrooms in which to try them. I tried jury trials in the Board of Supervisors' chambers, in the City Hall chambers, and in all manner of locations which were not conducive to justice, this because there were no suitable places to try them. While the criminal load was far smaller than today, there was still need for public defenders. There was almost no money to pay defenders, and counsel appointed were

THE HONORABLE

John J. Garaventa

*Judge of the Superior Court
Department 4*

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Corning, CA 96021

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Jeri M. Hamlin

Family Law Commissioner

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Chief Justice Cantil-Sakauye
Page 2 of 4
June 18, 2012

given a flat \$25 fee per criminal defendant. Once, that sum was increased to \$50 in a case where I represented a defendant through jury trial.

I became a judge twelve years ago, and my supervising clerk told stories of the bad old days when even basic office supplies were unavailable. Even before this crisis began several years back many courts, including my own, were underfunded. In the last few years we have decreased staff from 45 to 36. We do not have, nor have we ever had, research attorneys or commissioners, other than the mandatory child support Commissioner whom we share with four counties and who sits in our county only one morning each week. With all courts we now face the additional, crippling budget cuts scheduled for the coming fiscal year, and we do not know how we can keep the court functioning full time. We have absolutely no funds which could replace the many, many services provided by the Administrative Office of the Courts.

It is not the case that the AOC budget could be divided between the 58 courts, thus allowing them to replicate AOC services. If we received a pro-rata share of that budget, the additional funds would disallow most of what we now receive from the AOC. The reason is not hard to explain. It is the economy of centralized service.

My family were farmers in Nebraska, and my grandparents were the first to move from the "self sufficiency" of farm life to the "dependent" life of a city dweller. When young, I asked my grandmother if she missed the farm. She laughed. We romanticize rugged individualism, but it was centralization of production that provided the marginal utility on which our last 100 years of prosperity was built. Just as it is centralized production that allows our citizens to afford products to enhance their lives, so the centralized services of the AOC has made it possible to operate the 58 county courts of this state at a level unapproachable were each court required to attempt local duplication of those services.

You know better than anyone how vital the AOC is to our courts. The assigned judges program alone has kept our doors open. Judges have vacations and mandatory training. Judges get sick like other people, and we can identify a time when two of four judges and the one Commissioner were on medical leave. With the budget what it is we

Chief Justice Cantil-Sakauye

Page 3 of 4

June 18, 2012

have two choices: (1) require that judges not get sick, not take vacation, and decline mandatory training; or (2) turn to the AOC for assigned judges. Without AOC support, we and the public would not merely suffer closed courtrooms; there would be mandatory calendars with no judge to handle them.

Soon we will begin labor negotiations, difficult even in prosperous times. The AOC has before and will again provide labor expertise and labor negotiators. In addition the AOC provides training (both for judges and for staff) that is not only mandatory but also necessary to learn to handle the massive case loads, the ever changing law, and the intricate computer and financial management and reporting required of us.

Due to population growth and especially due to the legislative mandates which greatly increased court functions over the last fifty years, our courts were becoming inefficient. The inefficiency of which I speak was not due to judges or staff but due to the outdated, scattered, and inadequate facilities. As properties were patched into the system to handle increased caseload and to handle mediators, facilitators, drug courts and other new functions, the physical plant became decentralized causing costly inefficiencies. The Judicial Council gathered funds and began to accommodate the need for new, larger courthouses. All of the work was and is done by the AOC -- property purchase, planning, construction and oversight.

In addition to the above, the AOC provides us with general legal assistance, financial services, financial and legal compliance support, technology support, contract advice and drafting, legal assistance of all manner including representation of judges and court personnel who suffer increasing exposure to claims and lawsuits, and much, much more.

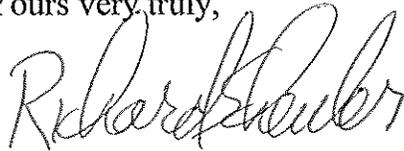
The ability of judges to independently run their courtrooms is not in question. We are helped, not hindered, by the AOC's more efficient, centralized services. Without doubt, all central authority should be scrutinized and kept efficient. We seek to correct and improve our local, state, and federal governments every day without suggesting that they should be abolished. Those who seek to diminish or eliminate the AOC

Chief Justice Cantil-Sakauye
Page 4 of 4
June 18, 2012

seek to remove not the problem but the source of cure for many of our difficulties.

