

**NAPA COUNTY
GRAND JURY**

2008-2009

Final Report on

**COUNTY OF NAPA
OFFICE OF
THE
COUNTY COUNSEL**

TABLE OF CONTENTS

1. Letter to Presiding Judges	
2. Letter to the Citizens of Napa County	
3. County of Napa Office of the County Counsel	
a) Summary	1
b) Background	2
c) Methodology	3
4. Discussion	4
a) Personnel	4
b) Administration	6
5. Findings	8
6. Recommendations	9
7. Commendation	9
8. Request for Responses	9
9. Glossary	9



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

April 22, 2009

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

Dear Judge Guadagni,

Pursuant to Section 933(a) of the California Penal Code, the 2008-2009 Napa County Grand Jury submits to you its Final Report on County of Napa Office of County Counsel. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury – to protect the interests of the citizens of Napa County.

This is the eighth in a series of final reports we will be issuing before our term ends. I would like to acknowledge the hard work and dedication of the Grand Jury which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "W. Trautman".

William E. Trautman
Foreperson
2008-2009 Napa County Grand Jury



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Citizens of Napa County:

The 2008-2009 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies, conducted an investigation of the County of Napa Office of the County Counsel. The Office of the County Counsel was last investigated by the 1998-1999 Grand Jury.

Because of its investigative role with respect to County and municipal governmental agencies, the Grand Jury at times finds itself at odds with these agencies regarding the release of sensitive information. While the Napa County Grand Jury has an assigned lead lawyer in the County Counsel's office, the Grand Jury was recently denied County Counsel legal services.

The office of the County Counsel consists of thirteen lawyers, a County Privacy Officer, two paralegals, a Probate Services Coordinator and four administrative/secretarial personnel. Morale among County Counsel office personnel is good.

The County Counsel had indicated his intention to retire toward the end of 2008 or early 2009. Because of a change in plans of the heir apparent, the existing succession plan was revamped. The decision was made to eliminate one Chief Deputy's position and to advertise for an Assistant County Counsel who will be groomed for approximately two years to fill the County Counsel's position. This selection process allows in-house lawyers as well as outside lawyers to apply. County Counsel will defer his retirement during this period.

County Counsel provides small claims legal advice to private citizens at no charge. This advice is provided by telephone.

The Napa County District Attorney has reviewed this final report on the Napa County Office of County Counsel and the Presiding Judge of the Napa County Superior Court has certified that the report complies with Title 4 of the California Penal Code. The report has also been accepted and filed as a public document by the County Clerk.

Copies of this report are available for your review in the Napa City/County Library and online by following the link to Grand Jury at <http://www.napacourt.com>. It is our pleasure and honor to serve you during the 2008-2009 Grand Jury's tenure. We hope you find our report interesting and informative.

Respectfully submitted,

The 2008-2009 Napa County Grand Jury

COUNTY OF NAPA OFFICE OF THE COUNTY COUNSEL

County Counsel's mission is to fulfill the requirements of the California Government Code, that the County Counsel advise the Board of Supervisors and all boards, departments, agencies, officials and employees of the County in civil matters, draft or prepare ordinances, defend or bring actions in which the local government or any of its components shall be a party, and in any other manner advise or represent the locality. County Counsel provides small claims legal advice to private citizens at no additional charge.

<http://www.co.napa.ca.us>

SUMMARY

The 2008-2009 Napa County Grand Jury, as a function of its charge to investigate and report to the citizens of Napa County on their local governmental agencies, conducted an investigation of the Napa County Counsel's Office. This decision was made because the County Counsel's Office has not been reviewed since the investigation carried-out by the 1998-1999 Grand Jury and because at the beginning of the investigation the retirement of the County Counsel was thought to be imminent.

The office of the County Counsel consists of thirteen lawyers, a County Privacy Officer, two paralegals, a Probate Services Coordinator and four administrative/secretarial personnel. Morale among County Counsel office personnel is good. Concern exists regarding County Counsel's successor and the physical separation which results because the lawyers are split-up among three separate offices. There is very low turnover in County Counsel personnel. Paralegal and administrative evaluations are timely; lawyer evaluations are generally months delinquent.

