

**BOARD OF SUPERVISORS  
RESPONSE TO THE**



**2002 - 2003  
GRAND JURY  
FINAL REPORT**

# **CITIZENS' COMPLAINTS**

**EL DORADO COUNTY GRAND JURY**  
**2002/2003**

**CITIZENS' COMPLAINTS**

CASE NO.	SUBJECT	DISPOSITION	COMMENTS	DATE
C-1-02/03	Accounting – Conflict of Interest	Audit & Finance	See Final Report	
C-2-02/03	So. Lake Tahoe Bldg. Permits	So. Lake Tahoe, Bldg.	No Action Finding	9/25/02
C-3-02/03	So. Lake Tahoe District Attorney, Child Support/CPS	Criminal Justice	No Action Finding	8/14/02
C-4-02/03	Attorney Fees Public Record Act	Audit & Finance	See Final Report	
C-5-02/03	Fitness Evaluation	So. Lake Tahoe, Govt. & Admin.	See Final Report	
C-6-02/03	Flu Shots	Health & Social Services	No Action Finding	10/17/02
C-7-02/03	Transient Occupancy Tax	So. Lake Tahoe, Govt. & Admin.	See Final Report	
C-8-02/03	Personnel/Human Resources	Health & Social Services	No Acting Finding	8/14/02
C-9-02/03	Cemetery	Govt. & Admin.	No Action Finding	8/21/02
C-10-02/03	Parking Violation	Audit & Finance	No Action Finding	10/17/02

**EL DORADO COUNTY GRAND JURY**  
**2002/2003**

**CITIZENS' COMPLAINTS**

<b>CASE NO.</b>	<b>SUBJECT</b>	<b>DISPOSITION</b>	<b>COMMENTS</b>	<b>DATE</b>
C-11-02/03	Child Adoption	Health & Social Services	No Action Finding	8/21/02
C-12-02/03	Mobile Homes	Govt. & Admin.	See Final Report	
C-13-02/03	Child Adoption	Health & Social Services	No Action Finding	8/21/02
C-14-02/03	Transient Occupancy Tax and Zoning	So. Lake Tahoe, Planning & Environ.	See Final Report	
C-15-02/03	El Dorado Irrigation Dist.	Public Bldg. & Special Districts	No Action Finding	10/30/02
C-16-02/03	Animal Control	Health & Social Services	No Action Finding	10/30/02
C-17-02/03	Audit Debts, Equipment Depreciation	Audit & Finance	No Action Finding	9/3/02
C-18-02/03	Overturn Superior Court Decision	Health & Social Services	No Jurisdiction	9/28/02
C-19-02/03	Misuse of Sick Pay, Lack of Follow-up, Sheriff's Dept.	Criminal Justice	See Final Report	
C-20-02/03	So. Lake Tahoe, Differential Pay, Sheriff's Dept.	Criminal Justice	See Final Report	
C-21-02/03	Nepotism in County Work Place/Evaluations	Govt. & Admin.	See Final Report	



**EL DORADO COUNTY GRAND JURY**  
**2002/2003**

**CITIZENS' COMPLAINTS**

<b>CASE NO.</b>	<b>SUBJECT</b>	<b>DISPOSITION</b>	<b>COMMENTS</b>	<b>DATE</b>
C-22-02/03	Nepotism in County Work Place/Evaluations	Govt. & Admin.	See Final Report	
C-23-02/03	Social Services Trust Fund Shortages	Govt. & Admin.	See Final Report	
C-24-02/03	Anonymous Complaint Against UnderSheriff	Criminal Justice	No Action Finding	11/20/02
C-25-02/03	Sheriff's Violation of Govt. Codes	Criminal Justice	No Action Finding	12/11/02
C-26-02/03	Georgetown Fire Dept.	Govt. & Admin.	No Action Finding	2/12/03
C-27-02/03	District Attorney's Office	Govt. & Admin.	No Action Finding	12/8/02
C-28-02/03	County Jail	Criminal Justice	No Action Finding	1/15/03
C-29-02/03	Golden West Community Services District	Special Districts	No Action Finding	5/21/03
C-30-02/03	District Attorney's Office and Sheriff's Dept.	Criminal Justice	No Action Finding	3/26/03
C-31-02/03	District Attorney's Office	Criminal Justice	See Final Report	
C-32-02/03	District Attorney's Office	Criminal Justice	No Action Finding	3/26/03

