

**Written Comments Received for
August 30–31, 2012, Judicial Council Meeting**

Name and Title	Affiliation	Topic	Date of Receipt	Page Nos.
1. Jennifer M. Guenther, President	San Bernardino County Bar Association	Public comment for the July 27, 2012, council meeting regarding trial court budget allocations and the need for judicial resources in under-resourced courts.	July 30	2-4
2. Hon. Terry B. Friedman (Ret.), Judicial Council member and Former Judge of the Superior Court of California, County of Los Angeles	Judicial Council of California	Recommendations of the Strategic Evaluation Committee	August 17	5-6
3. Ms Robyn A. Lewis, President	Riverside County Bar Association	State budget impacts on the courts of the Inland Empire and proposal to fund judgeships	August 27	7-9
4. Hon. Brenda F. Harbin-Forte, Judge	Superior Court of California, County of Alameda	Strategic Evaluation Committee Report	July 20 resubmitted	10-15
5. Ms. Teri Cannon, Chair	State Bar of California, Council on Access and Fairness	Strategic Evaluation Committee Report	July 19 resubmitted	16-22

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6.. Hon. Ronald B. Robie, Chair and Ms. Joanne Caruso, Vice-Chair	California Commission on Access to Justice	Comment on Report of Executive and Planning Committee concerning recommendations of the Strategic Evaluation Committee	August 30	23-25

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July 24, 2012

VIA EMAIL (judicialcouncil@jud.ca.gov)
AND FIRST CLASS MAIL

Judicial Council of California
Attn: Nancy E. Spero
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Public Comments by the San Bernardino County Bar Association for the
July 27, 2012 Judicial Council Meeting

To the Judicial Council of California:

I write this letter as the President of the San Bernardino County Bar Association (SBCBA) on behalf of its Board, our Members, and the many individuals and businesses that live and work in the County of San Bernardino.

So as to conserve the time and resources of the Council, I first join in the comments submitted separately by the Riverside County Bar Association (RCBA), our sister organization in the Inland Empire Region. As stated in the letter submitted by the RCBA, the Inland Empire, consisting of the Riverside and San Bernardino Counties, has experienced substantial population growth, accounting for 29% of all growth within the State of California since 2000. With the increase in population has also come a disproportionate increase in the number of Superior Court filings, which have jumped by nearly 40% since 2000 in the two Counties, individually. San Bernardino County now has the highest number of filings per judicial positions of any County in the State at 6,533 cases per judicial officer.

While the number of cases has continued to dramatically increase, the judicial resources for both the San Bernardino and Riverside County Court systems have remained stagnant. While San Bernardino County Superior Court maintains 6.26% of

the State's workload, it receives only 4.51% of the Court allocated funding. In real terms, the San Bernardino Superior Court system receives a third less funding than it actually needs in comparison to the overall State-wide allocations. The County of Riverside Superior Court System is in a similar position.

This reduced funding allocation, in comparison to the San Bernardino Superior Court's needs, has a real impact on Court operations. Although the San Bernardino Superior Court currently employs 990 employees, the recently completed Judicial Council study indicates that the Court should have 1353 employees based upon the number of Court filings. With the recent budget cuts, this difference is likely to increase.

In addition, the San Bernardino Superior Court has operated for years with substantially fewer judges than statewide standards indicate. The Court currently has 71 authorized judges and 15 commissioners, for a total of 86 judicial positions. Based upon an analysis of Court filings performed by the State Judicial Council, San Bernardino Superior Court should have 150 judges.

The San Bernardino Superior Court faces additional challenges that are unique to this area as well. The County of San Bernardino is 20,105 square miles, the largest County in not only the State of California, but in the entire United States. An estimated 2,065,377 people live in the County, with a strong ethnic diversity among the population: 67.3% of the County's population is non-Caucasian and 40.5% speak a language other than English in the home. With an average per capita income of only \$21,867, less than 20% of the population has any education beyond a high school diploma. The Inland Empire has a current unemployment rate of more than 12% and is still the top area for foreclosures in the United States.

While the need for access to justice continues to rise for the area, for many, the San Bernardino Superior Court has been forced to close or limit the hours of many of its Courts. The Chino courthouse will be closed effective January 1, 2013, the Needles Court will be in session only three days per month beginning October 1, 2012, and has already limited the Big Bear courthouse to three days per month. The Twin Peaks and Redlands courthouses have closed, and two Juvenile Traffic courtrooms and one

July 24, 2012

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Juvenile Delinquency courtroom have closed. The new closures will result in the elimination of an additional 23 positions from the already strained system.

While the Central Courthouse in the City of San Bernardino is able to serve one major metropolitan area, branch courthouses are necessary throughout the County in order to serve the vast area. Without sufficient funding, these branch courthouses are necessarily closing, causing those in need of access to the Courts to travel substantial distances. For example, it is 213 miles from the Needles branch to the Central Courthouse. It is 70 miles to the Barstow courthouse, and 43 miles to the Big Bear branch. To travel these distances in order to have access to justice is nearly impossible for many that live in San Bernardino County.

Unfortunately, the recent closure announcements are only the initial steps needed to be taken by the Court to meet a projected shortfall of \$13.5 million for this year, and a shortfall of over \$20 million next year.

