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MENDOCINO COUNTY COUNSEL

The County Counsel is charged by State law with the responsibility to defend or prosecute all civil actions and proceedings which concern the County or any of its officers. The County Counsel also provides legal advice and representation to the following: all County officers and departments, boards and commissions, special districts governed by the Board of Supervisors (BOS), the Mendocino County Grand Jury, and the Superior Courts located within the County. The County Counsel also acts as legal advisor on a fee for service basis to special districts, the Mendocino County Community Development Commission, the Mendocino Transit Authority and other Joint Powers Agencies.

Reason for Investigation

The Grand Jury received a citizen's complaint.

Method of Investigation

The Grand Jury interviewed: The complainant, three County Supervisors, County Counsel, Assistant District Attorney, Deputy County Counsel, Chief Deputy County Counsel, and representatives of County Departments served by the County Counsel, such as General Services, Social Services, and the Sheriff's Department.

Documents reviewed: Mendocino County Code Sections (Titles II & III); California Government Code Section 26520-26530 and Section 27640-27648; published opinions to the Grand Jury from the County Counsel for the past seven years.

Relevant Law

Mendocino County Code, Titles II & III; California Government Code, Section 26520-26530 and Section 27640-27648.

Findings

1. A County Counsel may be appointed by the BOS in any California County. Mendocino County has chosen to appoint a County Counsel.

Response (Board of Supervisors): The Board agrees with this finding.

2. The County Counsel serves four-year terms. He may be removed for several reasons having to do with job performance and is subject to annual review by the BOS.

Response (Board of Supervisors): The Board agrees with this finding.

3. The County Counsel was created in Mendocino County by the BOS in 1977, when it was split off from the District Attorney. County Counsel shall discharge all the duties vested by law in the District Attorney, other than those of a Public Prosecutor.

Response (Board of Supervisors): The Board agrees with this finding.

4. The County Counsel is one of the advisors to the Grand Jury.

Response (Board of Supervisors): The Board agrees with this finding.

5. The County Counsel represents and advises the County Special Districts when:

- a. A Special District Board requests it.
- b. A Special District Board is composed in whole or in part of members of the BOS, and
- c. No specific provision is made to obtain legal services.

Response (Board of Supervisors): The Board agrees with this finding.

6. According to California Government Code Section 26526, the County Counsel is the legal advisor to the BOS, shall attend its meetings, when required, and shall oppose all claims against the County that the County Counsel deems unjust and illegal.

Response (Board of Supervisors): The Board agrees with this finding.

7. The Grand Jury heard testimony that there exists a state of animosity between the County Counsel, the District Attorney, some County Supervisors, and past Grand Juries.

Response (Board of Supervisors): The Board believes that due to the nature of County Counsel's responsibilities that, at times, determinations and/or investigations might be perceived as animosity between the various offices and individuals. However, without further detailed information regarding specific incidents, the Board is unable to respond further to this finding.

8. Outside counsel is hired by the County Counsel when a conflict of interest arises, which, contrary to allegations, testimony showed occurred less than once a year.

Response (Board of Supervisors): The Board agrees with this finding.

9. The County Counsel reviews contracts for legal aspects, not content, to determine if the contract is legally defensible.

Response (Board of Supervisors): The Board agrees with this finding.

10. Staff attorneys work with minimal supervision and are overseen by the Chief Deputy County Counsel. Staff meetings are seldom held.

Response (Board of Supervisors): The Board agrees with this finding.

11. On occasion, County Counsel has been unable to advise the Grand Jury and other County departments due to its representation of County departments, which created, in the view of County Counsel, a conflict of interest.

Response (Board of Supervisors): The Board agrees with this finding.

12. A review of the past seven years of County Counsel opinions did not support the allegation that 50% of County Counsel opinions have been reversed. The Grand Jury investigations revealed such reversals as minimal.

Response (Board of Supervisors): The Board agrees with this finding.

