

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.5
(ID # 10895)

MEETING DATE:

Tuesday, September 24, 2019

FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Response to the 2018-2019 Grand Jury Report: Riverside County Human Resources Department and Office of Riverside County Counsel. All Districts; [Total Cost \$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve, with or without modification, the attached response to the 2018-2019 Grand Jury Report: Riverside County Human Resources Department and Office of Riverside County Counsel; and
2. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, the Presiding Judge and to the County Clerk-Recorder (for mandatory filing with the state).

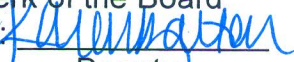
ACTION:Policy


Lisa D Brandl 9/18/2019

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Hewitt, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: September 24, 2019
xc: EO, Grand Jury, Presiding Judge, ACR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	N/A	N/A	N/A	N/A
NET COUNTY COST	N/A	N/A	N/A	N/A
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	18/19

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Penal Code Section 933(c) requires Board of Supervisors comment on the Grand Jury's recommendations pertaining to matters under the Board's control. In addition, responses must be provided to the Presiding Judge of the Superior Court within 90 days of receipt of the report.

2018 - 2019 Grand Jury Report Response

Riverside County Human Resources Department and Office of County Counsel

Introduction

The Riverside County Executive Office, Human Resources Director, and County Counsel respectfully submit this response to the Grand Jury's Report issued July 1, 2019 and titled "Riverside County Human Resources Department and Office of Riverside County Counsel". Penal Code Section 933 (c) requires the Board to comment on the Grand Jury's findings and recommendations pertaining to matters under the control of the Board and provide its response to the Superior Court Presiding Judge within ninety (90) days of the date of the Grand Jury Report was issued. Responses to findings and recommendations are included within this report.

Regarding interviews that occurred for the report from the Grand Jury, some key personnel were not interviewed. Interviews that did not take place in preparation for the Grand Jury's report include the County Counsel, all current management attorneys within the County Counsel's office, and recently retired management attorneys within the County Counsel's Office. By conducting interviews from a small number of disgruntled former employees, the results were not entirely inclusive. Additionally, various documents and articles could have been reviewed to provide a comprehensive picture of the County Counsel's operations, which include numerous training presentations in 2015, 2016, 2017, and 2018 on the Rules of Professional Conduct of the State Bar of California and the County Counsel's Ethical Duties to the Client. Additional available records that were not reviewed include the county's responses to previous grand jury reports on the County Counsel's Office in 2015 and 2018.

Responses to Grand Jury Findings:

Finding #1: Excessive Litigation Costs

Response to Grand Jury Finding #1: Respondents disagree wholly with the Finding.

HR provided the Board of Supervisors (BOS) information that disagreed with the information provided by the ACO to the BOS regarding Legal Settlement Costs, as compared to other public agencies. HR attempted to replicate the information provided to the BOS by the Auditor-Controller's office (ACO) but did not receive the same information from the public agencies queried by the ACO.

HR has no knowledge or evidence that managers, appointed and elected officials disregard HR advice. HR advises departments of the laws that impact County decisions related to HR topics and departments respect and follow HR's advice. Board Policy C-23 states there are four types of cases where HR determines the range of discipline and the department is to choose from within the range. In all other cases HR makes a recommendation for discipline which the department may choose to follow or take another action. HR follows Board Policy C-23, which provides guidance for employee discipline.

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HR has no knowledge of or response regarding whether employees have chosen not to litigate or the reasons for their choice. HR advises County Counsel and all departments regarding the steps to discipline and terminate employees. HR has no knowledge whether an employee retired due to the perception of harassment. HR hasn't been told of the case being referenced by the Grand Jury and cannot factually reply to the removal or substitution of an HR advisor on a matter. HR has no knowledge that individuals over age 40 having been forced to leave the County.

Over the past five years, there have been several instances in which employees had below-standards performance and/or engaged in misconduct. In each instance, the County Counsel's Office consulted and worked collaboratively with the Human Resources Department to ensure that all County and Office policies and procedures as well as applicable law were followed. There have been only three notices of intent to discipline issued in the past five years. Two of those resulted in the issuance of the imposition of serious discipline (a termination and a reduction in pay). In the third case, the employee chose to retire with proposed discipline pending. Specific details as to the basis for each personnel decision cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy.