While the SBCBA understands the economic realities of the State of California, we also recognize the need for the access to justice in an area where the population is growing at a greater rate than in other areas of the State and that is economically, geographically, and educationally challenged. We ask the Council to take the greater needs of the under-resourced Courts in mind, including the fact that the San Bernardino Court has only 57% of the judicial officers it needs, when making budget allocations as well as in preparing funding reduction recommendations to the State for future fiscal years.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Guenther". The signature is fluid and cursive, with a large initial "J" and "G".

Jennifer M. Guenther, of
San Bernardino County Bar Association

Judge Terry Friedman (Ret.)

August 17, 2012

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

I regret that I am unable to attend the August Judicial Council meeting where important decisions will be made regarding recommendations of the Strategic Evaluation Committee. If present, I would make this comment.

The Chief Justice has demonstrated courageous and visionary leadership since assuming her position just 1½ years ago. Creation of the SEC and appointment of its diverse, independent and able membership assured that the ultimate SEC report would be thoughtful and thorough. It is. It compels us to confront fundamental issues and challenges. Once the Council devotes the careful consideration to its recommendations that such an important report deserves, I am confident that the Council will adopt new policies and implement changes to assure that the Administrative Office of the Courts fulfills its mission.

At its core, and as promulgated by the California Rules of Court, the Judicial Council is responsible for improving the quality of justice and advancing access to justice “for the benefit of the public.” CRC Rule 10.1(a). The AOC exists to support the Judicial Council and therefore its mission is to work to improve the quality of justice and advance access to justice for the public. CRC Rule 10.1(d).

Guided by this mission, the AOC’s most important duty is to serve the people of California. Our judicial system – courts, judges, court administrators and staff, attorneys – exists not for its own sake but to serve the public. No segment of the public depends on the judiciary more than the poor and disadvantaged. Nearly six million Californians live in families below the federal poverty level. Their health, education, housing, safety and even survival often depend on whether they have access to the judicial system.

While the SEC broadly surveyed the judicial officers, employees and attorney groups *within* the judicial system, it did not reach out as widely *outside* the judicial system to the people on the margins of our society and their advocates. Their voices must be heard.

Fortunately, the public comment period established by the Judicial Council has given a platform to providers of legal assistance to the poor to present their views about the SEC recommendations and the work of the AOC. Uniformly, these commentators praised the AOC for providing crucial support to programs that improve the quality of justice and advance access to justice for the poor and disadvantaged, such as for self help clinics, counsel who represent abused and neglected foster children, efforts

to make court facilities physically accessible, and much more.¹ I urge all members of the Judicial Council to give great weight to their comments, which may well be the most important ones of all if we are to fulfill our ultimate duty to the people of California.

Thank you very much for the opportunity to offer this comment. I appreciate your consideration and wish the Council well in its deliberations.

Sincerely,

Terry Friedman

¹ Of particular note are the comments by Elissa Barrett of Bet Tzedek Legal Services, Roger Chan of East Bay Children's Law Offices, Gary Smith of Legal Services of Northern California, Kenneth Babcock of the Public Law Center, Kenneth Krekorian of Los Angeles Dependency Lawyers, Linda Kim of One Justice and Paul Cohen of Legal Aid of Marin.

Riverside County Bar Association

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Via Overnight Mail

August 27, 2012

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RE: Public Comments by Riverside County Bar Association for the
August 30th Judicial Council Meeting

To the Judicial Council of California:

KIRA L. KLATCHKO
Secretary
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As you may recall, the Riverside County Bar Association previously submitted written comments to you for your consideration at the July 27, 2012 Judicial Council Meeting. I, along with Ms. Kira Klatchko, Secretary of the Riverside County Bar Association, also had the privilege of addressing you in person, during the public comment section of that last meeting.

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In both our written submission and oral comments, we proposed that the Judicial Council take immediate action to fund much needed judgeships and support staff that were contemplated by Assembly Bill 159, which passed in 2008 by using monies from the Assigned Judges Program as a temporary measure. If adopted by the Judicial Council, the funding of those judges and the accompanying support staff would be an incredibly helpful stopgap to those counties, including Riverside County, that are most in need of additional judicial resources.

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As you know, as provided for by the recent Budget Act (FY 2012-2013, AB 1464), each county may only have the benefit of support staff for three of the assigned judges provided. As stated in the bill:

