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

ITEM
3.8
(ID # 7911)

MEETING DATE:
Tuesday, September 18, 2018

FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Response to the 2017-2018 Grand Jury Report Regarding Human Resources Department - Grand Jury Secrecy, All Districts.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve, with or without modification, the attached response to the 2017-2018 Grand Jury report regarding the Riverside County Human Resources Department - Grand Jury Secrecy;
2. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, the Presiding Judge and to the County Clerk-Recorder (for mandatory filing with the State).

ACTION: Policy

Lisa D Brandl 9/11/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes:	Jeffries, Washington, Perez and Ashley
Nays:	None
Absent:	Tavaglione
Date:	September 18, 2018
xc:	EO, Grand Jury, Presiding Judge, HR, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: _____ Deputy

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	N/A	N/A	N/A	N/A
NET COUNTY COST	N/A	N/A	N/A	N/A
SOURCE OF FUNDS: N/A			Budget Adjustment: No	
			For Fiscal Year: 2018/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

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

Lisa D Brandl 9/11/2018

Brenda Diederichs, Assistant CEO / Human Resources Director 9/11/2018

Gregory P. Priamos, Director County Counsel 9/11/2018

COUNTY OF RIVERSIDE
EXECUTIVE OFFICE

GEORGE A. JOHNSON
COUNTY EXECUTIVE OFFICER

LISA BRANDL
CHIEF OPERATING OFFICER

DON KENT
ASSISTANT COUNTY EXECUTIVE OFFICER
COUNTY FINANCE OFFICER

August 17, 2018

Becky Dugan, Presiding Judge
Superior Court of California, County of Riverside
4050 Main Street
Riverside, CA 92501

Sara Lipchak, Foreperson
Riverside County Grand Jury
P.O. Box 829
Riverside, CA 92502

Riverside County Clerk-Recorder
2720 Gateway Drive
4050 Main Street
Riverside, CA 92502

RE: County of Riverside's Response to "2017-2018 Grand Jury Report: Human Resources Department – Grand Jury Secrecy" (Penal Code §933.05)

Dear Honorable Judge Dugan, Honorable Members of the Grand Jury, and Grand Jury Foreperson Ms. Lipchak:

Thank you for the above Grand Jury Report, Findings and Recommendations, and the opportunity to respond.

The County carefully reviewed and considered this Grand Jury Report, Findings and Recommendations, as well as the substantial information underlying it.

In responding to the eight (8) findings and (8) recommendations in this Grand Jury Report, it is necessary to set forth pertinent facts giving rise to the matter, which are not included in the Grand Jury Report. The underlying facts provide necessary context to understand and appreciate the Grand Jury's Report, Findings and Recommendations, as well as the County's responses.

Facts Giving Rise to this Matter – Complaint Submitted by a Former Grand Juror Alleging Misconduct by Another Former Grand Juror as well as a County Employee, Initiates a Confidential Personnel Investigation

This matter initially arose in June 2017 when the County Human Resources (HR) Department received a complaint from a former member of this Grand Jury. "Complainant/Grand Jury Member No. 1" (GJ1) alleged that while completing the 2016/2017 Grand Jury term in June 2017, GJ1 was informed by a County Employee (Employee) of multiple pieces of information. First, that a second member of this Grand Jury (GJ2) had allegedly threatened to kill GJ1 two years earlier, and that Employee had spent hours talking GJ2 down. Second, Employee reported the threat to authorities, but was told to handle it themselves. Third, that another Grand Juror (GJ3) feared GJ2, as GJ2 had also allegedly threatened to shoot everyone on a Grand Jury Committee.

The HR Department is comprised of Confidential Employees, whose numerous divisions and duties include investigating allegations of workplace misconduct in servicing a County of 40 departments and a workforce of approximately 20,000 employees. After receipt of the complaint, the HR Department retained an independent retired Police Captain and licensed Private Investigator (PI) to conduct a confidential personnel investigation into the allegations.

The retained PI was referred and recommended to the County by one of its trusted labor & employment law firms. In additional to the trusted referral, the PI's curriculum vitae (CV) demonstrated that PI had retired in 2013 with approximately 30 years of distinguished police service, and that PI's rates were well within customary reasonable rates for the industry at $100 per hour. After retiring from law enforcement, the PI also obtained substantial and highly recommended experience conducting public sector employment investigations.

During the course of the ensuing personnel investigation and interviews, evidence was uncovered, that among other things indicated that:

1. Other members of this Grand Jury had been informed by Employee of the alleged threats by GJ2 towards other Grand Jury members; but that,

2. Employee had given conflicting reports of the alleged threats, including informing Employee's supervisor in writing that no threat had been made in the incident; and

3. GJ3 denied ever telling Employee that they felt threatened by GJ2; and

4. Three other members of this Grand Jury submitted written allegations of inappropriate, derogatory, internally divisive and unprofessional conduct by Employee, while a fourth Grand Jury member (GJ4) sent a letter to the Presiding Judge alleging various concerns about this Grand Jury.