None of those former employees appealed the discipline or filed a complaint with the Human Resources Department, the California Department of Fair Employment and Housing, or the Equal Opportunity Employment Commission. The former attorney who was terminated filed a lawsuit against the County and the County Counsel alleging that she was retaliated against for having filed a prior lawsuit against the County (before the current County Counsel was hired). The Honorable Daniel Ottolia, Judge of the Riverside County Superior Court entered judgment in favor of the County and the County Counsel finding that the Counsel had a legitimate, non-discriminatory, non-retaliatory basis for the termination of the attorney. The former attorney did not file an appeal of the trial court decision.

No former legal assistant, paralegal or attorney has filed a complaint with the Human Resources Department, the California Department of Fair Employment and Housing (DFEH), or the Equal Opportunity Employment Commission alleging constructive discharge in the past five years. No former legal assistant, paralegal or attorney has filed a state or federal lawsuit alleging constructive discharge in the past five years. Recently, a former legal support assistant filed a complaint with the DFEH alleging age discrimination. The former employee retired voluntarily and never made any complaint to the Human Resources Department. The only litigation costs incurred by the County with respect to County Counsel's personnel decisions were those related to the successful defense of the single lawsuit referenced above.

Finding #2-A: Abusive Management Behavior

Response to Grand Jury Finding #2-A: Respondents disagree wholly with the Finding.

HR has no information that supports the findings of the grand jury that certain county managers have set personal ego, arrogance, power and personal control above their duty to serve the people. HR is building a County-wide new employee orientation program that will be tied to the department's new employee orientation programs to strengthen the new employee experience. HR cannot confirm the information in paragraph three of the grand jury report that the workplace is fueled by long hours, harsh criticism and manipulative tactics that does not help retain employees. HR cannot confirm the information in paragraph four of the grand jury report about the harsh personnel practices as well as unscrupulous tactics by some managers that created a climate of fear, intimidation and anxiety among county employees.

There are no specific details as to what the grand jury is referring to; rather, the report provides conclusions without any facts as to how the finding was reached. County Counsel is thus unable to address the finding in any detail. In any event, the County Counsel has always performed in a manner consistent with the State Bar Act, the Rules of Professional conduct of the State Bar and all applicable laws.

Finding #2-B: Punitive Disciplinary Action

Response to Grand Jury Finding #2-B: Respondents disagree wholly with the Finding.

Employees are permitted to review their official personnel file. Managers and supervisors are permitted to keep an unofficial file on each employee to hold information that may later be used in an evaluation, a performance improvement plan, or discipline. These files are not official personnel files for employees and have no legal designation as such. Documents or evidence used against an employee are not typically contained in the employee's personnel file as they are typically a new event that is then the evidence of the possible need for discipline or termination, which is not in an official personnel file, as it had not occurred yet. After a disciplinary action has been taken the record of discipline is placed into the employee's official personnel file. Employees are permitted to gather information, i.e. documents etc. in response to charges against them. The County honors the National Labor Relations Board case that permits admonishing employees of confidentiality, on a case by case basis, in those instances where confidentiality is necessary for the case. Outside investigators, hired by the County, determine their own path forward as to how to investigate the cases they are assigned, within the parameters outlined in the engagement letter between the parties. Investigators that touch the private lives, such as when interviewing neighbors of an employee is done when relevant based upon the facts of the underlying accusations. The investigators hired by the County reach their own conclusions as to the merits of the accusations against County employees.

There are no specific details as to what the grand jury is referring to; rather, the report provides conclusions without any facts as to how the finding was reached. County Counsel is thus unable to address the finding in any detail. In each case in which a personnel investigation

was requested by the County Counsel, Human Resources investigator or outside investigator performed a thorough, complete and objective investigation consistent with County policy and applicable law. Any proposed or imposed discipline was based on a factual finding of gross misconduct and violation of the Rules of Professional Conduct of the State Bar.

Finding #2-C: Retaliatory Behavior

Response to Grand Jury Finding #2-C: Respondents disagree wholly with the Finding.

