

ADMINISTRATION, AUDIT AND COUNTY SERVICES COMMITTEE



Richard Benson

Kathy Jackson

Enrique Vicuna
Chairperson

MISSION STATEMENT

Pursuant to California Penal Code §925(a), the Administration, Audit and County Services Committee is responsible for reviewing county departments and their officers in the management and performance of their duties to serve the people of Kern County and to assure tax dollars are being spent properly.

The Committee will investigate and respond to citizen complaints and serve as an overseer against malfeasance and nonfeasance by public officials.

The Committee will make recommendations to address community concerns and improve the operation of county departments.

ADMINISTRATION, AUDIT AND COUNTY SERVICES COMMITTEE

SUMMARY OF ACTIVITIES

Reports Written and Published:

- Kern County Board of Trade
- Kern Economic Development Corporation
- Kern County Public Defender
- Kern County Indigent Defense Program
- Kern County Human Resources (*website only*)

Committee Activities:

- Participated in three District Attorney indictments
- Attended Board of Supervisors meetings
- Public Services Building; interviews and fact finding
- County Administrative Center; interviews and fact finding
- Toured the Kern County Sheriff's Headquarters
- Toured Kern County Crime Lab
- Kern County Sheriff's Office Evidence Locker
- Visited BARC
- Former Board of Trade office
- Attended KEDC Board meeting
- Attended KEDC Executive Committee meeting
- Public Defender's Office
- Kern Juvenile Justice Center
- Beale Library for Public Defender research
- Law Library
- 'Prison Court' in Delano
- Civil Service Commission meeting
- AD HOC: City of Bakersfield 'Red Light Camera follow-up'
- AD HOC: City of Bakersfield Homeless Center
- Grand Jury Recruitment: Home and Garden participation
- Grand Jury Recruitment: FAN (Friend and Newcomers)
- Grand Jury Recruitment: Retired Employees of Kern County Luncheon
- Grand Jury Awareness
- Jamison Center gift participation

COMPLAINTS:

- Complaints processed - 1

COUNTY of KERN

INDIGENT DEFENSE PROGRAM

“Conflicts of Interest—Counting the Cost”

SUMMARY:

Recently, the 2019-2020 Kern County Grand Jury (Grand Jury) published a report on the Kern County Public Defender. In doing so, the Grand Jury learned that indigent defense attorney services outside the Public Defender’s Office (PDO) are required when a Public Defender declares a conflict of interest or is otherwise unable to represent an indigent adult or juvenile defendant. When this occurs, cases are referred to independent attorneys through an agreement with the Kern County Bar Association. This process is the Indigent Defense Program (IDP). Attorneys assigned through the IDP then serve as quasi-public defenders, representing defendants and ensuring their constitutional rights are protected.

In 1996, Kern County (County) created the IDP. Prior to this, conflict of interest cases were handled by private attorneys assigned by the trial court judge. This method was expensive and without structure. Over time, as the County grew in population and as crimes per capita increased, the County recognized the need for an organized, alternative public defender process.

The 2019-2020 budget for the IDP is \$6.8 million which appears to be a staggering amount for conflict of interest cases. Therefore, several questions come to mind regarding the IDP:

- Is the IDP contract in the best interest of the County?
- Does the County save money?
- Are clients properly represented?
- What is the definition of conflict of interest cases and how are they determined?

PURPOSE OF INQUIRY:

The Grand Jury has never investigated the IDP. In light of the fact that the IDP receives County funds and serves a vital role in the County judicial process, the Administration, Audit and County Services Committee (Committee) inquired into the IDP contract, pursuant to California Penal Code section 925.

METHODOLOGY:

The Committee conducted interviews with County and IDP officials. The Committee also researched Board of Supervisor (BOS) agendas, minutes, and various County documents. The Committee attended a Kern County Superior Court arraignment in session and observed a Deputy Public Defender, Deputy District Attorney and an IDP Defense Attorney at work. Also reviewed were internet websites and publications

related generically to public defense and the concept and definitions of conflict of interest.

DISCUSSION OF FACTS:

The Grand Jury recently published a report titled, **Kern County Public Defender, “Until the lion learns to write, every story will glorify the hunter.”** The Grand Jury learned that, when a conflict of interest arises, these cases are referred to the IDP. As stated in the Grand Jury report:

“When the PDO cannot serve a client due to a conflict of interest, clients are referred to an outside attorney through the Indigent Defense Program (IDP). Since 1996, the Kern County IDP has been administered by the Kern County Administrative Office through a contract with the Kern County Bar Association. The IDP represents adults and juveniles in both the criminal justice and dependency systems.”

A conflict of interest typically arises in one of the following situations:

- Representation of a client whose interests may be adverse to those of another client
- Representation of a client whose interests may be materially adverse to those of a former client
- Representation of multiple defendants in a single action by the same attorney and/or law firm
- Representation of a client in a case in which the attorney may be called as a witness
- When a client/defendant, for whatever reason, requests a new attorney

When any of these factors arise, a Kern County Public Defender declares a conflict of interest and an IDP attorney is assigned. Reasons behind conflict of interest declarations are rarely questioned. When a conflict of interest is declared involving one PDO attorney, the conflict extends to all attorneys in the Public Defender’s Office.

In 1994, the County initiated a process to explore options to provide alternative indigent defense services. While discussing those options, questions arose as to whether all conflict of interest cases were truly conflicts. As indigent conflict of interest programs were being debated, the Kern County District Attorney opined:

[I]t is necessary to determine just how large the “conflict” problem is, and how large it should be. To the best of my knowledge, such an analysis has never been done by the County Administrative Office...Rather, the Public Defender’s representations with regard to his legal conflicts have always been accepted without question. In short, County government has absolutely no idea whether the Public Defender is “conflicting out” of only those cases in which he has a true

legal conflict, or whether on the other hand the office is getting out of far more cases than the law requires. If the latter, then obviously the taxpayer under the present system is paying private attorneys to represent defendants who the Public Defender should be representing.

Prior to 1996, assignment of conflict of interest cases were handled by trial court judges using an ad-hoc random assignment system. When the PDO declared a conflict, the judge assigned a private attorney to the case. It was not unusual to assign a case randomly to an attorney who happened to be in court that day. This method was without organization and costs were ballooning. The need for an organized, systematic method of assigning qualified attorneys to conflict of interest cases became apparent to County Administration.

There were several options proposed by the County Administrative Officer (CAO) to alleviate the conflict of interest dilemma:

- Keep the current ad-hoc system of randomly assigning attorneys
- Establish a rotational system of assigning attorneys
- Create an Office of Alternate Defense Counsel as a County department independent of the PDO
- Create an Alternate Defense Counsel Division within the PDO, separated by a secure informational barrier to maintain case confidentiality
- Contract for services with a private law firm or consortium of firms
- Contract for services with a newly formed or existing non-profit organization

In addition to the above, another proposal was brought forward by a local attorney that all capital, three strike, and life sentence cases should be handled by the Public Defender's office and that the current random system should be maintained to deal with the other less serious cases.

The County addressed the issue of providing alternative indigent defense services several times before adopting the IDP Contract. The timeline was as follows:

- In May 1994, the CAO brought a proposal to the BOS to establish an Office of Alternate Defense Counsel in order to control costs and standardize the alternate defense system. Rather than accepting the proposal, the BOS expressed the desire to issue a Request for Proposal (RFP) for conflict of interest defense cases. An RFP is a document used by government agencies that provides details about a project and solicits bids from contractors interested in completing the project.
- On April 11, 1995, the CAO presented a draft of the RFP to the BOS. At that time the Kern County Bar Association (KCBA) requested that rather than issuing an RFP, they be given the opportunity to submit a proposal to manage conflict cases.
- On April 25, 1995, as requested by the KCBA, the BOS directed the CAO to enter into negotiations with the KCBA, in lieu of issuing an RFP.

- For approximately one year the CAO negotiated with the KCBA. As a result, on May 28, 1996, a contract with the KCBA was presented by the CAO, adopted by the BOS and ultimately implemented July 1, 1996.

The Grand Jury also notes the following facts:

- A. The objectives of the 1996 contract were:
 - Decrease costs by 11%
 - Provide a mechanism to evaluate attorney's qualifications
 - Reduce the need for judges to review attorney's claims and reduce the court's clerical processing for payments, thus saving judicial and non-judicial staff time
 - Keep the provision of conflict of interest indigent defense within the community and not displace local attorneys currently participating in the court appointed process
 - Provide meaningful oversight of attorney performance and provide a point of contact when a problem is perceived

- B. The IDP administrative staff is located in the offices of the Kern County Bar Association at 1112 Truxtun Avenue in Bakersfield.

- C. In Fiscal Year (FY) 2018-2019 more than 5,100 adult cases and approximately 2,200 juvenile cases were referred to IDP.

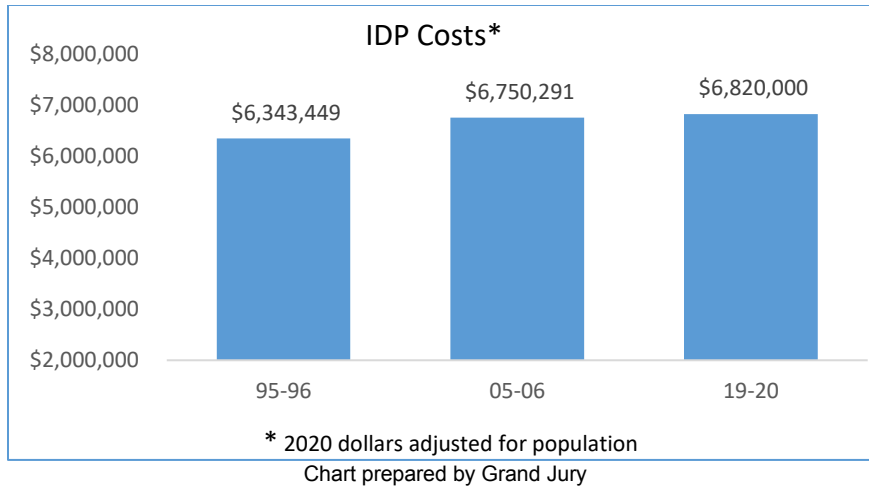
- D. Currently, approximately 55 attorneys participate in the IDP. Five are qualified to represent clients in capital cases and nine are assigned to juvenile cases.

- E. There is a grading system of 1 to 5 for attorneys to determine what level of criminal cases they are qualified to provide representation.