Employee Terminated for Just Cause

After a thorough investigation into the allegations and an extensive review and deliberation of the facts and evidence gathered during the investigation via multiple levels of review within the HR Department, the decision was made to terminate the Employee due to

egregious misconduct that included dishonesty, inefficiency/negligence in performance of duties, insubordination, discourteous treatment of the public or other employees, and conduct that adversely affected Employee's job performance and the operations of Employee's Department. Employee did not exercise the right to an administrative appeal of the termination. In addition, to the County's knowledge, Employee to date has not filed any legal challenge to the termination nor the personnel investigation that was conducted.

Related Issues Giving Rise to This Grand Jury Investigation

To the County's knowledge (as it is not privy to the confidential Grand Jury proceedings and deliberations), the following allegations gave rise to this Grand Jury Investigation and Report, Findings and Recommendations:

1. Confidential Grand Jury investigation information was disclosed during an interview in the above referenced personnel investigation. Specifically, disclosure to the PI of a list of Grand Jurors, along with their addresses and phone numbers by a former Grand Jury member; and

2. Human Resources had been instructed by the Office of the District Attorney to have a member of the District Attorney's Office present for all personnel investigation interviews, to ensure that no confidential Grand Jury information was disclosed in the personnel investigation. (The Office of the District Attorney is now the liaison between the County and the Grand Jury).

Actual or Potential Conflicts of Interest in This Grand Jury Investigation

The County respectfully notes its concerns that this Grand Jury proceeded with this investigation without addressing and/or distinguishing potential conflicts of interest that may be present. The Grand Jury's Report, Findings and Recommendations make no reference to its own professional, and possible personal relationships, with the complainant, witnesses and terminated Employee, nor the fact that the subjects of this Grand Jury Investigation and Report (the PI and Human Resources Department) had just investigated allegations by former Grand Jurors that could be viewed as critical of the Grand Jury's workplace. As this Grand Jury is aware, actual or potential conflicts by the investigator or investigating agency can cast doubt and skepticism upon investigative findings.

RIVERSIDE COUNTY HUMAN RESOURCES DEPARTMENT
Response to Specific Findings and Recommendations

FINDINGS (1-7):

Violation of Grand Jury Secrecy

1. On August 3, 2017, in response to a request from the Riverside County HR Director, the Grand Jury Foreperson, Grand Jury Foreperson *pro tem*, and the Assistant District Attorney (ADA) met with the HR Director and a Deputy Director in Grand Jury chambers. The HR Director stated that a previous Grand Juror, and an anonymous person, had filed a complaint

containing certain allegations of misconduct. The HR Director proceeded to inform those present that he was planning to investigate a County employee (EMPLOYEE) for misconduct.

Since the complainant was a previous Grand Juror, the ADA informed all those present that, as the Grand Jury's legal advisor, if any Grand Jurors were to be interviewed, the ADA must be present. This was to ensure that no intimidating actions or undue pressure was applied to violate Grand Jury secrecy, or that inappropriate information was disclosed.

HR proceeded with their investigation by hiring a Private Investigator (PI) on September 12, 2017. He was informed, via email, that he was to investigate the sole allegation of a previous Grand Juror. However, within days, at the request of the PI, HR explicitly agreed to expand the investigation beyond its original scope. With the help of HR, the unfettered PI (now a contracted agent of the County) interviewed at least eight prior or current Grand Jurors.

Even though the ADA had directed HR that he was to be present during all interviews with any prior or current Grand Jurors, the PI proceeded to interview at least eight prior or current Grand Jurors without the presence of the ADA. During these interviews, the PI questioned Grand Jurors about what was said, who it was said by, what matters were pending before the Grand Jury, and how they voted relative to the matters pending. This is in direct violation of PC §924.

Response:

Respondent disagrees wholly with the finding.

During meetings held regarding the investigation including the one referenced above, no one from HR recalls a verbal directive being given that the Assistant District Attorney (ADA) must be present when Grand Jurors are interviewed. There are also no responsive writings directing HR to include the ADA in confidential personnel investigation interviews. Had there been such a directive, HR would have considered the request and responded accordingly.

That said, HR conducts and oversees confidential personnel investigations as its customary role. It would arguably be a violation of the privacy rights of the complainant and witnesses, as well as the accused, to have an employee from another County Department present during their interviews. It would also arguably be more intimidating and possibly create a chilling effect on witnesses in terms of the information they feel comfortable providing, if an ADA is present in a non-criminal and confidential personnel investigative interview.

With respect to the hiring of the PI, it is true that on or about September 12, 2018, the County confirmed via email the hiring of a PI to investigate the complaint of a former Grand Juror

against a current County employee. It is not accurate however that the County stated to the PI in the email that the PI was to investigate this "sole allegation". Instead, the PI was forwarded the complaint in question, the County's Workplace Violence Policy, and the Employee's job description, and it was conveyed to the PI to begin reviewing these items and to plan on discussing next steps in the process with the HR Division Manager, that coming Friday afternoon.

Throughout the investigation, there were numerous discussions between the PI and HR Director, HR Division Manager, as well as a Principal HR Analyst, where the PI would provide progress updates, which would be followed up by direction from the County on next steps based on those discussions and the evidence the PI had gathered thus far. It is simply not accurate that the PI was operating "unfettered". It is true however, that as the PI began interviewing the complainant and other witnesses, further allegations were made against the Employee and additional written complaints about the Employee were submitted or became known, which were incorporated into the PI's investigation. It is not at all unusual during an administrative investigation to expand the scope of the investigation based on further complaints or allegations of misconduct that come to light against an accused party during the course of the investigation.

