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August 22, 2016

Honorable Carol A. Corrigan
Chair, Commission on the Future of California's Court System
455 Golden Gate Ave.
San Francisco, CA 94102

Delivered via email to FuturesCommission@jud.ca.gov

To the Chair and Members of the Executive Committee of the Commission on the Future of California's Court System:

On behalf of our 500 members, we write to express our reservations about three of the "concepts" on the agenda for your August 29, 2016 comment session: Concepts 8 and 10 regarding the work of our court reporters, and Concept 9 regarding statewide uniformity in employee classification and pay.

We note at the outset that these "concepts" sound awfully familiar. Concept 9, for example, echoes a proposal advanced at last February's public hearing to rethink "existing labor practices" in order to reduce "court-to court variations in employment terms and conditions." Concepts 8 and 10 repeat last February's call for studying the costs and benefits of electronic reporting and the current system of "ownership of the court record." It seems as though the Commission is considering repackaged old ideas that have been roundly criticized in the past. This hardly constitutes the "fresh look at legal and structural challenges" promised by the Chief Justice when the Commission was first established. We hope that some of these "concepts"—these three in particular—can finally be put to rest.

We offer the following comments as to specific concepts:

Concept 8 is a proposal to deprive court reporters of the money they make from preparing transcripts. We consider this proposal an attempt to nickel-and-dime our co-workers, hundreds of whom have already been laid off over the past few years. We ask the Commission to keep in mind that tuition for court reporting school ranges from \$5,000 to \$15,000 a year, and that it takes the average reporter four years to finish. The Commission should also consider that our reporters have to buy, maintain, and update their own equipment; the typical setup can easily exceed \$10,000, and annual expenses, including continuing education and licensing, can also reach into the thousands. According to a 2013-2014 Court Reporting Industry Outlook Report prepared by Ducker Worldwide, California will face a deficit of more than 2,300 reporters by 2018. Lopping off a major source of their income will do nothing to attract qualified candidates to our courts.

We join with the Los Angeles Superior Court and with dozens of presiding judges and court executive officers in voicing our strong objection to **Concept 9**, which represents a drive toward a "uniform statewide personnel system." We are baffled by the rationale offered for this concept. The concepts' authors assert, with no

evidentiary support, that local variation in employee pay and classification somehow affects “how courts’ users are served.” We fail to see how. There is no valid reason why a court clerk in Imperial County should be given the same title and pay as a clerk in San Francisco. Their duties and working conditions may vary widely. Their costs of living are vastly different. Any attempt to impose uniformity on employee pay and classification would render meaningless the mandate contained in Government Code, § 77001, of “a decentralized system of trial court management” with “local authority and responsibility of trial courts to manage day-to-day operations” and “[c]ountywide administration of the trial courts.” If local courts can’t set pay grades and salaries and negotiate with organized labor, they aren’t really administering much of anything.

We are also concerned that that this proposal would undermine the carefully crafted arrangements that now exist between local courts and employee unions. It would replace an employment system that isn’t broken with one that would be confusing, inflexible, unfair, and unresponsive to local needs.

Finally, we fear that the creation of a statewide and uniform system of compensation and classification would result in a massive expansion in size and reach of our statewide judicial bureaucracy. That is the last thing we need.

Concept 10 is an effort to promote the replacement of court reporters with digital recordings. Citing advances in other completely unrelated technologies such as 3-D animation and police body camera video, the concept’s authors claim with little support that “the technology available to provide a digital record has evolved rapidly over the last five years.” When it comes to recording court proceedings, it hasn’t. No matter how sensitive the microphone or how high the fidelity, digital audio recordings have inherent shortcomings that make them poor substitutes for the work of a human court reporter. Widespread expansion of electronic recording would turn clerks and judges into sound engineers, constantly checking whether expensive and fickle audio equipment is working properly. The inadequacy of electronic recording isn’t just a matter of speculation; it’s a matter of record. (See, e.g., *Egger v. Soltész* (2012) 2012-Ohio-3182 [recording of guardianship hearing could not be produced]; *Harper v. Kentucky* (Ky. Ct. App. 2012) 371 S.W.3d 763, 766 [recording equipment failed to record any audio of a three-day trial]; *Louisiana v. Higginbotham* (La. Ct. App. 2012) 122 So.3d 1, 9 [equipment failed to record testimony of two witnesses]; *Povoski v. Fischer* (N.Y. Sup.Ct. 2012) 2012 WL 5376845 [hearing tape had “numerous and lengthy” gaps]. We need more court reporters, not fewer, and we need to pay them adequately.

Beyond these specific criticisms, we have one overarching one: These three proposals reflect a basic orientation in favor of greater uniformity and more central control. They stem from the premise that bigger is better, and sameness is good. If the past 20 years have taught us anything, it is that uniformity and centralization are not the answers to our branch’s problems; they are in large part the cause. If the Commission is truly committed to hearing fresh voices and new ideas, we wonder why it has not considered a single “concept” that would involve increasing local control over court administration and reducing the size and authority of the AOC.

We also have concerns about what happens with these “concepts” once they get through the Commission. We are alarmed at the lack of deliberation with which a proposal to reallocate judicial positions from one county to another went from Commission concept to legislative proposal without so much as a hearing before the Judicial Council. We expect that the Council will hold a full debate and conduct an open vote before any concept becomes a bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve White", with a large, stylized flourish at the beginning.

Judge Steve White
President, Alliance of California Judges

cc: Alliance Board of Directors