

**NAPA COUNTY GRAND JURY  
2013-14**

**JANUARY 17, 2014**

**FINAL REPORT**

**REVIEW OF RESPONSES TO  
THE 2012-2013 GRAND JURY  
REPORTS**

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# **REVIEW OF RESPONSES TO THE 2012-2013 GRAND JURY REPORTS**

## **I. Introduction**

### **A. Summary**

The 2012-2013 Grand Jury issued its Consolidated Final Reports on June 24, 2013, at the end of its one-year term. The Consolidated Final Reports consisted of six individual Final Reports on governmental operations in Napa County. The Grand Jury made recommendations in five of its six Final Reports, the exception being the Napa County Juvenile Hall Report. The Grand Jury specifically requested responses to its recommendations from affected agencies.

Pursuant to California Penal Code section 933, elected officials are required to respond within sixty days of a grand jury report and government agencies are required to respond within ninety days. Their responses must be addressed to the Presiding Judge of the Napa County Superior Court.

During its present term, the 2013-2014 Grand Jury reviewed all the responses provided by government agencies to the five reports by the 2012-2013 Grand Jury that requested responses. The 2013-2014 Grand Jury finds that all agencies with the exception of the City of Calistoga filed timely responses to the recommendations of the 2012-2013 Grand Jury. The City of Calistoga submitted its response on October 4, 2013.

While all agencies (with the one exception) submitted timely responses, some of the responses did not comply with the specific statutory requirements of section 933 of the Penal Code. In particular, agencies responding that a recommendation had been implemented did not in each case provide a meaningful summary of the implementation, as required by law. Agencies responding that a recommendation would be implemented did not in each case specify the timeframe for its implementation, as required by law. Of even greater concern, agencies

stating that a recommendation required further study did not in each case provide the parameters of further analysis or study, and the needed timeframe, as required by law. (See California Penal Code section 933.05 describing form and content expected of responses depending on category of response.) The 2013-2014 Grand Jury encourages agencies to comply strictly with the statutory requirements of section 933.05. Strict compliance facilitates the work of the Grand Jury, especially its ability to track the implementation of grand jury recommendations. The Grand Jury concludes with a suggestion that responding officials certify that their responses conform to statutory requirements.

## **B. Background**

State law requires that at least one agency or official submit a written response to the Presiding Judge for every recommendation in a grand jury report. The current Grand Jury must assure that each response was submitted within the statutory timeframe and is otherwise compliant with the requirements of California Penal Code section 933.

In a grand jury report each finding is required to be substantiated by written documents and/or oral testimony. To be considered, oral testimony must be taken before at least two grand jurors. Every recommendation in a report must be supported by at least one finding. By adhering to these principles, the objectivity and accuracy of a grand jury report are assured. Recommendations from grand juries often suggest shortcomings and/or call for changes, and they encourage governmental entities to review their policies and procedures.

## **C. Methodology**

The 2013-2014 Grand Jury evaluated the responses to the 2012-2013 Grand Jury's recommendations to ensure compliance with the requirements of California Penal Code section 933.05.

The following criteria were considered:

- Was the response timely received by the Presiding Judge, which is within ninety days for a public agency and within sixty days for an elected official, including an elected agency head?
- If a respondent disagreed in part or in whole with a recommendation, did the respondent provide a reasoned explanation of its disagreement?
- If a respondent stated that a recommendation had been implemented, did the respondent provide a non-conclusory summary of the implemented action?
- If a respondent stated that a recommendation was to be implemented, did the respondent provide a summary of the proposed implementing action, and also the timeframe for completing the implementing action?
- If a respondent stated that a recommendation required further analysis or study, did the respondent provide an explanation of the scope and parameters of the proposed analysis or study, and also provide a timeframe for completion of the proposed analysis or study, with the timeframe not to exceed six months from the date of the release of the specific 2012-2013 Grand Jury final report?
- If a respondent stated that a recommendation was not to be implemented on the ground that it was not warranted or not reasonable, did the respondent include a reasoned explanation supporting its position?

