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Board of Supervisors

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Mark Luce
Chair

June 23, 2009

The Honorable Raymond A. Guadagni
Presiding Judge
Superior Court of California, County of Napa
825 Brown Street
Napa, CA 94559

FILED

JUL - 6 2009

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

Dear Judge Guadagni:

As required by Penal Code Section 933(c), enclosed is the response to the 2008-2009 Grand Jury Final Report on Napa County Adult Probation Department, Napa County Criminal Justice Facilities: County Jail and Juvenile Hall and County of Napa Office of the County Counsel.

Grand Jury activity takes place over the course of a number of months. As such, their findings and recommendations often address issues which county departments have already identified as problems and to which solutions are in the process of being developed.

The Board acknowledges the members of the 2008-2009 Grand Jury for the time they have devoted in preparing their report.

Sincerely,

Handwritten signature of Mark Luce.

Mark Luce, Chair
Napa County Board of Supervisors

Enclosure

cc: Foreman, 2008-09 Grand Jury

Received
Napa Superior Court

JUL - 2 2009

Court Executive Office

Brad Wagenknecht
District 1

Mark Luce
District 2

Diane Dillon
District 3

Bill Dodd
District 4

Keith Caldwell
District 5

**Napa County
Responses to Grand Jury Report
Fiscal Year 2008-2009**

COUNTY OF NAPA OFFICE OF THE COUNTY COUNSEL

Finding #1. There is general agreement among clients and County Counsel staff that the number of lawyers and paralegals will be adequate when the Assistant Counsel position is filled.

Response, County Counsel. County Counsel agrees with the finding that the currently authorized 13 attorneys and 2 paralegals are presently sufficient to respond within reasonable timeframes to requests for legal services. However, over time the inevitable increases in workload due to new statutory and administrative requirements coming out of Sacramento, as well as increases in the population of the County, will eventually require additional staffing. Increasing the Legal Administrative Specialist's position to full time and/or developing a more efficient time and billing system would be a major improvement that will increase significantly the chances of not being required to add additional staff through at least the end of FY 2010/2011.

Finding #2. The office manager's position is filled by a part-time employee and there is no file clerk.

Response, County Counsel. County Counsel agrees with the finding. The office manager works 32 hours per week and thus is a .80 FTE employee. See response to Recommendation #1.

Finding #3. One of the thirteen lawyers carried on the staff of the County Counsel serves as an executive administrator for another County agency.

Response, County Counsel. County Counsel disagrees with this finding since no member of the staff of the County Counsel serves as an executive administrator for another County agency.

Finding #4. Within the County Counsel's Office there is concern that a comprehensive list of primary and secondary lawyer assignments is not kept current.

Response, County Counsel. County Counsel agrees with the finding although due to the small size of the office and constant interaction between the various attorneys this is not viewed by County Counsel as a significant problem. Typically updates occur every other year, or when new attorneys join the office. To address the concern updates will occur more frequently. See response to Recommendation #3.

Finding #5. Face-to-face annual evaluation discussions between the supervisor and employee do not always take place.

Response, County Counsel. County Counsel mostly disagrees with this finding. Face to face evaluations always occur following the completion of an evaluation and before it is submitted to Human Resources for processing. That being said, there may have been a rare situation involving a senior employee of the office where a face to face meeting did not occur. However, the County Counsel cannot recall any such instance.

Finding #6. Paralegal and administrative evaluations are timely; lawyer evaluations are generally delinquent by several months.

Response, County Counsel. County Counsel partially agrees and partially disagrees with this finding. Paralegal and administrative evaluations have been timely for many years. Attorney evaluations were current for several years but beginning at some point in 2007 some of the evaluations of attorneys who have been with the office for extended periods of time have not been completed in a timely manner. However, evaluations of new attorneys have always been completed in a timely manner. The delinquent evaluations are being brought up to date and all are expected to be current by the end of July 2009.

Finding #7. Staff meetings are infrequent.

Response, County Counsel. County Counsel agrees with this finding to the extent meetings of the entire 21 person staff is being referenced. In response to the Grand Jury's finding, bimonthly meetings of the entire staff are being scheduled rather than the two or three meetings a year that have been historically scheduled. Meetings with smaller divisions within the office, which presently occur more frequently than meetings of the entire staff, will also be increased in frequency. One-on-one meetings with staff to discuss specific legal issues, which are frequent, will continue. See response to Recommendation #4.

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

Response, County Counsel. 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. See response to Recommendation #8.

Finding #9. The County Counsel's office is well run; employees are not micro-managed.

Response, County Counsel. County Counsel agrees with the finding.

Finding #10. County Counsel lawyers generally stay out of client policy issues.