With respect to the status of the Grand Jurors interviewed during the investigation, it is the County's understanding that all Grand Jurors who were interviewed by the PI were former Grand Jurors at the time of their interviews. The County also disputes that the PI sought to question Grand Jurors about matters pending before the Grand Jury and how they voted relative to the matters pending. However, the County does agree that the PI questioned former Grand Jurors about what was said and who it was said by, but only with respect to the allegations of misconduct against the Employee, which is entirely appropriate as well as essential when investigating allegations of misconduct against a County employee in order to determine whether or not the alleged misconduct occurred.

Hiring a Private Investigator

2. HR Divisional Manager contacted an outside attorney, who occasionally works for the County, for a recommendation to hire a PI. The reason stated for hiring an outside PI was due to the perceived sensitivity of the investigation. The HR Divisional Manager was not confident the in-house investigators could conclude the investigation in less than 120 days. The HR Divisional Manager also received instructions from the HR Director to complete the investigation within 30 days.

   The PI was hired with the approval of the HR Director with only a phone call and an email confirmation. There was no formal agreement or confirmation letter to define the scope of the investigation, the amount of time, maximum billing amount, or other covenants between the parties. With no formal contract between the County, and without proper hiring documentation and no specific direction, the PI apparently had free reign and complete authority to act with no oversight.

   When the Grand Jury interviewed the PI, he stated he did not feel he needed to provide a confirmation letter defining the scope or his understanding of

the County's expectations. The PI stated he could base his scope of investigation on his own interpretation of the allegations.

Response:

Respondent disagrees partially with the finding.

The HR Division Manager did not contact an outside attorney who occasionally works for the County, but rather an outside attorney who has a longstanding working relationship with the County and who provides legal services to the County on a regular and ongoing basis. The main reasons the attorney's recommendation was sought by the HR Division Manager was the sensitivity of the investigation and the HR Director's request that the investigation be completed within 30 days, a timeframe the HR Division Manager thought was more achievable if the investigation was assigned externally.

The PI was hired in large part based on this trusted attorney's recommendation and personal experience having hired the PI in the past and him being able to vouch for the PI's quality of work. The County also received a CV from the PI that indicated approximately 30 years of prior law enforcement experience that included conducting and overseeing investigations up through the rank of Captain, and 3 years of experience as a PI post law enforcement career. While it is true that there was no formal written agreement between the parties that initiated the investigation, multiple conversations took place between the PI, and/or HR Director, HR Division Manager, and Principal HR Analyst before, during and throughout the investigation via telephone and in-person meetings, as well as through numerous emails, that related to the scope of the investigation, progress inquiries and updates, approvals sought and received by the PI, the County's expectations, billing for services rendered, etc. It is patently false that the PI had free reign and complete authority to act with no oversight by the County during the investigation. The County oversaw the investigation throughout its duration and maintained its authority to direct the PI's actions as appropriate.

Comprehensive Investigation

3. The PI conducted his investigation by interviewing the Grand Jurors who had lodged complaints, or Grand Jurors referred by those interviewed. The Grand Jurors, in their statements to the PI, expressed animus against the EMPLOYEE. The PI was made aware of other Grand Jurors who may have provided a different interpretation, however, the PI chose not to seek out potential exculpatory evidence.

   An email dated December 19, 2017, from the PI to the HR Principal Analyst stated that a particular witness has animosity toward the EMPLOYEE making the motivation of this witness questionable. The PI stated that he chose to believe this witness any way.

   In an email dated October 26, 2017, from the PI to the HR Division Manager and Employee and Labor Relations Division, the PI states in part:

   > *...I believe it's important to understand that only five Grand Jurors have been interviewed. It sounds like there are a few Grand Jurors who have served several terms over the years, and who may be*

advocating for EMPLOYEE *with a different take on* EMPLOYEE *behavior. [sic]*

An email from the HR Principal Analyst dated December 20, 2017 addressed to the PI, states in part:

> *When you send me a revised draft of your report, could you send it in Word please? This will make it easier for ... and I... to communicate with each*
>
> *other re any further recommended edits or comments any of us may have re the report... We would not finalize any tracked changes without sharing them with you first, as we, and I'm sure you, would not want a situation down the road where you are testifying about your investigation, and someone shows you something in the report that you don't recognize or agree with. Thatwouldn't be good for anyone... [sic]*

The PI's response in part:

> *...But again, given the assortment of other inappropriate comments I don't know that it was necessary to include this one as well, (but I'm happy to do so if you'd like)...*

Response:

Respondent disagrees wholly with the finding.

