Item SP12-05 Response Form

Title: Strategic Evaluation Committee Report

The Strategic Evaluation Committee (SEC) was appointed by Chief Justice Tani G. Cantil-Sakauye in March 2011 to conduct an in-depth review of the AOC with a view toward promoting transparency, accountability, and efficiency. The Chief Justice received the report and recommendations on May 25. At its meeting on June 21, 2012, the Judicial Council accepted the report and directed that it be posted for public comment for 30 days. Comments received will be considered public and posted by name and organization.

PLEASE NOTE that all comments will be posted to the branch web site at www.courts.ca.gov as submitted by the commentator as soon as reasonably possible after receipt.

To Submit Comments

Comments may be entered on this form or prepared in a letter format. If you are *not* submitting your comments directly on this form, please include the information requested below and the proposal number for identification purposes. Because all comments will be posted as submitted to the branch web site, please submit your comments by email, preferably as an attachment, to: invitations@jud.ca.gov

Please include the following information:

Name: Alexander B. Aikman **Title:** Management Consultant

Organization: None

☐ **Commenting on behalf of an organization**

General Comment: As I have not worked in or with California's courts for some time and many reading these comments do not know me, allow me to introduce myself. I started in court administration with the National Center for State Courts almost 39 years ago. I have been a CEO in California (El Dorado County), a deputy state court administrator in Oregon, and, for most of those 39 years, a consultant to trial and appellate courts and administrative offices of the court throughout the nation. For the past two Springs I have taught the "Court Management" course in the California State University, Sacramento, judicial administration program. I also have authored the leading general book on court administration. I share this background so you will have some context for assessing the thoughts offered here.

Summary

Because these comments are lengthy, I offer this summary:

- The SEC report has much to commend it, but the specificity and detail of many recommendations are premature. A new management team and newly-sensitized Judicial

Council are owed time to apply well-established management principles and policies and consider answers other than those proposed by the SEC.

- New management can and will change the culture in the AOC that is the basis for many of the concerns expressed in the report. When the culture is changed, many of the recommended changes will not need to be addressed at the Council level.

- The new Administrative Director (AD) deserves the opportunity to study and make changes as needed to the AOC's structure and staff assignments. Although the SEC's revisions to structure sound reasonable and thoughtful, they may or may not be appropriate for the new management team. Structural changes should follow the hiring of a new AD, not precede it.

- Accordingly, the first priority for the Chief Justice and the Judicial Council should be hiring a new AD. Many positive changes will follow that decision. The Council should not make decisions now that will strait-jacket the new AD.

- The impact of the proposed changes—together with the language of this year's budget bill—on smaller courts is not addressed by the SEC. The Council should understand those impacts before making widespread and, to a degree, arbitrary changes.

- Because the SEC limited analysis of the raw data and development of its recommendations to its membership, it denied itself the benefits of a manager's knowledge and perspective. The Council, through its new Administrative Director and his or her new management team, should obtain those benefits before concluding that the SEC's recommendations are the best and worthy of adoption without further consideration.

- It will not be easy to disregard the many voices calling for immediate and dramatic action, but it is best for the Council and the branch if it does so.

Comments

The comments posted through July 6 come only from judges, with 27 of the 37 comments from judges in "Big 7" courts. The judges' views are helpful and appropriate, but limited. The heavy representation of views from our largest courts risks overlooking the needs and intersts of smaller and even mid-sized courts. More critically, judges and managers appropriately view the same issues from different perspectives; thus, they emphasize different considerations and, sometimes, reach different conclusions. Neither is necessarily right or wrong, just different. The amalgm of both perspectives produces the soundest results. Overlook either and the result too-often turns out to be bad for the judges, staff, or key stakeholders. When staff and senior managers' input is not sought or given equal consideration, judges lose important knowledge and insights that would inform and often improve their administrative decisions. The SEC report contains a number of instances where an administrator's views and knowledge might have produced a different or modified recommendation. Relying primarily on judges weakens the result

because many judges do not have the background in management policy and experience that will produce the best solution. As a current outsider, I have a bit more freedom to share these thoughts than others might have.

A related but independent observation is that trial court staff, including senior managers, are not listed among those from whom the SEC sought and obtained views. That may reflect a conscious choice based on resources and the committee's reading of its charge, but it also implies a lack of recognition of the value of the input of these AOC observers. Trial court staffs have substantially more and different contacts and interactions with the AOC than judges do. Again, these experiences are not better or worse, just different in a way that enriches the picture and expands the options for improvement. Without staff input, the judges' and CEOs' view of the elephant is incomplete. Survey tools are available that allow surveys of large numbers without burdening the tabulation and analysis process. It is unfortunate that these tools apparently were either unknown to the committee or unused.