The 2013-2014 Grand Jury reviewed the twenty-three recommendations given to the fifteen governmental agencies and officials in the Consolidated Final Reports of the 2012-2013 Grand Jury. It sets forth its observations concerning agency and officials' responses in this review report.

## **II. Review of Responses to the 2012-2013 Report On The Integrity of Grand Jury Investigations**

### **A. Discussion**

On April 25, 2013, the 2012-2013 Grand Jury issued its final report entitled On The Integrity Of Grand Jury Investigations. During its term the Grand Jury stated that it had conducted “extensive inquiries and investigations into the operations of certain agencies and departments within the Cities and County of Napa, some of which have or will result in formal reports and others will not.” The Grand Jury continued that witnesses coming before it had violated the secrecy admonition applicable to its proceedings. *“This conduct created an atmosphere within the concerned departments which caused other witnesses to feel pressure, apprehension, and intimidation, resulting in their being less than forthcoming in subsequent testimony.”* Italics added.

The 2012-2013 Grand Jury further stated: “Certain individuals in City or County departments, who were sometimes interviewees themselves, were in *flagrant and knowing disregard* for the secrecy of the investigation and binding nature of the [written] admonition [of secrecy, contained in a signed admonishment in a form approved by the California Attorney General], by pointedly interrogating co-workers about questions the Grand Jury asked, what answers they had given, who spoke about a certain subject, what records were disclosed and the like.” Italics added. The Grand Jury continued: *“The employees so interrogated subsequently expressed to the Grand Jury a deep concern about the conduct of these individuals, particularly when the persons so questioning served in a supervisory capacity over them.”* Italics added. The Grand Jury found that the evidence of such misconduct was “ample and compelling.”

Based on its findings of willful violation of the grand jury secrecy admonition and the impedance of proper investigation, the 2012-2013 Grand Jury made one recommendation, as follows:

R1. That the County Board of Supervisors, the City Council of each incorporated jurisdiction, the County Counsel and every public official not under the authority of the foregoing provide information to all

county employees within their jurisdiction regarding their duties and responsibilities towards the grand jury process and that the instruction be completed prior to the end of this calendar year [2013].

The 2012-2013 Grand Jury requested responses to recommendation R1 from the Napa County Counsel, the Napa County Board of Supervisors, the Napa City Council, the American Canyon City Council, the St. Helena City Council, the Yountville Town Council, the Napa County Auditor, the Napa County Assessor-Recorder-County Clerk, the Napa County Tax Collector, the Napa County District Attorney, and the Napa County Sheriff.

All respondents responded within the applicable statutory deadline with the exception of the City of Calistoga. Its response was received on October 4, 2013.

The responses varied in scope. Most respondents advised that they could not agree with or disagree with the finding of willful violation of the secrecy admonition due to the absence of personal information by the responding agency or official. Some respondents added that they had no awareness that the agency or its staff were involved in a violation of the secrecy admonition. The Yountville Town Council stated that it had not been involved in a grand jury investigation during the term of the 2012-2013 Grand Jury. The City of Napa specifically noted that the Grand Jury did not identify the offending local agencies and persons in its final report.

Some respondents advised that they had implemented recommendation R1. These were the Board of Supervisors, the City of Napa, City of American Canyon, the Town of Yountville, and the Assessor-Recorder-County Clerk. The Board of Supervisors added: "The Board of Supervisors agrees to have Department Heads review [its adopted Code of Ethics] with staff annually, and provide instructions to staff specific to the grand jury process." Others agreed to implement recommendation R1 by the end of calendar 2013. These were the County Counsel, the City of Calistoga, the City of St. Helena, the District Attorney, the Auditor-Controller, the Sheriff-Coroner, and the Treasurer Tax-Collector.

A few of the responses ranged beyond the 2012-2013 Grand Jury's specific findings and recommendation, and into a significant discussion of the respondent's perceived legal obligations in a response to a grand jury investigation. *See especially* the five-page, single-spaced letter response of the City of Napa.

