



September 22, 2011

Dear Members and Others:

We include an article from the Courthouse News Service dealing with the recent CJA meeting in Long Beach, titled "**Trial Judges Question Direction of Courts**". The article notes the continued anger by judges over the attempt by the AOC to add language to a trailer bill in 2009, the effect of which would have been to remove the ability of the trial courts to manage their own affairs, including the election of their Presiding Judges.

At the CJA meeting, where judges could obtain t-shirts depicting a sinking Titanic bearing a "CCMS" logo, Justice Douglas Miller, Chairman of the Judicial Council's Executive and Planning Committee, was asked about the 2009 incident. The article quotes him as stating that he does not know why the language was inserted, but that he does know the identity of the AOC staff person responsible. He did not name the individual. Thus we have asked him to assist us by providing that information. Our **letter to Justice Miller** is included herein. We have also included a **2009 blog entry by Cheryl Miller of the Recorder Newspaper** which nicely summarizes the incident for those not familiar with it. Finally, we have attached to this email a document setting forth the actual statutory changes that the AOC proposed.

We are happy to report that the herculean efforts of Judge Kevin McCormick to determine just how many people actually work for the AOC have borne some fruit, though gaps remain in the data provided by the AOC. The numbers just released are much larger than those in public statements by the AOC. Once again, the Courthouse News Service has followed up with an excellent article titled "**Court Bureaucracy Coughs Up Numbers On Workers and Pay**".

Thank you for your continued support.

Directors,  
Alliance of California Judges

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Justice Douglas Miller  
Chair, Executive and Planning Committee  
California Judicial Council

September 22, 2011

Dear Justice Miller:

It was reported in the September 17, 2011 edition of the Courthouse News that during your presentation at the CJA conference, you were asked about the 2009 attempt by the AOC to insert language into a trailer bill that would have all but ended local control of our trial courts, including potentially ending the ability of the local courts to select their own presiding judges. The article states that several judges asked about the incident, and that in response you stated that you did not know why the bill had been drafted, but that you were aware of the identity of the "staff member responsible".

Justice Miller, the 2009 attempt by the AOC to take over operation of the trial courts by this covert action has been covered in the legal press on several occasions. In response, the AOC first simply denied that it had any involvement in the matter, Mr. Vickrey blaming the Department of Finance for drafting the language. CJA accepted this explanation, and advised its members that the AOC had no part in the matter. When Judge Maryanne Gilliard of the Sacramento Superior Court contacted the Department of Finance, we learned that the AOC version was simply not true, and that in fact the AOC was solely responsible for submitting the language in question.

Since then, the AOC has failed to adequately explain who authorized the drafting and submission of that language to the legislature. In your capacity as Chairman of the Executive and Planning Committee of the Judicial Council, you have apparently become aware of the identity of the individual responsible for drafting the statutory changes. On behalf of our 400 members, we request that you share that knowledge with us. We would like the name of the individual or individuals who drafted the language, their position in the AOC at the time, whether they are still employed at the AOC, and if so, in what capacity. We would also like to know whether the Director, Mr. Vickrey, ordered or authorized the drafting of the language. We would also like to know what role Mr. Overholt, Mr. Childs, and Ms. Hershkowitz played in the matter.

We have tried to obtain this information in the past. Apparently you have been successful where we have failed. We do not believe this information is in any way privileged, nor can we see any valid reason for keeping the judges in this state in the dark as to the circumstances surrounding this blatant power grab, which was obviously undertaken without the knowledge of most--perhaps all--members of the Judicial Council.

We wish to make certain suggestions to Justice Scotland's committee re: restructuring of the AOC. One focus will be the unit within the AOC where this trailer bill language originated. We are sure you see the obvious relevance of the information we seek, Justice Miller, as your public pledge of greater transparency is in accord with one of our organization's core tenets. Finally, the information we have requested is very important to our organization as our branch stands for the principles of honesty and integrity. It is very troubling to us that judicial branch employees would knowingly and falsely cast blame on another branch of government for something that they are responsible for. We want the very best information possible in order to make appropriate recommendations, and do not wish to be accused of proceeding without all of the facts. Please assist us, Justice Miller.

Thank you.

Directors,  
Alliance of California Judges

cc:  
Members, Alliance of California Judges  
Justice Arthur Scotland, Ret.  
Associate Justice Marvin Baxter

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## **AOC: We Did Not Try to Grab More Power Through Budget Bill (2009, Cheryl Miller)**

As the governor and legislators inch closer to a \$26 billion budget-fixing deal, a bit of a mystery has surfaced over draft language that never made it into the court's budget trailer bill.