I have confidence in your leadership during this crisis. Thank you for listening to my input.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Richard Scheuler".

RICHARD SCHEULER
Presiding Judge
Tehama County Superior Court

RS/dmg
Cc: Justice Douglas P. Miller

LAW OFFICES OF MARTHA L. PASSALAQUA

1507 G Street

Modesto, CA 95354

Phone: (209) 238-9187 | Fax: (209) 238-9240

passalaqualaw@gmail.com

BANKRUPTCIES, FORECLOSURES & SHORT SALES

June 15, 2012

Chief Justice Cantil-Sakauye
and Members of the Judicial Council
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RECEIVED
JUN 18 2012
CHAMBERS OF THE
CHIEF JUSTICE

Chief Justice and Members of the Judicial Council:

As a business owner in Stanislaus County, I adamantly oppose Governor Brown's proposal to appropriate the fund balance and emergency reserves from the Stanislaus County Superior Court Budget.

The Stanislaus County Superior Court is one of the original seventeen courts designated as "historically underfunded". As early as 2008, the Court began making on-going reductions to its budget to proactively prepare for the decrease in funding from the California Judiciary Branch. Part of this planning included creating a reserve to help Stanislaus County Superior Court weather any future budget crisis.

The ongoing reductions made by Stanislaus County Superior Court included: (1) consolidating functions, (2) increasing their employee vacancy rate, (3) reducing vendor contracts, (4) re-engineering processes, (5) reducing public access hours, including phone access, (6) automating more clerical processes, (7) implementing a Volunteer Retirement Incentive Program, (8) implementing an enhanced collections program, (9) reducing expenditures, including but not limited to, reducing employee benefits, (10) negotiating no COLA's since 2008, (11) closing branch court operations in Turlock and Ceres, and (12) laying-off twelve valuable employees, effective in March of 2012.

While all of these fiscally responsible actions should earn Stanislaus County Superior Court the praise of our State's leadership, it seems that they are instead being punished. The reserve (or fund balance) generated by Stanislaus County Superior Court, which was created to be used to meet the known and on-going budget reductions scheduled for FY 2012-2013, is threatened to be stolen from them by a less-responsible government.

Appropriating the reserve would make it nearly impossible for the civil judicial system to bear the additional proposed budget cuts and continue to function. Civil suits are already backlogged and these cuts would force the courts to do away with critical functions including family law matters and services our area desperately needs.

I respectfully request that you protect the reserve funds and emergency funds for the County Superior Court.

Sincerely,



Martha L. Passalaqua

Roldon P. Sutton, Jr.

2309 Abinash Court
Modesto, CA 95355
Tel: 209-551-6161
Fax: 209-551-7575
Email: sandypam@sbcglobal.net

June 14, 2012

Chief Justice Cantil-Sakauye
and Members of the Judicial Council
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RECEIVED
JUN 18 2012
CHAMBERS OF THE
CHIEF JUSTICE

Chief Justice and Members of the Judicial Council:

As a citizen of Stanislaus County, I am outraged that in addition to severe cuts from the California Judicial Budget, Governor Brown is threatening to take Stanislaus County Superior Court's fund balance and emergency reserves.

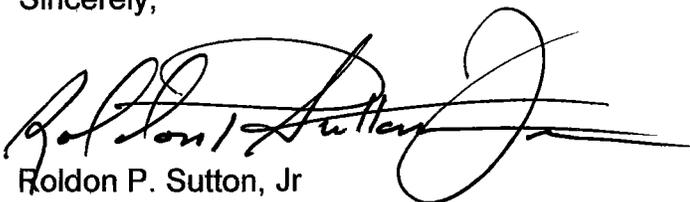
Stanislaus County's responsible actions in building a reserve should not be punished for others' shortcomings.

In recent years Stanislaus County Superior Court has made a number of changes to reduce its budget in preparation for state-wide budget cuts. Some of these measures included consolidating duties, lay-offs, reducing expenditures internally (employee benefits) and externally (vendor contracts), and closing operations in Turlock and Ceres. In addition, they have not negotiated COLA's for remaining employees since 2008.