- F. The KCBA established two committees intended to assure the integrity of the IDP. The Qualifications Committee reviews applications of attorneys seeking placement on the IDP panel. The Oversight Committee monitors the program for compliance with the terms of the IDP contract with the County.

- G. The CAO does not oversee the legal performance of the IDP attorneys or whether they represent clients adequately. Per the terms of the contract, the IDP Administrator certifies that the panel attorneys meet the agreed upon qualifications to include that all are in good standing with the California State Bar Association.

- H. In 1996, the original IDP budget was \$2,560,000. When adjusted for inflation and the increase in County population, the original budget equates to \$6,300,000 or \$979 per case. The current 2019-2020 budget is \$6,800,000 at a cost of \$921 per case. (See chart below)



- I. The County IDP budget unit has three expense categories: a) Operations, which includes the Administrator and two support staff; b) Attorney Compensation and; c) Expenses outside-the-contract.

The latest independent accountant’s review is for FY 2016-2017 and reflects:

- a. Operations \$ 453,004
- b. Attorney Compensation \$5,002,480*
- c. County expenses outside-the-contract: \$1,709,592, for expert witnesses, investigators, travel and other miscellaneous costs

* Attorney Compensation includes the cost of juvenile and prison case representation which are reimbursed to the County by the state.

- J. The operations budget for FY 2019-2020 has been increased to \$523,553. (See Appendix A)
Attorney Compensation and Expenses outside-the-contract will not be available until the end of the Fiscal Year.
- K. Noting that the agreement had not been updated for 20 years, on December 13, 2016, the CAO recommended that the BOS issue an RFP for a new contract for the IDP. The KCBA responded by requesting the BOS not issue the RFP and allow them to bid a new contract.
- L. Rather than issuing a new contract, the original contract was amended, effective July 1, 2017, with an expiration date of June 30, 2020. Per the terms of the contract, having not formally terminated or extended the agreement, the County has allowed the agreement to convert to an automatic year to year renewal with a nine month notice of termination requirement.
- M. The CAO and KCBA are currently renegotiating specific aspects of the current contract.

- N. Since the inception of the IDP, an independent accountant's audit has never been performed but a financial review has been conducted by an outside, independent accounting firm on a regular basis. The latest outside accountant's review was completed for the fiscal year ending June 30, 2017, and no anomalies were noted.
- O. There has been no analysis to determine if the number of conflict of interest cases is warranted given the size of the County and the prosecution standards of Kern County law enforcement.

FINDINGS:

- F1. In entering into the IDP contract of 1996, the County achieved the goal of reducing the cost of providing representation in conflict of interest cases.
- F2. The IDP continues to be a cost effective method in providing indigent defense services.
- F3. The County has not fully explored other methods of providing indigent defense services such as establishing an alternative defense division/department or issuing an RFP to solicit other cost effective alternatives in order to possibly save even more.
- F4. The periodic financial review of the IDP is valuable. However, an independent financial audit, with an unqualified opinion, would provide a more complete validation of the spending of taxpayer funds.
- F5. A comparison of the number and type of conflict of interest cases referred to the IDP by the Public Defender, with comparable counties, could validate the level of spending allocated to the program.

COMMENTS:

The Grand Jury would like to thank all who participated in interviews and who provided vital information for this report.

In the course of researching the Indigent Defense Program, the Grand Jury had the opportunity to attend a session of the Kern County Superior Court, "Prison Court" in Delano. The Grand Jury observed an IDP attorney representing a California Department of Corrections and Rehabilitation inmate arraignment, via video appearance from the prison.

RECOMMENDATIONS:

- R1. The County contract for a complete, independent, outside audit of the Indigent Defense Program every five to seven years. (Finding 4)
- R2. The County Administrative Office conduct a thorough comparison of the number and type of conflict of interest cases, referred to the Indigent Defense Program by the Public Defender with comparable counties by Fiscal Year end 2021. (Finding 5)
- R3. The County issue a Request For Proposal to determine if there are other more cost effective alternatives to the current Indigent Defense Program contract by Fiscal Year end 2022. (Finding 3)

NOTES:

- The Kern County Board of Supervisors should post a copy of this report where it will be available for public review
- Persons wishing to receive an email notification of newly released reports may sign up at: kerncounty.com/grandjury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: kerncounty.com/grandjury

REQUIRED RESPONSES WITHIN 60 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

APPENDIX A

Acct#	IDP Budget	FY 2019-20 Proposed
6001,60		
04, 6006	Salaries	225,530
6030, 601	Taxes & Payroll Services	20,000
	Subtotal	\$245,530
6160	Computer Consult/Upgrades	5,500
6161	Case Management	12,500
6140	Accounting/Audit Fees	1,000
6180	Office Supplies/Copying/Printing	6,500
6200	Postage/Delivery	300
6220	Repairs & Maintenance	2,000
6240	Travel & Auto	5,300
6260	Phones & Internet	9,000
6280	Dues/Subscriptions	4,500
6286	Professional Development	12,300
6300	Miscellaneous	5,400
6320	Rent/TCO	39,204
6330	Utilities	6,534
6340	Equipment & Furniture	500
	Subtotal	\$117,878
6380	Administrative Fee	160,145
	Prior Year Correction	
	Subtotal	160,145
	TOTAL	\$523,553

Kern County Board of Supervisors
Response to Grand Jury Final Report
County of Kern Indigent Defense Program

Response to Findings:

The Board of Supervisors notes that the Grand Jury's findings are substantially correct.

Response to Recommendation:

R1: The Grand Jury recommends the County contract for a complete, independent, outside audit of the Indigent Defense Program every five to seven years.

We concur with the Grand Jury's recommendation. The County Administrative Office will work with the Auditor-Controller's office to obtain a complete, independent, outside audit of the Indigent Defense Program. Currently, an independent outside review of the Indigent Defense Program is performed every two years.

R2: The Grand Jury recommends the County Administrative Office conduct a thorough comparison of the number and type of conflict of interest cases, referred to the Indigent Defense Program by the Public Defender with comparable counties by fiscal year end 2021.

We concur with the Grand Jury's recommendation. On July 1, 2020, the Public Defender's office started keeping a list of all conflict of interest cases referred to the Indigent Defense Program. The County Administrative Office will work the Public Defender to conduct a comparison of its list with comparable counties for the fiscal year end June 30, 2021.

R3: The Grand Jury recommends the County issue a Request for Proposal to determine if there are other more cost effective alternatives to the current Indigent Defense Program contract by fiscal year end 2022.

The County Administrative Office has performed several analyses of the way indigent defense is provided. In 2017, the County amended the agreement with the Kern County Bar Association to ensure the continued high-quality cost effective services in Bakersfield and expanded the scope of responsibility into the County's outlying courts. The County Administrative Office will continue to review to determine if there are other more cost effective alternatives and the necessity of performing a request for proposal.

KERN COUNTY BOARD OF TRADE

IS IT TIME TO MOVE ON?

SUMMARY:

The Kern County Board of Trade (BOT) is one of the most historically celebrated divisions within Kern County government. When you consider Kern County (County) was organized in 1866, the BOT's founding in 1888, puts its storied past into perspective. In 1888, the founders of Kern County, in establishing the BOT, saw the need to create an entity that would, *Extol the Virtues of Kern County to the East*.

Today, there are two entities that bear the BOT title. The first is a division of the County Administrative Office (CAO) which has seven employees including three that operate KGOV (video production for the County). The second is the BOT Advisory Board.

The BOT has supporters, many of whom are resistant to change. However, due to a number of factors, including advances in technology and the current information age, recent changes have been made and the BOT operates very differently from years past. This leads to the question — *Is the Board of Trade still relevant and valid today?*

PURPOSE OF INQUIRY:

Three prior reports were released by the Kern County Grand Jury in 2002-2003, 2009-2010 and 2012-2013. In 2015, a significant reorganization of the BOT occurred and an analysis of the results merit a new inquiry. Pursuant to California Penal Code section 925, the 2019-2020 Kern County Grand Jury (Grand Jury) inquired into the function and need for the BOT.

METHODOLOGY:

The Administration, Audit and County Services Committee conducted interviews with Kern County officials, past and present BOT Board members, and county residents who expressed an interest in changes to the BOT. The Committee also researched Board of Supervisor (BOS) agendas, minutes, videos, and various County documents. Internet research produced historical information about the BOT. Also reviewed were websites and publications that advertised the BOT.

DISCUSSION OF FACTS:

A newspaper abstract dated April 21, 1888, mentioned, "...*the Board of Trade growing daily...*" Board minutes from the Kern County Board of Supervisors dated Thursday, January 11, 1917, reflects the BOS action officially establishing an, "...*organization known as the Kern County Board of Trade.*" Among its charges, the BOT was

established “...to work for the proper advertisement of the County resources ...” and it was stipulated that, “...the members of the board shall, serve without compensation.” On January 10, 1961, the BOS renamed the BOT the *Kern County Chamber of Commerce*. On January 25, 2000, this name change was rescinded and returned to the Board of Trade.

Officially, the BOT was responsible for promoting all aspects of Kern County, e.g. oil, agriculture, industrial manufacturing, film and tourism. This included showcasing the County by hosting the State of the County Dinner. Today, the dinner and most of the traditional BOT functions have been reassigned to the Kern Economic Development Corporation. In recent years, the BOT has focused, almost exclusively, on promoting tourism and commercial filming.

- A. Prior to 2012, the BOT was its own department and averaged four to six employees, including the Director.
- B. In 2012, the BOT was informally moved into the CAO.
- C. In 2015, due to budgetary constraints and to improve efficiency, the BOS officially merged the BOT with the Employer’s Training Resource Center, forming the division of Economic and Workforce Development under the direction of the County Administrative Officer. However, today they function as two separate divisions.
- D. The BOT is now under the Office of County Wide Communications (OCWC), within the CAO. The duties of its seven employees encompass all business regarding the OCWC, not just BOT business.
- E. The current mission statement of the BOT is, “*To contribute to Kern County’s economy and quality of life by globally marketing its unique treasures, identifying tourism and film making opportunities, enhancing the image of Kern County as a visitor destination and creating a unified strategy to meet these goals.*”
- F. There is a ten member BOT Advisory Board, made up of residents of Kern County with two members from each supervisorial district appointed by the BOS. Their term is at the pleasure of the BOS.
- G. Advisory Board members receive \$50 per meeting for not more than one meeting in any bimonthly meeting schedule, plus actual and necessary travel expenses incurred in performance of duties as a BOT Board member.
- H. California Government Code section 26108 states, “*The board of supervisors may provide that the member of the county board of trade or county chamber of commerce established under Section 26104 shall receive their actual and necessary traveling expenses....If compensation is authorized by the board of*

supervisors it shall not exceed twenty-five dollars (\$25) per meeting for not more than one meeting of the commission in any calendar month.”