## **B. Observations**

In general, the responses stating that recommendation R1 had been implemented were not in conformance with statutory requirements. They did *not* provide a meaningful "*summary* regarding the implemented action." Italics added. (California Penal Code section 933.05(b)(1)). Instead, they provided only a conclusory statement that the recommendation had been implemented. Mostly, the responses stated that employees were advised of their obligations toward the grand jury at the time that the agency became aware of a grand jury investigation directed to it.

The responses did *not* state that employees in the normal course of their work (and not in response to a grand jury investigation) received information on their obligations toward the grand jury. For example, no respondent asserting that the recommendation had been implemented stated that a written policy was in place that is given to the employee at the point of hire, or on a regular, periodic basis during his or her employment.

The starting point of a written policy would be a discussion of grand jury secrecy, and that the agency respects grand jury secrecy. A written policy might discuss that a grand jury is entitled to all public records, and that careful steps must be taken to ensure preservation of public records upon learning of a grand jury investigation. It might note that "public records" is broadly defined and includes, for example, emails generated in the ordinary course of business. The policy might state that it is the policy of the agency to cooperate with grand jury investigations, including identifying and providing documents relevant to a grand jury's request, and that *no* employee will be asked by his or her supervisor about his or her interview(s) with the grand jury (as appears to have occurred on a significant scale during the last grand jury term).



A grand jury could reasonably expect to see some or all of the foregoing, and perhaps more, in a meaningful (non-conclusory) “summary” by an agency reporting that it has implemented the 2012-2013 Grand Jury recommendation R1.

A special word with respect to the response of the City of Napa:

The response correctly notes that the final report of 2012-2013 Grand Jury did not disclose the names of the witnesses or agencies where it concluded that there had been violations of the secrecy admonition. The response omits that the 2012-2013 Grand Jury could not lawfully do so because a civil grand jury in its report is not permitted by law to release “name of any person, or facts that lead to the identity of any person who provided information to the grand jury.” (California Penal Code section 929).

The response states that employees must be counseled so that they do not disclose information determined by the City of Napa to be confidential under the California Evidence Code; however, confidential designation pursuant to the California Evidence Code cannot be invoked against a grand jury. California Evidence Code 300 (“this code . . . does not apply in grand jury proceedings”). The grand jury is entitled on demand to examine all public records within the County. (California Evidence Code section 921.)

The response states concern for protection of the attorney-client privilege. The City of Napa has no basis for believing that a grand jury would seek attorney-client privileged information, assuming proper invocation of the privilege. On the other hand, the privilege cannot be used to shield information that is not properly within this narrow privilege.

Finally, the City of Napa seeks “to clarify” the manner of distribution of the “early non-public version” of a grand jury report, to which it is entitled two days before publication of the report. (California Penal Code section 933.05(f)). The City wishes an opportunity to request that the Presiding Judge redact information in the report that the City asserts is confidential. However, section 933.05(f) states that the non-public

version can be released by the grand jury only “after the approval of the presiding judge.” The 2013-2014 Grand Jury perceives no basis in law that would entitle the City of Napa to seek from the Presiding Judge any change in a grand jury report *after* approval of the report by the Presiding Judge.

The City of American Canyon, in its response to recommendation R1, asserts a right to withhold “information protected by the official information privilege per California Evidence Code section 1040. Again, information asserted to be privileged under the California Evidence Code section 1040 is not privileged as against a grand jury. (California Evidence Code section 300).

Finally, much of the foregoing also applies to the letter response of the Town of Yountville.

### **III. Review of Responses to the 2012-2013 Report on the Napa County Jail (with the Subtitle of Realignment, Recidivism and Replacement)**

#### **A. Discussion**

Each grand jury during its term is required to inquire into the condition and management of the public prisons within its county. (California Penal Code section 919(b)) On May 20, 2013, the 2012-2013 Napa County Grand Jury issued its final report on the Napa County Jail (NCJ).