Their efforts helped them to create a reserve to offset the cost of future budget cuts. Now the State is not only making cuts that the County is prepared for, but is also trying to take away reserve that Stanislaus County built. Without the reserves they will not be able to operate specific facilities such as Child Support/Family Court, and will have to lay off more employees, contributing to the already high unemployment rate in our area.

Taking away the reserve that Stanislaus County Superior Court made great effort to build is unfair and wrong. I respectfully request that you protect the reserve funds and emergency funds for the Stanislaus County Superior Court.

Sincerely,


Roldon P. Sutton, Jr

Pamela L. Sutton

2309 Abinash Court
Modesto, CA 95355
Tel: 209-551-6161

RECEIVED

JUN 18 2012

CHAMBERS OF THE
CHIEF JUSTICE

June 14, 2012

Chief Justice Cantil-Sakauye
and Members of the Judicial Council
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Chief Justice and Members of the Judicial Council:

As a citizen of Stanislaus County, I am outraged that in addition to severe cuts from the California Judicial Budget, Governor Brown is threatening to take Stanislaus County Superior Court's fund balance and emergency reserves.

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Taking away the reserve that Stanislaus County Superior Court made great effort to build is unfair and wrong. I respectfully request that you protect the reserve funds and emergency funds for the Stanislaus County Superior Court.

Sincerely,



Pamela L. Sutton



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
LEE SMALLEY EDMON
PRESIDING JUDGE

TELEPHONE
(213) 974-5600

June 18, 2012

The Honorable Tani Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Chief Justice Cantil-Sakauye:

I am writing to you as the Presiding Judge of the Los Angeles Superior Court in support of your efforts to reform the AOC through the establishment of the Strategic Evaluation Committee (SEC). In such dire budget times, the survival of the judicial branch depends more than ever on effective support from the AOC. The need for reform could not be more urgent.

I write to urge you and the Council to endorse the SEC Report enthusiastically and to take on the oversight role that the SEC recommends. I also urge you to assign to the judicial members of the SEC the responsibility of regular and public reports to the Council regarding the prioritization, implementation and monitoring of the progress on the SEC recommendations.

The Strategic Evaluation Committee did exceptional work and produced a remarkable document. The committee you appointed was well-balanced and consisted of thoughtful judicial officers and others who understand Court governance. Committee members went to great lengths to educate themselves about the performance of the AOC over the past decade. 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.

The SEC Report makes it clear that the primary responsibility for achieving these reforms lies with the Judicial Council: "The Judicial Council must take an active role in

The Honorable Tani Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council
June 18, 2012
Page 2

overseeing and monitoring the AOC and must demand transparency, accountability, and efficiency in all of the AOC's operations and practices." (SEC Report, p. 7) At the same time, it was a year-long, exhaustive and independent review by the SEC that documented these problems. The judicial members of the SEC are best qualified to monitor the progress toward solutions. Their continued involvement would greatly add to the credibility of reform efforts.

The significant nature of the SEC's recommendations, coupled with the demands of the budget crisis, make this work urgent. Therefore, I ask you to ask the Judicial Council to endorse the report, to acknowledge its significance and timeliness, and to accept the oversight role by adopting Recommendations 4-1 through 4-4 and committing to execute these and other SEC recommendations forthwith. Furthermore, I ask you to assign to the judicial members of the SEC the charge of regular and public reports to the Council as to prioritizing, implementing and monitoring reform efforts.

Sincerely,

A handwritten signature in blue ink that reads "Lee Smalley Edmon". The signature is written in a cursive, flowing style.

Lee Smalley Edmon
Presiding Judge

c: Judicial Council Members

To: Chief Justice Tani Cantil-Sakauye, Chairperson of the Judicial Council
Members of the Judicial Council

From: Michael A. Fischer, Attorney at Law
Retired Senior Attorney, AOC, OGC

Subject: Comments on the Report of the Strategic Evaluation Commission

I want to share with you my preliminary views on the Report of the Strategic Evaluation Commission. I do this as someone who no longer has “skin in the game.” As you know, I am now retired from the AOC after nearly 37 years of service. I think much of the report is a useful starting point for a thorough council review of the AOC, its staff agency. This is especially important in today's budgetary climate and with the soon-to-be fifth Administrative Director. It is a good time to bring greater consistency and productivity to the AOC. The report identifies some of these areas and I know from my experience that there are other areas that could benefit for a review.