- I. The Kern County Government website lists eight BOT Advisory Board members and two vacancies. Research and interviews revealed that more than one member listed had resigned and is no longer participating in BOT activities.
- J. The BOT Advisory Board is charged with meeting on a bimonthly basis. The Kern County Government website, Boards, Commissions & Committees, states, the BOT Advisory Board is, “...to advise and assist the Board of Supervisors in the matter of advertising promoting and making known the resources of Kern County.” The purpose of the Advisory Board is to recommend tourism grant awardees to the BOS, and only meets once per year to review grant applications.
- K. In 2018-2019, 13 tourism promotional grants, totaling \$100,000, were awarded.
- L. The BOT Advisory Board is subject to the provisions of the California Open Meeting Law, also known as the Ralph M. Brown Act (Brown Act). As such, all meetings are to be publically announced in advance, agendas posted and minutes kept:
 - Advisory Board meeting minutes were not always recorded
 - On June 6, 2018, the Advisory Board conducted an unnoticed meeting
 - They were subsequently advised by Kern County Counsel that an unnoticed meeting constituted a Brown Act violation
- M. The website, kerncountyboardoftrade.com, appears to be from the County. However, it is not owned, managed or controlled by Kern County.
- N. The OCWC has availed itself of new ways to communicate with potential visitors. It has implemented an interactive Facebook page and reports an increase in on-line contacts surpassing 1,000% since 2017.
- O. Since the BOT was absorbed by the CAO in 2015, there have been citizen concerns that there is reduced emphasis on promoting tourism that has led to a decline in tourist activity in the County. Grand Jury research revealed the following:
 - In order to promote the County and assist travelers, the BOT operated a visitor center at 2101 Oak Street, in Bakersfield. In 2017, the visitor center was closed. County officials stated the facility was underused and funds are better spent promoting the County electronically via the OCWC.

- County officials permanently discontinued attending trade shows. They concluded the shows were not an effective way to promote tourism given the new ways of doing business electronically.
- Based on data by the California Travel and Tourism Commission, after the 2015 reorganization, there was a decline in tourist spending. However, in 2017 and 2018, spending bounced back surpassing previous levels:

Kern County Direct Travel Spending 2015-2018
(In Millions)

	2015	2016	2017	2018
Tourism Spending	\$1.504	\$1.396	\$1.518	\$1.639

- P. Since the BOT was absorbed by the CAO, there were citizen concerns that there would be reduced emphasis on promoting film production in the County, which would result in a decline in those activities. Grand Jury research revealed that in 2017 and 2018, overall filmmaking permits declined compared to 2014 through 2016. In 2018, feature films were significantly higher:

	2014	2015	2016	2017	2018	2019 midyear
Permits Issued	184	187	189	143	146	119
Feature Films	10	8	9	7	16	7

- Q. In order to maintain channels of communication between the tourism and film industries and the County, the OCWC routinely participates in local chamber of commerce meetings attending over 100 meetings in the last 12 months.
- R. The OCWC maintains the website, FilmKern.com. A review of this site revealed the title, *Kern County Film Commission*, 1115 Truxtun Avenue, Bakersfield, CA 93301, (661) 868-7097. The site provides information regarding film making in the County, however, there are several dead links stating, *Page Not Found*.
- S. The Transient Occupancy Tax (TOT), also known as the bed tax, is a tax charged to travelers renting accommodations (a room, rooms or other living space) in a hotel, inn, tourist home or house, motel, or other lodging:
- The TOT is a funding source for tourism related functions, however, it is completely at the discretion of the governing board of the entity
 - The TOT for unincorporated areas of Kern County is 6%
 - In comparison, it is 12% for the city of Bakersfield
 - 10% for the cities of Delano, Ridgecrest and Taft
 - In 2002, Kern County ballot Measure D attempted to set the TOT rate at 10%
 - Measure D failed with 37% approval

FINDINGS:

- F1. In practice, the Board of Trade does not conform to its mission statement.
- F2. The BOT exists in name only. The Board of Trade label is a misnomer. It does not promote trade.
- F3. Other than recommending tourism grant recipients, the Board of Trade Advisory Board serves no other vital function. It no longer provides advice to the BOS regarding tourism and film issues.
- F4. The BOT Advisory Board compensation of \$50 per meeting is inconsistent with the \$25 allowed by the California Government Code.
- F5. The BOT Advisory Board is unaware of the importance of Brown Act requirements and compliance.
- F6. The citizen concern that the BOS changes made to the BOT in 2015 would negatively impact tourism is unfounded. There is no direct correlation between the changes and tourism activity in the County.
- F7. The Office of County Wide Communications continues to promote tourism and filmmaking with an increased emphasis on electronic media rather than relying on methods used in the past such as the visitor center, flyers and other paper publications.
- F8. If the Transient Occupancy Tax rate is increased, Kern County would have additional resources that could be applied to promoting tourism and filmmaking.
- F9. Portions of the websites under the Board of Trade and Office of County Wide Communications (visitkern.com, filmkern.com) are not maintained and updated consistently.
- F10. While not actually a Kern County maintained website, kerncountyboardoftrade.com projects an unprofessional image of the County and could confuse potential visitors.

COMMENTS:

The Grand Jury would like to thank all who participated in interviews and provided vital information.

RECOMMENDATIONS:

- R1. The Board of Supervisors should formally retire the Board of Trade title. (Findings 1 and 2)
- R2. The Board of Supervisors, through the OCWC, should continue to promote tourism and filmmaking and encourage communication with County residents involved in the tourism and film industries. (Findings 3 and 6)
- R3. The Board of Supervisors should decommission the Board of Trade Advisory Board before the next tourism grant application cycle. (Finding 3)
- R4. If the BOT Advisory Board is decommissioned, the Board of Supervisors should direct the County Administrative Officer to develop a process whereby members of the public may volunteer to serve on an ad hoc committee charged with reviewing tourism grant applications. (Finding 3)
- R5. If the BOT Advisory Board is not decommissioned, the Board of Supervisors should provide training for Advisory Board members on Brown Act requirements and government codes. (Finding 5)
- R6. The Board of Supervisors should submit a proposal to the voters of Kern County to increase the Transient Occupancy Tax Rate. (Finding 7)
- R7. The Board of Supervisors should direct the County Administrative Office to update the current websites associated with the Board of Trade and take reasonable steps to remove kerncountyboardoftrade.com from the internet. (Findings 8 and 9)

NOTES:

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RESPONSE REQUIRED WITHIN 90 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301**

**CC: FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**

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Kern County Board of Supervisors
Response to Grand Jury Final Report
Kern County Board of Trade

Response to Findings:

The Board of Supervisors notes that the Grand Jury's findings are substantially correct.

Response to Recommendation:

R1: *The Grand Jury recommends the Board of Supervisors should formally retire the Board of Trade title.*

We appreciate and will consider the Grand Jury's recommendation to formally retire the Board of Trade title. The title causes confusion and is part of an archaic lexicon no longer commonly used among California counties and local government marketing and promotion. Furthermore, the "trade" function was transferred to the Kern Economic Development Corporation, rendering the name even less relevant.

R2: *The Grand Jury recommends the Board of Supervisors, through the Office of County Wide Communications, should continue to promote tourism and filmmaking, and encourage communication with County residents involved in the tourism and film industries.*

We concur with the Grand Jury's recommendation to continue promotion through the County Administrative Office's Division of Countywide Communications. Kern County had more than 1,000% growth in followers and interactions on social media in the last three years. In addition to promoting tourism and filmmaking, the Division of Countywide Communications has also increased promotion of County services and departments, government education, and community partnerships. The open dialogue and commitment to partner with communities, by attending their city chamber meetings, resulted in more frequent and substantive information to promote than ever in the past. The film commission has also seen an increase in filming permits. Additionally, marketing and promotions staff attended the Trade Show in Los Angeles the past two years, in partnership with our Ridgecrest and Tehachapi chambers.

R3: *The Grand Jury recommends the Board of Supervisors should decommission the Board of Trade Advisory Board before the next tourism grant application cycle.*

We appreciate and will consider the Grand Jury's recommendation to decommission the Board of Trade Advisory Board. The Board of Supervisors appreciates the service of the Advisory Board to the County. However, due to advances in technology and changes in strategies developed to leverage existing resources, the Advisory Board's sole function in the past several years has consisted of only tourism grant reviews. During the last grant cycle, it was noted that the program needed a dramatic update. The Division of Countywide Communications reports to the County Administrative Office at the direction of our Board of Supervisors, and this may negate the need for an Advisory Board.

R4: *The Grand Jury recommends if the Board of Trade Advisory Board is decommissioned, the Board of Supervisors should direct the County Administrative Officer to develop a process whereby members of the public may volunteer to serve on an ad hoc committee charged with reviewing tourism grant applications.*

We will consider the Grand Jury's recommendation if the Advisory Board is decommissioned. While we want to support our local organizations, the tourism grant program needs an update to clearly define how much tourism the grants are driving to Kern County.

R5: *The Grand Jury recommends if the Board of Trade Advisory Board is not decommissioned, the Board of Supervisors should provide training for Advisory Board members on Brown Act requirements and government codes.*

We concur with the Grand Jury's recommendation. The Board of Trade Advisory Board was provided Brown Act training by County Counsel. Additionally, they have been counseled of violations in regards to conducting serial meetings over email. If the Advisory Board remains, the Countywide Communications Division is committed to taking the necessary steps to keep them aware of the importance of Brown Act and Government Code requirements and compliance.

R6: *The Grand Jury recommends the Board of Supervisors should submit a proposal to the voters of Kern County to increase the Transient Occupancy Tax Rate.*

We agree with the Grand Jury that an increase in the Transient Occupancy Tax Rate would be beneficial to Kern County. This was previously attempted, but perhaps due to general misunderstandings, the measure failed. The rate of unincorporated Kern County is low in comparison of the rates of many Kern County incorporated cities. The lower tax already exists and is typically paid by individuals commonly known as travelers that are lodged in unincorporated establishments. A rate increase would provide more County revenue that could possibly be used for tourism and marketing.