Recommendation

The Grand Jury recognizes that conflict of interest situations will arise, due to the nature of the County Counsel's job, which requires that the County Counsel represent entities which may occasionally oppose each other. While the Grand Jury agrees that it may be correct for the County Counsel to arrange for outside counsel, the Grand Jury suggests that the County Counsel create a mechanism, within the department, which would insulate individual attorneys, from conflict of interest situations, avoiding the need to hire outside counsel. This simple mechanism, a common practice in the legal profession, was put forward by the County Counsel.

Response (County Counsel): We believe it is Finding #11 (above) which is offered in support of the Grand Jury's recommendation.

It should be noted that on only four prior occasions, during the past 16 years, has the Board of Supervisors retained outside counsel to defend the interests of the County or a County employee due to either a professional conflict or because one of the County defendants demanded legal representation of their choosing, a demand which was agreed to by the Board of Supervisors at that time.

In the early 1980's a deputy district attorney sued then District Attorney Vivian Racaukas for wrongful termination. Although this office was prepared to defend the action on behalf of Ms. Racaukas and the County, Ms. Racaukas demanded the County obtain outside legal representation for herself.

This situation occurred again in approximately 1994, when a defendant deputy sheriff obtained independent legal counsel, and the County Counsel's Office represented the Sheriff and the County.

In 1993-1994 the County Counsel's Office recused itself when the Superior Court sued the Board of Supervisors over an issue involving the furloughing of County employees assigned to the courts. Prior to the initiation of the suit by the Court, County Counsel advised both the County and the Courts as to the legal issues involved, which were ultimately litigated. Rule 3-310(c)(2) of the Rules of Professional Conduct states an attorney shall not, without the informed written consent of each client, accept or continue representation of more than one client in a matter in which the interests of the client actually conflict. Given the nature of the actual conflict and the statewide significance of this case, this office recommended the retention of outside counsel by the Board of Supervisors. The cost of outside counsel for the County was paid for in major part by other interested counties through the County Counsel's Association of California.

The fourth and most recent case in which this office recused itself from a case was about two years ago when a former deputy district attorney filed suit against the County, then District Attorney Susan Massini and a deputy county counsel in this office for wrongful termination. The State Bar Rules of Professional Conduct forbids the acceptance or continued representation of a client where the attorney is a witness in the same matter without the written informed consent of the client. In this particular case, I recommended the Board of Supervisors obtain outside counsel to represent all the County defendants.

On occasion County Counsel has been unable to advise the Grand Jury due to its representation of County departments which would, in County Counsel's opinion, constitute a conflict. The Grand Jury's recommendation recognizes conflict situations will arise due to the nature of the duties placed upon County Counsel by state law. In

County Counsel's opinion, with respect to legal representation for a grand jury, the state legislature has recognized these conflicts will arise and has provided the following legislative solutions:

1. Penal Code Section 934 allows the grand jury to seek, at all times the advice of the court or the judge thereof, the district attorney, the county counsel or the attorney general. The attorney general may grant or deny a request for advice from the grand jury. If the attorney general grants a request for advice from the grand jury, the attorney general must fulfill that request within existing financial and staffing resources.
2. Penal Code Section 936 authorizes a grand jury to request the attorney general to employ special counsel and special investigators. These services are a charge against the county.
3. Penal Code Section 936.5 authorizes the presiding judge of the Superior Court, when requested by the grand jury, to employ special counsel and special investigators, subject to the following procedure:
 - a) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel and the attorney general from performing such investigation.
 - b) Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation.
 - c) The finding of the presiding judge may be appealed by the district attorney, the county counsel or the attorney general.
 - d) The authority to appoint is contingent upon the certification by the auditor—comptroller of the county that the grand jury has funds appropriated to it sufficient to compensate the special counsel. In the absence of a certification, the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the County has the obligation to appropriate the necessary funds.