In addition, the report provides in many cases complaints and recommendations that are not well founded and likely would be damaging to implement. This comment will concentrate on those issues because I think the pressure is likely to be to implement all or many of the recommendations without further analysis. I've presented some information below that shows why I think this would be a mistake. But I don't want my focusing on what I consider to be failings of the report to be taken as a universal condemnation of all the recommendations in that report.

As one of the relatively few people alive today who served under all four Administrative Directors (and the only one with recent service in the AOC), I do believe I have an invaluable historical perspective on the issues raised in the report. As such, I want to offer my assistance in this process if you think it would be helpful.

I would suggest that if the report is to have truly lasting value for the branch, it would be important for people with views as to the proper role and function of the AOC to discuss this in a public setting with appropriate give and take. And those who are either critical or complimentary of what the AOC does and how it does it should be willing and required to provide factual bases for their statements. We would require no less in any trial.

As I mentioned above, I believe there is much of value in the SEC Report. It makes a number of suggestions that should be carefully considered, and much of the value comes from these being recommendations of “outsiders.” This is both the strength and weakness of the recommendations. They need to be carefully considered, by both the council and the soon-to-be-selected new Administrative Director as to their appropriateness and efficacy. It would also be valuable to compare the facts as offered by the SEC with the factual findings of the recent Accountability and Efficiency Advisory Committee review of the AOC, to determine if there are any discrepancies and if so, how they can be resolved. To that end, it may be valuable to have the Executive Office of the AOC prepare a response to those sections of the SEC report that the council is considering. That is the typical for procedure used in an audit.

Given the significance of the proposed recommendations and the importance of the work of the AOC to the branch, it is important that the Judicial Council's review of the SEC report be based on well-established facts, not perceptions (discussed further below).

There are a number of issues that, on a very quick and cursory review, leap out of the report as problematic. The remainder of this email discusses these issues.

As I see the appropriate response of the council itself to the SEC report, there are basically two questions:

1) Which functions are appropriate for the AOC?

In this regard the council needs to determine what it wants its staff agency to do and what resources should be provided to do this. Because if the council is to do a function, the only appropriate ways to do so are (1) by means of the AOC as its staff, (2) by members of the council itself, or (3) by contracting with a third party – usually a more expensive alternative. The reason that service to trial courts has become an important role for the AOC is because the council has determined that is what the AOC is to do. In my view, the report of the SEC is most deficient in regards to discussion of this matter.

2) Which functions that are appropriate to the AOC are being done in a manner that is deficient?

The report focuses a good deal of attention on this issue and uses perception more than hard facts to raise issues and complaints. If there is a perception that the AOC is not performing a function as it should, then the response to the perception should vary depending on whether the perception is fact-based. Unfortunately the report does not distinguish between facts and perceptions, and includes recommendation to resolve what may be inaccurate perceptions. That does not mean that inaccurate perceptions should go unaddressed. Rather, if a complaint or perception is not based on fact, the problem is one of communication, and an appropriate recommendation would be to improve communication, not to change the way in which the AOC carries out a particular function.

Let me give an example based on something with which I am familiar -- the length of time to produce a legal opinion sought by a trial court. Some complaints were registered concerning the length of time it takes to get an opinion from the OGC. And the SEC reached a conclusion that that the perceived delays were in part the result of the General Counsel's micromanagement of the wording and style of opinions. First, as someone who used to do that work, I know the conclusion of the SEC is wrong. And a review of the wording and style of opinions should dispel this notion. The SEC's solution for the problem seems to be to let not only wording and style go, but to let the quality of the underlying research also drop. We can argue whether that is an appropriate remedy but I would raise several other questions here:

(i) How long does it, in fact, take to produce an opinion within the AOC as opposed to the time in private law firms or the Attorney General's office? There is no such information in the report.

