

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

July 18, 2012

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

Re: **Supplemental Comment on specific provisions of Strategic Evaluation Committee (SEC) report on the AOC**

Dear Chief Justice Cantil-Sakauye:

On behalf of the California Commission on Access to Justice, we are writing to provide this additional comment to the Judicial Council, as part of the public comment period. Previously, the Commission provided written comments to the Council in advance of its meeting of June 21, 2012, and appeared in person at that hearing through the public testimony of Justice Laurie Zelon, on behalf of the Access to Justice Commission.

It is apparent that a significant amount of work went into developing the SEC's detailed report. There are clearly some good recommendations that the Judicial Council should seriously consider, and the Access Commission welcomes 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 also believe that many of these recommendations are very significant and could have a profound impact on the entire judicial branch. For these reasons, it is particularly important that they should not be adopted on the basis of unsubstantiated impressions or innuendo, but only after a careful examination of the actual factual basis for the recommendations.

Major Considerations:

As the Access to Justice Commission reviews the specific recommendations in this report, the following themes inform our response:

* **The Judicial Council has adopted the right process to ensure that recommendations will only be adopted after careful analysis.** The recommendations are complex, and the SEC Report is a tool to use in analyzing the AOC. But the SEC did not have access to the amount of information it would have needed to actually develop a blueprint for restructuring the mission and goals of the AOC. The Judicial Council adopted the appropriate

process – seeking public comment at the outset and then having its Executive and Planning Committee move forward expeditiously to prioritize the recommendations, develop a timeline, and seek input on specific recommendations as they are considered.

* **Responsibility to the Public.** The AOC has a critical role, working with the Judicial Council to achieve the strategic goal of access to justice, so the AOC has a key role addressing the needs of the public, as well as providing service to the Council and the branch; [Rec. 4-2]

* **Unified, Coordinated Judicial Branch.** We have a unified judicial branch, and the statewide infrastructure to support that branch is critically important to ensuring access to justice. Services are also coordinated throughout the state so as to avoid major disparities among counties – the amount of access individuals have to their justice system should not depend on which county they live in. The AOC plays a crucial role in disseminating best practices, helping make resources available statewide, and providing support to all counties in their effort to improve access to our judicial branch.

* **Support for Appellate Courts and all individual judges.** The SEC report gives little attention to the importance of the work the AOC does for the appellate courts. Also, the report fails to acknowledge that the AOC provides direct services to judges, such as through the Judicial College, new judge education and ethics training.

* **Initiative not limited to Mandated Activities.** Limiting the work of the AOC to only that mandated by legislation or court decisions is short-sighted and can undermine valuable work that is ongoing as well as limit all-important innovation that allows the branch to respond to new needs and emerging trends; [Rec. 6-8, 7-4, 7-6]

* **Access to Justice requires more than a Cost-Benefit Analysis.** A pure business analysis will not provide the only measure upon which proposals should be considered, and cost-benefit studies, while important, should be balanced with analyses about what efforts that will improve access, procedural fairness, and public trust and confidence in the third branch of government. [Rec. 4-3, 7-21]

* **Major Changes need input from new Administrative Director.** A structural change in the AOC, while perhaps appropriate, should await action by a new Administrative Director. The SEC report is a “tool” and not a “blueprint”. While the report contains many details there is not an adequate factual basis for many of the structural reforms recommended, and those kinds of reforms should not be pursued without further study under the direction of the Administrative Director. Much planning work can be done in the meantime to inform those ultimate decisions, and implementation of some of the valuable recommendations in this report will not be unduly delayed. [Rec. 5-1 through 5-6, 6-1 and 6-2, 7-3 and 7-4, 9-1 through 9-5, and 10-1 and 10-2]

* **Grant Funding is Key Resource for Branch and should be encouraged.** Grant funding for access initiatives has been incredibly important, and while it is important to study the procedures used for seeking and administering grants, they should not be strictly limited, as is envisioned in parts of the report. [Rec. 6-9, 7-4, 7-5]

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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. However, we caution against adopting recommendations too soon without studying their implications – and getting input from those who would be affected. Our comments on specific recommendations are attached to this letter.

We appreciate the willingness of the Judicial Council to go through this valuable input process because it obviously has resulted in more work for Council members as you sort through the many comments received. But we hope that the quality of the many thoughtful submissions will inform your decision-making and that you will not be swayed by a high volume of comments urging a quick result without addressing the complex issues clearly reflected in the report.

Thank you again for this opportunity to submit comment.

Respectfully submitted,



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



Joanne Caruso
Vice-Chair
California Commission on Access

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Specific Comments on Recommendations of the Strategic Evaluation Committee (SEC) report on the AOC

Chapter 4: Judicial Council Oversight

Recommendation No. 4-1: The Judicial Council must take an active role in overseeing and monitoring the AOC and **demanding** transparency, accountability, and efficiency in the AOC's operations and practices.