Response, County Counsel. County Counsel agrees with the finding.

Finding #11. The quality of some written documents to clients needs improvement.

Response, County Counsel. County Counsel agrees with this finding due to the inclusion of the word “some” in the finding. Client Satisfaction surveys which have regularly been conducted since 1995 have consistently evaluated the office at the high “4” to mid “5” levels in the areas of providing decisive and understandable written legal advice as well as providing a high quality work product (Scale is 6=Exceptional; 5=Excellent; 4=Fair; 3=Poor; 2=Unacceptable). Nonetheless there is always room for improvement particularly in the area of the dozens of written agreements that are reviewed and approved each year by the office.

Finding #12. Personnel within the County Counsel’s office have been briefed on the current County Counsel succession plan and, although concerned about who the next County Counsel may be, are supportive of the plan.

Response, County Counsel. County Counsel agrees with the finding.

Finding #13. There is very low turnover in County Counsel personnel.

Response, County Counsel. County Counsel agrees that historically this has been the case.

Finding #14. County Counsel’s lawyers and staff personnel are located in three separate rooms.

Response, County Counsel. County Counsel agrees with the finding. This separation is required. A “firewall” exit is required by fire regulations due to the presence of a large meeting room on the same floor on which County Counsel is located (i.e. the room where the Board of Supervisors meets). That firewall hallway exit and the overall layout of the building requires that the main office of the County Counsel be separated from the two smaller offices and prevents the two smaller offices from being merged. See response to Recommendation #5.

Finding #15. Workload assignments are changed in an attempt to level the hours, but this leveling action generally occurs only on a one to two-year basis.

Response, County Counsel. County Counsel agrees with the finding. See response to Recommendation #6.

Finding #16. The archaic time/billing system wastes lawyer and administrative staff time, impedes accurate client billing and makes workload leveling more difficult.

Response, County Counsel. County Counsel agrees with the finding and routinely asks in its annual budget submittal that a more modern time and billing system be funded. The

current time and billing system has been in use for approximately 15 years and is badly in need of an upgrade. See response to Recommendation #7.

Response, County Executive Officer. County Executive Officer agrees with the Grand Jury finding that the time/billing system is archaic. However, as stated in County Executive Officer's response to Recommendation #7, it appears that the two-step process of inputting time is what is causing most inefficiency. Unless that issue is resolved, there may not be improved efficiency by procuring a new system. County Executive Officer disagrees with the finding that the existing system impedes accurate client billing. Based on the data received from the County Counsel's office, it appears that the existing system is capturing all billable hours.

Finding #17. Small Claims advice to the public is provided by the County Counsel's office.

Response, County Counsel. County Counsel agrees with the finding.

Finding #18. The Grand Jury was recently denied County Counsel legal representation in a dispute with a County agency over records release.

Response, County Counsel. County Counsel agrees with this finding. The Office of the County Counsel has historically not represented the Grand Jury where both the Grand Jury and a county department are taking adverse positions and both seek representation. In such a case the office cannot ethically represent each side. The Office of the County Counsel does represent the Grand Jury when non-county agencies are involved. The formal conflict of interest policy the office will be developing on a priority basis will address this issue after discussing the matter with the Court Executive Officer and, if the Court Executive Officer deems it appropriate, the Presiding Judge of the Napa Courts – Grand Jury. See response to Finding #8.

Finding #19. The Grand Jury does not have a vehicle to provide timely independent counsel services if County Counsel refuses to provide legal representation.

Response, County Counsel. County Counsel partially agrees and partially disagrees with this finding. Various sections of the Penal Code provide that if the Office of the County Counsel has a conflict the Grand Jury may seek representation from the District Attorney (§935), Attorney General (§936) or special counsel (§936.5). However, securing special counsel is subject to two preconditions. First, the approval of the presiding judge of the superior court must be secured after a noticed evidentiary hearing on the conflict issue. Second, the presiding judge of the superior court cannot approve a request for special counsel unless the County Auditor-Controller certifies that the Grand Jury has funds appropriated to it that are sufficient to compensate the special counsel. Whether the Attorney General would support the Grand Jury in a local non criminal investigation is an unknown. Thus County Counsel agrees with the Grand Jury that in the absence of the District Attorney providing representation in the event the County Counsel has an ethical

conflict the process of retaining securing counsel may not be timely considering the time pressures under which Grand Juries typically operate.

Finding #20. The County Counsel's staff has available to it adequate and updated legal reference sources.

Response, County Counsel. County Counsel agrees with the finding.

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Recommendation #1. The part time office manager's position be increased to full time.