(ii) Does the OGC provide a variety of responses for opinions based on the urgency of the need for the opinion and the complexity of the opinion? Is there evidence that OGC is not appropriately prioritizing these requests?

(iii) Is it relevant that the OGC also provides opinions to the Judicial Council and other AOC Divisions? How does the council expect these opinions to be prioritized with respect to those for the trial courts?

(iv) Is the amount of resources for opinions adequate and, if not (and I believe it is not), how can this be addressed?

(v) Should there be a prioritization of opinion requests that is developed by the OGC in response to council input and trial court comment and then clearly communicated to the trial courts?

Finally, there is the “perception” that the OGC twists the opinions issued based on a hidden political agenda that is AOC based. Frankly, of all the “complaints” about legal opinions, this one is the most troubling. In fact, it amounts to a charge of malfeasance or unethical conduct on the part of the attorneys involved. Anyone who would make such an allegation should not do so lightly and should have clear and convincing proof of the truth of the assertion. Instead, the report merely raises this as another “perception.”

(I would also note that this single point, by itself, is enough to overcome the recommendation -- discussed below -- that the General Counsel should be relegated to a non-policy, non-executive position with the AOC management. The legal effect of proposed policy is vitally important in any organization and even more important in an organization to is involved in assisting in making law.)

I focused on the small area with which I am most familiar -- legal opinions. While I am not as familiar with the work of the other units in OGC or the other divisions, I am concerned that there might be similar inadequacies in the facts supporting recommendations in those areas. I would not, in passing, that the report also inaccurately conflates the units within the OGC that work on (i) transactions and business operations and (ii) real estate.

I have not yet reviewed the full report in detail but in my skimming of it, there are several recommendations that I'd like to briefly comment on in addition to the subjects discussed above. I will do this in abbreviated, bullet form .

Moving the AOC to Sacramento:

- Cost is not only issue.
- Much of the same considerations apply to Supreme Court moving to Sacramento.
- Did not discuss the issue of split locations with Supreme Court in SF and AOC in Sacramento.

- Did not compare the cost and convenience of travel facilities in Sacramento vis-a-vis SF.
- Any such decision should be handled as part of a cohesive discussion of movement of all “central” branch functions currently in San Francisco including the Supreme Court, the Commission on Judicial Performance, the Habeas Corpus Resource Center, CAP, as well as the AOC.

Regional offices:

- Supervision seems to be an issue of perception, rather than one documented by evidence of issues arising from actual experience. In any event can be remedied by modern technology.
- Bringing everyone to Sacramento / SF will cause an increase in travel expenses involving direct service to courts.
- An implication would necessarily arise that service to local courts is less important.
- Moving to Sacramento will significantly diminish the pool of employees willing to work at the AOC, and therefore, might reduce the overall quality of AOC employees.

Use of attorneys:

- Is important to determine where attorneys should be used and where not.
- Cost is not important issue unless using attorneys where should not be.
- Important to recognize the JC is a law-making entity.
- AOC works with judges and attorneys all the time. Important to have attorneys interfacing with judges and other attorneys in many cases.
- If substituting paralegals for attorneys is appropriate in the AOC, is it not also appropriate in the appellate courts or in the trial courts? Similar considerations apply.
- Until William Vickrey, there was a long standing statutory requirement that the Administrative Director should be an attorney with 10 years experience; with the removal of that requirement, the need for attorneys in other parts of the AOC seem stronger.
- The General Counsel position is an important policy making position in terms of the AOC. Similar to many situations in corporate America.

The SEC did not appear to consider over-arching tenets of judicial branch policy and the philosophy underlying many of the council's existing policies. Instead it merely accepted many perceptions / complaints. Two examples (one big and one small):

- Telecommuting: the extent to which that was discussed, with a one-sided discussion only, indicates a preconception on the part of the SEC. If AOC is to do cost-benefit analyses (and it should), then shouldn't the SEC do likewise here? Or at least the JC in reviewing this should do so. And among the items to be considered here is why is telecommuting, which is being used with increasing frequency in the corporate sector, not a viable model for the public sector. (I should also note that I am familiar with a person who worked for the Attorney General – in a litigating capacity – who was allowed to telecommute from across the country for two years because of his perceived value to the office.)
- Staffing size: The report throws out some numbers as to “right-sizing” of the AOC. But there is no analysis as to where these numbers came from. In listening to reports of council members from their court visits, even those who want the AOC downsized, don't want programs "they" need/use taken away. What should have been done is to make some sort of estimate as to what the essential functions/roles/duties/services the AOC should provide and then discuss how many people are needed for each of these. By beginning with numbers, the SEC takes the opposite -- and illogical -- approach of suggesting there is a right number without really figuring out what functions those individuals should serve.