Suggestion: This restates the existing mandate of the Judicial Council and is unnecessary. If it is adopted, it should be edited, replacing "demanding" with words such as "with the goal of" or "requiring".

Recommendation No. 4-2: The primary role and orientation of the AOC must be as a service provider to the Judicial Council and the courts.

Suggestion: The role of serving the public should also be included here.

Recommendation No. 4-3: In exercising its independent and ultimate governance authority over the operations and practices of the AOC, the Judicial Council must **demand** that the AOC provide it with a business case analysis, including a full range of options and impacts, before undertaking any branch-wide project or initiative. In exercising its authority over committees, rules, grants, programs, and projects, the Judicial Council must demand that the AOC provide it with a full range of options and impacts, including fiscal, operational, and other impacts on the courts.

Suggestions: The word "demand" should be replaced with a more appropriate term; and the fact that the goal of the judicial branch is not always able to be analyzed using a business case should be reflected here. The goal of access to justice cannot always be achieved by merely relying on a cost-benefit analysis.

Recommendation No. 4-4: The Judicial Council must conduct periodic reviews of the performance of the Administrative Director of the Courts. These reviews must take into consideration input submitted by persons inside and outside the judicial branch.

Suggestion: This recommendation seems appropriate.

Chapter 5: Organizational Structure

The six recommendations in this Chapter reflect suggestions for a major restructure of the AOC. While such a restructuring might be appropriate, the individual details of such a decision need careful analysis, and the new Administrative Director should be involved in the determination of how the restructure is implemented, which activities belong within which division, and whether specific positions should be eliminated or added.

Chapter 6: Management Systems and Processes

Of the 9 recommendations contained in this Chapter, the same suggestion included for Chapter 5 is appropriate here. These are decisions best left to the decision of the new Administrative Director, after careful review. See below for specific suggestions on the final two recommendations in this Chapter.

Recommendation No. 6-8: The AOC must develop a process to better assess the fiscal and operational impacts of proposed rules on the courts, including seeking earlier input from the courts before proposed rules are submitted for formal review. The AOC should establish a process to survey judges and court executive officers about the fiscal and operational impacts of rules that are adopted, and recommend revisions to the rules where appropriate. The AOC should recommend changes in the rules process, for consideration by the Judicial Council, to limit the number of proposals for new rules, including by focusing on rule changes that are required by statutory changes.

Suggestion: While most of this recommendation may make sense, it does not make sense to limit judicial branch rule-making to times when statutory changes mandate those rules, since that can undermine the value of critical ongoing work and also deter innovation that allows the branch to respond to new needs and emerging trends.

In addition, it is not correct that proposed rules first appear when formal comment is requested. Most rule changes are developed by Judicial Council Advisory committees and Task Forces and significant input is requested from throughout the branch prior to the formal comment period. There is already adequate opportunity for input, and the proposal to distribute a preview of proposed rules and survey of the courts before sending out for comment will actually make the rule adoption process more cumbersome, more drawn out and more expensive

Recommendation No. 6-9: The Executive Leadership Team must develop and make public a description of the AOC's process for determining which grants to pursue. The process should mandate a detailed impact analysis for every grant proposal, including consideration of all anticipated impacts on the workload and resources of the courts and the impacts to the AOC as a whole. Only after such analysis should the Executive Leadership Team make a determination whether the AOC should pursue grant funding.

Suggestion: While the call for establishing a clear process for pursuing grants may be a good one, we caution that undue restrictions on the successful grant-seeking activities of the AOC can have an enormous detrimental impact on access to justice, and a strict cost-benefit analysis cannot be the sole determining factor.

Chapter 7. AOC Divisions and Specialized Offices

Center for Families, Children and the Courts

Recommendation No. 7-3: The Center for Families, Children and the Courts should be an office reporting to the Chief Operating Officer in the AOC's Judicial and Court Operations Services Division, rather than a stand-alone division. The CFCC manager position should be compensated at its current level.

Suggestion: This is the kind of decision that should be made by the new Administrative Director, after careful study.

Recommendation No. 7-4: CFCC's current number of authorized positions should be reduced. To achieve the reduction, these areas should be reviewed and considered, and appropriate actions taken:

- CFCC has a one-over-one management structure with a Division Director and an Assistant Division Director position. The Assistant Division Director position should be eliminated.

Suggestion: This is the kind of decision that should be made by the new Administrative Director, after careful study.

- There are nearly 30 attorney positions in CFCC, including 7 attorneys who act as Judicial Court Assistance Team Liaisons. All attorney position allocations should be reviewed with a goal of reducing their numbers and/or reallocating them to nonattorney classifications.

Suggestion: Attorney positions are often so important for the work of Advisory Committees and Task Forces, as well as on specific projects of CFCC, and we believe that an arbitrary bias toward lowering the classification to a non-attorney position may undermine the important work being done.

- CFCC staff members produce various publications. They should be considered for reduction or elimination.