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“The amount appropriated in Schedule (3) shall be made available for all judicial assignments. Schedule (3) expenditures for necessary support staff may not exceed the staffing level that is necessary to support the equivalent of three judicial officers sitting on assignments. Prior to utilizing funds appropriated in Schedule (3), trial courts shall maximize the use of judicial officers who may be available due to reductions in court services or court closures.”

~~~~~  
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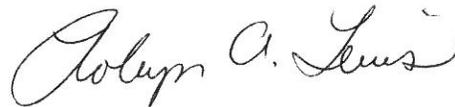
Thus, it appears that the Judicial Council, should it adopt our proposal, cannot provide support staff for more than three (3) judicial officers. Since there is not other clarifying language, we are interpreting this limiting language to mean per county and not statewide.

In our July 16, 2012 letter, we explained that the cost of our proposal would be approximately \$18.2 million, or \$8.2 million to fund AJP judges and \$10 million to pay for the staff to support them. That would leave over \$8 million in AJP funds for the Judicial Council to continue providing emergency assistance to courts not identified in AB 159 as those most critically in need of additional judicial resources.

Those figures would be substantially less, in light of the Budget Act, as set forth above. Based on our calculations, it would cost approximately \$15.8 million dollars to fund judges, based on the AB 159 allocations with the accompanying support staff per county. That would leave a balance of approximately \$10.2 million dollars left in the AJP budget. For your convenience, I have provided documents that set forth those proposed expenditures, both in general and per county.

With that clarification, I again urge you to adopt our proposal and grant the temporary funding of those additional judgeships and support staff to Riverside County, which is in desperate need of more judicial resources, and to other counties similarly situated across the state. In doing so, you will enable our courts to better serve our community and its citizens.

Very truly yours,

A handwritten signature in cursive script that reads "Robyn A. Lewis".

Robyn A. Lewis  
President, Riverside County Bar Association

**Cost for Assigned Judge and Support Staff (AB 159)**

|                                                                         |                   |
|-------------------------------------------------------------------------|-------------------|
| Annual Cost for Assigned Judge (\$657.94 current daily rate x 250 days) | 164,485.00        |
| Courtroom Staff (courtroom assistant and court reporter)                | 200,000.00        |
| <b>Total Annual Cost per Judgeship</b>                                  | <b>364,485.00</b> |

|                                                 |       |
|-------------------------------------------------|-------|
| Number of Authorized Assigned Judges per AB 159 | 50.00 |
| Number of Courtroom Staff*                      | 38.00 |

|                                              |                      |
|----------------------------------------------|----------------------|
| Assigned Judge Cost (annual rate x 50)       | 8,224,250.00         |
| Staff Cost (annual rate x 38)                | 7,600,000.00         |
| <b>Total to Fund AB 159 Judges and Staff</b> | <b>15,824,250.00</b> |

|                                            |                      |
|--------------------------------------------|----------------------|
| Total Assigned Judge Budget for FY 12/13   | 26,000,000.00        |
| Total Cost to Fund AB 159 Judges and Staff | 15,824,250.00        |
| <b>Balance</b>                             | <b>10,175,750.00</b> |

\*assumes complement of 3 staff for courts with 3 or more authorized judges

\*assumes complement of exact number of staff for courts with less than 3 judges

**Name:** Hon. Brenda F. Harbin-Forte **Title:** Judge

**Organization:** Alameda County Superior Court

**Commenting on behalf of an organization**

*General Comment:* RE: Item SP 12-05

Strategic Evaluation Committee Report

Comments from Hon. Brenda F. Harbin-Forte, Alameda County Superior Court

My name is Brenda F. Harbin-Forte, and I am a judge of the Alameda County Superior Court. I write with both a sense of urgency and despair, and I ask the Judicial Council to put a halt to what appears to be a rush to bow to political pressure to implement all of the recommendations of the Strategic Evaluation Committee ("SEC").

As an African American judge, I am very concerned that blind adoption of the recommendations will negatively impact efforts to improve diversity on the bench and ensure fairness in our court system. Some of the recommendations could have serious implications for the ongoing diversity and access and fairness work occurring in the California courts and on behalf of court users from diverse communities. Among the recommendations are items that would eliminate programs focusing on procedural fairness and public trust and confidence in the courts and that could have the effect of reducing staff expertise and other resources for ongoing access, fairness and diversity programs.

The consequence of implementation of such recommendations will be a denial of access to the courts and fair outcomes for African American litigants and other litigants of color. In a state that is almost 60% people of color, and more than 50% women, the fairness and wisdom of any overhaul of the Administrative Office of the Courts will be called into question if it fails to take into account the issues and concerns of these demographic groups. As the Judicial Council weighs my request to slow its pace and take a different approach to this hot-button task, I hope you will pause to reflect on the words of Dr. Martin Luther King, Jr.:

"On some positions cowardice asks the question "is it safe?" Expediency asks the question "is it political?" And vanity comes along and asks the question "is it popular?" But conscience asks the question "is it right?" And there comes a time when one must take a position that is neither safe, nor political, nor popular, but he must do it because conscience tells him it is right. "

A rushed, wholesale adoption of the recommendations may well be safe, politic, and even popular if one were to judge popularity by the number of people urging immediate adoption of all of the recommendations, but such a move would not be in good conscience because it simply would not be the right thing to do.