R7: *The Grand Jury recommends the Board of Supervisors should direct the County Administrative Office to update the current websites associated with the Board of Trade and take reasonable steps to remove kerncountyboardoftrade.com from the internet.*

We concur with the Grand Jury's recommendation for an update to all websites related to filming and tourism. Updates began during the Grand Jury audit and the Division of Countywide Communications will continue to strengthen their website presence.

COMPL_GJ BOT B

Kern County Board of Supervisors
Response to Grand Jury Final Report
Kern County Board of Trade

Response to Findings:

The Board of Supervisors notes that the Grand Jury's findings are substantially correct with clarifications to Findings F1, F3, and F5.

F1: *In practice, the Board of Trade does not conform to its mission statement.*

F3: *Other than recommending tourism grant recipients, the Board of Trade Advisory Board serves no other vital function. It no longer provides advice to the Board of Supervisors regarding tourism and film issues.*

The Board of Trade Advisory Board indicated that the regularly scheduled meetings previously held considered various tourism aspects, promoted the unique treasures and resources of the County, and conformed to their mission statement. The Board of Trade Advisory Board indicated that the payments received for the meeting attendance was donated to the Kern County Board of Trade Advisory Directors account for other supplemental uses. When the Board of Trade was moved under the County Administrative Office's Division of Countywide Communications the Board of Trade Advisory Board relied more on County staff and the bi-monthly meetings became less frequent.

F5: *The Board of Trade Advisory Board is unaware of the importance of Brown Act requirements and compliance.*

The Board of Trade Advisory Board indicated that they were aware of the importance of the Brown Act requirements and were in compliance with required Ethics Training. Meeting agendas were posted with appropriate advanced notice, as required. Minutes from previous meetings were prepared and placed as an item on the subsequent agenda for approval. The Discussion of Fact L referred to an "unnoticed" meeting that the Board of Trade Advisory Board indicated was a "serial" email where meeting times were coordinated. Subsequently, serial emails ceased upon additional guidance provided by County Counsel.

Response to Recommendation:

R1: *The Grand Jury recommends the Board of Supervisors should formally retire the Board of Trade title.*

We appreciate and will consider the Grand Jury's recommendation to formally retire the Board of Trade title. The title causes confusion and is part of an archaic lexicon no longer commonly used among California counties and local government marketing and promotion. Furthermore, the "trade" function was transferred to the Kern Economic Development Corporation, rendering the name even less relevant.

R2: *The Grand Jury recommends the Board of Supervisors, through the Office of County Wide Communications, should continue to promote tourism and filmmaking, and encourage communication with County residents involved in the tourism and film industries.*

We concur with the Grand Jury's recommendation to continue promotion through the County Administrative Office's Division of Countywide Communications. Kern County had more than 1,000% growth in followers and interactions on social media in the last three years. In addition to promoting

tourism and filmmaking, the Division of Countywide Communications has also increased promotion of County services and departments, government education, and community partnerships. The open dialogue and commitment to partner with communities, by attending their chamber meetings, resulted in more frequent and substantive information to promote than ever in the past. The film commission has also seen an increase in filming permits. Additionally, marketing and promotions staff attended the Trade Show in Los Angeles the past two years, in partnership with our Ridgecrest and Tehachapi chambers.

R3: The Grand Jury recommends the Board of Supervisors should decommission the Board of Trade Advisory Board before the next tourism grant application cycle.

We appreciate and will consider the Grand Jury's recommendation to decommission the Board of Trade Advisory Board. The Board of Supervisors appreciates the service of the Advisory Board to the County. However, due to advances in technology and changes in strategies developed to leverage existing resources, the Advisory Board's sole function in the past several months has consisted of only tourism grant reviews. During the last grant cycle, it was noted that the program needed a dramatic update. The Division of Countywide Communications reports to the County Administrative Office at the direction of our Board of Supervisors, and this may negate the need for an Advisory Board.

R4: The Grand Jury recommends if the Board of Trade Advisory Board is decommissioned, the Board of Supervisors should direct the County Administrative Officer to develop a process whereby members of the public may volunteer to serve on an ad hoc committee charged with reviewing tourism grant applications.

We will consider the Grand Jury's recommendation if the Advisory Board is decommissioned. While we want to support our local organizations, the tourism grant program needs an update to clearly define how much tourism the grants are driving to Kern County.

R5: The Grand Jury recommends if the Board of Trade Advisory Board is not decommissioned, the Board of Supervisors should provide training for Advisory Board members on Brown Act requirements and government codes.

We concur with the Grand Jury's recommendation. The Board of Trade Advisory Board was provided Brown Act training by County Counsel. Additionally, they have been counseled of violations in regards to conducting serial meetings over email. If the Advisory Board remains, the Countywide Communications Division is committed to taking the necessary steps to keep them aware of the importance of Brown Act and Government Code requirements and compliance.

R6: The Grand Jury recommends the Board of Supervisors should submit a proposal to the voters of Kern County to increase the Transient Occupancy Tax Rate.

We agree with the Grand Jury that an increase in the Transient Occupancy Tax Rate would be beneficial to Kern County. This was previously attempted, but perhaps due to general misunderstandings, the measure failed. The rate of unincorporated Kern County is low in comparison of the rates of many Kern County incorporated cities. The lower tax already exists and is typically paid by individuals commonly known as travelers that are lodged in unincorporated establishments. A rate increase would provide more County revenue that could possibly be used for tourism and marketing.

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We concur with the Grand Jury's recommendation for an update to all websites related to filming and tourism. Updates began during the Grand Jury audit and the Division of Countywide Communications will continue to strengthen their website presence.

COMPL_GJ BOT B Addendum

KERN COUNTY HUMAN RESOURCES

Reorganization—Five Years Later

SUMMARY:

In 1956, the Kern County Civil Service System was created in order to establish an equitable and uniform procedure for dealing with personnel matters and to place county employment upon a merit basis. The system encompassed the Personnel Department as an independent department under the supervision of the Civil Service Commission.

In 2015, the Board of Supervisors ordered the establishment of the Human Resources Division of the County Administrative Office (CAO), consolidating the Personnel Department and the Employee Relations and Health Benefits Divisions. The Human Resources Division is involved in the hiring and benefits administration of approximately 8,000 employees for the County of Kern (County).

The Civil Service Commission still exists today to maintain the integrity of the civil service system, but it has no control over the management of the Human Resources Division.

PURPOSE OF INQUIRY:

The Kern County Grand Jury has reviewed the County Personnel Department on several occasions, the last being in 2007. In light of the major reorganization conducted in 2015, the Administration, Audit and County Services Committee (Committee) of the 2019-2020 Kern County Grand Jury (Grand Jury) inquired into the Human Resources Division of the CAO, pursuant to California Penal Code section 925. The purpose of the inquiry is to determine if the reorganization produced the intended results.

METHODOLOGY:

The Committee conducted interviews with Human Resources officials, department heads, both appointed and elected, and Civil Service Commission members. The Committee also reviewed recorded Board of Supervisor (BOS) meetings, researched BOS agendas, minutes, and various County documents.

DISCUSSION OF FACTS:

In 1956, the Civil Service System Initiative Ordinance was adopted by the voters establishing the organizational structure for Kern County Personnel functions including the establishment of the Civil Service Commission. The Civil Service Commission was to consist of five members appointed by the BOS and tasked with assuring the hiring of County employees was based on merit and not on political patronage. Furthermore, the

Civil Service Commission was created to establish civil service rules that would govern Kern County personnel functions.

The 1956 Ordinance stipulated that no amendment repealing this Ordinance or nullifying the basic principles of the civil service system shall be effective unless approved by the voters:

KERN COUNTY INITIATIVE ORDINANCE
SECTION XII
Amendment and Repeal

“No amendment repealing this ordinance or nullifying the basic principles of the civil service system contemplated by this ordinance in Sections 31100 to 31113 of the California Government Code shall be effective unless such a proposition of its repeal or amendment shall first have been submitted to a vote of the qualified electors of the County at a general or special election and shall have received the affirmative vote of a majority of the electors voting on the proposition.”

In 1996, the BOS presented Measure L to the voters which proposed several changes to the civil service system including changes to the reporting structure whereby the Personnel Director would report to the Administrative Officer rather than to the Civil Service Commission. Measure L was not approved by the voters.

In 2012, the BOS presented Measures D, E, and F which proposed respectively, amending the Civil Service “Rule of Three,” changing probationary periods in certain job groups, and extending the employee appeal process from five business days to ten. The measures were approved by the voters. However, in June 2015, the BOS voted to consolidate the Personnel Department and the CAO’s Employee Relations Division and Health Benefits Division by forming the Human Resources Division of the CAO. This was done without submitting a ballot initiative to the voters and was met with little protest or objection.

This major revision to a process, that had been in place for nearly 60 years, was brought about in less than 30 days. Although the concept of making a revision may have been discussed by the BOS for many years, there was no previous BOS referral or formal action taken. The timeline of adoption was as follows:

- May 19, 2015, the proposal to realign the Personnel Department, the Employee Relations Division, and the Health Benefits Division into a newly formed Human Resources Division of the CAO, was presented by the Administrative Officer and approved, in concept, by the BOS
- June 9, 2015, the CAO introduced and the BOS approved ordinance to realign the Personnel Department, the Employees Relations, and Health Benefits Divisions into one Human Resources Division of the CAO
- June 16, 2015, ordinance enacted

The Human Resources structure, established in 2015, conforms to the majority of the counties in California. In fact, prior to 2015, Kern was one of only three counties who utilized the Civil Service Commission as the controlling body for all personnel functions.

Today, the Human Resources Division has 33 filled staffing positions and a budget of \$4,774,579. The Civil Service Commission portion of the budget is \$183,000.