In its report the 2012-2013 Grand Jury noted that implementation of the October 2011 Public Safety Realignment Act (AB 109 and AB 117) had resulted in approximately 100 additional offenders in the NCJ through a combination of transfers from the State Prison System and new convictions. Despite this increase, the prison population, ranging between 230 and 290 inmates, remained below the maximum capacity of the NCJ.

The Grand Jury focused on the importance of reducing recidivism in keeping down the prison population and in reducing cost. It also noted

that the NCJ, nearly forty-years old, should be replaced. It made two recommendations, as follows:

R1. It is recommended that the Napa County Department of Corrections (“NCDC”) and Probation fully define recidivism and work with Napa County Information Technology to extract meaningful information concerning past recidivism in order to gauge the success of ongoing alternative programs. This should be implemented by 1Q2014.

R2. The Grand Jury recommends that every effort be made to design a state-of-the-art jail facility. It should be sufficient for current needs as well as anticipated future requirements. Emphasis should be placed on designing the jail to facilitate not only capacity, but also the logistics of medical, mental health and evidence-based programs.

The 2012-2013 Grand Jury requested that the Director of NCDC, the Chief Probation Officer, and the Chief Information Officer respond to recommendation R1 and that the Board of Supervisors respond to recommendation R2.

The Board of Supervisors timely submitted its response by letter dated June 25, 2013. The Board of Supervisors in the same letter also provided the “appointed Department Head responses” to recommendation R1.

As to recommendation R1, the Board of Supervisors, on behalf of the three Department Heads, advised that the recommendation was in the process of being implemented, with implementation to occur by the end of the fiscal year 2014-15 (*i.e.*, by June 30, 2015).

In connection with the three underlying findings, the Board of Supervisors, while agreeing with finding F1 (relating to the increased number of offenders resulting from realignment) and advising that it had made the decision to construct a new jail in response to finding F3, disagreed in part with finding F2.

In finding F2, the Grand Jury found: “The information technology/systems used to keep records for adult criminal justice have not been used for extracting information specific to quantifying recidivism in

Napa County.” The Board of Supervisors responded: “The Board of Supervisors disagrees partially with this finding. Although recidivism rates are directly calculated in the County’s current criminal justice data system, data is taken and loaded into reporting systems that allow us to analyze basic recidivism findings. Work on a new data management system is underway and it is expected that an updated system and reporting/analysis process will improve our ability to see individual program impacts as they relate to recidivism.”

As to recommendation R2, the Board of Supervisors advised that the recommendation was in the process of being implemented, with the notation that “design and construction is several years away.” It advised that it expected to review an environmental impact report analyzing “the preferred out of downtown location for a new jail by the end of the 2013 calendar year.”

## **B. Observations**

The responses to recommendations R1 and R2 conform to the requirements of California Penal Code section 933.05(b)(2).

Substantively, it would appear that the response of the Board of Supervisors is in significant if not complete agreement with finding F2 of the 2012-2013 Grand Jury. In particular, the Board acknowledges that “recidivism rates are *not* directly calculated in the County’s current criminal justice data system . . . .” Italics added. The loading of data into reporting systems to ascertain “basic recidivism findings” (presumably meaning “rates,” with “basic” not defined in the Board’s response) is not claimed by the Board to be the same as or a satisfactory substitute for an ability to track *defined* and meaningful recidivism rates in the ordinary course of business through a system capable of doing so. The importance of being able to do so is the subject of significant discussion in the 2012-2013 Grand Jury report, as recidivism (and hence the importance of programs that seek to keep it as low as possible) has a direct and substantial impact on taxpayer cost, as the Grand Jury documented in its Final Report. The current Grand Jury continues to urge that a new data base management system capable of tracking meaningful recidivism rates be placed in service at the earliest practicable time – and well before June 30, 2015.

## **IV. Review of Responses to the 2012-2013 Report on the Napa County Juvenile Hall**

### **A. Discussion**

On May 20, 2013, the Napa County Grand Jury issued its final report on Juvenile Hall. The four findings were favorable to Juvenile Hall. The report made no recommendations. Juvenile Hall did not file a response. The 2013-14 Grand Jury has no further observation with respect to this report.