The first step in the process of deciding which recommendations to implement should be the appointment of a more ethnically diverse evaluation committee. Although there are approximately 130 sitting African American justices and judges, approximately 160 Latino justices and judges, and more than 100 Asian/Pacific Islander justices and judges, there is no African American judge or Latino judge to be found among the published names of judges who have been tapped to assist the Council's Executive and Planning Committee in prioritizing and implementing the recommendations. Moreover, there is only token representation of Asian/Pacific Islander justices and judges, the ex-officio participation of Chief Justice Cantil-Sakauye notwithstanding. Nor is there an African American or Latino judge on the Executive and Planning Committee.

The omission of sufficient numbers of ethnic judges from the process is troubling, especially as to the absence of African Americans. A 2005 report on public trust and confidence in our courts revealed that all ethnic groups – Caucasians, Latinos, Asian/Pacific Islanders and African Americans – perceive that African Americans have worse outcomes in court than any other ethnic group. The omission of Latinos should cause every fair-minded person concern, because Latinos comprise the largest ethnic group in our state, and it thus stands to reason that members of that community are more likely than other ethnic groups to be in the majority of court users.

Before any further steps are taken to implement any of the recommendations, Chief Justice Cantil-Sakauye should add four Latino judges, three African American judges, and two Asian/Pacific Islander judges to the group appointed to assist the Executive and Planning Committee in its task of prioritizing and implementing the SEC recommendations. The ethnic minority judges appointed should be ones who have demonstrated leadership and commitment to access to and fairness in our courts, who can withstand both subtle and overt pressure to shy away from asking the hard questions and raising the uncomfortable issues, and who can stand up to the political pressure to adopt the agendas of insular and short-sighted groups. The need to ensure fairness and justice in our court system demands no less.

I also note that there was no Latino judge on the Strategic Evaluation Committee, and there was only one African American and one Asian/Pacific Islander judge. Perhaps had a more diverse committee been appointed at the outset, recommendations preserving the Judicial Council's commitment to access and fairness would have emerged. Perhaps, too, the recommendations would have demonstrated an understanding of the distinction between "equal access to justice" and "access and fairness" issues, initiatives and needs. The oversight in appointing an inadequately diverse strategic evaluation committee can now be ameliorated by the appointment of an expanded and more ethnically diverse review committee to assist the Judicial Council in prioritizing, rejecting, and implementing the recommendations.

I make the request to appoint a more diverse committee based not on the assumption that the current group cannot be fair, but on the same rationale that former Chief Justice George stated in explaining the need for a more diverse judiciary:

“I strongly believe that any judge should be able to fairly hear and decide any case, no matter who the parties and regardless of the racial, ethnic, religious, economic or other minority group to which they belong. Nevertheless, it cannot be questioned that a bench that includes members of the various communities served by the courts will help instill confidence in every segment of the public that the courts are indeed open to all persons and will fairly consider everyone’s claims.” Chief Justice Ronald M. George (Ret.), 2007 remarks at Senate Judiciary Committee’s Public Hearing on the Judicial Selection Process

A more diverse evaluation and implementation committee will likewise instill confidence that the reform process considered everyone’s claims and concerns, and will ensure that the needs of a diverse group of court users -- such as, for example, the need for interpreters -- are addressed.

My despair stems from the observation that the SEC report failed to make specific references to ensuring commitment to Goal 1 of the Judicial Council’s strategic plan.

Goal 1 focuses on Access, Fairness and Diversity and states that

“California’s courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California’s judicial branch will reflect the diversity of the state’s residents.”

The SEC recommendations, and the initial steps the AOC took to implement them, make it appear that the Judicial Council and the AOC have lost sight of this important goal. In its haste to begin preliminary housecleaning, it appears that the AOC has swept out employees who are overwhelmingly ethnic and overwhelmingly female. These voluntary and involuntary separations should not be further exacerbated. One position targeted in the SEC report and thereafter eliminated by the AOC was held by an African American female attorney who was an expert in the field of implicit bias, who had trained numerous judges on issues related to implicit bias, and who had provided mandatory training to members of the State Bar’s Commission on Judicial Nominees Evaluation “(JNE Commission”) on ways to identify and reduce implicit bias in the evaluation of candidates for judicial appointment. The AOC already had an appallingly low number of African American attorneys and other attorneys and employees of color. Now the agency has even fewer members of these communities. These first steps suggest that the Judicial Council has abandoned its commitment to diversity.

The following three specific recommendations further illustrate the foundation for my concern that access, fairness and diversity may be casualties of the Judicial Council's rush to judgment in implementing the proposed reforms:

Recommendation 7-4: Recommendation to reduce the Center for Families, Children and the Courts ("CFCC") staff including the reduction of attorney positions and/or reallocating them to nonattorney classifications. One of these attorney positions serves as staff liaison to the Access and Fairness Advisory Committee. Given the priority status of this area (Goal 1 access, fairness and diversity) and given the scope and nature of the diversity initiatives (issues impacting race and ethnicity, women and women of color, LGBT and disabilities) it is incumbent that the liaison for this area be an attorney who has the time and expertise to devote to the critical work of this advisory committee. It is also important that diversity functions not be merged with the work of other CFCC staff who focus on equal access, legal services and other support functions, as the diversity area is discrete and independently important to the bench, bar and public.

