

**2009 – 2010**  
**Madera County Grand Jury**  
**Final Report**  
**County Counsel**

**Introduction:**

Pursuant to a complaint to Madera County Grand Jury alleging a conflict of interest on the part of the Madera County Counsel; an investigation was opened. The complaint alleges that a conflict of interest exists in that County Counsel has authorized the execution of agreements for legal services with an outside law firm which employed the County Counsel's wife and son. The complaint also alleges that there was no bidding process used in the award of legal service contracts.

During the investigation, the Grand Jury interviewed County Counsel and other county officials. County documents and files provided by County Counsel were examined. Government Code sections 87200, 87103, 87100, 87407, 1090, 1091 and 1091.5 pertaining to prohibition of government official's financial interests in contracts, to influence, disclosure and recusal from discussion and voting on contracts and to "remote interest" in contracts were reviewed. The Grand Jury also reviewed a training program manual "Ethics Law for Local Officers" authored and presented by Madera County Counsel, May 16, 2008.

**Findings:**

In 2002 County Counsel assembled a committee to interview and recommend outside law firms to be employed by the County to provide legal services. This committee was composed of a member of the Board of Supervisors (BOS), Chief Administrative Officer of the County (CAO), Assistant CAO, and County Counsel.

In April 2003 the BOS approved a list of outside law firms that could be contracted for legal services provided to the County.

A Claims Review Committee selects and recommends outside law firms from the approved list to be awarded contracts for legal services to the County as needed. The Claims Review Committee consists of the Auditor/Controller, Assistant CAO, Risk Management Analyst and County Counsel. The Committee generally recommends for approval law firms for particular assignments according to their specialties, or selects from the list in rotating order.

County Counsel recommends outside legal counsel to the BOS, but never unilaterally authorizes or executes agreements for legal services for the County.

California Law and specifically Public Contract Code No.10335.5(c) (4) exempts counties from putting out to bid contracts for legal defense, legal advice or legal services.

The law firm of Cota, Duncan & Cole was paid \$1,345,460 for legal services during the period from February 2007 through March 2009 for work on nine cases.

County Counsel testified to the Grand Jury that Cota, Duncan & Cole were good litigators, responsive to the BOS and kept the administration informed of legal strategies and progress of the legal work.

Excerpts from County Counsel's training manual "Ethics Law for Local Officials" pages 2 and 3 . . . "just because a course of action is legal does not mean it is ethical." (Page 2) and "Principal #1: No Personal Gain; Generally speaking, public officials: Must disclose their financial interest to the public and must disqualify themselves from participating in decisions that may affect (positively or negatively) their financial interests."

County Counsel's wife worked for the firm of Cota, Duncan & Cole for a five month period from October 2008 to February 2009 as a receptionist, 20 hours a week at \$14 per hour.

County Counsel's 18 year old son worked for the firm of Cota, Duncan & Cole during the summer of 2008 setting up furniture at their Roseville office. County Counsel's son now works for the firm 20 hours a week for \$12 per hour while attending college.

The Claims Review Committee was not fully aware and informed that County Counsel's wife and son worked for Cota, Duncan & Cole.

### **Conclusions:**

1. In the absence of a proven "quid pro quo", that is, there is no proof that the relatives of counsel were employed contingent upon the firm receiving county legal business and/or the employment of the Counsel's relatives has not been shown to have materially enhanced the firm's opportunities to receive county business. There exists, at best, an appearance of a conflict of interest.
2. County Counsel should have disclosed the fact that his wife and son were employed by Cota, Duncan & Cole.
3. There is the appearance of a conflict of interest and the appearance of unethical behavior by County Counsel with regard to failure to disclosure interest.

### **Recommendations:**

- County Counsel should be prohibited from being a member of the Claims Review Committee and be deemed ineligible to serve on any committee that recommends or authorizes contracts with law firms that employ any member of his family.
- To avoid any appearance of conflict of interest, County Counsel, or any member of the Claims Review Committee, should not participate in the approval process on any County contract awarded to any firm that employs members of their immediate family.

- Government Code 87300 requires every agency to have a Conflict of Interest Code. Madera County should review its Conflict of Interest Code to insure that it complies with the provisions of government Code 87302.

**Respondents: written response required pursuant to PC933(c)**

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**Respondents: response optional**

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