HR has no knowledge of this occurring.

Specific detail as to the basis for each personnel decision cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy. The determination as to an employee's assignment and work location is a management right and subject to the discretion of the Department Head. Deputies assigned to the Child Welfare Division are routinely rotated between the satellite offices including the Supervising Deputies in order to enhance consistency and competency between the offices and between the attorneys. Each of the Supervising Deputies who were transferred between offices were promoted by the County Counsel. Rotations were a new procedure implemented by the Chief Deputy in 2016. Almost every one of the deputies has been assigned to at least two of the three satellite offices over the past five years, including the four deputies hired by the County Counsel.

Finding #2-D: Misuse of Power and Intimidation

Response to Grand Jury Finding #2-D: Respondents disagrees wholly with the Finding.

Human Resources has no knowledge of a specific high-level manager overreaching related to human resources responsibilities.

HR investigates all allegations of harassment, discrimination or retaliation and when the allegations are founded the appropriate disciplinary actions are then taken.

The Supervising Deputy properly handled the matter at hand and gave appropriate direction to the deputy consistent with our legal and ethical duties. The Supervising Deputy properly asserted the privilege as required by law. Specific detail cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy. Specific detail cannot be provided in this response due to the Attorney-Client and Attorney Work-Product Privileges. The former deputy was not an "at-will" employee; rather, he was a probationary employee. A probationary employee who is failed on probation has no right to appeal that determination. All actions taken by the County Counsel were lawful, appropriate, and consistent with the management rights afforded to the County Counsel.

Finding #3: Timely and Constructive Evaluations

Response to Grand Jury Finding #3: Human Resources Department partially agrees with the Finding; Riverside County Counsel disagrees wholly with the Finding.

HR maintains the County-wide system of Employee Performance Management (EPM). The EPM reports indicated that County-wide, there was a need to improve the completion of employee performance evaluations. Since sharing the EPM report earlier this year, there has been a significant increase in the completion of evaluations County-wide. HR has no knowledge of the statements related to a specific employee evaluation.

Specific detail cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy. Performance Improvement Plans (PIP) are not disciplinary in nature and are used to try to improve an employee's below-standards performance and are required for performance management by Board Policy C-21. There have been no demotions or constructive discharges in the County Counsel's office in the past five years. Timely and accurate evaluations are an important tool to the management of the County Counsel's Office. The County Counsel's Office is current on all of its evaluations.

Finding #4: Exit Interviews

Response to Grand Jury Finding #4: Respondents agree in part and disagree in part with the Finding.

HR took over the responsibility to issue exit surveys in 2017 for employees departing the County. The Grand Jury is correct that few former employees complete the exit survey.

HR agrees with the Grand Jury that exit interviews can be a source of valuable information to make improvements in the workplace. HR is reviewing alternate systems and practices for improving the exit survey/interview experience.

County Counsel agrees that some of its employees have department County service but disagrees that they left for reasons of coercion or similar reasons.

Finding #5: Personnel Files

Response to Grand Jury Finding #5: Respondents disagree wholly with the Finding.

HR maintains the official personnel file of its employees, while the departments maintain the official personnel files for employees in their departments. HR will send out information to the

departments to ensure that the proper practices are maintained related to official personnel files.

Finding #6: Abuse of Whistle Blower Law

Response to Grand Jury Finding #6: Respondents disagree wholly with the Finding.

HR has no knowledge of this occurring.

HR does advise departments throughout the county about the disciplinary and termination procedures and what is required for these processes. This is a proper function of HR and is done with the purpose to guide and educate departments.

HR has no knowledge of the underlying employee complaints referenced by the Grand Jury in this section.