In addition, the CFCC assesses and implements initiatives designed to improve outcomes in our juvenile courts. Issues such as disproportionate minority representation in our delinquency and dependency courts, and innovative programs to address the school to prison pipeline via our juvenile delinquency courts, are issues that are important to the African American community and other communities of color. The treatment of women of color in the court system and in the legal profession is another issue of access and fairness in our courts. Tampering with the CFCC, without a full and fair consideration of the unintended consequences of adoption of this recommendation, would be both unjust and unwise.

Finally, it has only been through the hard work of the Judicial Council's Access and Fairness Advisory Committee that has led to improved judicial education and training in addressing issues of bias and fairness in judicial decisionmaking. Implementation of any recommendation that would eliminate the Access and Fairness Advisory Committee, or that would dilute the important work of that committee by folding it into a committee with a historically different focus would not be the right thing to do.

Recommendation 7-12: Recommendations to reduce Promising and Effective Programs Unit Functions in the Courts Programs and Services, in particular the Procedural Fairness/Public Trust and Confidence Program. The rationale stated for elimination of this program was the lack of budget allocation for the program. This should not be sufficient rationale for deleting a program that clearly responds to and focuses on a primary area of concern for court users, in particular court users from diverse backgrounds. The failure of the AOC to provide sufficient and robust support for this program should be questioned and remedied; the program should not simply be eliminated.

Recommendation 7-20: As a former dean of our judicial college, I am particularly concerned about the recommendations to reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney position allocations and/or staffing of positions by reallocating them to nonattorney classifications, with specific reference to education specialist positions that are staffed by attorneys. Training of judicial officers should be of the highest quality and provided by trainers who are familiar with the courts and judicial system. Attorneys are in the best position to meet these standards. Further, the level of expertise of individuals in the education specialist positions should not be an issue, as these positions are not at the attorney classification. The mere fact that an attorney performs the education specialist function and is classified as an education specialist should not be a concern. Given California's increasingly diverse population, efforts should be made to increase staffing devoted to CJER, so even more training can be given to judicial officers in the areas of access and fairness, and the expert in implicit bias should be rehired.

There are other recommendations that cause concern, and each should be looked at carefully before they are implemented.

I applaud Chief Justice Cantil-Sakauye for her leadership and courage in accepting the SEC report. The judicial branch must now implement reforms in a fair and thoughtful manner, with the assistance of an expanded and diverse implementation committee.

Thank you.



THE STATE BAR  
OF CALIFORNIA

Council on Access & Fairness

180 Howard Street, San Francisco, California 94105

Telephone (415) 538-2240

July 17, 2012

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

Attn: Invitations to Comment  
Administrative Office of the Courts

RE: **Item SP 12-05**  
Strategic Evaluation Committee Report  
From the State Bar of California, Council on Access & Fairness  
General Comments and Specific Comments on Recommendations  
7-4 (Committees and Task Forces)  
7-12 (Procedural Fairness and Public Trust and Confidence Programs)  
7-20 (reduction in educational division)

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

The State Bar of California Council on Access & Fairness (COAF) is submitting these comments in response to the Strategic Evaluation Committee (SEC) Report on the Administrative Office of the Courts (AOC) issued May 25, 2012 and presented to the Judicial Council of California on June 21, 2012.

COAF was created in 2006 to serve as the State Bar's diversity "think tank". The COAF is the only entity in the State Bar that assists in the implementation of the Bar's access, fairness, diversity, and elimination of bias strategies and goals. The State Bar's commitment to and support for diversity appears in its Strategic Plan, Goal 2 (Administration of Justice): *Undertake activities to enhance the diversity of the legal profession and to eliminate bias in the practice of law.* In this capacity, COAF focuses on issues and initiatives along the full diversity pipeline: Early Pipeline (preschool to high school), College and University (undergraduate, law school, and bar exam), Legal Profession (recruitment, employment, retention and advancement in the legal profession); and the Judiciary (diversity of the judicial applicant pool and appointments).

One of the major COAF goals is to achieve diversity in the legal profession and judiciary that reflects the statewide diversity. For the State Bar, diversity encompasses racial and ethnic groups, women, LGBT, persons with disabilities and older attorneys. The 2010 U.S. Census figures show that California is close to 60 percent people of color and close to 51 percent women. However State Bar data show that the legal profession is only 20 percent racial-ethnic minorities and only 39 percent women. The California judiciary is only slightly over 27 percent minority and 31 percent women. These statistics show how far the legal profession has to go before it reflects the diversity of the population.

Another of our goals is to ensure access and fairness and impartial treatment for court users. As you know, Judicial Council surveys of court users show that the failure to have a diverse legal profession and judiciary severely impacts the public's confidence and trust in the legal system. The public's perception of fairness in the court process is directly related to the level of diversity at all levels of the judicial system.

