

8/27/11

Dear Members:

We have included several items we hope you find interesting. We apologize for the length of the e-mail, but we believe all of the items needed to be included.

First, we have a great **editorial penned by Alliance Directors Judge Susan Lopez Giss and Judge Maryanne Gilliard**, of the LA and Sacramento Courts respectively, titled **The Judicial Council's Misplaced Priorities**. It ran in yesterday's Recorder Newspaper.

Second, we have **Sacramento Judge and Alliance Director Kevin McCormick's statement to the Judicial Council** which he delivered at yesterday's meeting during the public comment period. Even under the new procedures, speakers are limited to five minutes, but Judge McCormick was able to finish his statement. He reiterated the Alliance position that \$82 million in additional mitigation of the cuts visited upon the trial courts could be accomplished if the council would curtail CCMS spending, and further look to the AOC's budget for additional funds. He further spoke in strong support of Judge Feinstein and her court.

Next we have a **television spot featuring an interview of San Francisco's Presiding Judge Katherine Feinstein by KGO reporter Vic Lee**, which aired yesterday. It appears that the an "offer" made to Judge Feinstein's court by the AOC and/or Judicial Council (the meeting yesterday made it clear that the "offer" was extended before yesterday's council meeting by the AOC, so the exact mechanism for how the "offer" was formulated remains a mystery for now) will be insufficient to provide the assistance needed and will not be accepted by the San Francisco Superior Court. The link to the video is at

[http://abclocal.go.com/kgo/story?section=news/local/san\\_francisco&id=8329681](http://abclocal.go.com/kgo/story?section=news/local/san_francisco&id=8329681)

We have also included a written version of the story in this email.

We also offer you an article from the **Courthouse News Service written by reporter Maria Dinzeo** titled **Debate at Top of California's Courts Opens Up** and another titled **Presiding Judges Chart New Course, Toss Staff**, detailing what we hope signals a new trend.

Finally, we offer you a "**Letter to the Editor**" written by two noted California Judges, **Judge Robert Dukes of Los Angeles, and Judge Timothy Fall of Yolo**, titled "**Trial Courts Are Not the Cause of Budget Crisis**".

Thank you for your continued support.

Directors,  
Alliance of California Judges

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# The Recorder

## Viewpoint: The Judicial Council's Misplaced Priorities

Maryanne Gilliard and Susan Lopez-Giss  
2011-08-26 10:24:41 AM

At last month's Judicial Council meeting, San Francisco Presiding Judge Katherine Feinstein sought to convince the council to mitigate unsustainable budget cuts imposed upon California's trial courts, and instead focus cuts on the Administrative Office of the Courts, a bureaucracy with no adjudicative functions. She was joined by representatives from other trial courts, and leadership of the 400-member Alliance of California Judges. A common theme was that cessation of one AOC project — the \$2 billion California Case Management System that many believe will be obsolete well before deployment — would allow most if not all of the California courts to remain open for the foreseeable future. Additional cuts to the AOC's budget would all but guarantee open courts.

The council and chief justice, despite earlier pledges that keeping courts open was their absolute top priority, again sided with the bureaucracy, by a vote of 15-2. \$81 million legally available for the operation of trial courts this fiscal year instead stayed in the AOC coffers.

As a result of this decision, Judge Feinstein must now release 41percent of her court's staff, and cease operation of San Francisco's civil courtrooms for the first time in California's history. This decision wasn't made in a vacuum, and no other reasonable alternative presents itself. Yet some in the legal community — ironically including some who most loudly champion the CCMS boondoggle — question her decision. Their questions should instead be directed to the Judicial Council and the AOC, whose questionable actions and misplaced priorities over the past several years have finally taken their toll on our trial courts.

How did we get to this point? Space limitations allow only a few illustrations:

In 2003, the AOC embarked on an ill-planned computer project (CCMS). The AOC pegged the cost at \$250 million. In February 2011, the Bureau of State Audits released a blistering 138-page report putting the real cost at \$1.9 billion. The auditor found mismanagement, lack of oversight and a failure to follow accepted practices in executing the program. To date, CCMS has siphoned more than \$600 million from the operations of local courts and is only somewhat operational in seven counties. It is a fiscal disaster and by the time it is implemented its version of technology will be outdated. Today, its claim of venue transparency and e-filing remains unfulfilled.

