



# Alliance of California Judges

July 16, 2013

Dear Members and Others,

The following article by reporter Maria Dinzeo chronicles the lengths to which our court leaders have gone to block the media and judges from obtaining public information. This important article should alarm every judge in this state because the Judicial Council and its bloated bureaucracy purport to serve the courts "for the benefit of all Californians."

Last week we detailed Alliance director Judge Kevin McCormick's quest to obtain a list of current contracts entered into by the AOC. Having provided that list in the past, the AOC now contends that this information is not kept in the "regular course of business." Assuming for the sake of argument that is true, how does the second largest judicial system in the United States operate without a list of current contracts?

Perhaps this helps to explain the reckless spending of the AOC and Judicial Council. Who is getting taxpayer money that otherwise might be used to keep courthouses open and accessible to the public? "We can't tell you that." Really?

In the weeks to come, we will keep you apprised of the status of other requests made by the Alliance for public information. These include: Administrative Director Jahr's compensation package; whether the top 30 AOC bureaucrats continue to have the taxpayers foot their entire pensions; what lifetime benefits are enjoyed by AOC staff who retire after 10 years of service; and how much it cost to fund last year's Judicial Council meetings where AOC staff recommendations were routinely accepted.

If the past is any predictor, these requests will be placed on a slow track. Some may ultimately be handled by the chair of the Council's Rules Committee who, if he should respond, insists that all correspondence be through the U.S. mail. We kid you not.

All of this is an assault on the public's right to know how their hard-earned dollars are being spent. Everyone, including members of the media, should be concerned about the obfuscation and outright refusal by government officials to open their records to the light of day. Our Constitution and Rule 10.500 of the Rules of Court require that information requests be dealt with liberally, with a view toward disclosure, notwithstanding any policy of the Chief Justice and Council to the contrary.

Please forward this email to your colleagues. Every judge needs to understand the hole our leadership has dug to tarnish the reputation of our state courts. All judges should be troubled by this behavior and should join us in calling for the democratization of the Judicial Council.

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Courthouse News Service

Battle Fought for Info on Court Bureaucracy's Outside Contracts

By MARIA DINZEO

(CN) - What started as a seemingly simple records request from a trial judge has exploded into a four-month battle over how much information the judiciary's bureaucratic arm should provide to trial judges who want to know how the agency spends public money.

As part of a long-running challenge to the size and spending of the Administrative Office of the Courts, Sacramento Judge Kevin McCormick wants a current list of the office's contracts with outside businesses, how much the contracts are worth and where the money is coming from.

The office's refusal to provide such a list, said the judge, "appears inconsistent with the concept of transparency."

The administrators have answered by saying that it is extra work to update the list of contracts. They said a rule that requires them to give access to

administrative records, California Rule of Court 10.500, does not require them to do extra work to put information together.

The latest battle for information follows a series of actions by the administrative office working with the Judicial Council that have been criticized by legislators and newspapers for working against transparency in government.

They include a bill to impose a \$10-per-file fee on the right to review court files, successfully opposed by California's newspapers and open government groups. Court administrators argued that it was too much work to bring files to the counter.

After rejecting the \$10 fee, legislators then placed a condition in the budget that required the Judicial Council to open its committee meetings to the press and public. Chief Justice Tani Cantil-Sakauye lobbied against that requirement and Governor Jerry Brown struck it from the budget last month.

In another move, the Judicial Council passed efilings rules late last month that rode over opposition from the state's newspapers, including the L.A. Times, the Bay Area News Group and the California Newspaper Publishers Association. Written into the rules were comments that could be interpreted by local bureaucrats to delay access to new court filings until they are no longer news.

The current controversy over contracts stems from a history of wasteful spending by the administrative office, for example, spending a half-billion-dollars, primarily through contracts with private vendors, on a software system that was subsequently scrapped. Legislators and many trial judges reacted with an attempt to control spending by the bureaucracy and cut down its power.

In that long campaign, McCormick in 2011 asked for, and was provided, a list of the administrative office's open contracts with vendors. Earlier this year, he asked for an update of that list. And that is where the trouble began.

In a lengthy explanation by email, Chad Finke, who directs court services for the administrative office, argued that the report McCormick wanted would require extra work to create a computerized report that his office did not normally use, and

said he had been instructed by the the courts' rule-making body, the Judicial Council, to only provide reports kept "in the normal course of business."