We acknowledge the importance of the SEC's charge to conduct a "thorough and objective examination of the role, functions, organizational structure and staffing of the AOC" and the extensive work that went into its deliberations and preparation of its report and recommendations to address areas of concern. We note that the SEC did not make specific references to diversity-related issues and functions in its report, which raises concerns about whether the SEC considered the impact of its recommendations on diversity. It is clear that, if adopted, many recommendations contained in the report would have a negative effect on achieving the critical goals of improving the diversity of the bench and ensuring the fair treatment of people from underrepresented groups who interact with the court system.

We strongly support the Judicial Council's Access and Fairness Advisory Committee for its ongoing efforts to assist the Council in implementing and supporting Goal 1 of your Strategic Plan focusing on diversity, access and fairness in the courts and justice system. We also support the ongoing fairness education and training by CJER for judges, attorneys and the State Bar Commission on Judicial Nominees Evaluation (JNE) and note that JNE bias training is now mandated by legislation [Govt. Code 12011.5(b)]. We ask for the Council's continued support for this critical work.

Goal 1 of the Judicial Council's Strategic Plan focuses on access, fairness and diversity and states that

***"California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents."***

COAF supports the initiatives listed under Goal 1, including the elimination of all barriers to access; facilitating access to and trust and confidence in the courts; preventing bias and the appearance of bias in the judicial branch; achieving procedural fairness in all cases; increasing access to legal assistance; collaborating with justice system partners to identify, recruit and retain diverse judges, commissioners and referees and a judicial branch work force that reflects the state's diversity; collaborating with the State Bar and other entities to achieve diversity in the legal profession; achieving diversity on the Judicial Council; implementing and expanding multilingual and culturally responsive programs; ensuring access to court facilities for all court users and accommodations for persons with disabilities; and increasing access to court information and services.

Ongoing support through the AOC entities is critical for the continuation of our collective efforts. Some of the diversity, access and fairness accomplishments of the Judicial Council, AOC and Access and Fairness Advisory Committee include the following:

- 1987 Judicial Council through the AOC established the Advisory Committee on Gender Bias in the Courts and later adopted all 68 recommendations of that committee to redress gender bias.
- 1991 Judicial Council through the AOC established the Advisory Committee on Racial and Ethnic Bias in the Courts.
- 1994 Judicial Council through the AOC established the Access and Fairness Advisory Committee charged with making recommendations for continued improvements in access and fairness in the courts in relation to race, ethnicity, gender persons with disabilities and sexual orientation.
- 1996 Access and Fairness Advisory Committee created guidelines for judicial officers to avoid the appearance of bias in the courts.
- 1997 Access and Fairness Advisory Committee conducted a survey of court users, attorneys and court personnel on public trust and confidence in the judicial system and access to the California State Courts.
- 2000 Access and Fairness Advisory Committee created guidelines for lawyers on eliminating gender bias in the legal profession.
- 2001 Access and Fairness Advisory Committee, Sexual Orientation Fairness Advisory Committee conducted a study and released a report on Sexual Orientation Fairness in the California Courts.
- 2001 Access and Fairness Advisory Committee created guidelines for judicial officers on disability fairness and avoiding the appearance of bias against persons with disabilities.

- 2002 Judicial Council through the AOC convened the First Statewide Conference on Race and Ethnic Bias in the Courts.
- 2002 Access and Fairness Advisory Committee coordinated bias training for the State Bar Commission on Judicial Nominees Evaluation (JNE) through the AOC's Center for Judicial Education and Research (CJER). (Note: Bias training for JNE commissioners is now mandated by Govt. Code section 12011.5(b)).
- 2006 Judicial Council adopted its Branch Strategic and Operational Plan with Six Strategic Goals, including Goal #1 (Access, Fairness and Diversity).
- 2006 Judicial Council through the AOC and in partnership with the State Bar of California held the First Summit on Increasing Diversity on the Bench.
- 2010 Access and Fairness Advisory Committee developed a resource guide and model prospective civil grand juror questionnaire with accompanying tip sheet for jury managers and commissioners to assist in recruiting representative grand juries.
- 2010 Access and Fairness Advisory Committee developed a guide for judicial officers to assist in addressing issues related to LGBT youth in the court system.
- 2010 Judicial Council, at the recommendation of the Access and Fairness Advisory Committee, promulgated Rule 1.100 (former Rule 989.3 effective January 1, 1986) providing a mechanism for persons with disabilities to request reasonable accommodations to participate in court activities, programs or services.
- 2011 Judicial Council through the AOC and in partnership with the State Bar of California Council on Access and Fairness convened a five year follow-up Summit on Diversity on the Bench.

As a critical public policy matter, we urge the Judicial Council to:

- Continue to support Goal 1 of its strategic plan
- Extend Goal 1 into the Council's new strategic plan
- Support the allocation of ongoing resources and qualified AOC staff to ensure the effective implementation of access, fairness and diversity programs and initiatives
- Maintain the full functions, appointed positions and activities of the Council's standing Advisory Committee on Access and Fairness.

## **General Comments:**

If the bench and bar are to maintain the public's trust and confidence in the judicial system, we must devote resources to ensure that judges, attorneys, members of the public and court staff address the needs and concerns of our state's diverse population and continue to build the pipeline for diverse persons to enter the legal profession and judiciary. In this context, COAF offers the following general comments related to the SEC report:

We have serious concerns that the lengthy, detailed SEC report did not address the needs of court users, nor did it refer to maintaining ongoing efforts to meet Goal 1 of the Council's Strategic Plan, or any of the Judicial Council's and AOC's valuable work being done regarding diversity and fairness in the courts. In fact, the report recommended the elimination of key programs and reduction of staff and other resources without consideration of the implications for continued, effective implementation of Judicial Council priorities addressing one of its primary stated goals-- diversity, access and fairness in the judicial branch.

