



**2010-2011
Madera County Grand Jury
Final Report
Citizens Complaint Regarding District Attorney**

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Introduction:

The Grand Jury received a Citizen's Complaint requesting an investigation into the alleged fraudulent behavior of the District Attorney and the dismissal of the Supervising Deputy District Attorney due to incompetence. Due to the serious nature of the allegations, the Grand Jury undertook an investigation into the issues raised by the complainant.

During the course of this investigation, the Grand Jury sought and received guidance and counsel from the Office of the Attorney General, State of California.

Findings:

The Grand Jury found that the District Attorney is an independently elected, constitutional officer not subject to the direction or supervision of the Madera County Board of Supervisors (BoS) although the BoS does exercise budgetary control. The provisions and procedures that the BoS has established for the Human Resources activities of the county apply to the employees within the DA's Office. Due to the current funding crises, the office of the DA has had budget reductions as have other offices within county government. The DA is limited in budget flexibility because he must seek BoS approval for reallocation of funds within the total budget allocated to his office.

The Grand Jury found that it has the authority to initiate action against a public official and seek his or her removal from office for willful or corrupt misconduct (Penal Code Section 9a9c). In order to bring this action, called an "Accusation", the Grand Jury must specify to the court, in writing, conduct which was nonfeasance (the failure to act or the willful neglect of duty), misfeasance (the improper doing of an act), or malfeasance (the doing of an act that is positively unlawful or wrong or a wrongful act that the person has no legal right to do). Short of such action, the Grand Jury has no power to seek the removal of a public official.

The Grand Jury found that the DA was initially appointed to the position by the BoS on January 6, 2009 upon the elevation of his predecessor to the bench. At the June 2010 election, he was elected, unopposed, to a full four year term. Some office members were publicly vocal in opposition to his election until the withdrawal, before filing, of their desired candidate. The management, leadership style of the DA is markedly different from that of his predecessor. His demeanor has been characterized as "stiff" and his approach to issues as one of "black and white". Some staff turbulence would be expected when a new supervisor is appointed, especially as other candidates within the office were not selected. At the same time, employees must adjust to changes in leadership and revisions of priorities and have no right to select or choose their supervisors in opposition to the wishes of the voters.

The Grand Jury found that the complainant made some allegations based on rumor and supposition, without documentation or proof. Furthermore, the primary areas of alleged supervisory misconduct covered by the complaint are made on behalf of another employee; such matters are now in litigation and not appropriate areas for Grand Jury comment. The Grand Jury did find that the county human resources department acknowledged receipt of some written and verbal complaints, but could not document when and from whom such complaints were received. Moreover, the failure to locate any records to that effect also meant that the department could not demonstrate any action taken in response to such complaints. It was suggested that the former HR Director handled the complaints personally; with his unexpected departure last year, the actions he took, if any, were lost.

The Grand Jury found that the complainant alleged incompetence of the Supervisory Deputy District Attorney (Deputy DA) and alleged that the individual was hired due to his friendship with the DA. The Grand Jury found that the hiring process was competitive and in conformance with county personnel policies. The assignment of duties and the assessment of successful completion of such duties are a management responsibility and not subject to peer or subordinate evaluation. In support of the allegation that the Deputy DA has slept on duty, the complainant included undated and unverifiable photographs, which make it impossible to determine when and if sleeping did occur. In any case, the individual has indicated his intention to retire; therefore the allegation and proposed remedy is moot.

The Grand Jury found that an employee is, as alleged in the complaint, on extended administrative leave with pay. The Grand Jury concurs that this is a confidential personnel matter not open to public disclosure. The appropriateness of the action, due to its confidentiality, could not be addressed other than noting that the employee did not contest the action. The DA was properly limited in what information could be revealed to staff members about this ongoing action.

The Grand Jury found that the complaint alleged lost case files and the failure to meet filing dates is indeed a serious issue. Review of cases entered into the "Damian" tracking system, however, demonstrated that only 6 of 7000 cases could not be refilled due to a missed deadline. Nevertheless, tracking and control of case files within the office of the DA may well be haphazard. It is unknown if some suspects were released and then the cases were later filed because the DA computer programs to aid in case management are seemingly inadequate. The investment in specialized software for the task is questionable, as the system is not performing as expected. The ability of the DA or his Deputy to identify cases to insure timely filings is very limited due to such systems issues.

The Grand Jury found that the complainant made specific allegations regarding the handling of sexual assault and child molestation cases to include the reassignment of an attorney who had previously handled the bulk of such cases and who was respected for her expertise. Moreover, the complaint alleges that the Deputy DA was incompetent in the handling of juvenile cases. Objective evaluation of how successful the DA was in accomplishing such managerial tasks is difficult. As noted above, 7000 total cases were handled in 2010 by the Office of the DA with only 6 mishandled so as to preclude refiling, perhaps for any number of reasons. To reiterate, however, the assignment of staff attorneys, the allocation of workload, and the evaluation of performance are clearly within the purview of the DA.