Response, County Counsel. The recommendation requires further analysis. When the Office of the County Counsel had half a dozen attorneys a full time office manager was not needed nor requested. In recent years as the size of the office has increased from 6 to 13 attorneys the need for a full time office manager has become more and more evident. A request to reclassify the Legal Administrative Specialist as an Office Manager is in progress and should be completed and transmitted to Human Resources on or before July 31, 2009. That reclassification study, in the view of the County Counsel, will justify implementing the Grand Jury recommendation to increase the Legal Administrative Specialist by .20 FTE (from .80 FTE to 1.00 FTE) and reclassify the Legal Administrative Specialist as an Office Manager with duties and responsibilities consistent with the duties and responsibilities of Office Managers in those County Counsel offices in other counties that are of similar size and otherwise deemed comparable by Napa County Human Resources. County Counsel respectfully disagrees with the County Executive's conclusion that all work in being completed in a timely manner. However County Counsel does agree with the County Executive's response that, despite the anticipated substantial ending general fund balance following the close of fiscal year 2008/2009, the timing of the implementation, due to the current economic conditions, is unlikely to occur during the coming fiscal year. The timing of any approved implementation will need to be discussed with the County Executive Office at appropriate intervals as the economy improves during the next few years. That initial discussion is expected to occur not later than September 30, 2009.

Response, County Executive Officer. The recommendation will not be implemented because it is not warranted. The Grand Jury report does not provide specific reasons for, or evidence to support, this recommendation other than to state that "Increasing the office manager to full time appears to be justified based on the workload." In reviewing the employee's timesheet for the past two years as well as the observation made by this office, it appears that the employee's work is generally being completed within the current 32 hours/week schedule. A Classification study will be conducted by the Human Resources Division to determine whether the employee is in the right classification: the issue of converting the position to full-time is a separate matter. In any case, given the current economic and fiscal climate, the County Executive Office cannot support converting the position to a full time position at this time. When fiscal conditions

improve, it may be appropriate to further study the appropriate clerical staffing level for County Counsel's Office.

Recommendation #2. A file clerk position be established.

Response, County Counsel. The recommendation requires further analysis. A preliminary, rather than formal study should be conducted. That study should be completed by September 30, 2009. If that preliminary study justifies a formal study of the need for such a position that formal study should commence and be completed by December 31, 2009. County Counsel believes that adding a file clerk would clearly improve the efficiency of the office and thus evaluating the Grand Jury's recommendation is appropriate. In any event, implementing the Grand Jury recommendation, if and when CEO approval is secured, is not expected to occur until better economic times return. Until then non essential projects will continue to be placed on hold.

Response, County Executive Officer. The recommendation will not be implemented because it is not warranted. The Grand Jury report does not provide specific reasons for this recommendation other than to state that "The hiring of a file clerk was also one of the needs universally identified by office personnel." Filing is within the job scopes of both the legal secretaries and the paralegals and does not require the office to have a dedicated file clerk position. Also, by eliminating the two-step process for entering time/billing (see response to Recommendation #7), more time can be dedicated by one of the legal secretaries to create a better filing system for the office. The goal identified in response to Recommendation #7 is for ITS to examine whether there could be an interface between the time/billing system and PeopleSoft payroll system to avoid the two-step process in the next six months. Our goal is to improve the efficiency of the departments without increasing the cost to the County and in this particular case, it appears that may be accomplished through the help of ITS. Further, given current economic and fiscal conditions, the County Executive Officer cannot support adding an additional position at this time.

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

Response, County Counsel. The recommendation will be implemented in the near future. 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 #4. A more cohesive atmosphere be established through more frequent staff meetings.

Response, County Counsel. The recommendation has been implemented. Meetings of the entire staff are now scheduled bi monthly rather than less frequently. Meetings of the

major sections of the office (Main Section, Planning Section and Child Protective Services Section) will also occur more frequently than is now the case. One-on-one meetings which are very frequent will continue.

Recommendation #5. Consolidation of the County Counsel's office space be made a long term priority.

Response, County Counsel. The recommendation will be implemented. Requests by the CEO for input on departmental space needs tend to occur frequently. In the past, recommendations from County Counsel were limited to projecting the additional personnel and equipment that might be needed. All future requests for input will also include a request and strong recommendation that the Office of the County Counsel be consolidated into a single office either in the current building or in any new structure that might be built in the future.

Response, County Executive Officer. The recommendation has been implemented in part and will be implemented in full in the future. The County has already identified that the existing County facilities are not sufficient to support continued staff growth and has already begun taking actions to address that issue. In January of 2008, the County's public works department entered into an agreement with an outside consultant -- Hellmuth, Obata + Kassabaum Advance Strategies -- to develop goals and parameters that will guide the development of real estate planning scenarios which will be used to develop the County's Facilities Master Plan. All County departments, including the County Counsel's office have been involved in the process of identifying the realistic evaluations of the staffing that will be needed. However, the specific issue of consolidating the three offices has not been addressed. This issue will be included in the future phases of the study.