Thank you for your consideration of this email and for the work you are doing and have done for the branch that we all hold dear.



RONALD B. ROBIE
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June 20, 2012

Chief Justice Tani G. Cantil-Sakauye
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Members of the Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Dear Chief Justice Cantil-Sakauye and Judicial Council Members:

As Chair and Vice-Chair of the CJER Governing Committee, we are writing you to provide our observations regarding the SEC Report and its discussion of judicial branch education. We want to include our views in advance of the full Council's assessment of the Report and its recommendations.

First of all, we appreciate the fact the SEC acknowledged the importance of education and professional development for members of the judicial branch. Additionally, the Report agreed "a well-educated judiciary is critical to the fair and efficient administration of justice," and that the Education Division's statutory authority is "fairly well defined."

We want to underscore the Report's approval of the recent restructuring by the CJER Governing Committee of its educational development model and our continuing plan to evaluate our programs, courses, and online materials. The Governing Committee continues to work closely with the Education Division to assure our programs provide quality learning within the current fiscal limitations of the branch.

For example, this Spring the Governing Committee established a workgroup to evaluate all education for new judges with the goal of ensuring that course content be provided in the most effective and economic manner. We urge the Council to await this review due in the Fall, before any action dealing with new judge training and the College is undertaken.

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June 20, 2012

We want to underscore the substantial assistance our Education Division currently provides the trial courts and their employees. This includes regional training and substantial low-cost education through the National Center for State Court's Institute on Court Management. Unfortunately the SEC Report does not fully reflect these current activities.

On the subject of educational expectations and requirements, CJER conducted a thorough study of the first three years of the program. The review was supported by trial court leadership as well as the appellate bench and administrative heads. The bottom-line conclusion was that most judicial officers did not find the requirements difficult to satisfy. Based on the review CJER has recommended changes to the Rules of Court to ensure enhanced flexibility. The Council adopted the rule changes several months ago. These improvements, properly implemented, will allow delivery of adequate educational opportunity during this onerous financial period.

Finally, in all candor, we strongly disagree with any simplistic "cost-benefit" analysis presented in the SEC Report. We plan to continue our vigorous evaluation process for determining what and how our educational efforts should be conducted as a result of the Governing Committee's adoption of our recent education development model and the appointment of our nine subject matter curriculum committees. These committees determine the most cost-effective means of providing educational services. In an effort by the Governing Committee to efficiently deliver learning in an economic manner, the Division has implemented substantial use of technology, providing quality at lower cost.

In sum, we believe our educational programs aim to guarantee education in an effective manner. While monetary cost is a basic concern, we maintain that our product has to serve a branch that expects quality in the learning experience. The simple cost-benefit formula does not necessarily assure this expectation. We urge the Council to reject this ill-conceived recommendation.

Very truly yours,



Ronald B. Robie, Associate Justice
Chair, CJER Governing Committee
Also signed on behalf of Robert L. Dondero, Associate Justice

cc: Robert L. Dondero, Associate Justice
Vice-Chair, CJER Governing Committee
Nancy Spero



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June 20, 2012

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Chief Justice Tani Cantil-Sakauye
350 McAllister Street
San Francisco, CA 94102

Dear Chief Justice Cantil-Sakauye:

I am writing in regard to agenda Item G, Judicial Administration: Report and Recommendations from the Strategic Evaluation Committee, specifically the court appointed counsel program.

Children's Law Center of California ("CLC") (formerly Dependency Court Legal Services "DCLS") first began representing children in Los Angeles County in 1990. I personally joined CLC as a staff attorney in 1992, spent time as a supervisor and policy director and became Executive Director in 2007.

