

[The following article is an editorial excerpted from the Daily Journal]

3/15/2011

Who Really Runs the Judicial Branch

By Maryanne G. Gilliard

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Over the past 10 years, repeated clashes have erupted in the judiciary, all revolving around one question: Who really runs our judicial branch? The reality is that an imbalance of power currently rests in an insular triumvirate: the chief justice; William Vickrey, the director of the Administrative Office of the Courts; and the chairman of the Judicial Council's Executive and Planning Committee, a 14-year council veteran.

In 1997, the Legislature, at the urging of the former chief justice, passed and the governor signed into law a bill called the Lockyer-Isenberg Trial Court Funding Act of 1997. The laudable goal of the bill was to equalize funding among the 58 county trial courts by placing into the hands of the Judicial Council the power to allocate funding to the trial courts.

At the time, judges expressed concern that giving unfettered power to the Judicial Council and the AOC would erode the ability of our courts to respond to the needs of local communities and would foster a centralized bureaucracy, whose chief goal would be to serve itself. Responding to these concerns, the Legislature placed language in Lockyer-Isenberg directing the council to create a "Trial Court Bill of Financial Management Rights." They never complied, though the AOC continues to publicly maintain otherwise.

The AOC does not believe its own spin. In late 2009, AOC Assistant General Counsel William L. Kasley told the Alliance of California Judges that a Judicial Council financial policy manual and rules of court adequately addressed the issue. But, in responding to reporter Kenneth Ofgang's question, "Where is the Bill of Rights," the AOC inadvertently forwarded him an internal e-mail that contained this statement from AOC spokesperson, Phil Carrizosa:

"On this point, I think the Alliance is correct - the Legislature did ask the Judicial Council to draft a Trial Court Bill of Financial Management Rights and the council never did that. The finance policy quoted by /Kasley/ specifies /nothing/ about those rights."

"All we can do is emphasize that the finance policy recognizes that each trial court is responsible for managing its own operations."

"Good luck in selling this approach to Ken."

The concerns of those judges who sounded the alarm in 1997 have been realized. The AOC has grown from 268 employees to over 1100. The chief justice appoints 15 of the 21 members of the Judicial Council. The Executive and Planning Committee has imposed sweeping governance changes without public debate, without public circulation and without a public vote of the Judicial Council. The committee sets all council agendas, determines who addresses the council and what they may say, and who can be considered for council and advisory committee membership. (Rules 10.6 and 10.11) A rule passed without public circulation or comment in August 2009 allows the Executive and Planning Committee to act for the entire council in non-public votes. (Rule 10.11(a)) It was used on Dec. 17, 2010, when a telephonic vote relegated the council to "sponsor" status and gave Vickrey exclusive authority to select the members of the committees to oversee the California Case Management System (CCMS).

Vickrey has been delegated policy making authority, policy interpreting authority and budgeting authority by the Judicial Council and chief justice. (See California Rules of Court 10.2(b)(4), 10.101(d), 10.80(d)). The truth is that since 1997, the AOC has seized, and been ceded, much power and in return has received no serious or meaningful oversight by the council. Council votes are simply predictable endorsements of AOC projects and programs. No AOC staff recommendation has ever been rejected by the Judicial Council.

The AOC is simply out of control. Its excesses have harmed the judiciary's reputation immeasurably. It employed unlicensed contractors, resulting in a lawsuit to recoup millions, and spurring legislation introduced in the current session. The alleged mistreatment of an AOC employee, who informed the press of the lavish spending at a council planning session on the budget shortfall, resulted in last year's enactment of whistle-blower legislation now affecting all 58 trial courts, not simply the AOC.

In June of 2009, using authority delegated by the council to submit legislation during budget negotiations, the AOC surreptitiously submitted trailer bill language to gut Government Code Section 77001 to remove all statutory authority for local court control, including the power of courts to select their own presiding judges. When uncovered, they first falsely blamed the Department of Finance, and later were forced to admit their involvement.

The crown jewel of the AOC is CCMS. Last year, the Alliance of California Judges fought for a legislative audit of CCMS. The former chief justice, the AOC, and the current head of the CCMS "oversight committee" all weighed in against it.

Thankfully, our side prevailed. The February 2011 Bureau of State Audits report reveals a stunning record of failure, misinformation, mismanagement, and lack of oversight. The project, first slated at \$250 million, may top out at \$3 billion and will likely be obsolete by the time it is fully deployed in 2016.

The reaction by the Judicial Council and the AOC to this devastating audit has been shameful. In the immediate aftermath, judges received an e-mailed infomercial produced by the AOC's "news bureau"

announcing all was well because new oversight committees had been formed. Within 24 hours judicial leaders proclaimed it was time to "move on."

The damage done by this debacle is now nationally known: An Associated Press headline on March 12 reads "Computer Mess Jeopardizes Court's Political Clout." It appeared in over 300 newspapers, including the Sunday New York Times, within hours.

Particularly troubling to many judges is the concerted campaign by some Judicial Council members, AOC staff, and others aligned with them to discredit and marginalize those who dare to express a contrary view regarding our branches' obvious failings. Judges have publicly been dismissed as "ants," "shrill," "uninformed" (former chief justice), "clowns" (chairman, Executive and Planning Committee), "chicken little," and "strident" just to name a few. These ad hominem attacks are not limited to judges. Recently the chairman of the CCMS Executive Committee accused respected State Auditor Elaine Howle of being unfair, after she released a report criticizing the assumption laden cost benefit report purchased by the AOC. The chairman even suggested Howle inappropriately released her critique early to the "most strident" CCMS critics. One legislator observed: "I can't believe the AOC wants to get into a credibility contest with the State Auditor." How sad.

The Alliance is sponsoring a solution in AB1208 (Calderon), "The Trial Court's Rights Act of 2011." This bill clarifies the powers and responsibilities of the Judicial Council, AOC and our 58 trial courts. To those who would argue this bill represents legislative intrusion into the court's business, please realize that the structure of state trial court funding is itself a creature of statute. Also, bear in mind the only time the AOC complains about the "camel's nose under the judicial tent" is when judges propose legislation that would rein in their fiscal mismanagement and overreaching actions - otherwise, the AOC appears quite camel friendly.

To those who ask why we have not kept these problems "in house" we respond: Judges have tried. For instance, on Jan. 21, 2010, the president of the Alliance traveled to San Francisco to deliver a two-minute pre-approved statement to the Judicial Council. The chief justice ordered him to stop once he reached the point in the statement where "governance" was mentioned. When the president of another judges' organization complained about AOC raises at the Dec. 15, 2009 council meeting, the Executive and Planning Committee chair responded: "I'll be damned if I'm of a mood to support some major overhaul of the Judicial Council's governance policy because of some newspaper articles that caused some judges to get angry." The council did react, forming a new "accountability" committee. That committee has taken but one action since then - it recommended retroactive pay raises for the AOC.

The Alliance is not out to dismantle statewide rules that ensure the fair and consistent administration of justice as some have falsely claimed - AB1208 does nothing to the Judicial Council's constitutional rulemaking authority. We simply insist that our judiciary be controlled by those who are ultimately responsible for its successes and accountable for its failures - the judges of the state's 58 trial courts. AB1208's modest reforms will assist us all in realizing that goal.