I shared many of the objections and concerns noted in the SEC report when I was the CEO in El Dorado and as I have observed developments in the years since. I have had more than my share of disagreements with policy decisions and approaches to decision making in the AOC. Many of the general observations and opinons in the report about how the AOC has worked are credible. Even so, my goal while in El Dorado and since was for the AOC to be an effective entity on behalf of all of the trial courts and to help the AOC provide better support. I fear that today the goal of some of the most vocal critics of the Judicial Council and the AOC is to gain greater judicial control over administration--starting with the AOC--for the primary purpose of making it easier for judicial critics to thwart or blunt the impact of statewide initiatives with which they disagree or that introduce change that they find uncomfortable or inconvenient. To the extent that this is at least part of the motivation for the recent sometimes-very-harsh criticism of the AOC and Judicial Council, it is neither new nor surprising. It also is not a sufficient reason to abandon sound policies and goals. I reject the apparent view of some in the two other branches for statewide uniformity almost regardless, but support appropriate unifromity developed within the judicial branch. The push to minimize (or marginalize) the AOC could lead to 58 individual systems, a result that ill-serves our constituents.

I might also note that in Oregon, the division I headed within the AOC in many respects was the type of support organization envisioned by the legislation that created the AOC and in the SEC report. We offered the trial courts both expertise across many aspects of trial court operations and a limited, centralized staff that provided important economies of scale to the entire branch. (Interestingly, my students this year, who mostly were from large Southern California courts, noted that judges and staff alike in their courts often asked the AOC's staff for help even if the court's own staff has the same subject-matter expertise. They were concerned about the absence in the SEC report of recognition of the good work of the AOC's staff.) Because of my work in Oregon, I know that the ultimate

goal envisioned by the SEC of a supportive, service-oriented AOC is feasible, even in a state the size of and as diverse as California. I suggest an alternative path, however.

Observers of courts have noted for many years that judges' perspectives are "professional," i.e., focused on their status as professionals and their "independence" rather than on the court as an institution with requirements and needs independent of individual judges' preferences. More recently, former judges and administrators, among others, have added "loosely coupled," i.e., the fact that no judge owes his or her status to anyone in the institution and no one in the institution will be responsible for their continuing as a judge, resulting in a lack of connection with or, in some instances, even interest in their colleagues, staff who do not work directly with them, and staff management. (A former chief judge in a midwestern court refers to this an inconvenient need to share office space.) There is a clear overlap between the two perspectives, but combined they can result in an indifference to the needs of the court as an institution and a strong "me first and only" attitude in some judges. This makes managing in a court and at the AOC a challenge unknown to any other public-sector manager or anyone in the private sector. Court managers often feel that judges do not see their contribution as being important as or as worthy of consideration as those of their judicial peers. These views were reflected to some degree in the SEC's report through the SEC's emphasis that it accepted the assistance of only one senior manager within the AOC. It noted that, "the discussion, findings and recommendations contained in this report are those of the SEC alone" (p. 29). At one level, the circumstances that led to creation of the SEC make this isolation understandable, but in the process the SEC lost diversity of opinions and management knowledge that would have strengthed its report, not weakened it.

The SEC report mentions the AOC's regional offices only twice: they should not be independent units in a new organizational structure and the leases on two of the offices should be abandoned, inferentially because the offices are not needed, although that is not a recommendation. The report does not discuss why these offices were created and the value they provide. In today's economic world one might still conclude that the price is too high, but in failing to note why the offices were created in the first place, both the Council and a new Administrative Director do not have the information needed to decide if the benefits offset the cost. The focus is solely on structure and cost. Both are important, but not solely important. In a world in which the AOC is to return to being a service organization, one might conclude that regional offices--even more than three--are important to provide the service needed. This possibility is absent from the report.

This one example illustrates a broader weakness in the report. The focus is almost exclusively on what the AOC has done wrong or failed to do right and on saving money. Consequently, the report does not even suggest the following question: What would the Judicial Council and AOC look like if we designed it for maximum statewide-branch administrative effectiveness (not "efficiency") and how would functions and tasks be allocated between the AOC and the trial courts? The report mentions zero-based budgeting, but not a zero-based assessment of goals and how best to achieve those goals. The latter is more important than the former.

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

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Much of the discussion that led to creation of the SEC and surrounds it still involves trial court judges wanting "more" (undefined), fewer AOC staff with less responsibility, and the absence of concern at this point about what the Council and AOC will have left when the "slashing and burning" are done. Lawyers learn in the first year of law school that the answer one gets depends on the question that is asked. The right questions are not being asked. The Council needs to focus on the question just proposed, not on how to change the structure of the AOC, the number of people it employs, and how to reduce the dollars it is given, presumably, at least for some, so more dollars will flow to the trial courts. As one of my favorite philosophers, Yogi Berra, says, "if you don't know where you're going, it's hard to know when you get there." It also is hard to know how to get there. Without knowing what the AOC should be doing, its goals, and its role vis-à-vis and in support of the trial courts, it is impossible to know what to cut or how to organize those tasks and functions. "Providing service" is not a sufficient guide. Funding levels surely are important, but mission and method should drive decisions, not funding or angst over past practices.