It seems that at one point during negotiations among lawmakers, court administrators, union representatives, finance officials and staffers, the unrelated issues of trial courts' budgeting and presiding judges came into play. And, depending on your point of view, what happened was either inconsequential chatter about technical budget stuff or an attempted power grab by the Administrative Office of the Courts.

*You're hoping it's a naked power grab, aren'tcha? Read on, after the jump ...*

The commotion was mentioned in this weekend's *Sacramento Bee*, at the bottom of an article about courthouse furloughs. We asked H.D. Palmer, a Department of Finance spokesman, what all the hubbub was about. Here's what he forwarded in an email:

We had put forward trailer bill language meant to address some fiscal issues and problems with getting timely, complete, and accurate budgetary information at the trial court level. Our language provided the AOC with authority similar to what DOF has with regard to receiving fiscal information from state departments.

In response, the AOC put forward language that went beyond the fiscal authorities we proposed to include changes to the functional authority of the trial courts, one provision of which would have allowed the Judicial Council to appoint presiding judges and make other 'centralized' decisions. We did not ask the AOC to propose language that would be as sweeping as what they brought forward, but we did ask them for suggestions on ways we could get better information and data from the trial court system in order to try to control costs.

So was the AOC really trying to grab decision-making power over local courts' spending and appointing of presiding judges? Nope, said both the AOC's chief executive, Bill Vickrey, and its head lobbyist, Curt Child.

On local budgeting, "The system is based on outcomes and not trying to manage day-to-day operations of a very complex court," Vickrey said. The Department of Finance was pushing the changes, he said.

As for naming presiding judges, "The chief [justice] has been firmly opposed to any changes in that area," Vickrey said. The discussed changes were merely an attempt to clarify in statute existing PJ appointment procedures already spelled out in Rules of Court, Child said.

So why does the Department of Finance have such a different account of events? Nobody seems to know.

Whatever happened, several judges got wind of the draft language — or at least one critic's interpretation of it — and reportedly went ballistic. Talk of presiding judges and AOC local-budget authority never made it into the bill.

Now negotiations have turned to a possible provision that would provide more public access to AOC budget and spending figures. No deal had been reached as of Monday afternoon.

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## **Trial Judges Question Direction of Courts**

9/20/11 By MARIA DINZEO

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LONG BEACH (CN) - Changing the way California's trial courts are governed was the central issue at a Long Beach meeting of trial judges from around California, with a major session on Friday briefly erupting into shouted questions about who was behind an abortive attempt by the central administrative office to take over direct control of the trial court operations at the local level.

"There is a great angst within our branch on governance and how we're governing ourselves," said Judge Michael Vicencia of Los Angeles, who led the session called "Order in the Courts" about the future of California's courts.

That angst, in particular the anger of many trial judges with the central administrators, soon showed itself in a question sent up to Vicencia.

A judge wanted to know about a bill in the Legislature that would have given central bureaucrats the power to appoint the head clerk of every local trial court, a measure that would have taken away much of the authority of local presiding judges to run their courthouses.

The questioner asked why the measure was drafted and who was behind the move.

From the panel at the front of the room, Appellate Justice Douglas Miller said Supreme Court Justice Marvin Baxter had withdrawn the bill because he had been blindsided by the proposal.

"Why was it drafted in the first place?" Judge Lance Ito of Los Angeles shouted out.

"Why don't you have the answer?" shouted Judge Timothy Fall from Yolo County.

Vicencia tried to calm the waters, repeating the response from someone on the panel who said, "Order in the court!"

As moderator, Vicencia's theme from the outset of the session was that he wanted to avoid a complaint session and focus instead on proposals.

"It's instances like that, that gives people the impression that the AOC was in charge," he added, in reference to frequent theme of the conference, that it is a "perception" that the central bureaucrats are running the court system. Many trial judges say that perception is an accurate one.

Miller ultimately said he did not know why the measure was drafted, but knew the staff member responsible. He did not say who it was.

The session filled a large conference room with more than 100 judges in attendance. Officials from the central administrative office stood at the back of the room early in the session.

The 82d annual meeting of the California Judges Association was to last three days and

included judge training sessions such as how to handle evidence from social media sites Facebook and Twitter, and documents found on the Internet. The meeting concluded Sunday with a question-and-answer session with Chief Justice Tani Cantil-Sakauye.

The get-together came at a time freighted with disagreement over how policy is set and money is spent in the courts. State Representative Bonnie Lowenthal, Democrat from Long Beach, was on the panel at Friday's session.

Referring to efforts to fix the problems in the courts with legislation, she said that one thing her experience had taught her is that "You don't want to have it done to you."

