



Superior Court
State of California
COUNTY OF KERN

CHARLES R. BREHMER
Judge

1415 Truxtun Avenue
Bakersfield, CA 93301
(661) 868-4934
Fax (661) 868-4999

July 6, 2012

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

I write on behalf of myself. I have been a member of the bench for over 20 years a Judge for the last 19 years. I am a recent past Presiding Judge of the Kern Superior Court. I was a past Presiding Judge of our Municipal Court. I have been witness to the change in the relationship of the trial court and the AOC for the last 15 years.

Since this invitation is directed toward comments on the SEC report, I will begin my comments there. I have read the SEC report. I would like to commend the members of the Committee for their dedication, hard work and courage in researching, preparing and authoring this report.

There is very little I would disagree with in the report, except to note a very measured and tactful response to very delicate questions. In short I would urge the Chief Justice and the Judicial Council to adopt the recommendations of the SEC and use this report as a basis for restructuring the AOC to a viable and responsive organization that would serve the courts and NOT supervise or manage the courts.

I cannot voice my disappointment highly enough in the Judicial Council, at the last Judicial Council meeting not agreeing to accept the Committee's recommendations as to Chapter 4 :

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.

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.

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.

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.

What is objectionable about the recommendations of Chapter 4, is the necessity of the Committee to have to mention them. It appears that the failure to address Chapter 4 recommendations is based on a reluctance of the Chief Justice and the Judicial Council to see the judiciary as the governing or supervising authority over the AOC, rather they perceive the judiciary as working for the AOC.

If one reviews the Honorable David M. Rothman's "California Judicial Conduct Handbook", one would note numerous comments to violations of Canon 3, where a judge refuses to exercise discretion or delegates decision making to others. I see no greater failure to exercise judicial discretion than delegating the authority as to how the courts operate to the AOC.

The responsibility of the functions of the AOC rest with the Judicial Officers that should be supervising the AOC. I have had members of the AOC make false or misleading statements to me regarding issues related to court function and management. One of those comments was regarding authoring language of the budget trailer bill where the Judicial Council would select the Presiding Judge and the Chief Executive Officer of each Court. We are all aware of the outcome of that issue. At first the AOC denied authoring the language and most recently a member of the Judicial Council admitted that it was a "minor staff member" that did so at the suggestion of the Department of Finance. When asked who the staff member was the Council member declined to state.

The SEC report is about the symptoms of the ailments of the courts and not the disease. The disease is the current governance structure that has been imposed on the courts by the current and past Chief Justice.

The current governance is authority based on a culture of personality. There is no direct Constitutional or Statutory authority for the Chief Justice having such over whelming authority of the trial courts. I am not aware of any authority that removes the accountability of a judicial officer from the electorate and transfers such authority to the Chief Justice.

In closing I once again urge the adoption of the SEC recommendations as a positive first step in improving the delivery of justice in the State of California.

Sincerely,



Michael B. Lewis

Judge , Kern County Superior Court