A second question deserves consideration before adopting the SEC's recommendations: What can we learn from this experience to improve and do better? There is a tendency in the judiciary across the country to eliminate programs that are perceived to be "failures" or that are documented as not achieving all of their goals, rather than modifying and trying to improve before discarding. The question about what we can learn is more appropriate, will be more productive, and is better management than a flat rejection.

A likely result of the FY2013 budget and adopting the SEC's recommendations is that smaller courts again will suffer relative to the larger courts. Previous to state funding, most smaller-county courts could not compete as effectively for county dollars as the larger courts did. Thus, significant disparities grew between smaller courts and, particularly, the "Big 7" courts. After state funding and the RAS process, the discrepancies have been reduced, although they again may be creeping up with the economic crisis. In a world in which the legislature will determine what trial courts get, smaller courts again will be disadvantaged¸ only this time in the legislature. And they will lose supportive services they cannot buy themselves but that the AOC now provides. Making significant structural changes and staff reductions without more explicit consideration of the impact of these changes on smaller courts is not responsible.

Because of my experience both in California and nationally, I spent a number of pages in my book on thoughts about an appropriate relationship between an AOC and trial courts and why AOCs across the country often are seen by trial courts as out of touch or the "enemy." This is not just a California phenomenon. That recognition also is missing from the SEC report; the report implies that California's issues with the AOC are unique. They are not. The answers in my book may or may not appeal to the Council and other decision makers in California, but at least further discussion of these issues at the Council level is needed before deciding what structure, size, and budgets are appropriate.

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A number of the SEC report's criticisms of the AOC tie directly to preferences and tactics of senior managers who no longer are with the AOC. The report presents them, however, as if they are structural or institutional and can be addressed best by changing the institution and its duties. I have two responses.

First, what the SEC report describes as a "drift" from the AOC providing service to AOC control was identified 50 years ago as a common phenonenon in organizations by a pioneering, keen observer of organizational behavior. The observer was looking at how corporations work. Public-sector organizations operate similarly. The devolution from service, to monitoring, to auditing, to control is found in all organizations. This "drift" must be recognized and guarded against, but it is not unique to courts or to California's AOC. The report does not reference this understanding of organizational behavior. As a result, it does not discuss safeguards other than structure, staff size, and an auditing function for the Council.

Second, even with the institutional tendency of service organizations to devolve to control, the former management of the AOC chose to accelerate and assure this "drift." As the SEC itself acknowledges, therefore, most of the SEC's concerns can be addressed by new management, including new senior managers hired by a new Administrative Director. I suggest that these personnel changes will have greater impact than an arbitrary reorganization and cuts in staff numbers. The SEC's report contains a section in Chapter 4 titled, "Guiding Considerations." Too much of the rest of the report then goes way beyond guiding considerations and principles or goals to very specific and detailed prescriptions for change. This is not the report and the Council is not yet the place to install these specifics.

The Council and all the courts, not just the trial courts, would be better served by hiring different people than trying to assure through a new structure and new rules that no one can repeat past mistakes or make any new mistakes. Where there have been abuses of discretion or a lack of oversight, the Council should look to restrain the exercise of discretion by laying out the parameters or factors that must be considered when discretion is exercised and then monitoring their use. No attempt should be made to try to eliminate either mistakes or discretion or set the Council up as a supernumerary administrator. Creating a list of parameters that constrain the exercise of discretion is a very hard task, but it is preferable to the options offered by the SEC. Changing the institution is premature. New leadership, informed by the SEC report and all the other comments and concerns recently expressed, as well as a firm foundation in management theory and practices, should be given a chance to propose and implement specific changes. Changing the structure of the AOC, cutting its staff, and lowering its budget before giving new management a chance is short-sighted and possibly damaging to the branch. New management--and the Council--deserve a chance to change the culture and build a structure and operation the fits needs.

One other thought about a new Administrative Director: The new AD shhould not have a fixed agenda coming in, the SEC's or any other. He or she must be open-minded and

willing (and eager) to listen before proposing changes. Therefore, he or she must have time to bring on a new team and to gather views before proposing new approaches. (This the SEC recognizes.) The new AD should not come with a pre-determined resume (judge, someone with a legislative background, or a career manager). The Chief, Council, and any others involved in the selection process need to define in advance the desired qualities, characteristics, and skills of the next AD; the right person then will emerge regardless of his or her previous position(s). ("I'll know it when I see it" should not be the guide for the selection process.)