In 2009, our former chief justice went to the Legislature and obtained authority to close all courts to the public one day each month. Ostensibly done because of budget cuts to the branch, it was mostly due to the CCMS project's insatiable need for ever-larger cash infusions. The Judicial Council unanimously supported this action. In doing so, they communicated to the Legislature

the unintentional message that the judiciary was akin to any state agency, to be shut down at will in tough budget times, rather than a separate and co-equal branch of government. Worse, the subsequent audit made it obvious to everyone that the courts had been closed not out of necessity, but to fund a runaway project. (That same year the AOC spent roughly \$150 million on CCMS, almost the exact amount needed for all courts to stay open). This unnecessary closure has permanently diminished the judiciary in the minds of legislators, and the spending decisions of the council leave them understandably confused about our priorities.

Despite our worsening financial picture, our former chief departed soon thereafter, saying he did so in good conscience because "our fiscal position is sound."

Most judges were cautiously optimistic that the new chief would reverse some of these crippling decisions. Recent events leave little room for continued optimism. The current council continues to fund CCMS despite the certainty that this course will result in additional closures, layoffs and curtailment of services to the public. Last year, over objections from Sacramento Presiding Judge Steve White and the Alliance of California Judges, the council allowed the AOC to spend \$93 million from trial court funds on CCMS. The council did this knowing that incoming Gov. Jerry Brown had signaled his commitment to impose fiscal discipline. Most recently, on July 22, the council refused to suspend — even for one year — spending on CCMS which would have resulted in \$56.4 million available to our trial courts. Many judges privately wonder if the CCMS contract (amended more than 100 times by Deloitte, the service provider) is so one-sided that the AOC is simply unable to figure a way to turn off the money stream.

CCMS is but a symptom of the larger problem — the metastasizing central bureaucracy itself. In 1998, the AOC employed 268 staff; today that number exceeds 1,000 and just two weeks ago the AOC claimed to be unable to pinpoint the actual number, after weeks of trying. Roughly one third of AOC employees are paid more than \$100,000 per year. In 2007, the former chief justice spiked pension benefits for the top 30 paid employees so the public pays the full cost of their pensions, with the AOC employee contributing nothing. Since court hours have been reduced for the public, 80 percent of AOC staff received retroactive pay raises.

At last month's council meeting, Judge Feinstein did what few judges have had the courage to do — she publicly took on the AOC, drawing the line between judges and bureaucrats, between core services and AOC pet projects. After she concluded her remarks, interim AOC Director Ronald Overholt rather oddly stated that he and his agency "would not attack the trial courts." However, it now appears that others are attacking the messenger for telling the truth about AOC profligate spending, ineptitude and arrogance.

Rather than backing down, Judge Feinstein has fought back, this time in a letter to the council explaining how reliance upon AOC budget misrepresentations last year stopped her court from following through on contemplated and more modest actions which would have prevented ruinous layoffs now. She has rightfully renewed her request to the council for additional funding and that funding should be provided to all courts. It's time that California's judges display the same courage demonstrated by Judge Feinstein. Further, her attackers must understand in attacking her; they attack all judges who believe service to the public is more important than servicing the bureaucracy.

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Madame Chief Justice and Members of the Council:

I am Kevin McCormick, a Judge with the Sacramento Superior Court. I address you today in my capacity as one of the Directors of the 400 member Alliance of California Judges. We are respectfully asking you to reconsider and reverse your decision which allocates cuts in a manner that ensures court closures, compels layoffs of staff critical to court operations, requires shortened court hours, and makes denial of access to justice a certainty to the public we are in existence to serve. As a judiciary we have a duty to carefully, prudently, responsibly and thoughtfully spend the taxpayers' money and we are required to take special care to ensure access to the courts is not denied to the citizens who pay for it.

It is undeniable that the cuts of \$350 million are difficult to distribute. It is challenging to decide what projects to forgo, which building projects to delay and how to prioritize valuable and important personnel. Nobody wants to make these horribly difficult decisions but that is the financial situation in which we find ourselves.