Lowenthal pressed on the difference between internal matters of policy at the courts and the handling of public money, which is disbursed by the Legislature.

She said a recent proposal favored by many trial judges and trial courts as a whole, called the trial court bill of rights, involved matters best handled within the judicial branch. "If the Legislature sees mismanagement," she warned. "that's another thing."

A table at the entrance to the conference room was weighed down by stacks of 137-page compendia of survey answers from trial courts around the state. The answers suggested that the belief that the Administrative Office of the Courts runs the show is widespread and specific.

"Rarely is there a vote by the Council rejecting staff recommendations; indeed, there almost never serious questioning of those recommendations," wrote Presiding Judge Michael Bush from Bakersfield, in Kern County. "Watching and listening to to Judicial Council meetings leads one to the conclusion that the Council is the captive and does not seriously oversee the AOC."

Moving to a controversial IT project called the Court Case Management System, Bush said, "This lack of oversight has led to problems such as CCMS."

The project is years behind schedule at a cost many times greater than planned, said the judge, for a project "that may well benefit the AOC but is of marginal value to most trial courts. Yet it is trial court funding that has been siphoned off, without permission, to pay for it."

The project has continued to generate controversy. This summer administrators said it would be "paused." But that was changed a month ago when administrators said the IT project, which has been outsourced to Deloitte Consulting, was not being paused but was in fact being continued, at a further cost of \$76 million.

Referring to the administrative office's oversight of the project, Lowenthal said at Friday's session, "We were astounded by the mismanagement and the terrible job Deloitte had done."

On the panel with Lowenthal was Los Angeles Presiding Judge Lee Edmon who said of the 137-page handout, "It's clear from the responses we got that there's a basic loss of trust and confidence throughout the state with the Judicial Council."

She noted the push toward uniformity as a main contributor to the strained relationship between the courts and central bureaucrats.

"One thing that adds to the tensions is that 13 years ago we were a lot of independent counties doing our own thing. We've gone more and more towards centralization," she said. "A one-size-fits-all approach is not going to work."

"Is it time to take a pause and go to some form of decentralization?" she asked. The past 13 years, almost of all of it under the former chief justice, Ron George, involved two principal elements, uniformity of rules in the various courts and centralized funding for all the courts.

Edmon said the uniformity of rules is a good idea. Opting for general language, she added, "Some things don't work on a statewide centralized basis."

Referring to the state's budget crisis and its effect on the courts, Judge David Rosenberg from Yolo County, who sat on the panel with Edmon, said, "When times are good you don't hear

a lot of criticism. When times are bad the criticism is brought to the fore."

Rosenberg argued that the Judicial Council, made up of judges and administrators and chaired by the chief justice, has taken strides toward change in recent months by taking a more active role in the decisions that affect the courts. "My sense is that the Judicial Council has started to assume a proper role vis-a-vis staff. There's always tension between a body and staff and the body has to assert itself," he said. "The AOC is starting to understand."

Along with dissatisfaction with the administrators, there was substantial question within the session about how the members of the Judicial Council are chosen. They are currently appointed by the chief justice, and there was a strong suggestion at the session that some council members should be chosen by vote from within the trial judges.

One of the questions texted to Vicencia's cell phone asked why the chief justice should continue to be in charge of appointing judicial council members, in a time when many judges feel the council does not listen to the concerns of the courts. "Why simply trust the chief justice to appoint a judicial council that will listen?" the judge asked.

Miller replied that council members should take a broader view, rather than representing the interests of individual courts.

While Miller said he didn't disagree that the courts should have more autonomy, he pointed to the changes already being made within the branch. "We have a new chief justice, new members of the judicial council and changes at the AOC," he said. He pointed out the recent opening of council meetings that had been previously closed to the public, as well as extended periods for public comment at meetings. "I could go on and on," he said.

The chief justice has also formed a Strategic Evaluation Committee this year to investigate the work done by the administrative office and how it can better serve the courts. But news that the committee's report is not expected until next year was disheartening to many judges.

Vicencia told the panel, "There's a perception that nothing is changing. That people have expected a lot of change with the new chief justice but nothing has changed."

Edmon answered, "There are lots of changes we can make right away. We don't need to wait a year for the SEC to finish its work. To be an effective branch we need to have strong, independent, local trial courts."

