

The following is the Alliance response to the survey of the Strategic Evaluation Committee chaired by Justice Arthur Scotland. It was delivered to Justice Scotland today. We are providing our members with a copy in advance of the due date of **August 9, 2011** so that they may consider this response when making their own. Though this is the third survey in the past several months, we again urge our members to respond--your earlier responses to CJA and to the Chief Justice are not a substitute for filling out this survey. You may do so by visiting

[http://survey.confirmit.com/wix/p1826502793.aspx?\\_sid\\_=hd\\_DPj8-R9oqnOfzMDIsSgEQJnF2Z51ryKZ70NiQB9f\\_IOPgpV8frnJO8leogXJ30](http://survey.confirmit.com/wix/p1826502793.aspx?_sid_=hd_DPj8-R9oqnOfzMDIsSgEQJnF2Z51ryKZ70NiQB9f_IOPgpV8frnJO8leogXJ30)

(If the hyperlink does not lead you to the survey, copy and paste it into your browser). Justice Scotland has indicated that the Confirmit survey site is secure and independent of the AOC and that survey responses will be available only to the Strategic Evaluation Committee.

Thank you.

Directors,

Alliance of California Judges

---

August 3, 2011

ALLIANCE OF CALIFORNIA JUDGES

Response to the Strategic Evaluation Committee

Survey Regarding the AOC

The Alliance of California Judges submits this response to the SEC survey of judges regarding the AOC and its usefulness.

Rather than respond to the individual survey questions, we submit this letter. We respond in this way, rather than answer the survey questions asked, because we believe that both the questions themselves and the format in which answers are required, presume that some of the AOC's functions, as stated, have a "direct effect on the administration of justice" (emphasis added), and that the AOC should continue to operate in a fashion closely resembling its current form. We do not agree. The AOC does not adjudicate cases. We believe that if the SEC is to play a meaningful role it must reexamine the entire structure of the AOC. The judicial branch needs a Judicial Council and AOC that serve its true needs as cheaply and efficiently as possible.

Our courts are facing a crisis. The SEC must assume its charge by recognizing the crisis.

The survey sent out by the SEC asks judges to describe the services their courts receive from the AOC and evaluate how effective those services are. The survey also asks what requirements and burdens are placed on them by the AOC. While the SEC is to be complimented for broadly seeking input, it is unfortunate that no questions are asked about how effective they feel the branch's governance structure is as a whole. In a sense the entire survey is a so-called "push" survey, in that it assumes that a centralized AOC should continue to exist and "provide services" and impose requirements on local courts in the current fashion. One would almost think that the National Center for the State Courts, or the AOC itself, had a hand in drafting the survey, which would almost guarantee a biased outcome. We hope that this is not the case. Would you please inform us of exactly who drafted the survey questions?

While attempts to improve "customer service" are laudable, incrementally improving the operations of an out of control central bureaucracy will not solve the governance or financial problems of the judiciary. *The essential problem of branch governance is not that the AOC is not efficient or user friendly. The essential problem of branch governance is the very existence of the AOC as structured; the existence of a large centralized bureaucracy with the power to manage local courts ensures that the desires and funding needs of the central power will always take precedence over those of local courts.*

Therefore, asking the level of interaction with the AOC, whether the AOC has been timely, helpful, thorough, and whether respondents are satisfied, completely begs the question. In this environment, the question must be asked whether any function of the AOC is equal to or more important than support for direct adjudication of cases and operation of the trial and appellate courts. If the answer is "no," then that function must be eliminated.

On July 17, 2011, we made a proposal to the Judicial Council to eliminate approximately 50% of the AOC's functions. We proposed reducing the Executive Division, the General Counsel's Office, the Office of Government Affairs, the Finance Division, Human Resources, and Information Services. We proposed eliminating the Judicial Education Program, the Executive Office Program (except for the Interpreters element), and all of the Regional Offices. Our proposal is attached at the end of this document. This concept is not arbitrary. It would save \$50 million per year that could be reallocated to direct trial court funding within the existing branch appropriation. We believe that SEC must start with a goal of reforming the AOC by a

specific dollar amount of at least the amount we suggest and working backwards to eliminate functions and achieve that goal. Otherwise, the committee will “spin its wheels” evaluating anecdotal evidence about “levels of satisfaction” with AOC services which is frankly irrelevant.

We use the Judicial Education Program as an example. Almost every judge in the state encounters this program. It is very valuable to many judges. However, we presume that every judge of this state has achieved a very high level of competency. As valuable as these services are, they are not essential to adjudication. Local courts are capable of providing orientation and education for judges. Our organization stands ready to take up the slack and organize local programs for education, particularly emphasizing to judges the role of stare decisis, the minimal value of “benchbooks” that teach only one model of decision, and also that they are independent constitutional officers, while explaining how judicial independence can be threatened by bureaucratic constraint. In this climate, statewide judicial education which costs \$8.0 million should be eliminated.