The President of the Alliance, Judge David Lampe, addressed you at the July meeting to ask that you fully mitigate the impact of the \$350 million dollar budget cuts to the trial courts this year. He explained at that time that there was approximately \$82 million dollars of additional mitigation available to the Council under the authority granted it in this years budget bill. We asked you to find these funds in the CCMS budget, and AOC operating budget, and utilize them to keep our trial courts open, as the Chief Justice, and many of you have promised is your absolute first priority.

We were not the only ones who made this request. San Francisco Presiding Judge Katherine Feinstein made a very compelling case for this position as well, pointing out the folly of continuing to fund a controversial and untested computer system and bloated bureaucracy, while forcing trial courts to close, and depriving citizens of their constitutional right to their day in court.

The choice before you last month was clear: Cut the AOC's budget and suspend funding for CCMS, or deprive our citizens of their ability to access their courts. Unfortunately, Judge Pines and Wesley were the only to come down on the side of our courts and constituents, the rest of the Judicial Council acceded to the AOC's allocation proposal.

What is extremely concerning about the allocation of these cuts is how the Judicial Council went about deciding how to apportion the cuts. With the most significant financial decision facing California's judiciary in its history, the decision was made based on recommendations from the AOC staff. There was not an independent fiscal advisor, no auditor, no financial experts, no independent analysis, no consideration of further cuts toward the AOC as opposed to the courts themselves.

To many it seemed peculiar to leave the decision-making responsibility to the very bureaucracy that was criticized so completely in the state auditors report and who had a vested interest in protecting its own fiefdom. Not surprisingly, based on this methodology, there was no option considered which looked carefully and thoughtfully at the size, growth and appropriate scope of duties originally contemplated for the AOC. There was no option presented which was designed to minimize the impact on the citizens who rely on the courts being open. In fact the decision was made without a detailed analysis of viable alternatives like the ones suggested by Judge Lampe and Presiding Judge Feinstein.

There was no careful consideration of the size of the AOC and recent events expose why. Because nobody even knows who the complete makeup of those who works for the AOC? For over a month I have been asking for a list of people paid by or through the AOC. A seemingly simple task, easily compiled in any private company in the United States. One would think an e-mail list, HR department, "information services division," Executive Office, office of general counsel, finance division or at least somebody in the 1000+ person bureaucracy or their myriad of committees could supply a list of who earns an income from work done for the AOC. Over a month later, and in spite of assurances that the information would be provided by 8/22. . . . As of now I still do not have the requested information. There is nothing that could more clearly cause legitimate concern that the AOC has grown beyond any concept of reasonableness than the fact they can't even identify who works for them. Unless it is the

fact that CDAA provides training across the state for 5200 prosecutors with a staff of 9. While the education division of the AOC serves the 1700 judicial officers with a staff of.... anyone want to venture a guess? . . . . 100!

On CCMS, branch leadership in response to a 138 page report from the state auditor created 4 committees staffed by approximately 60 people designed to give them feedback on CCMS issues. Even the decisions about how to run a judicial council meeting is now the subject matter of an entire committee.

Branch leadership has a convened a committee (the SEC) to "conduct an in-depth review of the AOC and its organizational structure." The usefulness of such an evaluation is obvious but it is inconceivable that proposals from this committee are not anticipated until the summer of 2012. Our financial situation is too severe to wait a year from the committee's formation for proposals.

The Chief Justice has many times been quoted as saying that "keeping the courts open is the number one priority." These words are meaningless if the Judicial Council actions place administrative bureaucracy and failed projects such as CCMS with a higher priority than public access to justice.

You need to act now to provide all available mitigation from all available sources including additional reductions to the AOC and cessation of funding to CCMS to the courts to prevent closures and ensure public access.

Thank you.

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In the last 24 hours, they've offered a token offer that essentially an offset, saying, 'We spend a portion of our reserves and they reimburse us the amount of those reserves.' It doesn't assist us in any way in being able to avoid the layoffs that we have planned," said Feinstein."