## **V. Review of the Responses to the 2012-2013 Report on the Napa County Sheriff/Coroner-Services Operations**

### **A. Discussion**

On May 20, 2013, the 2012-2013 Napa County Grand Jury issued its final report on the Napa Sheriff's Office ("NSO") Coroner and Services Divisions.

The Grand Jury found that the Coroner's Office/Morgue Division "utilizes state-of-the art technology and equipment together with personnel who are highly skilled and trained in this specialized area."

The Grand Jury also examined the Services Division that contains a number of support groups essential to the operation of the NSO. These include the Technical Services/Records section, the Evidence/Fingerprint ("CSI") laboratory, and the Property/Evidence Room. These operations were reviewed to provide residents of Napa County with a larger view of the not so well known support arms of the NSO.

The 2012-2013 Grand Jury commended the NSO for its overall operations. Its recommendations focused on a few operational issues. The Grand Jury made six recommendations, all directed to the NSO with

one (R5) also directed to the Napa County District Attorney. The six recommendations were as follows:

R1. The Coroner's Division immediately begin a program of entering data from the old system of typewritten index cards into the current computerized system.

R2. The NSO seek assistance, as appropriate, from the BOS [Board of Supervisors], the Napa County Executive Office, and/or County Counsel to secure an agreement with a third party credit/debit card merchant service to allow the NSO to accept credit and debit cards for payment of fees and services and pass related costs to the customer.

R3. The NSO, County IT [Information Technology] and the NSO budget analyst work together to develop a cost/benefit analysis for a secure server with state-of-the-art software to store, index, manage and retrieve crime-scene photographs that are now routinely stored on CDs.

R4. The NSO develop full documentation of policy and procedures for the collection and preservation of DNA evidence. This documentation should include the currently used standard operation procedures for handling DNA evidence.

R5. That no later than December 31, 2013, the NSO and District Attorney's Office develop a joint policy and procedure which effectively obtains and enforces proper court orders for appropriate destruction of evidence in NSO custody in cases either fully adjudicated, dismissed or beyond the statute of limitations.

R6. That within the 2013-14 fiscal year the NSO hire a part-time or extra-help person to fully staff the Property (Evidence) Room.

The Sheriff-Coroner timely submitted his response by letter dated June 10, 2013. The Sheriff-Coroner agreed with recommendations R1 through R5 and disagreed with recommendation R6.

The Sheriff-Coroner agreed to the immediate implementation of R1, R2, and R4. The Sheriff-Coroner, while not so stating directly, provided a response that showed that recommendation R3 required further

analysis. As to recommendation R5, the Sheriff-Coroner agreed to work with the District Attorney to have a procedure in place by December 31, 2013, as requested by the Grand Jury.

The Sheriff-Coroner disagreed with recommendation R6. He provided this explanation: "We are currently developing procedures that will help with time management of the property room. We have also determined some procedures are redundant and those procedures have been eliminated."

The District Attorney by letter dated June 7, 2013 timely responded to R5, the sole recommendation directed to him. He advised: "We will develop a joint policy and procedure within this framework by December 31, 2013 as requested."

## **B. Observations**

The 2013-14 Grand Jury appreciates the responses of the NSO. Although the Sheriff-Coroner did not respond through use of the precisely stated categories as set forth in California Penal Code section 933.05(b)(3), the Grand Jury is able to make appropriate observations with respect to his responses as submitted.

In connection with recommendations R1, R2, R3, and R4, where the Sheriff-Coroner advises that the NSO is implementing the recommendations, the NSO omitted to provide the timeframe within which the NSO would accomplish implementation of these recommendations, as required by California Penal Code 933.05(b)(2). The 2013-14 Grand Jury assesses from the response of the Sheriff-Coroner that these recommendations will be implemented within six months of June 10, 2013, or by January 10, 2014. If this assessment is incorrect, the Grand Jury requests that the Sheriff-Coroner so inform the Grand Jury by letter on or before February 7, 2014.