The one overall function that the AOC provides at a statewide level that many in the Executive Branch and Legislative Branch deem valuable is that it represents one “place” that these other branches may go to discuss budget and fiscal decision-making. Unfortunately, that “benefit” has put the AOC in charge of the judicial budget. This has led to the “tail wagging the dog” in terms of failed judicial oversight of critical fiscal and budget decisions. That model has led to the expenditure of \$600 million of appropriated branch money expended on the CCMS project without meaningful consensus among the judges of the state of the business need for the system, and without any meaningful and timely cost/benefit analysis. The courts could use that money right now.

For this reason, we have sponsored AB 1208, now held on the floor of the Assembly, which would guarantee every trial court a minimum direct funding of a baseline allocation from the Legislature without AOC discretion. This will allow the AOC to substantially reduce its financial and budgetary functions. Those cost savings can be passed on to the trial courts. We will be disappointed if the SEC does not directly address the benefits of such direct funding compared with past AOC allocations, and how the AOC budget could be reduced and the savings passed to the courts upon the enactment of this legislation.

Our further suggestion regarding AOC reform is outlined below.

#### The New AOC Model: A Cost of Services Agency

The AOC currently operates on the premise that centralizing control over the allocation of resources and decision-making is the best and most efficient way to provide services to “consumers” of that agency’s governmental “product.” This is sometimes true if the service to be provided is simple and routine, and if most of the consumers of that service need the same thing. The Social Security Administration is well designed to issue millions of checks to recipients on a regular basis, and does so quite well.

However, where the services to be provided are more complex and varied, or when the needs of the agency's "consumers" are quite varied – both of which are true for trial courts which use the services of the AOC – the model of centralized management and mass production of services breaks down. The need of the centralized agency for standardization requires it to force its consumers to accept a "one size fits all" product, even when one size does not fit all. CCMS serves as an excellent example of the problem; the ultimate aim of the system is to require all courts to use the same system of tracking, reporting and maintaining court case data. There is little benefit to most trial courts in this; many of them have systems that function well now and will continue to do so for the foreseeable future. The felt need of the central authority (the AOC) for standardization and control of all information dominates the design of the system, which has become overly complicated and "bloated" because it tries to do too much. It is years behind schedule and will end up billions over budget, and will already be outdated by the time of full delivery.

California's 58 local trial courts are 58 different users. Many small counties have traditional small county courts with only a few judges. They have minimal financial resources and relatively few employees, and often only a few cases a year of certain kinds. They need maximum flexibility in using their resources without outside restrictions, but may need professional expertise from another agency to deal with specialized problems – IT issues, personnel management, judicial education, or coverage for ill or vacationing judges. Los Angeles County or other large courts may have no need for these kinds of services, but face other problems unique to their size and urban character.

We propose that the AOC be remade as a "cost of services" agency. The survey asks judges to rate the utility and efficiency of AOC services. The real question, however, is whether these services are worth what they cost to the judicial system and to the taxpayer. That is the true measure of efficiency. Once the AOC has been reduced by 50% to its core functions, any court services it offers may be rebuilt based upon this model. Trial courts should receive a full allocation of money, including money that is currently allocated to AOC service functions. Then the AOC may offer services to the courts, and set a "price" for those services which will be charged to each court's allocation if the court chooses to use AOC services. In other words, the courts will be permitted to determine whether they wish to obtain certain services from the AOC, provide them in house, or purchase them from an outside provider. They will bear the cost of providing that service (subject to the requirements of law) from their own allocation. For instance, if a particular trial court finds that the AOC provides the best human resource services at the most reasonable cost, they are free to purchase it; if not, that court may provide it in house or outsource it elsewhere. This provides an incentive for the AOC to provide the best possible service to its "customers," rather than trying to force them to comply with its own requirements and desires. At the same time, trial courts will become more attuned to the cost and efficiency of their own operations, because they are responsible for the cost and must maximize the efficiency with which they use their limited resources.

This model also fosters trial court coordination. For instance, some small courts may agree with a larger court under a Memorandum of Understanding or Joint Services Agreement to combine

certain functions, such as IT, or human resources. This will foster the utmost level of innovation for the courts. The one thing we hope everyone agrees upon is that centralization is not a model for innovation.

This model will have a “market” effect of establishing a true assessment of the need for AOC services. We understand that there are some policy issues that do not meet this market model. However, we believe that voluntary organizations of judges, or collaborative efforts among the courts, can serve these policy oriented functions.

We believe that this suggestion provides a concrete basis for the SEC to evaluate the concept of “coordinated decentralization” set forth in the Report on Trial Court Governance presented to the Chief Justice by the Los Angeles Superior Court. We strongly urge that the SEC consider the matters stated in that report.

### Conclusion

We find it discouraging to analogize the current state of the AOC to one of history’s most famous disasters, but incrementally improving the responsiveness of the AOC is closely akin to rearranging the deck chairs on the Titanic.

As blunt as this criticism is, we hope that the SEC will take it in the spirit intended – an earnest effort to assess the problems facing California’s judiciary in a time of disastrous financial crisis. Once the AOC has been reduced to its core, we propose an entirely different model of AOC operations, which we believe better serves the needs of trial courts and their users, and makes far better use of their limited financial resources.

Very truly yours,

Directors of the Alliance of California Judges