**KGO TV**

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Judicial Council makes offer to save SF Courts

Updated at 07:21 PM today

Vic Lee

SAN FRANCISCO (KGO) -- There are new developments about the financially-strapped court system in San Francisco. With unprecedented employee layoffs and service cuts looming next month, state judiciary officials are making an offer they say will help control the bleeding red ink, but will it really?

The Judicial Council is a body which makes statewide policy and also administers the multi-billion-dollar budget for California's courts. Very much on their minds is the \$350 million hit they're taking this fiscal year because of state budget cuts. They met on Friday in San Francisco, where its courts have been hit hardest of all.

San Francisco's court workers demonstrated outside the state building where the Judicial Council was meeting; 200 will be laid off in the fall, which is nearly 40 percent of the county's court employees. Twenty-five courtrooms in the civil division will close.

Story: San Francisco courts make drastic cuts

Video: San Francisco courts make drastic cuts

Timothy Lavorini is court clerk who testified. He said, "Unemployment and foreclosure have taken the place of 'to serve and uphold.'"

In a letter to the Judicial Council, San Francisco Presiding Judge Katherine Feinstein said her court is facing a dire budget catastrophe. She is asking the staff of the Judicial Council, the AOC or Administrative Office of the Courts, for emergency funding of \$20 million over the next three years.

"The Administrative Office of the Courts has \$82 million that the legislature authorized it to use to backfill for the trial courts from its various pet project funds. It chose not to do that," said Feinstein.

Feinstein says she was poised to layoff 122 employees last year which would have mitigated the severity of the cutbacks this fiscal year.

"We received a midnight phone call from executives at the AOC encouraging us, imploring us, not to proceed with our layoffs," said Feinstein.

She says those AOC executives told her they were expecting \$230 million from the legislature which would help the courts. That money never came.

"We fell for it. We didn't layoff," said Feinstein.

And now, she's faced with even more layoffs. On Friday, a member of the Judicial Council said that they've made yet another offer to Feinstein.

"The ball is in San Francisco's court right now, as I understand it, to resolve this. We have a workable arrangement here that can keep the courts open," said Judicial Council Member Judge Burt Pines.

However, Feinstein told ABC7 that it is just another meaningless offer.

"In the last 24 hours, they've offered a token offer that essentially an offset, saying, 'We spend a portion of our reserves and they reimburse us the amount of those reserves.' It doesn't assist us in any way in being able to avoid the layoffs that we have planned," said Feinstein.

The Judicial Council declined our request for a camera interview and said instead in a prepared statement that they are working with San Francisco to come up for a budget solution for the next fiscal year, but Friday, Feinstein said the offer she received just doesn't work.

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## **Presiding Judges Chart New Course, Toss Staff**

By MARIA DINZEO

### **ShareThis**

SAN FRANCISCO (CN) -- California's presiding judges are throwing off years of dominance by the bureaucratic staff based in San Francisco, with a meeting that included taking to task the bureaucracy's head lawyer and removing staff members from the room so the judges could speak frankly.

"Not having staff in the room allowed the presiding judges to be completely candid," said incoming committee chair Judge David Rosenberg of Yolo County. "I'm implementing a different approach to these meetings."

He added, "I'm attempting to give the presiding judges much more opportunity to meet together, talk together and work together. In the past, these meetings have been more in the form of lectures where AOC staff basically give us information. In my opinion that can be done in a different way, without taking up the entire meeting."

Rosenberg said the initiative to move to break away from the staff's dominance was shared by both himself and the outgoing head of the presiding judges group, San Diego's Kevin Enright.

With staff out of the room, the judges discussed how the courts are led, the judiciary's budget crisis and what the relationship should be between the judges and the central bureaucracy of the courts.

"The whole purpose of the exercise was to give presiding judges an opportunity to talk

frankly without hesitation," he said. "There was great commonality voiced by the judges."

A second judge present at the meeting said, "I thought it was very productive, because the judges were able to talk amongst ourselves about these issues we are all facing. The gauge of success will be what becomes of that, and if any of our thoughts and frustrations are passed on further."

The judge said discussions with AOC staff, which included interim director Ron Overholt and General Counsel Mary Roberts, were heated during the first day of meetings.