The actual billable hours reported by the lawyers varied significantly. Workload assignments are changed in an attempt to level the hours, but this leveling action generally occurs only on a one to two-year interval. A confidential County Counsel Performance Review form is sent to client agencies, routinely on an annual basis. The responses reviewed were quite candid and generally favorable.

The County Counsel had indicated his intention to retire toward the end of 2008 or early 2009. Because of a change in plans of the heir apparent, the existing succession plan was revamped. The decision was made to eliminate one Chief Deputy's position and to advertise for an Assistant County Counsel who will be groomed for approximately two years to fill the County Counsel's position. This selection process allows in-house lawyers as well as outside lawyers to apply. County Counsel will defer his retirement during this period.

County Counsel provides small claims legal advice to private citizens at no charge. This advice is provided by telephone. The telephone number for this service is listed under County Government in the Government Blue Pages of the telephone directory.

Because of its investigative role with respect to County and municipal governmental agencies, the Grand Jury at times finds itself at odds with these agencies regarding the release of sensitive information. While the Napa County Grand Jury has an assigned lead lawyer in the County Counsel's office, the Grand Jury was recently denied County Counsel legal services.

BACKGROUND

The County Counsel has described the statutory mandates of that office as follows:

The Office of the County Counsel is required to provide legal advice and assistance to the County Board of Supervisors and County departments, commissions, and agencies. Health, public safety, child welfare, jail operations, environmental protection, personnel and human resources, taxation, elections are among the wide range of subjects that engage the Office of the County Counsel. The Office of the County Counsel's mandated duties are found in the Government Code and the State Bar Act. The Government Code establishes the County Counsel as a public officer and sets forth the general and specific civil duties the office must perform.

The 2008-2009 Grand Jury conducted an investigation to evaluate the performance of the County Counsel's Office in carrying out its assigned responsibilities. This investigation was limited to the administrative functions of the Office and not the legal advice provided. The County Counsel's Office was very helpful to the Grand Jury in carrying out this investigation.

METHODOLOGY

Interviews Conducted

Several lawyers and staff of the County Counsel's office
Representatives of various County Departments using the services of County Counsel's office

Documents Reviewed

Prior Grand Jury Reports on County Counsel's office
Employee Review Dates Listing
Napa County Employee Performance Appraisal (blank form)
County Counsel Performance Review (blank form)
Responses to County Counsel Satisfaction Survey
County Counsel Service Request (blank form)

Staffing of County Counsel Office 1988-2008
County Counsel Budget Unit data
County Counsel Department Summary
County Counsel Mission Statement
County Counsel Goals and Objectives (2008-2012), undated
County Counsel Overall Goals and Objectives, undated
County Counsel Statutory Mandates
County Counsel Statistical Data

DISCUSSION

Personnel

County Counsel Staff

The office of the County Counsel consists of thirteen lawyers, a County Privacy Officer, two paralegals, a Probate Services Coordinator and four administrative/secretarial personnel. There is general agreement among clients and County Counsel staff that the number of lawyers and paralegals will be adequate after filling the Assistant Counsel position. The Legal Administrative Specialist, who serves as office manager and supervises the legal secretaries, is a part-time employee. Two of the legal secretaries are part-time employees as well. Increasing the office manager to full time appears to be justified based on the workload. The hiring of a file clerk was also one of the needs universally identified by office personnel. Current budget constraints impact this issue. The County Counsel's statement of Overall Goals and Objectives includes a reorganization of the office in Fiscal Year 2009-10 "to create a more effective management structure." One of the thirteen lawyers carried on the staff of the County Counsel serves as an executive administrator in another County agency.

Each of the County organizations/agencies, which utilize the services of the County Counsel's office, is assigned, at least, one lead lawyer and generally a back-up or secondary lawyer to cover the agency's needs if the lead lawyer is not available. The relatively small size of Napa County government means that the County Counsel's office must be staffed with "generalists," each of whom is responsible for a wide variety legal issues. In order to provide basic familiarity with the unique needs of the client agencies, lawyer assignments must be changed from time to time to provide the requisite backup capability. In addition, the workload of the client agencies changes with time. Many of the client agencies would like to have an expert in their particular legal needs and some would like to have that expert located in their offices. These agencies realize however, this is not practical and generally give the assigned lawyers high marks in professionalism, dedication, responsiveness and knowledge of their particular agency's needs. Within the County Counsel's office, there is concern that a comprehensive list of primary and secondary lawyer assignments is not kept current. The lack of a current list, together with the physical separation of the lawyers described in the section entitled Office Space below, makes it difficult for lawyers and administrative staff to know the primary and secondary assignments of their fellow workers.