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## **Court Bureaucracy Coughs Up Numbers on Workers and Pay**

9/22/11

By MARIA DINZEO

SAN FRANCISCO (CN) - In the face of massive cuts to California's judicial budget, the central court bureaucracy still employs 988 workers, according to a list provided after months of requests. The full number includes highly paid "temporary" workers such as testers paid \$50 an

hour to work on an IT system that trial court judges compare to the sinking Titanic. The number of workers has political importance because legislators have criticized the enormous growth in the Administrative Office of the Courts since the 1990s, when it was a small agency assisting the state's roughly 2,000 judges. Faced with heavy cuts in the state budget announced this summer, trial judges argued that the size of the bureaucracy needs to come down.

In the face of that political pressure, agency officials have claimed they are reducing staff, an assertion challenged by Judge Kevin McCormick of Sacramento, who has been demanding the list of workers since July. The assertion is also challenged by a group of judges who say the administrative office is still hiring.

The full list of the so-called temporary employees, who work with high pay but without full benefits, and the list of employees referred to as staff, who have high pay plus benefits, totals 988. The administrative office did not release the employee lists from earlier years, as also requested by McCormick.

This disclosure comes on the heels of repeated statements by administrative office officials that it employs no more than 877 staff and that a hiring freeze is in place. A request for a proposal for a new director of the administrative offices shaded that number down further by saying the office has "a staff of more than 750."

"We have been shrinking," interim director Ron Overholt told the Judicial Council at its July meeting. "You've heard somehow that we're on a wild hiring spree. We haven't gone on a spree at all."

McCormick dryly replied, "His perception of the AOC as shrinking is inconsistent with the documentation the AOC provided me."

"I think that while the number of full time and part time employees is accurate, it's misleading to suggest that's the total number of people employed by the AOC," McCormick continued. "They've significantly increased their actual number of people paid by or through the AOC by hiring independent contractors and significantly increasing the number of temporary employees on the payroll."

The administrative office has had difficulty with its representation of other key figures in the course of the year.

A report from the state auditor in February chided the administrative office for misrepresenting the enormous cost of IT system, called the Court Case Management System, to the Legislature.

State auditor Elaine Howle said the office's annual reports "did not inform decision makers about the true cost of the statewide case management project. When asked by the Legislature in August 2010 what the true cost of the project will be upon its completion, AOC officials cited a figure of \$1.3 billion."

The auditor said the correct number is closer to \$1.9 billion.

In a related matter, a group of trial judges this month called for retraction of a statement made by a spokesman for the administrative office to the Ventura County Star newspaper. The retraction letter from the Alliance of California Judges was addressed to Philip Carrizosa, who speaks for the administrative office.

"You are represented as stating 'there have been pay and hiring freezes in the Office of the Courts, along with no cost-of-living pay increases in the last four years'," said the letter. "As we have reviewed copies of the 'temporary worker' lists and contract employee list we have reason to believe this statement is also inaccurate."

The judges point to an October 2010 retroactive pay raise of 3.5 percent for roughly eight out

of 10 administrative office employees. "Your suggestion that the AOC has not brought on new and additional staff and that their pay has remained stagnant is at best misleading," the judges wrote. "We are requesting you immediately correct these misleading and inaccurate statements."

The full list sent to McCormick last week shows that the administrative office employed 110 temporary staff from the Apple One temp agency, as of August. The rates of pay for staff employees and temporary are hefty across the board, ranging up to \$18,000 a month, or \$216,000 a year, with a full 22 percent pension payment on top for the agency's director, to \$102.51 an hour, or \$212,000 a year with no pension for a programmer.

A temporary human resources worker bills \$80 an hour or \$166,000 a year.

A temporary "area facility analyst," a job that is not further defined but pays handsomely, bills \$51 an hour or \$106,000 a year.

Adding heat to an ongoing fire, a set of temporary "testers" for the frequently criticized and ridiculed Court Case Management System bill \$49 to \$53 an hour, roughly \$104,000 a year.

In 2011 alone, the AOC entered into 56 contracts for highly paid workers for technology projects, including the CCMS.

A large portion of the funds used to pay for those contracts have come from the Trial Court Trust Fund, a fund that many judges assert should be used to keep trial courts running, not for a technology project on the road to becoming a fiasco.

More than \$12 million has been taken from that fund for contracts tied to CCMS in this year alone, and many of those contracts are scheduled to expire next year. The administrative office wants the Legislature to provide an additional \$74 million for the project as part of next year's budget.

The constant drain of tens of millions of dollars from the court budget for the IT project has infuriated a wide range of trial judges, with an overwhelming number of judges in the California Judges Association saying that they are dissatisfied with the supervision of the project.

At that group's annual meeting in Long Beach last weekend, judges were grabbing T-shirts that depicted the Titanic tilting down into the Atlantic with the letters CCMS printed across the image.