The Grand Jury noted the following:

- A. Mission Statement: *“The Human Resources Division is committed to building a healthy, positive, and productive workforce in order to effectively and efficiently assist and provide services to the residents and businesses of the County of Kern.”*
- B. The Personnel Department structure, prior to 2015, was perceived by most County Departments, the BOS, and others to be cumbersome, antiquated and in need of reform.
- C. The stated goals of the 2015 reorganization were to improve:
 - Public access in job search efforts
 - Professional development and career opportunities of the County workforce through training
 - Employee access to benefit information
 - Department’s ability to add classifications, set compensation, and recruit and test for position openings
- D. In 2015, certain members of the Civil Service Commission had concerns about the reorganization that included:
 - The CAO could usurp the role of the Civil Service Commission
 - The CAO could make de facto rule changes to County hiring processes
 - Lessening the Civil Service Commission’s independence in enforcing Civil Service rules
- E. During the 2015 BOS reorganization meeting, there was public comment that stakeholders were not brought into the transition process.
- F. Based on interviews with County officials, the new structure is as responsive or, in some instances, more responsive to the hiring needs of the departments.
- G. The Director of Human Resources is responsible for administering the Civil Service Rules but no longer reports to the Civil Service Commission, thereby, curtailing the Commission’s ability to enforce the rules.
- H. In order to bring the Civil Service Commission into compliance with Civil Service Rule 204.21 (See Appendix A), a procedural change was made in the role of the Commission regarding the approval process for job specifications. Formerly, all

specifications were officially approved by the Commission. Now formal Commission approval is only solicited in instances where objections are raised by employee organizations or affected County departments.

- I. Civil Service Rule 1800 governs complaints based on discrimination and harassment. (See Appendix B) At times, the Human Resources Division has had difficulty meeting the timelines mandated in the rule. Over the past two years, in six of 29 reported complaints, the Human Resources Division has not met timeline requirements. There are no penalties for this lack of adherence.

FINDINGS:

- F1. The 2012 passage of Measures D, E, and F by the voters of Kern County improved the function of the Personnel Department.
- F2. It is difficult to confirm or quantify if “*public access in job search efforts, employee training opportunities or employee access to benefit information*” (See Fact C) has improved as a result of the 2015 change.
- F3. The 2015 change did affect the “*departments’ ability to add classifications, and recruit and test for position openings.*” It improved communication channels between Human Resources and County departments, decreasing the time it takes to add or revise position classifications. It also reduced the amount of time it takes to fill vacancies.
- F4. The entire 2015 reorganization process should have been more inclusive of the stakeholders.
- F5. Although the 2015 reorganization was advocated as a major reform package, the only significant change was the organizational reporting structure.
- F6. The intrinsic rights of employees still exist as defined in the Civil Service Rules.
- F7. The 2015 reorganization weakened the Civil Service Commission’s ability to fulfill their mission as the watchdog for merit-based employment and safeguarding employee rights.
- F8. A mechanism is necessary to compel the compliance of timelines within the Civil Service rules, by the Human Resources Division, particularly Rule 1800.

COMMENTS:

The Grand Jury would like to thank all who participated in interviews and provided valuable information.

RECOMMENDATIONS:

- R1. The Board of Supervisors direct the County Administrative Office to adhere to the timelines of Civil Service Rule 1800 and to ensure the spirit of Rule 1800 is not weakened or abolished. (Finding 8)
- R2. The Civil Service Commission modify their rules to include sanctions for not adhering to Rule 1800 timelines, so that if the Human Resources Division fails to comply with time limits, the complaint shall be settled in favor of the complainant. (Finding 8)

NOTES:

- The Board of Supervisors and the Civil Service Commission should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: kerncounty.com/grandjury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: kerncounty.com/grandjury

REQUIRED RESPONSES WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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APPENDIX A:

CIVIL SERVICE COMMISSION RULE 201.21

The Director may approve new specifications and revise existing specifications. Such approval shall require the concurrence of recognized employee organizations and affected County departments, and shall be calendared for review at the regularly scheduled meeting of the Commission. In case of objection by any of the parties, the specifications are subject to final approval by the Commission. (Rev. 08/00)

APPENDIX B:

CIVIL SERVICE COMMISSION RULE 1800 DISCRIMINATION APPEALS

1810.00 COMPLAINTS BASED ON DISCRIMINATION AND HARASSMENT

1810.01

Every person has the right to complain of and to seek remedy for acts of unlawful discrimination against or discriminatory harassment experienced by the person in applying for County employment or in the County workplace. Unlawful discrimination is discrimination based on the person's race, national origin, sex, age, physical ability, medical condition, marital status, ancestry, religious affiliation, union affiliation, political affiliation, or sexual orientation.

1810.02

Every County officer and employee is prohibited from engaging in unlawful discrimination against or harassing any person or from retaliating against or taking adverse employment actions against a person based upon that person's complaint of unlawful discrimination or discriminatory harassment.

1810.03

Every County officer or employee is prohibited from unlawfully discriminating against, retaliating against, or taking adverse employment actions against an employee based upon an employee's testimony, assistance, cooperation, or participation in connection with an investigation, disciplinary action, or hearing before a governmental body arising out of the complaint of unlawful discrimination or harassment.

1810.04

As used in these rules, acts of unlawful discrimination, retaliation, and adverse employment actions include, but are not limited to:

1810.04.10

Verbal or physical abuse or threats of harm;

1810.04.20

Disciplinary actions including demotions, suspensions, oral or written reprimands, transfers, or termination of employment;

1810.04.30

Failure to give equal consideration in employment decisions;

1810.04.40

The imposition of adverse working conditions not encountered by similarly-situated employees;
or

1810.04.50

The unreasonable denial of employment benefits.

1820.00 COMPLAINT PROCEDURE

As set forth in Kern County Civil Service Commission Rule 1800 et seq., each employee or applicant for employment who believes that they have experienced unlawful discrimination or harassment in the application for employment, within the testing for promotion within County employment, or in the general terms and conditions of County employment may file a written complaint setting forth the specific facts and evidence supporting the complaint with the Equal Employment Opportunity Officer. This complaint shall provide all documentary evidence, names of potential witnesses, and any other information believed by the complainant to be relevant to the complaint. Such complaints shall be filed within 180 days of the occurrence of the acts giving rise to the complaint.

1820.01 INFORMAL INVESTIGATION

Upon the receipt of the written complaint, the Equal Employment Opportunity Officer shall attempt to resolve the complaint on an informal basis through informal investigatory and conciliation efforts between the complaining individual and the involved County department(s). The Equal Employment Opportunity Officer or his delegate shall have a period not to exceed thirty (30) business days to investigate and to informally attempt to resolve the complaint. (Rev. 03/99)

1820.02 FORMAL INVESTIGATION

If the Equal Employment Opportunity Officer (EEOO) is unable to resolve the complaint through informal conciliation efforts, the EEOO shall notify the complainant, the Director of Personnel, and the impacted County department of this inability in writing. If the EEOO believes there are grounds to proceed, he/she may initiate a formal investigation of the allegations of the complainant, interview all witnesses to the incident giving rise to the complaint (including the complainant and the person(s) against whom the complaint is directed), and issue written findings as to the merits of the complaint and the remedy that should be implemented to resolve the complaint under existing County ordinances, policies, and procedures. The Equal Employment Opportunity Officer shall have a period of not more than forty-five (45) business days to conduct the investigation and to issue appropriate findings of fact and recommended remedies. (Rev. 03/99)

The complaining person, the affected County department, and the Director of Personnel shall have twenty (20) calendar days to review and either accept or reject the findings and recommendations of the Equal Employment Opportunity Officer.

1820.03 EEO OFFICER FINDINGS AND RECOMMENDATIONS

If the complainant, the impacted County department, the County Administrative Officer, and the Director of Personnel are satisfied with the findings and recommendations of the Equal Employment Opportunity Officer, these findings and recommendations may be implemented informally and the matter closed. If the findings and recommendations of the Equal Employment Opportunity Officer require some action or order on the part of the Board of Supervisors to be implemented, the Director of Personnel shall forward the findings to the Board of Supervisors and recommend that the Board of Supervisors authorize the action called for therein.

1830.00 HEARING

If either the complainant or the impacted County department is not satisfied with the findings and recommendations of the Equal Employment Opportunity Officer as a resolution to the complaint, either may file a written request within twenty (20) days of the issuance of the findings and recommendations of the Equal Employment Opportunity Officer for an evidentiary hearing before the Civil Service Commission.

This hearing shall be commenced within thirty (30) days of the written request for hearing.

1830.01

The purpose of this hearing is to create an evidentiary record of the basis for the complaint, to permit the examination and cross-examination of all witnesses under oath, and to permit the Civil Service Commission to make factual findings based on the evidence presented and to order/recommend specific remedies designed to achieve a resolution to the dispute.

1830.02

The hearing shall be conducted as a public hearing, in accordance with the evidentiary standards established by Government Code Section 11513. The Equal Employment Opportunity Officer shall initiate the hearing by presenting his/her report and recommended findings to the Commission. After the presentation of the Equal Employment Opportunity Officer's report, the complaining person shall present all relevant documentary evidence and witness testimony that the complainant believes will establish proof of the unlawful discrimination or harassment. At the conclusion of this presentation, the impacted department shall present all relevant documentary evidence or witness testimony, which the department believes to refute or disapprove the complaining person's allegations. All witnesses shall be subject to cross examination and to examination by the Commission. The complainant has the burden of proof to establish the validity of the complaint. At the conclusion of the hearing and upon the issuance of a written order, findings, and decision, the Civil Service Commission may take such action as is within its jurisdiction under Kern County Code Chapter 3.04 and Board of Supervisors' Resolution 85-094. If the action deemed appropriate is beyond the limited jurisdiction of the Civil Service Commission to implement, the Commission's findings and recommendations shall be forwarded to the Board of Supervisors with the recommendation that the same be adopted as an order of the Board of Supervisors. The order and decision of the Civil Service Commission (or the order of the Board of Supervisors implementing the decision of the Civil Service

Commission) shall be final when issued and are subject to the judicial review provisions of Rule 2303. (Rev. 5/14)

COUNTY OF KERN
CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION

Romeo Agbalog, President
Brian Holt, Vice President
Joy Rose
Jeremy Price
Kevin Oliver

Maria Murbach, Secretary



November 9, 2020

The Honorable Judith K. Dulcich, Presiding Judge
Kern County Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301

Dear Judge Dulcich:

Transmitted herewith is the Civil Service Commission's response to the 2019-2020 Grand Jury's Final Report titled KERN COUNTY HUMAN RESOURCES – Reorganization—Five Years Later.

The Civil Service Commission appreciates the Grand Jury's review and input.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Agbalog".

Romeo Agbalog, President
Kern County Civil Service Commission

RA:mm

Attachment

cc: Kern County Board of Supervisors

Code No _____
BY ORDER OF THE BD/SUPV
Referred To _____

Copies Furnished Each Supervisor And CAO
County Counsel

Filed by BD Supv 11-9-2020

KATHLEEN KRAUSE

Clerk of the Board of Supervisors

By K Krause

**RESPONSE TO 2019-2020 KERN COUNTY GRAND JURY REPORT
KERN COUNTY CIVIL SERVICE COMMISSION**

FINDINGS

1. *The 2012 passage of Measures D, E, and F by the voters of Kern County improved the function of the Personnel Department.*

The Civil Service Commission disagrees partially with this finding to the extent that the Commission cannot confirm or quantify the results of Measures D, E, and F. This finding is better addressed by the Human Resources Division.