Specific detail cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy. The written directive at issue was reviewed and approved by the Human Resources Department. Over the past five years, there have been several instances in which employees had below-standards performance and/or engaged in misconduct. In each instance, the County Counsel's Office consulted and worked collaboratively with the Human Resources Department to ensure that all County and Office policies and procedures as well as applicable law were followed. There have been only three notices of intent to discipline issued in the past five years. Two of those resulted in the imposition of serious discipline (a termination and a reduction in pay). In the third case, the employee chose to retire with charges pending. Specific detail as to the basis for each personnel decision cannot be provided in this response due to the confidentiality of personnel matters and the employee's right to privacy. None of those former attorneys appealed the discipline or filed a complaint with the Human Resources Department, the California Department of Fair Employment and Housing, or the Equal Opportunity Employment Commission. The former attorney who was terminated filed a lawsuit against the County and the County Counsel alleging that she was retaliated against for having filed a prior lawsuit against the County (before the current County Counsel was hired). The Honorable Daniel Ottolia, Judge of the Riverside County Superior Court entered judgment in favor of the County and the County Counsel finding that the County Counsel had a legitimate, non-retaliatory basis for the termination of the attorney. The former attorney did not file an appeal of the trial court's decision. The only litigation costs incurred by the County with respect to the County Counsel's personnel decisions were those related to the successful defense of the single lawsuit referenced above. Any proposed or imposed discipline was based on a factual finding of gross misconduct and violation of the Rules of Professional Conduct of the State Bar. All actions taken by the County Counsel were lawful, appropriate, and consistent with the management rights afforded to County Counsel.

Finding #7: Past and Present Practices of RCC.

Response to Grand Jury Finding #7: Respondents disagree wholly with the Finding.

These issues have been raised before and responses have repeatedly been issued clarifying the role of the County Counsel and his statutory and ethical duties to his clients; thus, Respondents repeat and incorporate those responses by reference herein.

- At the empanelment of the 2014-15 GJ, the Honorable Mark Cope, the then-Presiding Judge of the Superior Court appointed the District Attorney's Office as the grand jury's legal advisor; this decision was made before the County Counsel's first day in office.
- Since July of 2014, the Riverside County District Attorney's Office has ably acted as the grand jury's legal advisor.
- County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See Government Code §§ 26526, 26529 & 27642). Further, the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.
- The County Counsel has declined to represent the grand jury since it already has an assigned legal advisor and moreover, it would be a conflict of interest to do so under the Rules of Professional Conduct of the State Bar of California.
- The County Counsel's Office is not required to represent the grand jury; the County Counsel must decline a request for representation if it appears to the County Counsel that doing so would be a conflict of interest.
- The determination of whether there is a conflict is a discretionary decision for the County Counsel to make; failure to declare a conflict of interest when the Rules of Professional Conduct of the State Bar of California command it, subjects the County Counsel to potential State Bar discipline as well as another Motion for Disqualification filed by the grand jury.
- The 2014-15 grand jury sought to disqualify the County Counsel's Office from representing the County, its Departments, and its officials and employees in any matter before the grand jury.
- On June 24, 2014, the Honorable John Vineyard, Judge of the Riverside County Superior Court issued an order finding "... that there is no basis to disqualify the County Counsel from proceedings before the Grand Jury and that the office of the County Counsel may provide representation to County employees during their testimony before the Civil Grand Jury pursuant to Penal Code Section 939.22."
- On October 21, 2015, the Court of Appeal summarily denied the writ petition filed by the 14-15 grand jury challenging Judge Vineyard's order.

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- On January 13, 2016, the California Supreme Court issued an order denying the 14-15 grand jury's petition for review thus ending the litigation.
- Moreover, the law does not permit the court or the grand jury to question the declaration of a conflict of interest. Once made by the County Counsel, the determination stands.
- With the conflict having been declared, the County is assured that the County Counsel's Office will be able to discharge its duties to its client without a potential conflict of loyalties.
- The full and faithful discharge of the County Counsel's statutory and ethical duties do not constitute interference when the County Counsel:
 - Advises County officials and staff on the law governing civil grand juries
 - Advises County officials and staff on their legal obligation to provide information to which the grand jury is entitled
 - Advises County officials and staff as to that information which may not, by law, be disclosed to the grand jury
 - Offers representation for County officials and staff when they are called to appear before the grand jury

The assertions of the attorney-client and attorney work-privileges were required and proper in each instance; specific detail cannot be provided due to the confidential nature of the information.