The Grand Jury found that the complainant included in his submission copies of documents relating to specific cases, including correspondence from a private attorney and identification of minors. Neither

the complainant nor the clerical staff member from who he obtained such documents may well have access rights to such documents, but it is unclear if either staff member would have authority to release such material to third parties. The complaint also included details of sensitive personnel actions. Inclusion of such information, even to the Grand Jury, raises questions of breach of victim and employee privacy especially as the authority of clerical staff to have access to and to release such sensitive materials is questionable.

The Grand Jury found that in some cases employee evaluations were not completed in a timely manner. The press of workload was given as a reason for some missed evaluations. Moreover, there appears to be no system by which such evaluations are initiated and monitored to insure completion. The DA and the county human resources department share responsibility for this deficiency.

The Grand Jury found that the complainant alleged that the County retained an outside attorney to conduct an lengthy and expensive investigation of the DA. While a review indeed was conducted, it was done on the basis of a retainer relationship already in place managed by the Director, Human Resources. As the then Director, Human Relations, is no longer available, the reasons for his request for an inquiry cannot be determined. The investigating attorney submitted his expense claim of slightly over \$3, 000 in May 2009, only four months after the DA assumed his duties. With an hourly charge of \$175, the actual investigation lasted, at most, 20 hours. This brief report is a matter of mystery nearly two years after its completion. Many persons acknowledge the existence, completion, and delivery of the report to the County Counsel rather than the Director, Human resources. The County Counsel, in an informal conversation, acknowledged the report but denied having read it in its entirety as did the CAO. Furthermore, the County Counsel indicated that members of the BoS have neither read nor been briefed on the reports contents. The Grand Jury, believing that it has a right to that report, made an informal request for the report. The County Counsel denied the request by citing client-attorney privilege. When it was suggested that a subpoena might be issued for the document, the County Counsel indicated that such an action would be contested. In the interest of time and the avoidance of litigation costs for the County, the Grand Jury decided not to pursue the matter further at this time.

The Grand Jury found that there is a lack of civility and courtesy, which is apparent in the conduct, and comments of county officials and members of the BoS regarding the DA. The existence of the report, noted above, is further indicative of the relationship between the BoS and the DA. A lack of civil discourse, to include comments in public and private by individual county officers and elected officials, are not supportive of the efforts of the DA and certainly could contribute to lower morale within the Office of the DA.

Conclusions:

The Grand Jury concludes that there is insufficient cause for the issuance of an “Accusation” for the removal of the DA.

The Grand Jury concludes that the DA’s leadership style and methods may contribute to morale issues within the office, especially in times of staffing shortages and heightened workload.

The Grand Jury concludes that accusations in the complaint regarding discriminatory personnel actions are the subject of litigation and not within the purview of the Grand Jury.

The Grand Jury concludes that complaints regarding the performance, work habits, or suitability of the Deputy DA for his position are not fully convincing and, in any case, action for his termination is moot with his announced retirement.

The Grand Jury concludes that there may be some justifiable concern regarding the timely filling and handling of some court cases. Some of the problems may be attributed to an inadequate systems for suspending and controlling cases as they are processed from filling to resolution. Management decisions, to include prosecutorial discretion, also should be addressed.

The Grand Jury concludes that the release of documents relating to active cases involving minors is troubling and effective guidelines as to who has the authority to release such information must be strengthened.

The Grand Jury concludes that the report prepared by outside counsel for the county might address issues of concern to employees within the DA's Office and the general public. The suggestion that an investigation ordered by agents of the County has not been read in its entirety nor made available to the members of the BoS is not creditable. The DA should be permitted to read the report and submit a rebuttal or refutation of the findings, if any.

The Grand Jury concludes that rather than contest a subpoena, the public interest would be better served with an early release of the report prepared by outside counsel.

Recommendations:

The Grand Jury recommends that the DA review his leadership style and seek assistance in rebuilding staff morale and improving his communication of matters to his staff.

The Grand Jury recommends the BoS give due deference to a co-equal elected county official, encourage courtesy and collegiality, and consider granting increased budgetary discretion to the DA.

The Grand Jury recommends control and release authority for confidential documents, especially those dealing with minors, be reviewed and strengthened.

The Grand Jury recommends that the BoS address the county human resource function, to include proper staffing; file retention and control; initiation and tracking of timely personnel evaluations; and the promulgation of procedures regarding employee complaints.

The Grand Jury recommends that the BoS release in full or in part the investigative report now in the possession of the County Counsel. Such a release, even if redacted in part for privacy or privilege purposes, must be shown to the DA, and he should be permitted to offer materials in rebuttal or refutation before release to the general public.

Respondents: Written response required pursuant to PC 933(c)

Madera County Board of Supervisors
200 West Fourth Street
Madera, CA 93637

District Attorney
Madera County
209 West Yosemite Avenue
Madera, CA 93637

Information: Response Optional

Interim Director, Human Resources
Madera County
200 West Fourth Street
Madera, CA 93637