



A Tradition of Stewardship

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COUNTY of NAPA

OFFICE OF COUNTY COUNSEL

Wednesday, October 30, 2009

FILED

NOV - 5 2009

Clerk of the Napa Superior Court
By: C. Brennan
Deputy

Honorable Diane M. Price
Judge of the Superior Court
Napa Superior Court
825 Brown Street
Napa CA 94559

Re: *Response of County Counsel to the 2008/2009 Napa County Grand Jury
Final Report – County of Napa Office of the County Counsel*

Dear Judge Price:

This is in response to your letter dated September 23, 2009 wherein you noted certain possible deficiencies in my response to the above referenced Grand Jury Final Report.

As you know, Section 933.05 provides in relevant part as follows:

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) .
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) . . .

At least on regard to subdivision (b)(2) my position has been that identifying general timeframes are appropriate since, unlike subdivision (b)(3), there is no deadline for responding. Thus a response to a recommendation that the recommendation will be implemented on a "priority basis" or in the "near future", arguably complies with the

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statutory requirement. However, I have no objection to providing actual dates if that is what the Grand Jury desires.

In regard to Recommendation #9 which involved subdivision (b)(3) of Penal Code section 933.05 I regret that the cross reference to the response to Finding #8 resulted in not identifying a response date that was within six months of the issuance of the Grand Jury report. That omission has been corrected in my revised response which is attached as Exhibit "A".

The Grand Jury requested revisions to Recommendation #8 and Recommendation #9 (which also requires changes to my response to Finding #8). However, in reviewing my entire response, I note that the response to Recommendation #3 suffers from the same Grand Jury identified deficiency and thus I have also revised my response to that Recommendation by providing actual dates. The changes are highlighted in Exhibit "A" for ease of reference.

Regrettably, the office continues to be understaffed due to 3 resignations/retirements, the decision of the County Executive Office to freeze one of the vacant attorney positions for a significant period of time, and the difficulty in finding replacement attorneys of the quality I demand. Thus, the timeframes identified in Exhibit "A" are much longer than would otherwise be the case. However, as an accommodation to the Grand Jury, I have identified timeframes that should enable the current Grand Jury to evaluate the results approximately a month prior to the deadline for issuing its final reports should it wish to do so.

Thank you for bringing to my attention the desire of the Grand Jury for specific dates of implementation whenever subparagraphs (b) or (c) of Penal Code section 933.05 are involved. I do not know what other county departments, if any, have provided general timeframes rather than actual dates of implementation but will make sure all county agencies understand that providing actual dates is the preferable approach in all future county responses to reports of the Grand Jury.

Respectfully Submitted



ROBERT WESTMEYER
Napa County Counsel

cc: John K Morris, Foreperson, 2009-2010 Grand Jury
Patricia Tyrrell, Deputy County Counsel (Grand Jury Counsel)
Honorable Raymond A. Guadagni, Presiding Judge, Napa Courts

EXHIBIT "A"
(Amended Responses to Recommendations 3, 8 and 9)
(Report on the Napa County Counsel)

Finding #8. The County Counsel's office does not have a formal conflict of interest policy.

Response to Finding #8. County Counsel agrees with this finding. Representational conflict of interest issues are presently addressed on a case by case basis. Although this office does not have a formal conflict of interest policy, the County as a whole has a formal conflict of interest policy that is followed. A conflict of interest policy focused on conflicts of interest that develop when multiple departments or agencies with competing adverse interests request representation by the Office of the County Counsel will be developed on a priority basis by April 30, 2010. See also response to Recommendation #8.

Recommendation #3. A procedure be established to maintain an up-to-date listing of primary and secondary lawyer assignments.

Response to Recommendation #3. The recommendation will be implemented ~~in the near future~~ by April 30, 2010. A written policy will be developed requiring that the attorney assignment lists be reviewed, revised if necessary, and distributed not later than 90 days following the end of each fiscal year. Additionally the policy will require an evaluation of the need for a possible redistribution of work load within 60 days of a new attorney joining the office.

Recommendation #8. Formal conflict of interest procedures be established for County Counsel's office.

Response to Recommendation #8. The policy has not yet been implemented but will be implemented within the same timeframe identified in ~~See response to Finding #8.~~

Recommendation #9. The Grand Jury consistently be provided with legal representation when requested in the pursuit of its duties.

Response to Recommendation #9. The recommendation requires further analysis. As a part of developing the conflict of interest policy relating to representation the office will re-review whether it would be appropriate to have one attorney in the County Counsel's office represent the Grand Jury and another attorney represent the involved county department when the Grand Jury wishes to obtain information another county department is unwilling to disclose due to

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confidentiality, privacy, or other considerations. Review of recent caselaw, particularly as it relates to bias (see for example *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal.4th 731) due to county counsel representation of agencies and departments with competing interests, will be completed by the County Counsel and the deputy county counsel assigned to the Grand Jury not later than October 22, 2009 (i.e. within 6 months of the issuance of the Grand Jury report). County Counsel will be prepared to discuss the matter at any time thereafter with the Grand Jury. A draft written policy will subsequently be developed by the end of calendar year 2009. The draft written policy will be discussed with the County Executive office and the Board of Supervisors if additional funding is required to implement the draft written policy. The draft written policy will be finalized and made available to the 2009-2010 Grand Jury. That analysis will be completed within the timeframe identified in Finding #8 shortly after the first of the year.