The PI interviewed 11 witnesses as well as the Employee (accused party) for a total of 12 people during the course of the investigation. With respect to the email cited above about the five Grand Jurors interviewed and other Grand Jurors who were not, it is always possible during an administrative investigation to continue seeking out witnesses who may have positive things to say about an accused party. However, all of the allegations against the Employee that led to findings of misconduct were corroborated through multiple witness statements and/or the very statements/explanations the Employee provided during administrative interviews with the PI, a number of which statements/explanations proved to be dishonest or implausible based on other credible evidence obtained during the investigation. In addition, it's conceivable that a witness could possess a certain amount of animosity toward an accused party (especially when the accused party engaged in behavior that adversely impacted that witness), but that does not mean that the witness is not credible or believable if there are other witnesses that corroborate their statements or there is other credible evidence that substantiates that it is more likely than not that the witness(es) who were interviewed are telling the truth.

With respect to the emails cited above between the Principal HR Analyst and the PI regarding the Principal requesting to receive a draft of the PI's report in Word, the reason for this request was because the PI's report would need to go through multiple levels of review at the County (as is the case when an investigation is conducted by an internal investigator), and having the report in Word allows for each person who reviews the report to provide any feedback they may have directly into the document via tracked changes mode to make communications about the document more efficient. Typical feedback

included in an investigative report includes suggested edits related to grammar, spelling and punctuation, questions requesting clarification when something is not clear, observations that the preponderance of the evidence gathered does not seem to support a finding that was included, or the opposite, the preponderance of the evidence gathered seems to support a finding that the investigator did not include, etc.

The feedback at each level of review is ultimately shared with the investigator, and assuming the investigator agrees with the feedback after it is shared, the feedback will be incorporated into the final draft of the document. If the investigator does not agree, the feedback will not be incorporated as the document is ultimately the investigator's work product and the County would not want to put itself nor the investigator in a position where the investigator has to testify about something in their report that someone else has changed, and the investigator does not recognize the change nor agree with it. This is what the Principal HR Analyst was trying to communicate to the PI in the email cited above to ensure that there is concurrence regarding any potential edits to be made to the report. With respect to the partial reply to that email by the PI that is cited, that is an example of an additional finding (inappropriate comment) that seemed supported by the evidence gathered during the investigation, which the Principal HR Analyst was pointing out to the PI after reviewing the report. Beyond that, there were few substantive changes recommended by the County during a multi-level review process, as the PI had done a good job with fact finding, analysis and conclusions, and the report was well-written.

In addition to the Principal HR Analyst who reviewed the PI's report, a Senior HR Analyst on the HR Services Team that supports the County Department that the Employee worked in, was assigned to review the PI's report and all of its attachments, and make an initial recommendation to the Principal HR Analyst and the HR Division Manager whether the findings appeared to be substantiated based on the preponderance of the evidence gathered during the investigation, and what level of discipline (if any) should be recommended to the Employee's Department.

Failure to Properly Protect Employee Rights Under Investigation

4. In the letter from the Deputy County Executive Office to EMPLOYEE informing EMPLOYEE about the ongoing investigation, EMPLOYEE was instructed to cooperate with the investigator. This letter states in part:

> *...In order to preserve the confidentiality of the investigation, you are not to discuss the investigation with anyone other than your representative, legal counsel, or the Private investigator. If you are unsure whether a comment or discussion would be a violation of this directive, you must first contact Mr. ... for guidance... [sic]*

Response:

Respondent disagrees wholly with the finding.

It is unclear from what is stated above, what is being asserted that the County failed to do in terms of properly protecting the Employee's rights while under investigation. In accordance with standard County practice, the Employee was issued an Administrative Investigation notice (Directive) by a manager in Employee's chain of command before Employee was interviewed by the PI. Employee was issued the

notice on October 16, 2017, and was subsequently interviewed by the PI on November 1, 2017 and December 4, 2017. As evidenced by the language quoted above from the notice Employee received, the Employee was told with whom Employee could discuss the investigation in order to preserve its confidentiality. Employee was also told if unsure whether a comment or discussion would be a violation of the directive who the Employee should contact for guidance.

The notice also told the Employee in other sections not quoted above, the following:

- The purpose of the investigation is fact-finding
- Employee is directed to answer the questions of the PI accurately, completely, and truthfully
- Employee is entitled to representation at their interview
- A signed acknowledgement where the Employee attested to the understanding of the directives contained in the notice and that Employee is required to comply with them, and that failure to do so may result in disciplinary action up to and including termination

It should be noted that the Employee proceeded to violate the directive of answering all questions during the interview truthfully, by being dishonest in a number of responses made to the PI's questions. The Employee also chose to attend both administrative interviews without representation despite being informed of their right to be represented.

HR Policy Requires Progressive Discipline

5. HR policy (Disciplinary Process Manual) stipulates that progressive disciplinary steps (from least to most severe), should be followed and implemented in relation to the alleged offenses being substantiated and supported. When there is a continued pattern of the employee failing to comply with a policy or a directive, then a more serious penalty may need to be imposed. This progressive disciplinary history must be clearly documented by the employee's supervisor. The disciplinary penalty imposed should be appropriate in relation to the offense committed – starting with the least severe.

   The evidence developed by the PI did not confirm the initial allegation. The underlying incident, as discovered by the PI, had been handled appropriately. The PI then proceeded to search for other allegations. These complaints made, and corroborated, by the shared testimony of a few disgruntled Grand Jurors, were then used to pile on the allegations against EMPLOYEE, in order to establish the case to terminate EMPLOYEE without progressing through the normal disciplinary steps.