The Grand Jury commented upon the creation of an ethical wall or screen within the County Counsel's office to avoid potential conflicts in the future and to allow County Counsel to continue to provide representation to County clients who are in conflict with one another. The creation of an ethical wall or screen between attorneys in a county counsel's office depends upon the nature of the representation undertaken, as well as sufficient professional and support staff and office space to be able to institute a complete screening between

attorneys and staff. Another problem with a screening device, particularly in significant litigation, is what role would the County Counsel play as the appointing authority and supervisor of County Counsel staff and as advisor to the Board of Supervisors? Can and should the County Counsel abdicate his duties as defined by state law to permit his deputies to operate with complete autonomy?

A screening device is not a “one size fits all” proposition. County Counsel is currently reviewing the benefits of creating a screen with respect to certain recurring county counsel functions. However, for cases which pose a significant risk of liability we believe the prudent course of action is to retain outside independent counsel to represent one of the adversarial parties.

As can be seen from the above examples, when the County did retain outside counsel, it was either mandated by law or it was a conscious decision of the Board of Supervisors, based upon a recommendation from this office. The instances requiring outside legal representation are so few that we are surprised this is even the subject of Grand Jury comment. We particularly find this puzzling because many county counsel offices do not undertake to defend 1983 actions, wrongful termination actions and tort actions in-house, opting instead for outside legal counsel. Keeping these cases in-house has been extremely cost-effective for the County.

Response (Board of Supervisors): The Board agrees with the response of the County Counsel and concurs that state legislature has provided sufficient alternative mechanisms with respect to legal representation for the Grand Jury as cited in Penal Code Sections 934, 936 and 936.5. The Board also agrees that County Counsel should continue its review of the benefits of creating an ethical wall or screen with respect to certain recurring County Counsel functions.

Time Frame for Implementation: Review of the benefits of creating an ethical wall or screen with respect to certain recurring County Counsel functions is an on-going process.

Comments

Representatives of the County Departments that were interviewed, which are clients of the County Counsel, testified that they were pleased with the service provided to them by the County Counsel.

The Grand Jury agrees that it is proper for the County Counsel to confine its review of contracts to legal content. The Grand Jury agrees that it is the responsibility of each department to acquire and provide the necessary expertise to enable the County to obtain the best goods and services. To accomplish this, all County Departments should pool their resources. For example, all County Departments

now rely on Information Services for all computer matters including service and procurement. The County Administrative Officer should create a roster of County experts and knowledgeable people in all areas of specialization to facilitate this process.

The citizens of Mendocino County deserve, and have every reason to expect, that all Government officials conduct themselves in a mature, professional manner, without political, territorial battles that seem to be the norm.

Response Required

Mendocino County Board of Supervisors

Response Requested

Mendocino County Counsel
Mendocino County Administrative Officer

MENDOCINO COUNTY DEPARTMENT OF SOCIAL SERVICES

The Mendocino County Department of Social Services (MCDSS) is organized into four program divisions: Employment and Family Assistance Services, Family and Children's Services, Adult Services, and Veterans Services. The Employment and Family Assistance Division is responsible for administration of CalWORKS (CalWORKS is mandated and primarily funded by the Federal and State governments to provide financial support to children and their families who are unable to support themselves), Medi-Cal, the County Medical Services Program (CMSP), Food Stamps, and Employment Services.

The Family Assistance Representatives (FARs) in Fort Bragg are assigned to two different units: CalWORKS with nine staff positions including one supervisor; Medi-Cal/ Food Stamps/CMSP with eight staff positions including one supervisor. The Fort Bragg office, which is the focus of this investigation, consists of a Program Manager who supervises those two units plus one other nine staff Benefit Issuance unit.

Reason for Investigation

The Grand Jury received a citizen's complaint.

Method of Investigation

The Grand Jury interviewed the complainant, current employees, former employees, one Supervisor, one Program Manager, MCDSS Director and one union representative.