Prior to the passage of the Trial Court funding Act, CLC was funded by and reported to the county of Los Angeles. We were then one of the first organizations to become part of the AOC supervised DRAFT program. In the spring of 2011 we were awarded the contract for representation of dependent children in Sacramento County as well. Accordingly, we opened our doors in Sacramento, just one year ago – on July 1, 2012.

Over the past 20 years I have had the privilege of not only serving the children and families of Los Angeles and now Sacramento but also have been actively involved in regional and statewide training in counties large and small, helping colleagues in other parts of the state start children's law offices as part of the DRAFT program, of sponsoring and drafting legislation, and serving on numerous local and statewide committees and workgroups, including the Child Welfare Council. Accordingly, I have had the opportunity to become familiar with dependency practice in many different California counties and across the nation.

While I recognize that no system is perfect and that county administered programs as well as state run programs both have strengths and weaknesses it is my observation and opinion that California's abused and neglected children and their families have benefitted from the support and technical assistance provided by the AOC through the Center for Families, Children and the Courts and the DRAFT program in particular. By way of example, CLC recently received a privately funded grant which, among other things, calls for us to travel around the state providing training to lawyers, judges and youth regarding The California Fostering Connections to Success Act (AB12.) Through this process we have seen that, in general, DRAFT counties seem to have better access to and awareness of changes in the law, best practices and available implementation tools. We are often invited to other jurisdictions to provide training and our experience in other subject matter areas is consistent with our AB12 experience.

We have received feedback from many stakeholders, including judges, county counsel, child welfare workers and community stakeholders to the effect that they have observed noticeable improvement to services and quality of legal representation when court appointed counsel are provided through the DRAFT. When a litigant, such as a child, lacks the ability to assess the quality of legal services she or he is receiving it is imperative that those responsible for administering justice ensure not only the highest level of practice but as much consistency from one jurisdiction to another as possible. Our experience representing children in one large and one smaller county, Los Angeles (25,000 children) and Sacramento (3,000 children), respectively, has shown us that consistency and standardized practice can be achieved without sacrificing local culture.

Given the complexity of both state and federal child welfare law and regulation as well as the significant subject matter expertise (domestic violence, child development, substance abuse, mental health, health, special education, and more) required by attorneys practicing in this arena,

* affiliation for identification purposes only

the support provided by the AOC is not only beneficial but without it many practitioners would be far less able to meet the many demands of this important work. Accordingly, while I appreciate and agree with the committee's general focus on core function and the work of the courts I hope that as the Council is called upon to make difficult decisions regarding allocation of resources that you will ensure that court appointed counsel program receives funding adequate to continue the DRAFT program and related technical assistance.

Thank you,

Leslie Starr Heimov, JD, CWLS

June 20, 2012

The Honorable Tani Cantil-Sakauye
Chairperson
California Judicial Council
San Francisco, CA

Dear Chief Justice Cantil-Sakauye:

I see that the report and recommendations from the Strategic Evaluation Committee (“SEC”) is up for consideration at tomorrow’s Judicial Council meeting. Although I am unable to appear at tomorrow’s meeting, I wanted to share with you and the members of the Council my recommendation on how best to proceed.

The Judicial Council should accept the report at tomorrow’s meeting but take no further action on it until at least two conditions are satisfied: First, nothing should be done in reliance on the SEC report until a new, permanent Administrative Director has been appointed. Second, nothing should be done in reliance on the SEC report until the Judicial Council itself resolves fundamental questions of governance within the Judicial Branch, including the relation between trial court governance and statewide governance, and the role the AOC is to play in that governance structure. Acting on the SEC recommendations *before* these conditions are resolved would almost certainly be premature.

This does not mean the Council or Acting Director Jody Patel can sit back in the interim. In response to Council action on the case management project and the facilities program, and in recognition of the budget realities facing the Branch, Ms. Patel is already taking action to reduce AOC staffing levels and expenses. There may be additional actions that can and should be taken immediately to cut AOC expenditures further, but I think it is appropriate to trust and rely upon Ms. Patel to recommend and implement those further changes.