He pointed to his initial 2011 exchange with McCormick in which he said the report was "created from scratch." But in that same exchange, he also said the Finance Department was able to create the report promptly.

"They have assured me that they can rebuild and rerun the query tomorrow," he told McCormick at the time. "If it truly had been as simple as printing out a report in a format that we regularly use, I'm confident we could have gotten it to you by close of business today."

In last week's email, Finke argued that the earlier exchange made it clear that generating the report required additional work. "As you can see, then, the document requested was not something the AOC maintained (or currently maintains) in the regular course of business."

He said doing extra work to create the report is something "which we have been instructed by the council not to do."

He was referring to a directive from the rule-making body for California's courts, the Judicial Council, which said the administrators should stick tightly to a literal reading of Rule 10.500 and in particular Part B of that rule which says the administrative office does not have to create a record.

"From this day going forward the council has directed staff to comply strictly with the requirements of the rule and not to go beyond the requirements as set forth in the rule," said Justice Douglas Miller in a 2011 council meeting. Miller heads the most powerful committee on the council, the Executive and Planning Committee.

In an interview and in answer to email questions, McCormick said the narrow interpretation of Rule 10.500 runs contrary to the terms of the rule itself, which says it "must be broadly construed to further the public's right of access."

"They have chosen, rather than to provide this readily accessible information in the previously provided format, to provide 400 pages of raw data," he said. "This interpretation would appear to be inconsistent with the concept of transparency and also the Rule 10.500 edict that the section be interpreted broadly."

The rejection of McCormick's request brought a withering blast from the Alliance of California Judges, a reform group that counts 400 judges in its membership.

"We write about a troubling practice of our branch leaders that appears to be getting worse over time: the use of a Rule of Court to obfuscate and refuse to make available public records which reveal how public funds are being spent," said the Alliance in a statement last week. "We cannot discover and call attention to wasteful spending if our court leaders continue to hide the records that may reveal it."

"Are we to sit by quietly and simply accept that the public's money is being spent prudently when we know from past experiences, as well as the Chief Justice's own Strategic Evaluation Committee, that this is a bureaucracy run amok?" said the Alliance. "Is there any doubt why the AOC would resist an audit of its functions as it did recently, citing the cost as a reason not to be audited even while a number of local courts were being audited at their own expense?"

The evaluation committee in a report last year recommended wholesale changes in the way the administrative office is run, but the adoption of those recommendations has proceeded slowly.

"The Alliance will not accept business as usual at the AOC, nor will we be deterred by persistent refusals to accept oversight," said the blast from the judges' group. "We will keep you informed as we persist in seeking the information needed to stop wasteful bureaucratic spending at the expense of the trial courts and the credibility of the judicial branch.

Justice Miller explained in an interview Friday the reasoning behind his original

directive ordering a tight interpretation of the rule on providing access to administrative records.

"We said look, with regard to compiling and assembling new types of reports, that is a broad interpretation that doesn't fit into 10.500 Part B. You should narrowly interpret it when it comes to creating some type of new record and issuing a report. We wanted [staff] to broadly give them records but not broadly spend time creating a new type of record."

"I want to give them more documents than they do want, to make sure we're not accused of hiding information. I don't want to say give them 1,000 pages of stuff, but give them anything and everything the [AOC] thinks responds to it."

Miller said he was not familiar enough with McCormick's request to judge whether the administrative office has been unresponsive, but if judges are not satisfied with the information, he said, they should work with staff to reach an understanding. He added, "They need to work it out as to what they want and better define it so they can provide it."

Request by judges for information have, since December of last year, been given special attention.

A rule adopted last year, Policy 2.8, sends their requests along their own path, separate from requests by the press, legislators or the public. If the judge's requests is deemed "outside the regular scope of business," it goes to a chief justice appointee specially for such requests.

McCormick and other judges have complained that their special path is in fact a dead end.

The current appointee to handle judge requests for information is Justice Harry Hull, chair of the council committee on rules and constructions projects, another very powerful committee on the Judicial Council.

In his fight for the current list of contracts, McCormick said he wrote to Hull, but

received no substantive response. Hull did not respond to a request for an interview.

The council is due to revisit the Policy 2.8 this year. In a status update presented at the last Judicial Council meeting in June, the administrative office said the rule had no doubt saved time but "it is impossible to quantify the exact level."