Documents reviewed: the December, 1998 Management Audit (Audit), MCDSS response to the Audit, Job Classification List, 2000 Slavin Report, miscellaneous documents, MCDSS employee turnover results for the years 1995/1996 to 1999/2000, correspondence, and copies of interoffice memoranda and the County Training Institute Class Schedule.

Finding

- 1.** The Audit consisted of the results of a survey of all available employees and found serious problems in all of the FARs units. The employee survey results are as follows:
 - a.** Turnover rate for FARs was 59% in 1997/1998 fiscal year, which was almost twice that of the ten other comparable counties surveyed. This figure also included any FARs transferred to another division in the MCDSS. In addition, 43.4% of FARs were planning to leave. Top five

reasons cited for leaving were: low pay, inadequate management, favoritism, burnout, and lack of recognition for achievement.

- b. The MCDSS was out of compliance with state regulations regarding time required to process applications for CalWORKS and Food Stamps.
- c. 30% thought management had done a good job implementing changes in the past year.
- d. 30% thought their opinions were valued and respected by management, but only 11.7% thought their opinions were valued and would contribute to fulfilling the MCDSS goals and purposes.
- e. 33% thought management communicated the goals of MCDSS clearly and consistently, while only 15% thought communication between management and staff was good.
- f. 20% thought MCDSS was managed efficiently.
- g. 13.6% thought good work was consistently recognized and rewarded.
- h. 42.4% thought supervisors were fair in dealing with employees (testimony showed this has improved with personnel changes).
- i. 13.3% agreed that coordination between units and divisions in MCDSS was good.
- j. 90% were not satisfied with their salary. MCDSS salaries range between 90-93 % of the other counties surveyed (testimony revealed the Board of Supervisors {BOS} are considering the Slavin Report proposals to improve salaries).
- k. 18.3% thought MCDSS Human Resources Division was helpful in resolving personnel matters.
- l. 47.5% thought their training was sufficient.

A review of documentation and testimony from several former and current employees from the Fort Bragg FARs units, including management personnel resulted in the findings listed below:

Response (Social Services): Agree, with clarification. This first finding is a selective listing of information from a management audit conducted in late 1998.

Response (Board of Supervisors): The Board and the Department agree with clarification. This finding represents a selective listing of information from a management audit conducted in late 1998. Since that time, many of the recommendations contained in that report have been implemented.

Findings

2. Testimony supports most of the Audit findings. The MCDSS has developed a Multi-Faceted Action Plan, which has been approved by the BOS, to address the issues raised by the Audit.

Response (Social Services): The Board agrees that a Multi-Faceted Action Plan has been approved and implemented, but is unable to confirm or deny the testimony referred to by the Grand Jury.

Response (Board of Supervisors): The Board agrees that a Multi-Faceted Action Plan has been approved and implemented, but is unable to confirm or deny the testimony referred to by the Grand Jury.

3. The MCDSS management did not accept the finding by the Audit that favoritism played a part in promotions of employees. Staff reported occasions of favoritism practiced in promotions toward certain staff members, plus subtle favoritism or discrimination against men. MCDSS denies that favoritism is practiced in the MCDSS, stating this is only a "... perception of favoritism held by some people."

Response (Social Services): Do not agree. The Audit did not make a finding that favoritism played a part in promotions of employees. The Audit stated: "Although recruitment for supervisory positions in the Department follows general Merit Service Systems guidelines, the perception exists among some staff that employees are promoted to supervisory positions based upon favoritism and loyalty to management rather than merit." The Department's response to the Audit was: "It is accepted that the perception of favoritism is held by some people; the reality is that promotions follow personnel guidelines and are based on a determination of who appears to be able to best perform the job."

The Department follows standard government personnel practices in its adherence to Civil Service and Merit System regulations in the recruitment, testing, and selection of employees. There is no discrimination against men. The individual filing the complaint with the Grand Jury also filed an EEOC complaint regarding not getting a promotion. The Department of Fair Employment and Housing conducted an investigation and found no evidence of discrimination by the Department. This outcome was communicated to the Grand Jury prior to the completion of their report.