In particular, San Francisco's presiding judge, Katherine Feinstein, clashed with general counsel Roberts over a legal opinion on a proposal by the Bar Association of San Francisco for increases in some lawyer appearance fees.

Feinstein was displeased, and according to those present expressed that displeasure clearly, with Roberts for failing to provide a legal opinion in time for the meeting. Overholt's attempt to calm the waters did not help, said those familiar with the events.

Feinstein runs a court that has been hit the hardest by the budget crisis, with a wholesale shutdown of San Francisco's civil courts threatened. The lawyers in the Bay Area, whose livelihoods would be put in jeopardy by such a shutdown, have proposed increasing lawyer appearance fees for case management conferences in complex cases.

Feinstein, who is desperate for money to run her courts, wants the proposal approved. Roberts did not complete her opinion in time for the presiding judges' meeting but she did complete it in time for this week's meeting of the Judicial Council, which has authority to OK the fee hike.

Roberts' opinion recommended against approval.

Another issue at last week's presiding judges' meeting generated "heated discussion," according to the judge. It was about an overhaul committee headed by Justice Arthur Scotland.

Earlier this year, Chief Justice Tani Cantil-Sakauye asked Scotland's group to survey judges, attorneys and court employees from all over the state on a range of issues, including whether many of the bureaucrats are even needed.

In a presentation to the presiding judges, Scotland said his committee may take until next summer to come up with its findings.

"There was some frustration about that," said the judge. "Many of us advocated that the Judicial Council cut the AOC before the trial courts in terms of budget."

The judge said the administrators had claimed to be waiting on information from Scotland's overhaul committee, called the Strategic Evaluation Committee, in order to reorganize the bureaucracy. The two sides are locked in battle over funding.

The judges argue that the trial courts must be kept open, and to do that money should be taken away from the army of highly paid bureaucrats in San Francisco. The bureaucrats, on the other hand, are fighting to protect their turf.

Some judges at the meeting believed the AOC should not be waiting for conclusions from the SEC before it started reorganizing.

"There is some belief that if they are relying on the information from the SEC they won't be able to participate in budget discussions," said the judge.

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## Debate at Top of California Courts Opens Up

By MARIA DINZEO

## ShareThis

SAN FRANCISCO (CN) -- In a sign of change, a new member of the most powerful committee at the top of California's court system opened up discussion meetings over court policy and finances for the first time in 14 years. The state's chief justice then blamed a drastic budget cut on the "din" from other legislative proposals about the courts.

The day of discussion takes place ahead of the formal meetings of the Judicial Council, top policy-making body for the courts, where votes are taken often following staff presentations and little debate. And for years, those pre-meeting discussions were closed to the public and the press.

"Those many -- and I believe many valuable and interesting discussions -- were closed. And the information there was only heard by those who were in attendance," said Justice Douglas Miller, recently appointed to the Executive and Planning Committee.

"This also led, though, to an unfortunate perception, that the real discussions of the Judicial Council took place in private or in secret, and that we as a Judicial Council on our business meeting the next day simply rubber stamped those issues."

Miller then said the closed meetings also contributed to the notion that bureaucrats from the Administrative Office of the Courts run the show, a conviction held by many experienced judges.

The view that a cabal ran the courts largely in secret was articulated in answers from judges to a survey put out by Chief Justice Tani Cantil-Sakauye. In those answers, the judges had also offered suggestions on opening up the council's business and doing a better job of supporting the trial courts.

"Stay tuned, because there are more changes to come," Miller added. "There are more proposals in the works, all inspired by council discussions and informed by the responses to the survey conducted by presiding judges at the request of the chief justice."

Some of those changes include increasing the number of judicial council meetings from six to eight, and setting up a network of judicial council liaisons to individual courts. "Court leaders would have designated council members that would become familiar with their court, listening to their concerns, bringing those to the attention of the council, be willing to answer questions, and then obtain information if it's needed," Miller said.

In a separate area of controversy, the council's Accountability and Efficiency committee is in the process of auditing the AOC's budget and its pricey contracts with consultants, and expects to report its findings to the council in October.