The following story may not seem to be germane, but I believe it is. During the three pilot years for the Civil Delay Reduction Project in the early 1990s and before the evaluation of the project was complete, the Los Angeles Superior Court hired the Rand Corporation's Institute for Civil Justice to document how many more judges it needed based on and using a methodology that the then-CEO had been trying to advance for several years (i.e., not the Council's established weighted caseload methodology). Rand's report stated that to catch up with the backlog and to dispose of the new cases expected over the next five years, LA alone needed about 250 new judges. I worked intensively with the LA court during the delay-reduction pilot years and directed the statewide evaluation of that effort. As Judge Eamon has noted recently, at the end of the pilot program, LA eliminated the backlog assigned to the 25 pilot judges, those judges were trying civil cases in 18-24 months (down from over four years for most cases), and the typical caseload per judge was about 30%-35% of the originally-assigned number. And they did it without one new judge. Four new staff were assigned at the outset for four months, but other than that, no new staff were needed, either. Better management and information were the answer, not more judges. LA had its political document, but not a model for moving forward.

In like fashion, different management at the Judicial Council and the AOC can deal with most of the issues identified by the SEC. If new management does not, then the Council—and the legislature, if necessary—can make the needed structural and management changes (or find a new AD). The report together with considerable management and leadership literature will help identify the type of person needed as the next AD. Bring that person on board and let him or her do the job. Those who argue otherwise are not seeking better management or operation at the AOC, just less AOC (whatever that means) and, to some extent, less Council. The new AD will have the broad management experience and knowledge to approach the issues using data and management and organizational principles, which is how the issues should be addressed. The members of the SEC are to be commended for their effort to define specific management solutions in support of their goal-based recommendations. Nonetheless, as they did not go beyond their membership in fashioning their recommendations, the Council owes it to itself and the branch to obtain the new AD's perspectives and input before mandating detailed changes that may or may not be necessary or appropriate. Too often in the judiciary, arguments that are logical and fervently championed fail when tested against experience and data. It would be a mistake for the Council to let this happen to the AOC, at least at this point.

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At some point it might be concluded that management alone cannot solve the problems, that more changes are needed. Today, the Council should not rush to make all, or even many, of the SEC's specific changes without giving new management and a new sensitivity to its own role a chance to make needed improvements, informed by goals and performance data and not solely by the SEC report. A statement by the Council of its goals and broad policy preferences would be appropriate at this point; ordering the immediate implementation of many of the specifics in the SEC report is not.

In this context, the report states that, "the future of the judiciary may depend on its budgetary success in the capital" (p. 22). I understand the context that leads to this statement, but in my view it is wrong. Beyond implying that the next AD must be a "Capital insider," my experience in California and in other states is exactly the opposite. Budetary success follows strong, positive management that improves courts' service to the public (broadly defined) and documents its advances. Good lobbying may help in the short term, but it's a Pyhhric and short-term victory if strong management does not lie behind the lobbying. Many management successes are possible within even today's unhealthily-reduced budgets. The future of the judiciary--both in the AOC and in trial courts--will depend on strong management directed toward achieving the mission and goals of the entire branch. Now is the time to build the foundation for that result, not to be misdirected by short-term budgetary difficulties and surface changes in structure and numbers.

If the Council takes this slower but sounder approach, it doubtless will be criticized by some looking for simple, quick decisions and those who might have other agendas. That should not deter the Council from taking the better policy and management path. There are no simple answers to the complex issues facing the judiciary. Even with the considerable, thoughtful work of the SEC, there are approaches that deserve consideration that are not addressed in its report. I urge you to take the sounder management steps first and see what happens before imposing some of the more dramatic structural and staffing-level changes recommended by the SEC.

Thank you for your consideration of these thoughts.

Specific Comment - Recommendation/Chapter Number 4-1 and 4-3:
These recommendations sound reasonable in light of some of the concerns surfaced in the SEC report. They probably are largely unworkable day to day, however, not only for the Council and the Administrative Director, but in some instances the Council's advisory committees, as well. I urge the Council to seek additional advice from senior managers in comparable public and private organizations before trapping itself and the new AD in a process that all later will regret.

For many years members of the Judicial Council have been very burdened by the time demands of membership. Should the recommendations in Chapter 4 and some other

recommendations be adopted, the burdens will be even greater. In years past I have suggested that consideration be given to relieving Council members who are judges of some or all their bench responsibilities while on the Council so they can exercise the oversight urged by the SEC. I was advised that idea is a non-starter. Should the recommendations of Chapter 4, plus several of the other recommendations enhancing the Council's oversight responsibilities be adopted, I again suggest that asking Council members to be full-time judges or CEOs plus largely-full-time Council members will require some review.