In light of the current fiscal situation, the Board of Supervisors on December of 2008 approved the implementation of short-term fiscal contingency plan which included deferring approval of contracts for services not fully revenue offset. Therefore, the future study is currently on hold.

Recommendation #6. The frequency of workload assignment review and balancing be increased.

Response, County Counsel. See response to Recommendation #3.

Recommendation #7. A new time/billing software system be procured for County Counsel.

Response, County Counsel. The recommendation requires further analysis. The current time and billing system has been in use for more than a dozen years, is DOS based with a Windows overlay, and is outmoded when compared to other systems now available. The office has routinely asked in its annual budget requests for funding to purchase a more efficient time and billing system that also incorporates an up to date court calendaring

and document retrieval system. These requests have routinely been denied on the basis that the County has more pressing needs. While County Counsel believes this is not a cost effective approach, County Counsel also understands that the CEO has to prioritize the needs of all departments of the County and act accordingly. However, the annual requests for a more efficient time and billing system will continue until approved.

Nonetheless, the recommendation of the Grand Jury merits further analysis at the present time both as to the type of software to be utilized and the timing of the implementation of the software selected in light of current economic conditions. The goal will be to provide a more efficient time and billing system, court calendaring and document retrieval system while at the same time avoiding purchasing a system that involves fitting a round peg in a square hole. Several software programs developed specifically for public legal offices, and used with success in other County Counsel offices of similar size, are presently being reviewed by this office. Another partial option being considered is having the office's time entered directly into PeopleSoft Time & Labor using Project Costing to track specific tasks and projects. One possible advantage of PeopleSoft is that it will eliminate duplication of time entry. A significant negative is that it will not resolve the need to have an efficient court calendaring and document retrieval system which is the core of any legal office that wishes to maximize efficiency. The office at the next County Counsel Office Managers meeting will discuss with other counties who utilize PeopleSoft or similar systems but also utilize software programs developed specifically for public legal offices whether it is possible to integrate the two systems. The office will also ask for input regarding whether any county has integrated District Attorney, Public Defender and County Counsel into a single time and billing system.

Response, County Executive Officer. The recommendation requires further analysis. The Grand Jury report states "One frequently identified deficiency is that the system requires a two-step input. Individual employees fill out a spreadsheet "time card" which is then sent to the administrative staff. The administrative staff manually enters the hours from the spreadsheet into the billing program. This two-step process is time consuming and subject to clerical error. In addition, since the spreadsheet is not linked to the billing program, each employee must also keep track of the billing codes and sub-codes for each client. An updated time/billing software system will significantly enhance office efficiency. This efficiency will be gained by reducing the two-step input process, minimizing the time spent on identification of proper billing codes, and providing better tracking capabilities for client billing and manpower leveling." County Executive Office agrees that the existing time/billing software system is somewhat out of date and could be improved. However, procuring the new software system may not solve the problem of two-step input process the Grand Jury report points out.

Payroll for all the employees is generated through the PeopleSoft payroll system. County Counsel is the last department to still follow the old process of using the paper timecard and one administrative staff inputting the time into PeopleSoft payroll system. The roll out of the new process where each employee inputs his/her own time into the system hasn't been implemented due to the very issue the Grand Jury points out, that time recorded needs to be tied to the project so that it can be billed out to the outside agencies

when necessary. County Executive Office and County Counsel staff already met with the Information Technology Services (ITS) department to discuss if there is any way to create an interface between the PeopleSoft payroll system and the time/billing system to eliminate the two-step input process. Even if a new time/billing system is procured, this issue of interfacing between the two systems needs to be first resolved to avoid the two-step system. Another option that was discussed was the use of PeopleSoft Time & Labor and Project Costing to keep track of time and provide billing reports.

Through the meeting with ITS, these short-term/long-term goals were identified:

Short-term goal: ITS will examine whether there could be an interface between the time/billing system and PeopleSoft payroll system to avoid the two-step process. ITS will also see if the combination of Time & Labor and Project Costing can provide a solution.

Long-term goal: There are three legal departments in the County: County Counsel's Office, District Attorney's Office, and Public Defender's Office. Information Technology Division will be exploring to see if there is a solution that can serve all three departments.

The result of the short-term goal will be completed by ITS in next six months.

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

Response, County Counsel. The policy has not yet been implemented but will be implemented. 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, County Counsel. 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 confidentiality, privacy, or other considerations. That analysis will be completed within the timeframe identified in Finding #8.