Internal AOC Management Decisions

Although the SEC report contains and endorses many criticisms of the prior management of the AOC, the underlying data in support of those conclusions is not readily apparent within the report itself, which suggests to me that a new Administrative Director should be given the opportunity to conduct his or her own assessment in light of the SEC report. It is clear that a

great deal of work went into conducting interviews with insiders, outsiders and stakeholders, and the SEC is to be commended for completing such a broad assessment. However, it also appears that some of the conclusions and recommendations are based not on detailed analysis of comprehensive data, but on a 300,000 foot view and experienced guesswork. In this way, the report raises legitimate issues for further analysis and consideration – but it does not justify immediate implementation without that further analysis.

The Council has already taken action on the case management project and on the facilities program, and the Acting Administrative Director is quickly downsizing appropriately in response to those decisions and to the budget reality facing the Judicial Branch. The Council has every reason to trust that Ms. Patel will continue to manage effectively, and a new, permanent Administrative Director should be given the room to evaluate matters, including the SEC report, upon his or her appointment.

Overall, most of the issues identified in the SEC report are exactly the sort of issues that a new Administrative Director should be tasked with resolving. The SEC report will certainly provide the new Administrative Director a well lit path for considering AOC reforms. But even if a new Administrative Director were to agree with the criticisms of prior management contained in the report, a new Administrative Director may have different organizational and management preferences that he or she would choose to implement as solutions. The Judicial Council should not tie the hands of an incoming Administrative Director by making organizational decisions about the AOC in reliance on the SEC report before the new Director has had an opportunity to weigh in.

Governance Vision for the Judicial Branch: Accountability & Decentralized Management

The SEC appears to have embraced a vision for Judicial Branch governance that would substantially increase trial court autonomy while substantially reducing statewide initiatives that bring greater uniformity and accountability to trial court operations. Starting from this premise – in the words of the report, that “the AOC has amplified its role and has lost its focus on one of its primary roles and core functions, which is providing service to the trial courts” (p. 1) – the recommendations in the SEC report are not surprising.

However, the premise that the AOC should be little more than a service provider is subject to very substantial disagreement and debate, and the Judicial Council needs to revisit and resolve this issue before making substantial changes to the AOC. The AOC’s role, programs, organization and staffing depend very directly upon what the Council believes the relationship should be between trial court and statewide governance, and the mechanisms by which trial courts will be held accountable for performance in a state funded context. The spotlight needs to

be put on this issue first, not upon “fixing” the AOC when a much more fundamental issue is on the table.

In my current role as receiver in charge of prison medical care in California’s state prisons, I am facing precisely the same issue of decentralized operations and statewide funding, policies and accountability. Working closely with Secretary Matt Cate, the California Department of Corrections and Rehabilitation has, over the last five years, successfully implemented a statewide inmate management system, a statewide business information system, a statewide network for healthcare telemedicine and information sharing, and the first steps in a statewide health information system. We also have very detailed written policies for the delivery of the medical, mental health and dental programs. In other words, we have a lot of statewide policies and systems that give the appearance of centralized command and control.

At the same time, we have wardens responsible for managing general operations at each institution, and we have appointed “Chief Executive Officers” responsible for prison-level healthcare at each prison. Over the last 18 months, I have been working to push accountability for healthcare performance out from headquarters to these new CEOs. Our CEOs still complain that we exercise too much control from HQ, and achieving the right balance is an ongoing conversation. In my mind, the balance is best achieved by agreeing upon a substantial number of performance criteria, gathering data regularly to measure performance on those criteria, and then holding local leadership accountable for those publicly reported results. Accountability for results with flexibility in local management is our target. Our current version of this approach can be found on the “Health Care Services Performance Management Dashboard” which contains both prison-level performance data as well as statewide aggregated performance information. [http://www.cphcs.ca.gov/docs/special/CCHCS_Dashboard_External.pdf]

Whether the Council embraces a performance dashboard approach or some other model for trial court accountability, the important thing is to have that conversation first before “fixing” an AOC that, depending upon the governance model selected by the Council, may not be quite as broken as the SEC report suggests.

Thank you for the opportunity to comment upon this important report.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Clark Kelso". The signature is written in a cursive, flowing style.

J. Clark Kelso