In connection with recommendation R5, the Sheriff-Coroner advises that a joint policy and procedure will be worked out with the District Attorney's Office by December 31, 2013. The 2013-2014 Grand Jury commends the Sheriff-Coroner for this expedition. The Grand Jury requests either the NSO or the District Attorney's Office provide it with

a copy of the to-be-developed joint policy and procedure by no later than February 7, 2014.

In connection with recommendation R6, the 2013-2014 Grand Jury requests that the Sheriff-Coroner provide it with a copy of the new procedure no later than February 7, 2014. If the new procedure is *not* established by then, the Grand Jury requests the Sheriff-Coroner to so inform it by letter on or before February 7, 2014.

The 2013-14 Grand Jury requests that the NSO carefully reviews California Penal Code section 933.05 so that its responses to any grand jury report in the future are in full technical compliance with the statute.

## **VI. Review of Responses to the 2012-2013 Report on the Napa County Election Division**

### **A. Discussion**

On June 24, 2013, the 2012-2013 Grand Jury issued its final report on the Napa County Election Division. The Election Division is one of four Napa County Divisions (Registrar of Voters, Assessor, Recorder, and Clerk) consolidated under the management of the Assessor-Recorder-Clerk. The Assessor-Recorder-Clerk, an elected officer, serves as the ex-officio Napa County Registrar of Voters ("ROV"). The Grand Jury stated: "This consolidation of offices is unusual and is found in few other California counties."

The 2012-2013 Grand Jury stated that upon careful examination it questioned "the ability of a single Napa County manager to oversee the operations of all four consolidated divisions (ROV, Assessor, Recorder, Clerk)." It stated that in the months before an election the manager's "full and undivided attention" is "absolutely required" to be focused on the Election Division. The Grand Jury noted that other counties "have chosen to have election staff working under a separate elected or appointed ROV who is able to concentrate energies solely to election issues, without distraction from the demands of other divisions, even if there should be an increased cost attendant to that structure."



The 2012-2013 Grand Jury found advantages in an appointed ROV. In brief summary, it noted that an ROV requires both managerial and technical competence, and that the position was more likely to be filled with a properly credentialed person if appointed. It expressed concern about the appearance of a conflict of interest when the position is elective, whether or not the ROV is on the ballot. It stated that accountability would be bolstered through an appointive position because the appointee would be answerable to the Board of Supervisors, which could better ensure high-quality conformance with good practices with “accountability for ultimate performance . . . shifted from one elected official to a more representative number.” In the 2012 election, the Grand Jury noted expressed dissatisfaction with the substantial switch to vote by mail (“VBM”) and the limited release of interim election results after the election night count. It believed that an appointed ROV, answerable to a County Elections Board appointed by the Board of Supervisors, might result in an election system more responsive to the will of County residents.

The 2012-2013 Grand Jury made fifteen findings, followed by nine recommendations, as follows:

R1. The Napa County Board of Supervisors change the elected status of *ex-officio* Registrar of Voters to an appointed office.

R2. Upon establishment of an appointed Registrar of Voters, the Napa County Board of Supervisors should establish an oversight committee of Napa County voters that would be charged with monitoring the performance and procedures of the Registrar of Voters.

R3. The Napa County Election Division publishes periodic interim results in addition to the initial voting on Election Day.

R4. The Registrar of Voters solicits voter input regarding the reduction of polling precincts in favor of vote by mail.

R5. The Registrar of Voters solicit input from voters through a vigorous media campaign, flyers to registered voters, as well as an online survey to determine how and where Napa citizens choose to vote.

R6. The Registrar of Voters ensure that voter pamphlets and ballots are received at the same time.

R7. The Registrar of Voters publish the voter information pamphlet on the Election Division website.

R8. The Election Division create an archive of public concerns and/or complaints and its responses thereto.

R9. Napa County Board of Supervisors establishes an election office facility with more space for storing and processing ballots and easier access for the public.

The 2012-2013 Grand Jury requested responses to recommendations R1, R2, and R9 from the Board of Supervisors and responses to recommendations R3, R4, R5, R6, R7, and R8 from the Registrar of Voters.