We agree with concerns made in person during the Judicial Council meeting emphasizing the need to consider the input from court users, in keeping with prior Judicial Council and AOC surveys of court users that addressed public trust and confidence in the judicial system and the perception of fairness in court proceedings.

Further, the report does not make a distinction between "equal access to justice" and "access and fairness" and their respective issues, initiatives and needs. Testimony from Justice Zelon supporting the access to justice agenda was critically important; however the access, fairness and diversity initiatives are different and also critical to the effectiveness of the court system.

Among the SEC recommendations was the elimination of programming focusing on Procedural Fairness and Public Trust and Confidence in the Courts, which would have the effect of reducing staff expertise and other resources for ongoing diversity, access and fairness programs and initiatives. The report did not acknowledge that the continued existence of the Access and Fairness Advisory Committee would be jeopardized if these recommendations are implemented. We note that COAF maintains a regular partnership and undertakes joint activities with the Access and Fairness Advisory Committee to further our mutually shared diversity goals.

Finally, we have concerns that while the Judicial Council decided to post the SEC Report for a 30-day comment period and to consider comments prior to creating a timeline for implementation of any of its recommendations, the AOC management has apparently already initiated implementation of its own internal reorganization. See the AOC status report at [http://www.courts.ca.gov/documents/SEC\\_aocstatusreport.pdf](http://www.courts.ca.gov/documents/SEC_aocstatusreport.pdf)

## **Specific Comments:**

We offer comments on specific recommendations as follows:

**Recommendation 7-4: This recommendation would reduce the Center for Families, Children and the Courts staff including the elimination of attorney positions and/or reallocating positions to non-attorney classifications.** COAF is concerned that the SEC recommendation will encompass attorneys who staff committees and task forces, such as the Access and Fairness Advisory Committee. Given the priority status of Goal 1 (access, fairness and diversity) and the scope and nature of the diversity initiatives, it is critical that the staff leader be an attorney who has the stature, time and expertise required to function effectively as liaison to the Access and Fairness Advisory Committee and related entities outside the bar. It is also important that diversity functions not be merged with the work of other CFCC staff who focus on equal access, legal services and other support functions, as the diversity area warrants dedicated staff, given its high priority with the bench, bar and public.

**Recommendation 7-12: This recommendation would reduce Promising and Effective Programs Unit Functions in the Courts Programs and Services, in particular the Procedural Fairness/Public Trust and Confidence Program.** The rationale stated for elimination of this program was the lack of budget allocation for the program. Programs that clearly promote efficient and effective methods of serving court users should be funded and retained.

**Recommendation 7-20: This recommendation would reduce the Education Division staffing in the Judicial Education Unit, specifically reducing the numbers of attorney positions and/or staffing of positions with non-attorney classifications, with specific reference to education specialist positions that are currently staffed by attorneys.** The stated concern by the SEC that an attorney was in a Senior Education Specialist classification was misplaced given the minimal possible cost savings. Training of judicial officers should be of the highest quality and provided by trainers who are familiar with the courts and judicial system. Attorneys are in the best position to meet these standards

We commend the Judicial Council and the AOC for the positive work it has done to promote and ensure support for and implementation of Goal 1 (Access, Fairness and Diversity) and other important goals for the judicial branch. We look forward to our continued partnership with the Council's Access and Fairness Advisory Committee to address our shared diversity goals and to our collaboration with Center for Judicial Education and Research (CJER) staff with ongoing fairness education and training. We offer our assistance to help build a diverse organization that will foster public trust and confidence and the perception of fairness in our judicial system.

In the words of former Chief Justice Ronald George at the first Judicial Diversity Summit co-sponsored by the Judicial Council and the State Bar of California in 2006:

*“In my view, a diverse bench not only will maintain and enhance our state’s tradition of having an excellent judiciary, but will also serve to reinforce our guiding principle – that we are committed to making our justice system fair and accessible to all.”*

Thank you for this opportunity to comment in response to the SEC report. If you have any questions or need additional information, please feel free to contact me at [TCannon@wascsenior.org](mailto:TCannon@wascsenior.org) or at (510) 219-1977 or contact Patricia Lee, Special Assistant for Diversity & Bar Relations at [patricia.lee@calbar.ca.gov](mailto:patricia.lee@calbar.ca.gov) or 415-538-2240.

Sincerely,

Handwritten signature of Teri Cannon in black ink.

Teri Cannon, Chair  
State Bar of California, Council on Access & Fairness

cc: *Justice Douglas Miller, Chair, Judicial Council Executive & Planning Committee  
Members, Judicial Council  
Jody Patel, Interim Administrative Director, Administrative Office of the Courts  
Jon Streeter, President, The State Bar of California  
Sen. Joe Dunn, Executive Director and CEO, The State Bar of California  
Patricia Lee, Special Assistant for Diversity & Bar Relations, The State Bar of California*

## CALIFORNIA COMMISSION ON ACCESS TO JUSTICE

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

August 27, 2012

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

Re: **Comment on Report of Executive and Planning Committee  
concerning recommendations of the Strategic Evaluation Committee**

Dear Chief Justice:

On behalf of the California Commission on Access to Justice, we wish to thank you for your consistent and steady leadership on efforts to achieve access to justice for our branch, and to extend to the Judicial Council our appreciation for adopting Goal I that embodies the “equal access” goal, and for continuing to reaffirm its commitment to that goal in many, many ways over the years.

Although it has been suggested that access efforts should be abandoned due to the severe budget constraints facing the branch, it is more important than ever that fundamental goals such as equal access not be abandoned during challenging times. Access to justice efforts are critical when vulnerable Californians are most at risk - when they are facing foreclosure, unemployment, family disintegration, domestic violence, and other ills – and that is when they are most in need of the protections of our judicial system.

With regard to the recent report and recommendations released by the Executive and Planning Committee concerning the SEC Report, the Commission believes that the Executive & Planning Committee has taken a balanced, thoughtful approach to the many recommendations the SEC Report contains.

A great deal of work went into the SEC Report. It contains some very valuable recommendations and reflects the thoughtful input of a wide range of individuals. Some of its recommendations are appropriate to adopt promptly, as proposed; some of the recommendations need some minor editing before they can be adopted, while others need to be vetted more carefully through a normal Judicial Council process. By recommending a specific timeline for considering all the recommendations, the Committee rightly establishes a process that allows careful thought and analysis while also not postponing consideration indefinitely.

We want to particularly thank the Executive & Planning Committee for realizing the need for more careful study of the following recommendations:

**Rule-making process.** E&P Rec. No. 6 (SEC 6-8) - This recommendation involves studying ways to improve the rule-making process. The Executive & Planning Committee rightfully calls on RUPRO to recommend an appropriate process and timeline, and the Committee also recommends that the Council undertake a comprehensive review of rulemaking, not just a “business case” analysis. The Committee also does not limit rulemaking to those required by statute, since that would unnecessarily limit the initiative of the branch.

**Attorney Positions.** E&P Rec. No. 52 (SEC 7-4-b) – The SEC recommendation referenced a goal of reducing attorney positions, and the Executive & Planning Committee recommends a study of this proposal, taking into account the results of the classification and compensation studies. Since attorney positions are often very important for the work of Advisory Committees and Task Forces, as well as for the substantive work of the AOC, on behalf of the courts and the public, we hope that there is not an arbitrary bias toward lowering classifications to non-attorney positions.

**Publications.** E&P Rec. No. 56 (SEC 7-4-g) - The SEC recommendation encourages considering CFCC publications for reduction or elimination, and the Executive & Planning Committee calls on the Administrative Director of the Courts to consider the reduction or elimination of these publications. While analyzing the value and the cost-benefit of these publications is appropriate, we would hope that that analysis would also consider the value of the publications to lawyers and the public at large, as well as the value to the trial and appellate courts. Most of these publications are available online, and volunteers provide significant input to their content, so they are developed with efficiency in mind, and we hope that there is not a bias toward eliminating many of these valuable resources.

**Justice Corps.** E&P Rec. No. 66 (SEC 7-12-b) – The SEC recommended that AOC involvement with the Justice Corps be limited to procuring and distributing the funding. However, if adequate support, training and evaluation are not ensured, then future funding will be endangered and this incredibly valuable program may have to be terminated. The Justice Corps project helps trial courts and the public by serving vulnerable, unrepresented litigants. This issue deserves a serious, comprehensive analysis, as recommended by the Executive & Planning Committee.

**Grant-Seeking.** E&P Rec. No. 145 (SEC 6-9) – The SEC appropriately urged that grant-seeking activities be studied carefully, and the Executive & Planning Committee agreed. We hope that, while appropriate processes are put in place,

those procedures do not undermine the effort to find funding for key work within the branch. In these desperate funding times, it would be counter-productive to reduce revenue into the branch, as long as there is not undue burden placed on the courts and the value of the grant funds improves services to the courts and the public.

We also wish to join in Part III of the comments submitted by State Bar President Jon Streeter on July 22, 2012. Those comments stressed the importance of maintaining uniform justice across the state to the greatest extent possible so that courts are open and equally accessible for all Californians. As the Access Commission emphasized in our comment submitted in July, "...we have a unified judicial branch, and the statewide infrastructure to support the branch is critically important to ensuring access to justice".

By its inclusion of the public as a key stakeholder for the branch and calling for comprehensive study of the impact of many of the proposed recommendations, the Executive and Planning Committee makes clear that it understands the importance of these steps and that it values the statewide coordinating role of the AOC.

The Commission welcomes the opportunity to continue working with the Council and its advisory committees as the recommendations that are referred for more careful review continue through the appropriate process. While we continue to have grave concerns about the potential impact of several of the recommendations, we believe that this measured approach to the recommendations will provide the thoughtful analysis necessary before those recommendations are acted on.

We also look forward to working with you and the Council to consider how we can ensure the ongoing commitment to the equal access goal despite the ongoing fiscal challenges facing the branch.

Respectfully submitted,



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



Joanne Caruso  
Vice-Chair  
California Commission on Access  
to Justice

cc: Members of the Judicial Council  
Hon. Steven Jahr (Ret.), Administrative Director-Designate  
Ms. Jody Patel, Interim Administrative Director