Response:

Respondent disagrees wholly with the finding.

The County does maintain, and has for many years, a progressive disciplinary process that governs permanent, non At-Will County employees who have gained property rights to their jobs by passing their initial probation. Progressive discipline is typically required prior to proposing termination of a permanent County employee, except when the misconduct engaged in is highly egregious. In addition to inefficiency or negligence in performance of duties and discourteous treatment of the public or other employees, the Employee in this case engaged in multiple acts of dishonesty as well as insubordination,

both of which are considered highly egregious employment offenses that adversely affected the Employee's job performance and operations of the Employee's Department, which justified termination of their employment.

With respect to the initial allegation that initiated the investigation (i.e., the complaint against the Employee by former GJ1 concerning how Employee handled the alleged threat made against that former Grand Juror by GJ2), while it was not substantiated that the threat was made, it was substantiated that the Employee was dishonest regarding what Employee told GJ1, and other Grand Jurors, about the alleged threat. The Employee was also dishonest during administrative interviews when questioned by the PI about the alleged threat and what Employee told people about it, after having been directed by Department management to answer all questions of the PI, accurately, completely and truthfully, and after being warned that failure to do so may result in disciplinary action up to and including termination.

In addition, it is not accurate to state that the underlying incident was handled appropriately, as the Employee made dishonest statements to multiple Grand Jurors with respect to the alleged threat as well as made dishonest statements about what actions Employee took in response to the alleged threat. Further, the PI did not "search for other allegations" against the Employee. Rather, during the course of the investigation, other allegations against Employee were made by other former Grand Jurors, a number of which were substantiated by a preponderance of the evidence gathered during the investigation based on witness statements that corroborated one another and the Employee's own statements (some of them dishonest) that were made during their administrative interviews.

While the former Grand Jurors interviewed are categorized above as "disgruntled" with the implication appearing to be that their allegations against Employee were not credible, the PI, as well as HR, found the former Grand Jurors whose allegations were substantiated during the investigation to be credible based on the overall evidence gathered during the investigation, including the Employee's own statements when interviewed about the allegations.

Further, neither the PI nor HR was seeking to "pile on the allegations" against the Employee to "establish the case to terminate", as the purpose of the investigation was fact-finding to determine what occurred and whether what the Employee was accused of more likely than not happened based on the preponderance of the evidence gathered during the investigation. It was ultimately determined that the Employee had engaged in serious misconduct that warranted termination. After Employee received the Notice of Proposed Termination, in accordance with established County procedures, Employee had 7 business days to request a Skelly meeting with the assigned Skelly Officer or provide a written response to the proposed action. The Employee chose to provide a written response and to forego the in-person meeting with the Department's Skelly Officer. After reviewing the Employee's written response, the Skelly Officer determined that the Employee did not provide any new information that mitigated the proposed discipline, and did not provide any evidence that discredited the PI's investigative conclusions; thus, the proposed termination was upheld by the Skelly Officer. Upon issuance of the final Notice of Termination, Employee was provided 10 business days to file an appeal if Employee disagreed with the County's decision to terminate, a decision which would be subject to review by a neutral third party arbitrator if Employee filed the appeal. However, Employee did not file an appeal of their termination.

No Provision to Inform Employee They Are Under Investigation

6. There is no provision or policy to inform an employee that they are under investigation

unless they are employed as a peace officer or they have been placed on administrative leave.

Response:

Respondent disagrees wholly with the finding.

It is unclear from what is stated above, what is being asserted that the County was required to do, but failed to do with respect to informing Employee that Employee was under investigation. It is true that the Employee in this case was not a peace officer and there is no requirement in law nor in County policy, to have informed this Employee that Employee was under investigation prior to being interviewed by the PI. After the investigation began on September 12, 2017, and the PI had interviewed some of the witnesses and determined that the evidence gathered thus far indicated it was more likely than not that Employee had engaged in misconduct, Employee was issued an Administrative Investigation notice on October 16, 2017, prior to the first administrative interview on November 1, 2017 and second administrative interview on December 4, 2017.

In addition to employees potentially not being notified of an administrative investigation until enough evidence has been gathered to determine whether it appears more likely than not that misconduct has occurred, the County may choose not to notify an employee until before their administrative interview out of concern that the employee will have an opportunity to destroy the evidence against them or possibly attempt to influence a witness likely to be contacted during the investigation.

Breach of Confidentiality of Grand Jury Information

7. Other than their names, the Grand Juror's personal information is confidential and shall not be disclosed except by order of the Presiding Judge.

   The Executive Office staff, HR staff, along with a prior Grand Juror, breached this confidentially by providing home addresses and other personal contact information to the PI. The PI used this information to contact current and past Grand Jurors by phone, and/or visiting their residences, in an attempt to gather investigative material for the case he was building against EMPLOYEE. The PI even went as far as to interview a Grand Juror's neighbor.

Response:

Respondent disagrees partially with the finding.

With respect to the above statement, "...the case he was building against the Employee", this implies that the PI was intent on finding wrongdoing and searched for the necessary evidence in order to reach that conclusion. This is simply not the case. Instead, the PI engaged in extensive fact-finding in order to arrive at appropriate conclusions that were supported by the preponderance of the evidence gathered during the investigation.