2. *It is difficult to confirm or quantify if "public access in job search efforts, employee training opportunities or employee access to benefit information" (See Fact C) has improved as a result of the 2015 change.*

The Civil Service Commission agrees with this finding. This finding is also better addressed by the Human Resources Division.

3. *The 2015 change did affect the "departments' ability to add classifications, and recruit and test for position openings." It improved communication channels between Human Resources and County departments, decreasing the time it takes to add or revise position classifications. It also reduced the amount of time it takes to fill vacancies.*

The Civil Service Commission disagrees with this finding to the extent that the Commission cannot confirm or quantify these results. This finding is better addressed by the Human Resources Division.

4. *The entire 2015 reorganization process should have been more inclusive of the stakeholders.*

The Civil Service Commission agrees with this finding.

5. *Although the 2015 reorganization was advocated as a major reform package, the only significant change was the organizational reporting structure.*

The Civil Service Commission disagrees partially with this finding. The change to the organizational reporting structure is a major change to both the Commission and the Human Resources Division.

6. *The intrinsic rights of employees still exist as defined in the Civil Service Rules.*

The Civil Service Commission agrees with this finding. The 2015 reorganization did not alter employee rights under the Civil Service Rules. However, it did alter the ability of the Civil Service Commission to directly oversee the administration of these rights.

7. *The 2015 reorganization weakened the Civil Service Commission's ability to fulfill their mission as the watchdog for merit-based employment and safeguarding employee rights.*

The Civil Service Commission agrees with this finding. The nature of the organizational change is that the Commission no longer directly oversees the Human Resources Division. As a result, the Commission is often limited to making recommendations to either the County Administrative Office or the Board of Supervisors. Without a direct oversight role, the Commission is less able to act as custodian of the Civil Service Rules and Ordinance.

8. *A mechanism is necessary to compel the compliance of timelines within the Civil Service Rules, by the Human Resources Division, particularly Rule 1800.*

The Civil Service Commission agrees with this finding. The Commission has convened a Rule 1800 Committee to further study potential sanctions in case the Human Resources Division does not adhere to the Rule 1800 timelines.

RECOMMENDATIONS

1. *The Board of Supervisors direct the County Administrative Office to adhere to the timelines of Civil Service Rule 1800 and to ensure the spirit of Rule 1800 is not weakened or abolished.*

The Civil Service Commission agrees with this recommendation and recommends that the Board of Supervisors implement it.

2. *The Civil Service Commission modify their rules to include sanctions for not adhering to Rule 1800 timelines, so that if the Human Resources Division fails to comply with time limits, the complaint shall be settled in favor of the complainant.*

The Civil Service Commission will not implement this recommendation because it would create an unfair process for the investigation of and response to discrimination complaints. Employees are entitled to a prompt and thorough investigation of discrimination complaints. In some cases, a thorough investigation takes longer than the expected timelines. The Commission understands that the Human Resources Division must balance the interests of promptness and thoroughness when conducting an investigation.

Furthermore, a Rule which automatically resolves complaints in favor of the complainant is not a fair process. County employees alleging discrimination, employees alleged to have acted in a discriminatory manner, and the County departments managing those employees are all entitled to fair investigation and adjudication of a complaint. A rule which required settlement in favor of the complainant in cases of investigatory delay would be unfair to the other parties involved.

The Commission has convened a Rule 1800 Committee to study potential revisions to Rule 1800 in response to the Grand Jury's report. The Committee will develop and propose revisions to Rule 1800 as appropriate to address investigatory delay.

KERN COUNTY PUBLIC DEFENDER

*“Until the lion learns to write, every story will glorify the hunter”
African Proverb*

SUMMARY:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” (U.S. Constitution, VI Amendment)

The Kern County Public Defender’s Office (PDO) priorities are to provide high quality and professional representation to indigent defendants (those who cannot afford an attorney). The doctrine that **everyone is innocent until proven guilty** is aggressively promoted in this office. Ideally, within the Public Defender’s DNA, the heart of renowned British jurist William Blackstone should be personified. In 1769 he stated, *“The law holds that it is better that 10 guilty persons escape, than one innocent suffer.”* A U.S. Supreme Court 1895 case expands, *“It is better to let the crime of a guilty person go unpunished than to condemn the innocent.”*

Recent California legislation designed to lower the overall prison population and bring about fairness in sentencing laws has placed an additional burden on the PDO in the number of motions filed, the number of court appearances, and the attorney hours necessary to respond to changes in the law. Over the past decade these expanded responsibilities were created by state legislation without accompanying funding. As a result, funding of the PDO and staffing levels have remained relatively unchanged—the department is doing more without additional resources.

The PDO also struggles with the challenge of securing the long-term service of qualified attorneys. Attorney retention is vital for PDO continuity. This is the single most important issue facing the PDO.

PURPOSE OF INQUIRY:

Three prior Grand Jury inquiries of the PDO were conducted in 1999-2000, 2005-2006, and 2008-2009. Since then, much legislation has passed that has influenced the operations of the PDO. In light of this, a new inquiry is warranted.

Pursuant to California Penal Code section 925, the Administration, Audit and County Services Committee (Committee) of the 2019-2020 Kern County Grand Jury (Grand Jury) inquired into the operations and management of the Kern County Public Defender’s Office.

METHODOLOGY:

The Committee conducted interviews with PDO and Kern County officials. The Committee also researched Board of Supervisor (BOS) agendas, minutes, and various Kern County (County) documents. Also reviewed were PDO websites and publications.

DISCUSSION OF FACTS:

The U.S. Supreme Court in *Gideon v. Wainwright* (1963), 372 U.S. 335, ruled that the Sixth Amendment of the Bill of Rights and the due process clause of the Fourteenth Amendment require the State to provide legal counsel to indigent defendants in criminal cases. The U.S Constitution also guarantees individuals the right to representation by an attorney regardless of financial means.

The Kern County Public Defender's Office was created in 1969. Prior to this, the County hired private attorneys as public defenders. The PDO provides legal representation to defendants who face incarceration and cannot afford an attorney. The PDO ensures the right to legal representation and also provides legal services to juveniles involved in delinquency and dependency (foster care, wards of the court) proceedings. In addition, they represent individuals involved in mental health and conservatorship proceedings, or whose mental capacity is challenged.

PDO's Mission Statement: *"The Kern County Public Defender's driving priorities are providing high quality and professional representation to all clients who we have the privilege and constitutional mandate to represent, and respecting Kern County and state taxpayers, who fund our department's work."*

When the PDO cannot serve a client due to a conflict of interest, clients are referred to an outside attorney through the Indigent Defense Program (IDP). Since 1996, the Kern County IDP has been administered by the Kern County Administrative Office through a contract with the Kern County Bar Association. The IDP represents adults and juveniles in both the criminal justice and dependency systems.

The Grand Jury noted the following:

- A. The PDO handles 30,000 to 35,000 cases per year. These are not all new cases. They may include hold-over and/or old cases and a single client may have multiple cases. Also included are conservatorships, juvenile and probation violation cases.
- B. In Fiscal Year (FY) 2018-2019, the PDO conducted 127 felony trials and 72 misdemeanor trials.
- C. State laws have been enacted which have affected the PDO by requiring review of thousands of cases for potential court actions. This requires substantial attorney hours for case review, client interviews, the filing of

motions and petitions, and court appearances. This added workload is not reflected in the PDO's caseload statistics. Listed below are the laws with the greatest impact: (See Appendix A)

- Proposition 36 mandates drug treatment in lieu of incarceration for eligible drug offenders
- Proposition 47 retroactively re-categorized some non-violent felonies to misdemeanors
- Proposition 57 allows convicted felons who were serving life terms under the Three-strikes law to become eligible to petition the court for a new, reduced, sentence
- Senate Bill 1437 provides for resentencing of certain individuals convicted of felonies as accomplices

D. Because the PDO is publicly funded, every person who comes through the door—rich or poor—is assigned a public defender.

E. There is a system in place to recover PDO fees, however, implementation is difficult and not cost effective. This is due, in part, to the indigent status of most clients. Fee collection directly from a client involves additional court hearings and rulings. When court ordered, fees are not collected by the PDO but by the court's Revenue Recovery Division. California law also prohibits fee collection on cases that are dismissed or where there is a verdict of "not guilty." Therefore, almost all of the \$2.3 million in fees that were recovered in FY 2018-2019, as reported in the annual budget, are from the State of California for new felony and misdemeanor cases from prisons in Kern County. The PDO is not entitled to recover fees for appeals or motions related to law changes such as California Propositions 47, 57, et al. (See Appendix A)

F. In FY 2008-2009, the PDO budget was \$14.5 million. The FY 2019-2020 budget is \$16.9 million which includes \$8.9 million in funding provided by sources other than the Kern County General Fund.

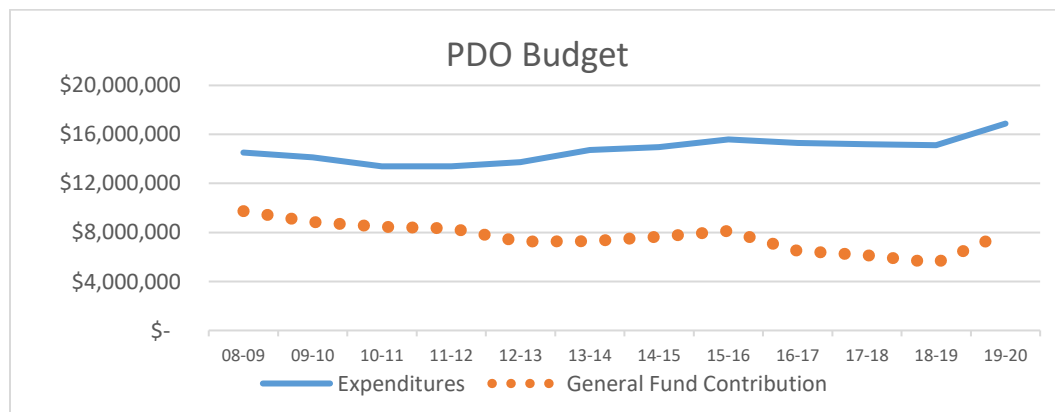


Chart created by Grand Jury

- G. The PDO currently has 101 authorized positions. Staffing is as follows:
- Misdemeanor and Felony Trial Attorneys
 - 1 Public Defender
 - 1 Assistant Public Defender
 - 1 Chief Deputy Public Defender (unfilled)
 - 61 Deputy Public Defenders
 - Investigations
 - 11 Investigators
 - 1 Public Defender Investigative Aide
 - 25 Support Staff
- H. The PDO has offices in Bakersfield, Delano, Lamont, Mojave, Shafter and Ridgecrest. Additionally, the Juvenile Court Division is located in Bakersfield.
- I. Every attorney, including those in the highest levels of management, directly serves clients. No attorney has strictly administrative duties.
- J. Each new attorney starts handling cases on day one of employment; it takes approximately 3.5 years to train an attorney to handle murder cases.
- K. There is a high level of turnover among Deputy Public Defenders. The average length of employment is three to four years. Most new attorneys come from outside of Kern County and ultimately return to their home communities.
- L. In addition to legal representation, the PDO provides clients with appropriate clothing and advice on grooming etiquette for trial court. Below is a photo of the PDO clothing room.