In other matters, the Chief Justice Cantil-Sakauye has also established three new internal committees: one to find a new AOC director to replace the outgoing Bill Vickrey, a governance issues committee and a "parliamentary" committee to look at the council's meeting rules.

"The chief has encouraged us to take a fresh look at how the council operates. Everything from the conduct of our meetings to the strategic plan for the branch, to the composition of the council itself," Miller said.

The meeting then turned to the matter of direct import on the operation of the courts -- the \$350 million cut in the budget OK'd by the legislature earlier this summer.

Yolo County Presiding Judge David Rosenberg recommended that courts implement a "Draconian toolbox" of small cuts.

"Some of the easy items at the get-go is, you know, getting rid of Post-its, things of that nature. Getting rid of coffee. But the toolbox can have 100 different items depending on how far you need to go and how much money you need to ultimately save and cut," said Rosenberg who is also the incoming head of the presiding judges committee.

Council members suggested going back to the legislature, and the Governor to ask for a restoration of funding.

"I must say that for what its worth, the legislature and Governor have to provide, in my opinion, an adequate level of funding for the judicial branch to do their job. We are a constitutional branch and we have to have a certain amount of money," Rosenberg said.

Chief Justice Cantil-Sakauye said she had urged the legislature to spare the judicial branch, by explaining what harsh budget cuts would mean for the courts, but her pleas were drowned out by what she called "other noise" being made in Sacramento by judges dissatisfied with the judicial branch.

"There was too much other noise going on about the judicial branch that wasn't about the budget," she said.

The statements appeared to be a reference to AB 1208, legislation intended to restore financial independence to the individual county courts who that are now subject to an overarching bureaucracy based in San Francisco, the Administrative Office of the Courts, that controls finance and policy. The office has been the subject of deep criticism from a majority of trial judges in the state, shown in a series of surveys earlier this year.

The chief justice, the administrative office, and many individual members of the Judicial Council opposed AB 1208. But it enjoyed support from a majority of the state's trial judges, based on answers to a survey by the California Judges Association, and it was supported by a host of courts large and small, from Los Angeles Superior to Sacramento, Amador, Kern and Mariposa.

"In my view that other noise that created the din that took away the focus of the branch and undercut our ability to hold the line on the budget cut," said the chief justice.

Immediately chiming in, Marin's head clerk, Kim Turner, said, "It was more of a reason to cut us. For whatever reason we can't agree so we deserve to be cut. Unbelievable."

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## **Viewpoint: Trial Courts Are Not the Cause of the Financial Crisis**

Robert A. Dukes and Timothy L. Fall  
The Recorder  
August 26, 2011

We write in response to "[Viewpoint: It's Time to Tap the S.F. Superior Bank](#)" by attorney Christopher Dolan (Aug. 22). With respect, his plan to have the San Francisco court spend all its reserves is a sure-fire way to doom the court to certain financial failure.

As former presiding judges (Los Angeles and Yolo), we both have experience in dealing with court budgets during times of fiscal crises.

San Francisco is in its present distress in part because it accepted poor advice from others that the budget would get better and then spent reserves to the point they are now — about two weeks of operating expenses.

This small reserve is desperately needed in the following areas, irrespective of emergencies:

1. To cover expenditures for essential services during future delays in the adoption of the state budget. Without reserves the court would instantly slam its doors on all services without any warning such as is now given.
2. To prevent exposing the court to financial liability for inability to pay for contractually mandated commitments for goods and services already received but not yet paid.
3. To cover cash flow needs in the court's many grant funded programs where the court covers expenditures months before reimbursement.

Depleting reserves wholesale is never a solution for permanent ongoing budget reductions. They are a bridge funding device to cover unfunded and underfunded operating costs to allow a court to gradually adjust reduced operations in an organized and controlled manner.

Whether the fault is in the Legislature or the spending decisions of the Judicial Council and the Administrative Office of the Courts matters little to the trial courts. The trial courts are the victims of this. They are not the cause.

*Judge Dukes has been a trial court judge since 1987. He is past presiding judge of Los Angeles County Superior Court — 2003 to 2004 — and the former Pomona Municipal Court, 1988. Judge Fall has been a judge in Yolo County since 1995 and served as Superior Court presiding judge in 1999.*