It is true that a former Grand Juror provided the PI with a roster that contained contact information, but it was provided in the context of the Grand Juror attempting to provide evidence to the PI of confidential information the Employee was alleged to have shared with other Grand Jurors.

A primary method utilized by the PI to locate potential witnesses during this investigation, was to access a database the PI uses to locate people during investigations. However, it is not true that "The PI went as far as to interview a Grand Juror's neighbor." This statement likely refers to the neighbor of a potential witness the PI had sought to speak to but was not home at the time, and the neighbor asked the PI if he could help him with something. The PI politely declined, but did engage the neighbor, who was outside with his family, in small talk about his motorhome. During their conversation, the witness the PI had been seeking to interview returned home, but the witness was not interested in talking to the PI.

With respect to the finding that the Executive Office and HR staff also breached Grand Juror confidentiality by providing home addresses and other personal contact information to the PI, it is unclear how this would have occurred, as County staff would not normally have access to non-County employee contact information. Without further details regarding the job titles, context, or method by which this is alleged to have occurred, the County does not believe this finding is accurate. Regardless, no Grand Juror contact information was shared outside the context of the confidential personnel investigation conducted by the PI on behalf of HR and the County.

Grand Jury Subpoenas

8. The Grand Jury subpoenaed the HR Director and PI to appear and produce documents to assist the Grand Jury in its investigation. The HR Department contacted County Counsel. County Counsel elected to file a motion to quash or modify these subpoenas. County Counsel further contacted the PI instructing him not to comply with the subpoena. Upon receipt of this motion, the Grand Jury sent a letter to County Counsel requesting his office provide legal representation for the Grand Jury. The Grand Jury did not receive a response from County Counsel. The County then hired an attorney to represent the contracted PI.

   The Grand Jury appeared before the Court to defend its subpoena without representation. The Court questioned why County Counsel was not providing representation to the Grand Jury as required under California Government Code §27642. County Counsel did not provide an answer acceptable to the Court.

Response:

Respondent County Counsel contacted the Grand Jury's legal advisor, Michael Cabral, in response to the request to provide legal representation to the Grand Jury. A true and correct copy of this letter dated February 13, 2018 is attached hereto.

Further, respondent County Counsel's Office disagrees with the Grand Jury's finding that Government Code Section 27642 compels the County Counsel's Office to represent the Grand Jury. The proper discharge of the County Counsel's duties under the law also requires that the County Counsel and its members comply with the Rules of Professional Conduct of the State Bar as well as the State Bar Act. The County Counsel's Office represents the County of Riverside and its officers, officials, departments

and employees. Rule 3-310 of the California Rules of Professional Conduct prohibited the County Counsel's Office from representing the the Grand Jury in this matter since the County Counsel's Office was already representing the County and concurrent representation would create an impermissible conflict. Finally, pursuant to California Penal Code Sections 934 and 935, the Presiding Judge appointed the Riverside County District Attorney's Office as legal advisor to the Grand Jury. Since at least July of 2014, the Grand Jury has been represented by the Riverside County District Attorney's Office.

As indicated in the Penal Code Sections cited above, there is no legal requirement that the County Counsel's Office represent the Grand Jury. Rather, the law allows for representation by the District Attorney's Office, County Counsel or the Attorney General's Office. In Riverside County, the District Attorney's Office acts as legal advisor to the Grand Jury as authorized by the Penal Code and as assigned by the Presiding Judge.

RECOMMENDATIONS (1-8):

Violation of Grand Jury Secrecy

1. HR shall comply with PC §924 *et seq.,* in any and all dealings with the Grand Jury. HR shall add a new policy that defines how the HR Department will work with the Grand Jury in matters which impact Grand Jury secrecy, including compliance with any and all requirements specified by the Grand Jury and/or the County District Attorney's Office.

Response:

The recommendation will not be implemented because it is not warranted.

The County did comply with Penal Code Section 924. The County's Human Resources Department undertakes every effort to comply with all laws of confidentiality and secrecy (as well as all other relevant laws) in every investigation and matter it undertakes. Working in HR and having to address matters of employee discipline, grievances, pay disputes, complaints, harassment, discrimination, workplace violence, union relations, and other disputes on a daily basis can be a challenge. Thus, HR also pursues cooperation and positive relationships with all entities, agencies, departments and individuals with whom HR necessarily interacts, which serves HR's interests as well. However, HR at times must retain the discretion and confidentiality of personnel investigations, discipline and other matters, given their obvious sensitivity and confidentiality.

In sum, the Grand Jury's recommendation for compliance with law and working with departments are already hallmarks of the HR Department.

Hiring a Private Investigator

2. Hiring an outside investigator instead of using an in-house investigator, if based on sound reasoning and justification for doing so, shall include proper hiring documents. These documents should include a hiring letter which should include the scope of the investigation, length of the investigation, operational parameters, client expectations and maximum bill rate for such services. This process then becomes a binding contract clearly defining the duties, responsibilities, obligations and legal requirements of the

parties.

Response:

The recommendation has been implemented.