Most of the County Counsel personnel were vaguely aware of the office's Mission Statement, but unaware of published Goals and Objectives.

Morale among County Counsel office personnel is good. Lawyers are not micro-managed and professional pride is clear. Anxiety regarding the future County Counsel and the physical disconnect resulting from the office arrangement are the principal concerns. To counter the disconnect issue caused by physical separation, regularly scheduled staff meetings and more frequent walk-about by the County Counsel were suggested to the Grand Jury. There is very low turnover in County Counsel personnel.

Personnel Evaluations

After the initial probation period, employees are to be evaluated yearly. The process begins with the Office Manager providing the employee with a blank evaluation form on which the employee is to list the work assignments for the preceding year. Lawyer evaluations go to the County Counsel. Client satisfaction reviews (see below) may be used in the evaluation process. Lawyer evaluations are generally delinquent by several months. Administrative personnel evaluations are returned to the Office Manager. For paralegals and secretaries, evaluations by lawyers may be used. Paralegal and administrative evaluations are timely.

When completed, the evaluation is returned to the employee for signature and is presumably discussed with the employee. Face-to-face discussions between the supervisor and employee do not always take place.

Billable Hours

The standard for billable hours in the County Counsel's Office is 1700 hours per year. These are hours which a lawyer is expected to bill to specific clients for his/her time. That figure is derived by taking the total number of work hours for the year, subtracting half an hour each day for miscellaneous duties, and subtracting vacation time. This results in approximately 1600 hours. The lawyers receive eighty hours of administrative time which is added to the 1600 hours and rounded at 1700 hours per year. The lawyers were aware that a standard existed, but most did not know what the standard was.

The actual billable hours reported by the lawyers varies significantly. Workload assignments are changed in an attempt to level the client hours required by all lawyers, but this leveling action generally occurs only on a one to two-year interval.

Training

Lawyers and paralegals are provided with continuing education opportunities by the County. Lawyers are required to maintain continuing education hours to keep their licenses; paralegals currently do not have mandatory continuing education requirements. Course selection is up to the individual subject to general applicability to their assigned areas of law.

Each lawyer is provided with a training budget of \$1500 per year. If a given lawyer does not use the budgeted amount, that money can be used by another lawyer who would benefit from additional training. Typically new-hire lawyers require more training. In addition to the \$1500 individual training budget, the office provides other general training opportunities.

Client Satisfaction

A confidential County Counsel Performance Review form is sent to client agencies, generally on an annual basis. The form, which is returned directly to the County Counsel, asks detailed questions about the manner in which requested services are performed. These evaluations provide input on the individual lawyers as well as the overall services of the County Counsel's office. The responses reviewed were quite candid and generally favorable. County Counsel lawyers are viewed as professional, hard-working and dedicated to the County's business. While the Grand Jury did not ask for client evaluation of specific legal advice, the quality of some written documents, such as agreements, needs to be addressed.

Administration

Succession Plan

The County Counsel had indicated his intention to retire toward the end of 2008 or early 2009. Serving directly under the County Counsel were two Chief Deputies who in turn supervised the Deputy County Counsels and paralegals. It had been anticipated that one of the Chief Deputies would be appointed to fill the County Counsel position. Because of a change in plans of the heir apparent, the then existing succession plan had to be revised. In addition, the retirement of the second Chief Deputy left a vacancy at the supervisory level. The decision was made to eliminate this Chief Deputy's position and to advertise for an Assistant County Counsel who will be groomed for approximately two years to fill the County Counsel's position. This selection process will be an open advertisement, allowing in-house lawyers as well as outside lawyers to apply. County Counsel will defer his retirement during this period. The selection process, to be made by the Board of Supervisors (BOS), is critical because once hired the County Counsel has a four year contract.