Suggestion: The tone of this recommendation seems to imply that the publications are not valuable. While it is appropriate to evaluate the work, we are concerned because these publications help courts increase access

to justice while also providing best practices that are cost-effective and most are already available electronically.

- Although staffing reductions in this division are feasible, any reorganization or downsizing of this division must continue to allow for reasonable servicing of the diverse programs mandated by statute and assigned to this division, including such programs as the Tribal Project program.

Suggestion: The indication that only mandated programs should be continued is inappropriate and unnecessarily narrow, since that can undermine the value of critical ongoing work and also deter innovation that allows the branch to respond to new needs and emerging trends. The new Administrative Director, after careful study and broad input from key stakeholders, should recommend any necessary staff reductions to the Judicial Council.

Recommendation No. 7-5: The Judicial Council should exercise oversight to assure that grant-funded programs are undertaken only when consistent with predetermined, branch-wide policy and plans. The fiscal and operational impacts of grant-funded programs on the courts should be considered as part of the fiscal planning process.

Suggestion: All of the discussions about grant-funded programs should be addressed consistently, and should not be limited to an immediate cost-benefit analysis, but rather should be subject to more thoughtful analysis about the benefits and the requirements for implementation – and the impact.

Recommendation No. 7-6: Consistent with recommendations in this report calling for a review of AOC's rule-making process, legislative proposals generated through this division should be limited to those required by court decisions and approved by the Judicial Council Advisory Committees.

Suggestion: There is no need to limit these activities to those required by court decisions since that can undermine the value of critical ongoing work and also deter innovation that allows the branch to respond to new needs and emerging trends.

Recommendation No. 7-9: Self-represented litigants in small claims, collection matters, foreclosures, and landlord-tenant matters are frequent users of court self-help centers. A majority of self-help clients seek assistance in family law matters. Consideration should be given to maximizing and combining self-help resources with resources from similar subject programs, including resources provided through the Justice Corps and the Sargent Shriver Civil Counsel program.

Suggestion: The issue of self-represented litigants is a critical one for the branch and is best addressed through coordination of work throughout the AOC. The same person oversees self help funding and the Shriver projects ensuring appropriate coordination, resulting in economies of scale and avoiding duplication of effort. These programs work closely with Justice Corps staff and

with attorneys who staff subject matter committees that are responsible for rules, forms and procedures in these different case types.

Court Programs and Services

Recommendation No. 7-12: The Promising and Effective Programs Unit functions are largely discretionary and should be considered for reduction or elimination, resulting in position savings. Consideration should be given to the following.

- To save resources, the Kleps Award Program should be suspended temporarily.

Status: The Kleps award has already been suspended, and we hope that that suspension is only temporary, because the best practices that it helps publicize help all courts throughout the state.

- The Justice Corps Program should be maintained, with AOC's involvement limited to procuring and distributing funding to the courts.

Suggestion: The support for the Justice Corps program can be done much more cost-effectively at the statewide level, so support should not be limited to procuring and distributing funds. Ongoing work is needed to provide adequate training, provide supportive resources, and conduct evaluation so that grants can be continued.

- Since funding for the Procedural Fairness/Public Trust and Confidence program has ceased, it should be eliminated.

Suggestion: This is the kind of decision that should be made by the new Administrative Director, after careful study; the appearance of eliminating the unit pursuing procedural fairness and public trust and confidence makes it imperative that this be done thoughtfully and carefully, if at all.

Recommendation No. 7-17: Modifications to the Assigned Judges Program should be considered, including the following:

- The program's travel and expense policies should be reviewed to mitigate adverse impacts on the availability of assigned judges to smaller and rural courts.

Suggestion: Good idea that would help access in rural areas.

- Consideration should be given to a pilot program to allow half-day assignments of judges, taking into account the probable inability of small, rural courts to attract judges on this basis.

Suggestion: Good idea that would help access in rural areas.

- Consideration should be given to development of an Assigned Commissioner Program to assist courts with such matters as AB1058 child support cases.

Suggestion: Good idea that deserves serious consideration.

Education Division/CJER

The recommendations in this section address the all important training needs of the branch. Determination about the direction of CJER should be made after a new Administrative Director is available to analyze the AOC structure and each of these recommendations. The needs of individual trial and appellate court judges as well as the needs of the branch overall, need to be studied before recommendations are implemented.

Recommendation No. 7-21: The Education Division should conduct true cost-benefit analyses — and not rely only on its own preferences — in determining the types of training and education it provides, including types, lengths, and locations of programs, delivery methods, and the costs to courts. This type of analysis should apply to training and education programs for new judicial officers.

Suggestion: A pure business analysis will not provide the only measure upon which proposed training should be considered, and cost-benefit studies, while important, should be balanced with analyses about what efforts that will improve access, procedural fairness, and public trust and confidence in the third branch of government. The needs of individual judges also need to be taken into consideration.

It is also important to note that training can be a quick and cost-effective way to address problems without having to go through the expense and inconvenience of rule changes. And the training can often yield immediate results in improved courtroom procedures and effective case management.

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