While most of the items listed above were documented via other means during this investigation (e.g., emails between the PI and the County), the County agrees that going forward it would be beneficial to utilize formal engagement letters when hiring outside investigators to conduct administrative investigations on behalf of the County, and the County has already begun using these letters with investigations that outside counsel has been engaged on since the investigation in question was conducted.

Comprehensive Investigation

3. By allowing HR to make changes to his investigative report and not seeking out exculpatory evidence, the PI, and by inference HR, has demonstrated their conformational bias toward this investigation. All future investigations should be conducted by HR in a fair, unbiased, neutral manner, without any preconceived prejudice. This will ensure the entire investigation is conducted ethically and professionally, and any disciplinary outcome is weighted with both aggravating and mitigating factors in reaching a fair and equitable disciplinary decision. Both aggravating and mitigating factors must be part of a comprehensive investigatory report for a balanced account of the circumstances.

Response:

The recommendation will not be implemented because it is not warranted.

In the County's response above to the finding that relates to this recommendation, it was explained how an investigator's report is internally reviewed by HR. Describing it as "allowing HR to make changes", does not capture the process that was followed nor distinguish between an investigator being forced to incorporate a change that HR wanted, which seems to be implied above, but definitely did not occur here. Instead, feedback was given on the report, explained, and concurred with by the investigator prior to its incorporation. To reiterate, typical feedback given in an investigative report includes suggested edits related to grammar, spelling and punctuation, questions requesting clarification on something that is not clear, observations that the preponderance of the evidence gathered does not seem to support a finding that was included, or the opposite, the preponderance of the evidence gathered seems to support a finding that the investigator did not include, etc.

A routine method used by the County to provide feedback to an investigator on a report, is to review it in tracked changes mode so the feedback can be inserted directly into the document for the investigator's review (as well as comments to explain the feedback) before the investigator potentially incorporates it. If necessary, dialogue can occur between the investigator and the reviewer to further discuss the feedback given. Ultimately, if the investigator does not agree with the feedback, it will not be incorporated as the report is considered that investigator's work product and they must be able to stand behind the content of the report. In the current case, limited feedback was needed on the PI's

report, as the PI had done a good job with fact-finding, analysis and conclusions, and the report was well-written.

The County also disputes that exculpatory evidence was not sought out by the investigator and further disagrees that HR demonstrated conformational bias toward the investigation. On the contrary, it was clear from reviewing the PI's report, including the statements made by the various witnesses and the accused party's own statements during their interviews, that there was a clear preponderance of the evidence that the Employee had engaged in the alleged misconduct. While additional witnesses could have been sought to comment on other aspects of the Employee's behavior that may have been more positive and not considered misconduct, it would not have negated the PI's findings regarding the misconduct that was substantiated during the investigation through credible evidence and multiple witness statements, as well as the Employee's own statements corroborating that misconduct had occurred.

In addition, the Employee had the opportunity to provide exculpatory evidence in the written Skelly response that was submitted, to potentially mitigate the proposed discipline, but according to the Skelly Officer, failed to do so. The Employee was also unable to do so during two administrative interviews, and made the situation worse by providing the PI with untruthful responses. The Employee also had an opportunity to file an appeal of the termination, which would lead to a third party neutral arbitrator reviewing the County's decision during an appeal hearing, but the Employee did not avail themselves of that opportunity.

The County disagrees with the assertions above that the investigation was conducted unethically and unprofessionally, was unfair and biased, and that an inequitable disciplinary decision was made. The County's view is that this case was properly investigated and that both aggravating and mitigating factors were considered, as is the County's practice. The County further believes that if the Employee had chosen to appeal the County's decision to pursue termination, that an arbitrator would have upheld the discipline in full.

Failure to Properly Protect Employee Rights Under Investigation

4. As an "unrepresented confidential" employee with property rights to the job but no representation, EMPLOYEE's only recourse was to hire an attorney, or per EMPLOYEE's supervisor, seek guidance from the very person conducting the investigation, an obvious conflict of interest. An employee under such circumstances should be given a neutral, unbiased avenue to seek assistance or advice. An employee should never be forced to seek advice from the investigator.

Response:

The recommendation will not be implemented because it is not warranted.

While it is true that the Employee's job class is not represented by a County union, it is not true that the Employee's only recourse was to hire an attorney, or seek guidance from the person conducting the investigation. While the Employee could have hired an attorney, the Employee could also have enlisted a non-attorney advocate to represent Employee at their administrative interviews.

With respect to seeking guidance from the PI as referenced in the Employee's Administrative Investigation notice, that provision was specific to seeking guidance regarding discussing the investigation with others and whether a comment or discussion with someone about the investigation would be considered a violation of the Directive. The purpose of this provision is to protect the confidentiality of the investigation. It did not mean, nor could it have reasonably been construed to mean, that Employee was being directed to rely on the PI as Employee's representative during the administrative interviews or being "forced" to seek advice from the investigator for any purpose other than to confirm if a discussion with someone or comment about the investigation would be a violation of their Directive.

HR Policy Requires Progressive Discipline

5. HR shall comply with its policy of *Progressive Discipline* by using and documenting offenses alleged against an employee, by the employee's supervisor.

Response:

The recommendation will not be implemented because it is not warranted.