Personnel within the County Counsel's office have been briefed on the current succession plan and are supportive of the plan. There is some apprehension about who the new boss will be and some disappointment that a Chief Deputy position has been eliminated. The elimination of this position limits upward mobility by lawyers within the office.

Conflict of Interest.

Because of the diverse nature of the clients represented by the County Counsel's office, from time to time a situation may arise in which lawyers within the County Counsel's office find themselves representing conflicting interests. Lawyers acknowledged that this can occur and referred to the need to establish an ethical barrier under these circumstances. An ethical barrier can be defined as an administrative screening process developed to segregate lawyers or administrative staff who may have a conflict of interest in regard to common clients or administrative staff.

In general, the lawyers understand the basic rules of an ethical barrier, but have limited knowledge of what the particulars were or how these rules would be carried-out in the County Counsel's office. Some described password protection of electronic files and acknowledgement that lawyers could not discuss the case with opposing counsel. Clear and concise direction is required for lawyers, paralegals and administrative staff in this regard.

The Conflict of Interest issues with respect to the County Counsel's office are of particular concern to this Grand Jury and State Grand Juries in general. The Grand Jury and County agencies are both represented by County Counsel. The County Counsel's office is to provide legal services as required. Because of its investigative role with respect to County and municipal governmental agencies, the Grand Jury at times finds itself at odds with these agencies regarding the release of sensitive information. The Grand Jury was recently denied County Counsel legal representation in a dispute over file access with a County agency, also represented by County Counsel's office.

The Grand Jury has four options regarding legal assistance:

- County Counsel's Office
- District Attorney's Office
- Outside lawyers
- Represent itself

The Grand Jury can make use of the services of the District Attorney's office for legal advice. However, the District Attorney's expertise is criminal law, not civil law. In fact, the District Attorney has a lead lawyer in the County Counsel's office to handle its civil issues. The Grand Jury can petition the Court to obtain the services of an outside lawyer. This option is both time consuming and expensive for the County. If there is a member or members of the Grand Jury who have the requisite expertise, the Grand Jury can represent itself as was the case in the situation described. There is no assurance, however, that any given Grand Jury will have that expertise or that an individual would be willing to take on the responsibility of such pro bono representation. The Grand Jury must be able to expect full support from the County Counsel's office, with appropriate ethical barrier protection, when pursuing legal issues with other County agencies.

Since a Grand Jury may be denied support by County Counsel, a process for timely access to independent counsel should be in place. In an April 2002 article discussing desirable Grand Jury reform legislation, the California Grand Jury Association noted the following:

Better access to independent counsel, both to advise grand juries during the course of their terms and to represent them in judicial proceedings where the interests of a grand jury, or all grand juries, are at stake. Current access to independent counsel is overly restrictive and forces grand juries to rely for their advice on counsel with conflicts of interest or no concern for the grand jury and its interests. Occasionally, grand juries must go to court and there is no current provision designed to permit them to retain litigation counsel. A recent ruling from the Superior Court, not appealed, granting the grand jury access to material that the county was improperly withholding, was possible only because a member of the grand jury panel was a skilled litigation practitioner and represented the grand jury pro bono.

Office Space

It is important the County Counsel's office be physically in close proximity to the BOS and County Executive Officer (CEO) and their staffs to facilitate the required communications. To

accomplish this, and because of the building layout, the County Counsel's lawyers and staff personnel are located in three separate rooms. These rooms are referred to as pods; the mother ship (which houses the County Counsel, office manager, and other lawyers), the Planning pod, and the Child Protective Services (CPS) pod. The resulting physical separation of County Counsel staff is undesirable because it adversely impacts communications between the lawyers and between management and staff.

There is not a practical short term resolution to the space requirement consistent with the required proximity to the BOS/County Administrator. The presence of the BOS Meeting Room and applicable fire codes present physical as well as financial constraints. This issue is addressed in County Counsel's Overall Goals and Objectives and must remain a long term priority. One way to mitigate the impact of the physical separation would be to increase the number of office meetings.