Every year, the grand jury initiates at least 25 – 50 investigations, makes hundreds of requests for documents, and interviews hundreds of officials and employees; the grand jury has never been denied access to witnesses or to documents to which it was entitled by law to receive; it is the rare instance in which the grand jury seeks information to which it is not entitled and in that instance, the request is denied; the grand jury has never sought a court order to provide information to which it was denied.

GRAND JURY RECOMMENDATIONS:

Recommendation #1: Excessive Litigation Costs

Response to Recommendation #1: The recommendation will not be implemented because it is not warranted or is not reasonable.

HR does not believe that new policies and procedures are necessary to address the effectiveness of HR advice, services, etc.

HR has existing policies that address ensuring that state, federal and local laws are followed regarding protecting employees and the effective administration of HR services.

Response to Recommendation #1-A: The recommendation has been implemented.

1-A. HR, through Board action, has established a similar procedure wherein HR will assess liability cases to discover root causes of the claims and then determine what actions, if any, are needed in response to correct or to reduce the likelihood of similar events reoccurring.

Recommendation #2: Abusive Management Behavior, Punitive Disciplinary Action, Retaliatory Behavior and Misuse of Power and Intimidation.

Response to Recommendation #2: The recommendation will not be implemented because it is not warranted or is not reasonable.

HR, through its policies and procedures, works with the BOS, CEO and all departments to ensure legally compliant training of County managers and directors. HR has an advisory role with the BOS, EO and all departments related to performance management, discipline and terminations of employees.

Recommendation #3: Timely and Constructive Evaluations

Response to Recommendation #3: The recommendation will not be implemented because it is not warranted or is not reasonable.

HR monitors the status of evaluations for all County employees by centrally collecting the information from the Employee Performance Management (EPM), PeopleSoft system and the separately maintained records by some County departments. HR is presently evaluating various performance evaluation record keeping methodologies with the purpose to identify a centralized electronic platform for ease of use by all departments with the purpose to create a singular and improved manner to conduct and record employee performance evaluations.

Recommendation #4: Exit Interviews

Response to Recommendation #4: The recommendation has been implemented.

HR has been responsible for conduct exit surveys of employees since 2017. Employees, upon separation from the County, are sent an exit survey in which they can rate and describe their experience with the County. Departments are encouraged to conduct exit

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interviews with separating employees to gain insights on how to maintain and improve the work environment for employees.

Recommendation #5: Personnel Files

Response to Recommendation #5: The recommendation will not be implemented because it is not warranted or is not reasonable.

The County is compliant with the recommendations, in that the official employee personnel files are maintained by each department, either by an HR employee or by a department employee trained by HR. Supervisors are permitted to maintain records of events of employees of both a positive and negative nature in order to have a memory of how to rate employees under their supervision. Additionally, HR commits to ensuring that those employees who maintain official personnel files are re-trained.

Recommendation #6: Abuse of the Whistle Blower Law (intimidation)

Response to Recommendation #6: The recommendation will not be implemented because it is not warranted, not reasonable, and is not supported by the law and the facts for all of the reasons set forth in this response.

The recommendation will not be implemented because it is not warranted, not reasonable, and is not supported by the law and the facts for all of the reasons set forth in this response above.

All personnel actions taken by the County Counsel have been in consultation and collaboration with the Human Resources Department. Further, all actions were supported by the facts and in conformance with the County Counsel's statutory and ethical duties.

Holding employees, especially lawyers accountable and ensuring that they perform with professionalism and integrity and in conformance with the Rules of Professional Conduct of the State Bar of California and the State Bar Act at all times is not an abuse of power.

Recommendation #7: Past and Present Practices of RCC

Response to Recommendation #7: The recommendation will not be implemented because it is not warranted, not reasonable, and is not supported by the law and the facts for all of the reasons set forth in this response.

The recommendation will not be implemented because it is not warranted, not reasonable, and is not supported by the law and the facts for all of the reasons set forth in this response above.

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All personnel actions taken by the County Counsel have been in consultation and collaboration with the Human Resources Department. Further, all actions were supported by the facts and in conformance with the County Counsel's statutory and ethical duties.

Holding employees, especially lawyers accountable and ensuring that they perform with professionalism and integrity and in conformance with the Rules of Professional Conduct of the State Bar of California and the State Bar Act at all times is not an abuse of power.