This recommendation is already the County's practice. The County has a progressive disciplinary process in place and a Disciplinary Process training class that all managers and supervisors must take after being promoted, which instructs them that behavioral and performance issues with an employee should be documented and progressively addressed. However, it should be noted that for egregious misconduct, progressive discipline is not required to propose termination of a County employee, which is also covered in the Disciplinary Process training class. The County has found that arbitrators tend to agree with this view, and will not typically require there to be prior progressive discipline on file when the employee engages in egregious misconduct, in order for them to uphold the termination. Moreover, the record in this case does not suggest that the employee's supervisor was aware of the dishonesty the Employee had engaged in during the performance of job duties, and the supervisor could not have been aware of the dishonesty and insubordination the Employee would choose to engage in during administrative interviews with the PI, in contravention of the Directive the Employee had been given to be truthful during those interviews.

No Provision to Inform Employee They Are Under Investigation

6. County employees who are being considered for termination should be given notice when an investigation begins. Policy should be revised to add this provision. Employees deserve the respect and dignity of such protection as members of the workforce for the County.

Response:

The recommendation will not be implemented because it is not warranted.

As previously stated, there is no legal requirement that the County inform an employee that they are under investigation at the time the investigation is initiated (in this case on September 12, 2017), and the Employee was not "being considered for termination" until months later after HR had reviewed the PI's report and findings, prior to making a recommendation to the Employee's Department. That review confirmed that termination was the appropriate action to take based on the Employee's egregious

misconduct, which included dishonesty and insubordination (most of which occurred during the administrative interviews). Termination was subsequently proposed on January 10, 2017. The Employee was nevertheless notified about the investigation relatively early on, when the Employee was issued an Administrative Investigation notice on October 10, 2017, as it was becoming relatively clear that Employee more likely than not had engaged in misconduct. Employee was issued the notice prior to the administrative interviews with the PI that took place on November 1, 2017 and December 4, 2017.

It is unclear from what is stated above, how the Employee's respect and dignity was adversely impacted by not being placed on notice that Employee was under investigation when the investigation first began in September 2017, and as previously mentioned, Employee was not noticed until it appeared that Employee more likely than not had engaged in the alleged misconduct. Termination was not considered until months after Employee received notice about the Investigation, as outlined above.

Breach of Confidentiality of Grand Jury Information

7. Confidential information pertaining to Grand Jurors shall not be disclosed.

Response:

The recommendation will not be implemented because it is not warranted.

It is already the County's practice to not disclose confidential information to unauthorized parties. No confidential information of Grand Jurors was disclosed outside of the confidential personnel investigation. Witness contact information was used for the sole purpose of contacting and interviewing witnesses, which was necessary to conduct a thorough investigation, as well as for the County to fulfill its obligation to investigate allegations of misconduct against one of its employees.

Grand Jury Subpoenas

8. Pursuant to California Government Code §27642 and PC §925, the BOS should create and publish a policy instructing County Counsel to fully cooperate with the Grand Jury in its legal requirement to inquire into all County departments.

Response:

The recommendation will not be implemented because it is not warranted.

The County Counsel's Office recognizes the Grand Jury's power to investigate and fully cooperates to the extent that the subpoena lawfully seeks information to which the Grand Jury is legally entitled. Grand juries are a creature of state statute and may only exercise those powers expressly granted by law. Case law has repeatedly limited grand juries' efforts to exercise investigative and other powers beyond those expressly granted by statute. Furthermore, grand juries are not entitled to information protected by constitutional, statutory or common law privileges. The County Counsel's Office is ethically obligated to challenge any subpoena served on our client that seeks such information to which the Grand Jury is not entitled and/or may exceed the Grand Jury's statutory authority and jurisdiction. In the instant case, we were able to reach an informal resolution with the Grand Jury through its counsel to provide the Grand Jury with all information to which it was entitled.

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February 13, 2018

Michael Cabral
Assistant District Attorney
Office of the District Attorney
3960 Orange Street
Riverside, CA 92501

Re: ***Riverside County Grand Jury Subpoenas***
Case No: RIC1723224

Mr. Cabral:

Please allow this to serve as a response to the Grand Jury Foreperson's correspondence to me dated February 6, 2018.

The Office of County Counsel will not represent the Grand Jury in the handling of Riverside Superior Court, Case Number RIC1723224, as was requested. As you are aware, the Motion to Modify the subpoenas served by the Grand Jury was filed by my office on behalf of the County of Riverside, Michael Stock, and Gary Wedge. This creates a conflict under Rule 3-310 of the Rules of Professional Conduct as the Office of County Counsel is unable to represent two clients in the same matter with adverse interests.

Furthermore, the Office of the District Attorney was appointed by the Presiding Judge of the Riverside Superior Court as legal counsel to the 2017-18 Grand Jury under Penal Code sections 934 and 935.

The Office of the County Counsel has the obligation to represent the County and all of its elected officials, along with its 42 Departments and thousands of employees. My office has consistently undertaken this representation throughout my terms as County Counsel. This representation is incompatible with any request.

Very truly yours,

GREGORY P. PRIAMOS
County Counsel

KAM:meq

cc: Hon. Becky L. Dugan, Presiding Judge
Hon. John Vineyard, Assistant Presiding Judge