Billing/Project Management

Funding for the County Counsel's office is basically provided from the County's General Fund. However, specific agencies which have outside funding streams are required to pay the County Counsel's office for the services provided. In fact, one of County Counsel's Goals and Objectives (2008-2012) is to "Continue efforts to reduce the percentage of county counsel's budget that impacts the County General Fund." Accurate timekeeping records are important in recovering these funds. In addition, timekeeping records also permit management to determine if the workload among the lawyers is being distributed equitably.

An almost universal complaint by County Counsel personnel concerning office management is the computerized time/billing program in use. 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. This issue is identified in the County Counsel's Goals and Objectives (2008-2012).

Small Claims Advice

The California Code of Civil Procedure, Section 116.260 requires that:

In each county, individual assistance shall be made available to advise small claims litigants and potential litigants without charge as provided in Section 116.940 and by rules adopted by the Judicial Council.

In Napa County individual assistance is provided by the County Counsel's Office. The small claims advisor is a paralegal. However, the assistance of a lawyer is available if an issue is particularly difficult. Small claims advice is provided by telephone. The direct

dial telephone number is provided under Superior Court in the County Government Offices section of the telephone directory (707-299-1130).

Policies and Procedures

The County Counsel's Office does not have its own Policy and Procedures Manual. Some office personnel listed this as an area to be addressed, but not necessarily a high priority issue. The Grand Jury believes that the Office would be well served with specific written direction in some areas. The "Conflict of Interest" issue discussed previously is one such issue.

Reference Material

Up-to-date reference material is an essential element in the legal profession. It is particularly important for the generalists working in the County Counsel's office to keep up with broad range of statutory and case law required in the performance of their duties. The County Counsel's office has good resource information. Much of this information is now provided in electronic form with current legislative and judicial updates provided by the various legal library services.

FINDINGS

The 2008-2009 Grand Jury finds:

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.
2. The office manager's position is filled by a part-time employee and there is no file clerk.
3. One of the thirteen lawyers carried on the staff of the County Counsel serves as an executive administrator for another County agency.
4. Within the County Counsel's office there is concern that a comprehensive list of primary and secondary lawyer assignments is not kept current.
5. Face-to-face annual evaluation discussions between the supervisor and employee do not always take place.
6. Paralegal and administrative evaluations are timely; lawyer evaluations are generally delinquent by several months.
7. Staff meetings are infrequent.
8. The County Counsel's office does not have a formal conflict of interest policy.
9. The County Counsel's office is well run; employees are not micro-managed.
10. County Counsel lawyers generally stay out of client policy issues.
11. The quality of some written documents to clients needs improvement.
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.
13. There is very low turnover in County Counsel personnel.
14. County Counsel's lawyers and staff personnel are located in three separate rooms.
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.

16. The archaic time/billing system wastes lawyer and administrative staff time, impedes accurate client billing and makes workload leveling more difficult.
17. Small Claims advice to the public is provided by the County Counsel's office.
18. The Grand Jury was recently denied County Counsel legal representation in a dispute with a County agency over records release.
19. The Grand Jury does not have a vehicle to provide timely independent counsel services if County Counsel refuses to provide legal representation.
20. The County Counsel's staff has available to it adequate and updated legal reference sources.

RECOMMENDATIONS

The 2008-2009 Grand Jury recommends:

1. The part time office manager's position be increased to full time.
2. A file clerk position be established.
3. A procedure be established to maintain an up-to-date listing of primary and secondary lawyer assignments.
4. A more cohesive atmosphere be established through more frequent staff meetings.
5. Consolidation of the County Counsel's office space be made a long term priority.
6. The frequency of workload assignment review and balancing be increased.
7. A new time/billing software system be procured for County Counsel.
8. Formal conflict of interest procedures be established for County Counsel's office.
9. The Grand Jury consistently be provided with legal representation when requested in the pursuit of its duties.

COMMENDATIONS

The 2008-2009 Grand Jury commends the lawyers and staff of the County Counsel's Office for their professionalism and dedication to duty.

REQUEST FOR RESPONSES

The 2008-2009 Grand Jury requests responses from:

1. County Counsel for Recommendations 1,2,3, 4, 5, 6, 7, 8 and 9.
2. County Executive Officer for Recommendations 1, 2, 5 and 7.

GLOSSARY

CEO County Executive Office
 BOS Board of Supervisors