Photo provided by Grand Jury

FINDINGS:

- F1. The culture of the PDO is client centered.
- F2. The PDO has absorbed the additional workload brought about by legislative changes without compromising their core services.
- F3. The service provided to the public may be enhanced if more Deputy Public Defenders were recruited locally and have a vested interest in the community.
- F4. The Public Defender's Office would benefit if attorney retention was improved and attorneys remained for at least ten years.
- F5. When compared to other public entities, the organizational structure of the PDO is not top-heavy. The PDO has limited upper level administrative positions. Every attorney is actively engaged in trials, pleadings and appeals.
- F6. When adjusted for inflation, there have been no revisions to the PDO budget to account for an increased work load.

COMMENTS:

The Grand Jury would like to thank Kern County Public Defender and County officials who participated in interviews and provided vital information for this report.

RECOMMENDATIONS:

- R1. The Public Defender's Office should enhance outreach programs to encourage local students pursuing careers in law to choose a career with the Kern County Public Defender's Office. (Finding 3)
- R2. The Public Defender's Office should designate and compensate Deputy Public Defenders to be responsible for recruiting, mentoring, and retaining attorneys. (Finding 4)
- R3. The Public Defender's Office should propose that the Board of Supervisors establish and fund an incentive program to retain Deputy Public Defenders (i.e. bonuses, student loan rebates in exchange for ten years of service). (Finding 4)

NOTES:

- The Board of Supervisors and the Public Defender's Office should post a copy of this report where it will be available for public review
- Persons wishing to receive an email notification of newly released reports may sign up at: kerncounty.com/grandjury
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: kerncounty.com/grandjury

REQUIRED RESPONSES WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

**APPENDIX A:
CALIFORNIA LEGISLATION AFFECTING THE PUBLIC DEFENDER'S OFFICE**

Proposition 36:

- Requires that eligible non-violent drug offenders serve their time in a drug treatment program instead of in jail or prison. The laws regulating who may be eligible for this alternative sentencing program are technical and complex.

Proposition 47:

- Proposition 47 implemented three broad changes to felony sentencing laws.
 - Reclassified certain theft and drug possession offenses from felonies to misdemeanors.
 - Authorizes defendants currently serving sentences for felony offenses that would have qualified as misdemeanors under the proposition to petition courts for resentencing under the new misdemeanor provisions.
 - Authorizes defendants who have completed their sentences for felony convictions that would have qualified as misdemeanors under the proposition to apply to reclassify those convictions to misdemeanors.
- Felony convictions resentenced or reclassified as misdemeanors under the proposition are considered misdemeanors for all purposes, except that such relief does not permit the person to own, possess, or have in his or her custody or control any firearm.

Proposition 57:

- Effective January 1, 2019, the California Department of Corrections and Rehabilitation has issued new emergency regulations that allow some people serving indeterminate life terms for non-violent crimes (i.e., some third-strikers) to be considered for early parole.

Senate Bill 395:

- Requires that a youth of 15 years of age or younger consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before waiving any of their rights.

Senate Bill 1391:

- In any case in which a minor is alleged to be a person described in Welfare & Institution Code section 602 (custody case/wards of the court) by reason of the violation, when he or she was 16 years of age or older, of any offense listed in subdivision (b) or any other felony criminal statute, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction.

Senate Bill 1437:

- Resentencing of certain accomplices to the underlying felony who were convicted of first degree felony murder.
- Resentencing of accomplices who were convicted under the natural and probable consequences doctrine as it relates to murder.
- Resentencing of those who were convicted of second degree murder.

Assembly Bill 865:

- This bill authorizes any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who was suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service to petition for a recall of sentence under specified conditions, could authorize the resentencing the person following a resentencing hearing.

Assembly Bill 109:

- Transfers responsibility for supervising certain kinds of felony offenders and state prison parolees from state prisons and state parole agents to county jails and probation officers.

Kern County Board of Supervisors
Response to Grand Jury Final Report
Kern County Public Defender

Response to Findings:

The Board of Supervisors notes that the Grand Jury's findings are substantially correct.

Response to Recommendation:

R1: *The Grand Jury recommends the Public Defender's office should enhance outreach programs to encourage local students pursuing careers in law to choose a career with the Kern County Public Defender's office.*

We concur with the Grand Jury's recommendation. There are a couple key ways to recruit and retain attorneys embedded in the community. The Public Defender department recruits attorneys that are from or attend school in Kern County. The department intends to continue its concerted effort to be involved with the pre-law program at California State University, Bakersfield where there has been a real force in encouraging students to pursue law and involve us in mentorship. We hope that those students, who attend law school elsewhere, will continue to see our office as a place to return and work upon graduation. Unlike in the past, the newly formed Kern County law school will provide tremendous local education and job opportunities to a pool of new local attorneys that may want to spend their entire career with the County Public Defender's office.

R2: *The Grand Jury recommends the Public Defender's office should designate and compensate Deputy Public Defenders to be responsible for recruiting, mentoring, and retaining attorneys.*

The department will consider the Grand Jury's recommendation for recruiting, mentoring, and retaining attorneys. With the highest homicide rate in the State, the Kern County Public Defender department is constantly challenged with appointing experienced attorneys to complex cases. It is easier for the department to fill lower level positions, but a challenge to retain attorneys past 4-5 years in such a stressful and demanding field. The department provides experience quickly as they promote attorneys to felony trials within 3 years, whereas it generally takes other Counties 6-7 years. Pre-requisite felony trial work experience is often grueling and creates burnout but also creates a great sense of opportunity that makes our attorneys highly marketable elsewhere.

R3: *The Grand Jury recommends the Public Defender's office should propose that the Board of Supervisors establish and fund an incentive program to retain Deputy Public Defenders (i.e. bonuses, student loan rebates in exchange for ten years of service).*

The department will consider the Grand Jury's recommendation and research innovative ideas as incentives for retention. The State offers a loan forgiveness program for those who practice in California public service jobs. It appears that Kern County has a lower cost of living and its Deputy Public Defender's salaries are fairly comparable to other Counties in the State but senior experienced attorneys are certainly far lower than private firms.

KERN ECONOMIC DEVELOPMENT CORPORATION

Government and Industry Working Together

SUMMARY:

Unless one is involved in business or is in upper levels of Kern County government, few are aware of the Kern Economic Development Corporation (KEDC) and its function. Created in 1988, KEDC has helped businesses and jobs grow in Kern County (County). Since 1999, KEDC has been responsible for implementing the County's economic development strategy. In doing so, KEDC helps the County to project a positive, business friendly image.

It may be said that Kern County has something of an identity crisis. The County has sometimes been unflatteringly portrayed as being part of the *Appalachia of the West*—economically challenged and uneducated; while, some would rather it be seen as the *Texas of California*—business friendly with as few barriers as possible. KEDC works to portray Kern County as a place where *Business Is Boundless*.

PURPOSE OF INQUIRY:

KEDC is a private, non-profit corporation created by the Kern County Board of Supervisors (BOS) which acts as a public/private partnership that performs a public service and receives tax-payer funding. KEDC has never been investigated by the Kern County Grand Jury. The corporation is of particular interest since KEDC's mission is vital to the economy of the County. In light of this, the 2019-2020 Kern County Grand Jury (Grand Jury) conducted an inquiry into the operations and function of KEDC, per Penal Code section 933.6.

METHODOLOGY:

The Administration, Audit and County Services Committee (Committee) conducted interviews with KEDC employees, as well as, Kern County officials. The Committee also researched BOS agendas, minutes, audio recordings, videos, and various County documents regarding the founding and development of KEDC. The Committee attended KEDC Board and Executive Committee meetings. Budgets, audits, contracts and publications, produced by KEDC, were also reviewed.

DISCUSSION OF FACTS:

As a result of the 1988 economic downturn in the oil industry, leaders from both the public and private sectors identified a need to work together in order to spearhead efforts to improve the economic climate in Kern County. They determined that an independent public/private partnership was needed whose mission would be to promote

Kern County's economic development and to encourage employee retention. To this end, the Kern Economic Development Corporation came to be.

Through its first ten years, KEDC and the Kern County Board of Trade shared responsibilities for promoting the County. KEDC focused on current and potential employers while the Board of Trade increasingly worked on the County's image regarding tourism and filmmaking.

In 1999, the County again faced economic challenges as a result of changing business trends, cyclical and chronic unemployment, defense cutbacks and welfare to work requirements. In response, a study was commissioned by the BOS to develop a comprehensive economic strategy for Kern County. Among the conclusions of that study was that the County needed to make a collaborative effort to diversify and not solely rely on oil and agriculture. The study also recommended that one entity be given the responsibility to implement the economic strategy. By that time, KEDC had already been serving as the County's lead agency for business recruitment and expansion as well as the lead for job creation. Thus, on June 8, 1999, the BOS formally placed the task of improving Kern County's business climate in KEDC's hands.

KEDC Mission Statement: To cultivate and promote Kern County's boundless opportunities for business.