The Board of Supervisors timely responded by letter dated September 17, 2013. The *ex-officio* Registrar of Voters timely responded by letter dated July 24, 2013.

## **B. Observations**

The most significant issue posed by the 2012-2013 Grand Jury was whether the ROV should be elected or appointed. The Board of Supervisors responded to recommendation R1 by stating: “The recommendation requires further analysis. On September 15, 2009, the Board did an extensive review of the Election Division and concluded that it was more cost effective and efficient to remain an elected position.”

The response of the Board of Supervisors did not meet the statutory requirements of California Penal Code section 933.05(b)(3). A respondent advising that further analysis is required must respond “with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared . . . . This timeframe shall not exceed six months from the date of publication of

the grand jury report.” The Board in its response cited a 2009 study. Its citation of a 2009 study is not relevant when it concedes, as it did in its response to recommendation R1, that the recommendation “requires further analysis.” Stated another way, the Board cannot invoke a four-year old study in satisfaction of a statutory requirement requiring it to provide the parameters of an analysis which it states needs to be made.

In response to recommendation R2 the Board advised it required “further analysis” but failed to specify the scope and parameters of the required analysis. The Board commented that the authority of an oversight committee would be recommendatory to the Board of Supervisors. The 2013-2014 Grand Jury does not read recommendation R2 of the 2012-2013 Grand Jury as asserting otherwise.

In response to recommendation R9 the Board again advises “further analysis” but it seems clear from the explanation provided that the Board is not in a position to implement this recommendation in a near timeframe. The 2013-2014 Grand Jury treats this response as a response under California Penal Code section 933.05(b)(2), with implementation to occur well down the road, after the new jail and Health & Human Services Agency campus are funded, as stated in the Board’s response.

The *ex-officio* Registrar of Voters responded to recommendations R3 (“further analysis”), R4 (“not warranted or reasonable”), R5 (“implemented”), R6 (“implemented”), R7 (“further analysis”), R8 (“implemented”) in each case (taking into account explanatory backup materials provided with the responses) within the terms of the statutory requirements. (California Penal Code section 933.05.)

## **VII. Review of Responses to the 2012-2013 Report on Napa County Public Employee Retirement Benefits**

### **A. Discussion**

On June 24, 2013, the 2012-2013 Grand Jury issued its final report on Napa County Public Employee Retirement Benefits. In light of the

protracted recession, the slow economic recovery, and general concern over the funding of post-retirement benefits of public employees, the Grand Jury decided to investigate and report on the funding status of retirement and other post employment benefits (primarily health care) of employees of Napa County.

As of June 2011, the latest date for which data was then available, the Grand Jury found that the funding level for retirement benefits was at 73.8%. This was below the 80% funding threshold that the Grand Jury stated the experts deemed necessary for “sustainable solvency”. The Grand Jury found that the County was on track to pay off the unfunded liability of other post employment benefits. Overall, the Grand Jury found that Napa County was better situated than many jurisdictions, but its finding that the funding level for retirement benefits was well below that for sustainable solvency was of serious concern.

The 2012-13 Grand Jury made six recommendations, all directed to the Napa County Board of Supervisors. The six recommendations were as follows:

R1. Implement all Public Employees’ Pension Reform Act (“PEPRA”) (also known as AB340) provisions as soon as practicable, but no later than at the time of adoption of the next memorandum of understanding (MOU) with the employee bargaining units.

R2. Maintain a maximum 20-year amortization of the unfunded Other Post-Employment Benefits (“OPEB”) liability in addition to funding all current obligations on a pay-as-you-go basis. Reduce the amortization period if an opportunistic funding mechanism develops.

R3. Develop plans to control future health care costs including the concepts advocated by the Government Finance Officers Association (“GFOA”) of accessing increased deductible or higher co-pay insurance plans.

R4. Implement a side-fund to offset the risk of overly optimistic discount rates assumptions by CalPERS, if a budget surplus or another opportunistic funding source becomes available.