Kern County and KEDC collaborate to promote a pro-business climate with the three legged stool approach:

1. Attraction (job creation)
2. Retention (keep them here)
3. Growth (help them to be profitable)

The Grand Jury noted the following facts:

- A. KEDC is an independent 501(c)(6) non-profit corporation established for the purpose of creating a strong and diverse economy in Kern County.
- B. KEDC offices are housed in the County Public Services Building, 2700 'M' Street, Suite 200, Bakersfield, CA 93301.
- C. KEDC is not part of the Kern County government structure. KEDC workers are not employees of the County.
- D. Within one business day, KEDC provided all requested documents to the Grand Jury, e.g., budget, income and expense reports, independent audit, meeting minutes, by-laws and project summaries.
- E. KEDC produces an annual publication, the *KERN COUNTY MARKET OVERVIEW (and membership directory)*.

- F. KEDC operates on an annual budget of approximately \$1.1 million (See Appendix A), with a staff of six full-time employees.
- G. Funding for KEDC primarily comes from:
- A performance based agreement with Kern County (\$175,000)
 - Kern County also provides space and utilities as an 'in-kind' contribution
 - Private membership (\$415,000)
 - Public membership other than the County (\$50,000)
 - Special events and miscellaneous (\$473,800)
- H. The County agreement establishes goals for KEDC's performance. The limit is \$175,000 even if KEDC significantly exceeds these goals. In 2018-2019, KEDC reached the limit early in the year.
- I. KEDC invites businesses and government entities to become members of the corporation. Currently, KEDC has 171 dues paying members representing business, education, non-profit organizations and government entities:
- KEDC offers several membership levels with dues ranging from \$1,000 to \$20,000 per year depending on the level selected
 - Membership benefits include newsletters and updates, KEDC assistance, networking, exposure, advertising and tickets to KEDC events
- J. KEDC has a 48 member Board of Directors elected by the members. They meet quarterly and meetings are subject to the California Open Meeting Law known as the Ralph M. Brown Act (The Brown Act).
- K. There is also a seven member KEDC Executive Committee that includes two members from the BOS appointed in order to protect the interests of the County. The remaining five members are selected by the Board of Directors. The Executive Committee oversees the KEDC staff and meets regularly:
- Monthly meetings are scheduled with the exception of July and December and are subject to The Brown Act
 - Monthly meetings are often cancelled due to a probable lack of a quorum when committee members do not RSVP
 - From August 2017 to September 2019, out of 22 scheduled meetings, seven were cancelled
 - From August 2017 to September 2019, two meetings were conducted without a member of the Board of Supervisors or a designee present
 - California Corporation Code section 7211(c) states: *"Each director shall have one vote on each matter presented to the board of directors for action. No director may vote by proxy."*
 - At 12 meetings a staff designee attended in lieu of a BOS member and acted as a proxy

- Occasionally, the designees acted as a proxy by moving, seconding and voting on motions

- L. Currently, KEDC conducts four annual events:
- The State of the County Dinner
 - The Kern County Energy Summit
 - The Kern County Economic Summit (in conjunction with the Bakersfield Chamber of Commerce and California State University, Bakersfield)
 - The KEDC Member Dinner

- M. KEDC targets five industry sectors:
1. Aerospace & Defense
 2. Energy & Natural Resources
 3. Health Care Services
 4. Transportation, Logistics & Advanced Manufacturing
 5. Value-Added Agriculture

N. KEDC does not promote tourism and film.

- O. KEDC meets with potential employers and provides them with assistance in site selection, permitting and incentive programs. They also maintain a relationship with established employers to provide services to assist them in their success and growth. To facilitate these objectives, KEDC participated in creating the following programs:
- *Advance Kern*: a job growth initiative; an incentive based recruitment program
 - *Kern Initiative for Talent and Entrepreneurship (KITE)*: a program designed to incorporate regional collaboration to develop the next generation of businesses and their related ecosystems

P. In 2018-2019, KEDC successfully completed 10 projects in the following sectors:

Sector	Projects	Jobs Created
Distribution	5	2,605
Professional Services	1	500
Transportation	2	50
Manufacturing	1	20
Industrial	1	15

Q. KEDC is actively pursuing nine projects with potential job creation of 4,600 jobs.

- R. In 2008, KEDC formed the Kern Economic Development Foundation (KEDF) as a 501(c)(3) non-profit organization, to educate and develop a local pipeline of talent especially in the Science, Technology, Engineering and Math (STEM) professions. KEDF has developed several programs and activities:
- Mentoring girls between 4th and 7th grade
 - Created mentoring programs at the *Health Careers Academy* and *Energy & Utilities Academy* at two local high schools
 - Presents the annual *Kern County STEMposium* where students showcase their inventive STEM projects, which was attended by 3,000 students in 2019
 - Created *Kern County Women in STEM Circle* which creates a forum for educating and networking and STEM career advancement

FINDINGS:

- F1. The KEDC staff is organized, professional and very efficient.
- F2. The KEDC website is well-managed and user friendly.
- F3. Kern Economic Development Corporation is member driven. In addition to being a funding source, membership is an important collaborative feature that provides critical oversight to KEDC management and its overall success.
- F4. Kern County Board of Supervisors and County Administrators are very supportive of KEDC providing oversight without micro-managing.
- F5. Regular attendance by a duly appointed member of the BOS at all Executive Committee meetings would better safeguard the public interest.
- F6. The practice of allowing designees to make motions, second motions or vote at Board or Executive Committee meetings, on behalf of a BOS member, is inconsistent with California Corporations Code section 7211(c).
- F7. The current contract between the County and KEDC, with a limit of \$175,000, has the potential to hinder performance based initiative. The collaboration between KEDC and Kern County would benefit from an increased limit to the agreement so the concept that, *Business Is Boundless*, is personified.
- F8. Most Kern County residents may not be aware of the collaboration between the County and KEDC, or its role in the economic growth of the County. Many of the clerical, blue-collar, professional, and technical employees, who will ultimately fill jobs, may not be informed that economic development and jobs are not created from thin air. KEDC continues to fulfill its role with little fanfare.

COMMENTS:

The Grand Jury would like to thank all who participated in interviews and who provided vital information for this report.

RECOMMENDATIONS:

- R1. The Board of Supervisors should reevaluate by June 30, 2020, the County agreement with KEDC and increase the funding limit to ensure that KEDC is appropriately compensated for creating a strong and diverse economy for Kern County. (Finding 7)
- R2. In addition to sponsoring events, KEDC should promote its name outside the business community to the general public. KEDC might consider public service announcements with the credit, "*Brought to you by KEDC,*" in sponsorships, announcements, and media sources. (Finding 8)
- R3. There should be at least one BOS member (not a staff designee) at each Executive Committee monthly meeting. (Finding 5)
- R4. Each BOS member of the Executive Committee (not a staff designee) should attend at least four of the ten monthly meetings each year. (Finding 5)
- R5. The practice of allowing BOS designees to take formal actions on behalf of the BOS member at KEDC Board or Executive Committee meetings (i.e., make and/or second motions or vote) should be discontinued immediately. (Finding 6)

NOTES:

- The Kern County Board of Supervisors and the Kern Economic Development Corporation should post a copy of this report where it will be available for public review
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- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: kerncounty.com/grandjury

RESPONSE REQUIRED WITHIN 90 DAYS:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301**

**CC: FOREPERSON
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**

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APPENDIX A:

**Kern Economic Development Corporation
Budget 2019-20**

	<u>2019-20</u> <u>Approved</u>
Ordinary Income/Expense	
Income	
501 · Public Members Revenue	225,000
502 · Private Members Revenue	415,000
503 · Other Income	3,200
504 · Interest Income	500
505 · In-Kind Services Revenue	30,000
506.3 · Energy Summit	140,000
506.5 · Annual Dinner	42,000
506.6 · Innovation Tours	
506.7 · Economic Summit	102,100
506.90 · State of the County Dinner	110,000
506.95 · Dinner and Dialogue	-
507 · Publication Ad Revenue	10,000
510 · Kern Economic Foundation (c)3	36,000
	<u>1,113,800</u>
Expense	
710 · Salaries & Benefits	666,753
715 · Staff Training and Education	6,000
720 · Equip & Service Purchases	20,000
730 · Emp Auto & Bus Exp	3,000
740 · Office Expense	19,000
765.01 · Energy Summit	38,858
765.02 · Annual Dinner	28,000
765.05 · Economic Summit	80,000
765.06 · State of the County	58,000
765.07 · Dinner and Dialogue	-
770 · Marketing Expenses	66,000
775 · Publications	13,000
780 · Subs and Memberships	6,800
790 · Professional Services	31,000
800 · Depreciation	6,065
875 · In-Kind Expense	30,000
880 · Uncollectible Revenue	36,000
	<u>1,108,476</u>
	<u><u>5,324</u></u>

Kern County Board of Supervisors
Response to Grand Jury Final Report
Kern Economic Development Corporation (KEDC)

Response to Findings:

The Board of Supervisors notes that the Grand Jury's findings are substantially correct with minor clarifications added to Findings F5, F6, and F7 in the Response to Recommendations R3, R5, and R1, respectively.

Response to Recommendation:

R1: The Grand Jury recommends the Board of Supervisors should reevaluate by June 30, 2020, the County agreement with KEDC and increase the funding limit to ensure that KEDC is appropriately compensated for creating a strong and diverse economy for Kern County.

We appreciate the Grand Jury's recommendation to reevaluate the contract with KEDC. The County's Economic Development Program encompasses many phases and strategies. Currently, KEDC is receiving immense assistance in their reported efforts through the work of six County employees in addition to assistance from private business developers such as Tejon and Wonderful. The County Administrative Office annually reevaluates and updates their contract based on KEDC performance. Although KEDC has not communicated any insufficient compensation to achieve a strong and diverse economy, we do welcome the conversation should an issue arise in the future.

R3: The Grand Jury recommends there should be at least one Board of Supervisor member (not a staff designee) at each Executive Committee monthly meeting.

We understand the importance of a Board of Supervisor member's participation and involvements with KEDC. To that end, a Board member will strive to attend all meetings and in the rare event, the Board member is unavailable, the Board member will send a designee.

R4: The Grand Jury recommends each Board of Supervisor member of the Executive Committee (not a staff designee) should attend at least four of the ten monthly meetings each year.

We understand the importance of a Board of Supervisor member's participation and involvements with KEDC. To that end, a Board member will strive to attend all meetings and in the rare event, the Board member is unavailable, the Board member will send a designee.

R5: The Grand Jury recommends the practice of allowing Board of Supervisor's designees to take formal actions on behalf of the Board of Supervisor member at KEDC Board or Executive Committee meetings (i.e., make and/or second motions or vote) should be discontinued immediately.

The recommendation will be followed.

COMPL_GJ KEDC B