R5. Develop a plan to phase in the Annual Required Contribution (“ARC”) changes that will result from recently announced CalPERS actuarial methodology and discount rate changes, as quickly as financially feasible.

R6. If favorable rulings result from federal bankruptcy proceedings concerning California jurisdictions, investigate freezing earned pension benefits of active employees who were beneficiaries of the SB400 retroactive enrichments and reset to the lower formulas in effect when employees joined the County.

The Board of Supervisors timely submitted its response on September 10, 2013. The Board largely agreed with the findings of the 2012-2013 Grand Jury. It stated that recommendations R1, R2, and R5 had been implemented. It stated that recommendations R3, R4, and R6 require “further analysis.”

## **B. Observations**

The 2013-2014 Grand Jury concurs in the statement in the cover letter of the Board of Supervisors, stating: “[2012-13] Grand Jury members committed an enormous amount of time in educating themselves on the complexities of retirement benefits afforded public employees.” The Board specifically noted that the analysis was “thorough.”

The 2013-2014 Grand Jury acknowledges and appreciates the Board’s responses to recommendations R1 and R2 of the 2012-2013 Grand Jury in which it advises that it has implemented these recommendations. Specifically, in response to recommendation R1 the Board advised that it had implemented *all* provisions of the Public Employees’ Pension Reform Act (“PEPRA” (also referred to as AB 340)). In response to recommendation R2 the Board stated that it was committed to amortizing the unfunded Other Post-Employment Benefits’ liability (mainly health care) by 2028, and further advised that it would consider shortening the period if a further funding mechanism became available.

As to recommendations R3, R4, and R6, the 2013-2014 Grand Jury recognizes that these recommendations cannot be immediately implemented. Further, as set forth in the Board’s responses, they raise

issues of considerable complexity, and, as to recommendation R3, “would likely require negotiation with employee labor representatives,” as explained in the response. Nevertheless, the Grand Jury is concerned that the time horizon for accomplishing meaningful further analysis should not be deferred into an indefinite future. This is especially true with respect to recommendations R3 and R4.

In its responses to recommendations R3, R4, and R6, asserting a need for “further analysis,” the Board, while providing an explanation of the need for further analysis, omitted to provide a statement of “the scope and parameters of an analysis or study,” and acknowledge the “timeframe,” to not exceed six months from the date of publication of the Grand Jury Report (*i.e.*, March 9, 2014), for completion of the analysis or study, as required by California Penal Code section 933.05(b)(3).

As noted above, the 2013-2014 Grand Jury is of the view that further and timely analysis should be forthcoming in connection with recommendations R3 and R4.

## **VIII. CONCLUSION**

The 2013-2014 Grand Jury is deeply concerned that elected officials and designated officers and employees of governmental agencies are signing responses to grand jury reports upon the say-so of others involved in the preparation of the responses. There is nothing inappropriate in delegating to staff or counsel the preparation of responses. However, the signing official, by his or her act of signature, has an obligation to ensure that the signed response meets the requirements of section 933.05 of the California Penal Code.

Based on the responses reviewed in this report, the 2013-2014 Grand Jury concludes that a certification process could materially assist in ensuring that responses are in conformity with section 933.05 of the Penal Code. The goal of a certification process would be to encourage the signing elected official or other officer or employee to make reasonable inquiry that the responses prepared for his or her signature are in fact compliant with statutory requirements. It is reasonable to expect that any person presenting a response to a signing official for

signature would make sure, whether by explanation or otherwise, that the signing official understands his/her obligation to review the proposed response for statutory compliance *before* providing his or her certification.

The 2013-2014 Grand Jury suggests that future grand jury reports specifically request that the signing official or agency certify immediately above the signature line that the responses to a grand jury report's findings and recommendations are in conformity with section 933.05 of the Penal Code.

The foregoing report was duly approved by the 2013-2014 Grand Jury at regular session on January 7, 2014.

/s/  
Alan Galbraith  
Foreperson, 2013-2014 Napa County Grand Jury