***EL DORADO COUNTY GRAND JURY***  
***2002/2003***

**CITIZENS' COMPLAINTS**

<b>CASE NO.</b>	<b>SUBJECT</b>	<b>DISPOSITION</b>	<b>COMMENTS</b>	<b>DATE</b>
C-33-02/03	Superior Court Staff	Govt. & Admin.	No Action Finding	3/12/03
C-34-02/03	District Attorney's Office	Criminal Justice	See Final Report	
C-35-02/03	Transient Occupancy Tax Measure 2	So. Lake Tahoe, Govt. & Admin.	See Final Report	
C-36-02/03	Fallen Leaf Lake Community Services District	Govt. & Admin.	See Final Report	
C-37-02/03	District Attorney's Office	Govt. & Admin.	No Action Finding	3/26/03
C-38-02/03	Cameron Estates Community Services District	Govt. & Admin.	No Action Finding	5/14/03
C-39-02/03	Cameron Estates Community Services District	Govt. & Admin	No Action Finding	5/14/03
C-40-02/03	Evaluations	Govt. & Admin	No Action Finding	4/14/03
C-41-02/03	District Attorney's Office	Criminal Justice	See Final Report	
C-42-02/03	El Dorado Irrigation District	Planning & Environment	No Action Finding	4/3/0/03
C-43-02/03	County Library	Education	See Final Report	

**EL DORADO COUNTY GRAND JURY**  
2002/2003

**CITIZENS' COMPLAINTS**

CASE NO.	SUBJECT	DISPOSITION	COMMENTS	DATE
C-44-02/03	Chief Administrative Officer's Contract	Govt. & Admin.	See Final Report	
C-45-02/03	Latrobe School District	Education	No Action Finding	4/9/03
C-46-02/03	District Attorney's Office	Criminal Justice	No Action Finding	5/14/03
C-47-02/03	District Attorney's Office	Health & Social Services	No Action Finding	4/16/03
C-48-02/03	Chief Administrative Officer's Budget Estimates	Audit & Finance	See Final Report	
C-49-02/03	District Attorney's Office	Criminal Justice	No Action Finding	5/14/03
C-50-02/03	Superior Court – Allegations of Misconduct	Govt. & Admin.	No Jurisdiction	4/16/03
C-51-02/03	Transient Occupancy Tax	So. Lake Tahoe, Govt. & Admin.	See Final Report	
C-52-02/03	<b>DEFERRED TO 2003/2004 DOT Planning Comm.</b>	<b>GRAND JURY</b>		
C-53-02/03	<b>DEFERRED TO 2003/2004 E.I.D.</b>	<b>GRAND JURY</b>		
C-54-02/03	Sheriff's Dept. Coroner Report	Criminal Justice	No Action Finding	6/18/03
C-55-02/03	<b>DEFERRED TO 2003/2004</b>	<b>GRAND JURY</b>		
C-56-02/03	<b>DEFERRED TO 2003/2004</b>	<b>GRAND JURY</b>		
C-57-02/03	<b>DEFERRED TO 2003/2004</b>	<b>GRAND JURY</b>		

# **AUDIT & FINANCE**

## **AUDIT AND FINANCE COMMITTEE**

### ***Georgetown Divide Public Utility District Georgetown***

#### **Reason for the Report**

The Grand Jury selected the Georgetown Divide Public Utility District (GDPUD) as a general review for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an announced visit to GDPUD on January 23, 2002;
- Interviewed the General Manager and other staff members;
- Attended two GDPUD board meetings;
- Reviewed the GDPUD certified Incorporation Documents created in 1946;
- Reviewed the Five Year Facilities and Financial Planning Study dated February 1, 1999;
- Reviewed financial statements for fiscal year 2001/2002;
- Reviewed the budget for fiscal year 2002/2003;
- Reviewed previous Grand Jury reports and found no reports that dealt with GDPUD.

#### **Background**

The GDPUD is a special independent enterprise district. It is considered “independent” because it is a self-governed body, and the term “enterprise” means it can charge the public directly for services without relying on property taxes. As such GDPUD is more resistant to economic fluctuations. It maintains designated reserve funds for the servicing and replacement of fixed assets as well as undesignated reserve funds for future projects. For the fiscal year ending June 2002, designated reserve funds were \$2,661,358 and the undesignated reserve funds were \$9,847,331 (approximately three times the annual operating revenue of \$3,242,206). Net income for fiscal year 2001/2002 was \$542,254.

As a special district, GDPUD receives assistance from local, state and federal governments in the form of grants and low interest loans for special projects.

The water supply comes from Stumpy Meadows Reservoir and amounts to 20,000 acre-feet (or 327 surface acres). Approximately 3000 water connections and 1,100 wastewater disposal accounts exist within the district. Both Auburn Lake Trails and Walton Lake treatment plants are approximately 30

years old, and have a 4.5 million gallon capacity. Nine storage tanks cumulatively hold about 3 million gallons. The general manager believes the district is prepared to accommodate the predicted one to two percent growth rate within its service area for the immediate future, however, the demand is estimated to exceed supply by 2025.

The district operates with no written personnel procedures or formal policies for employees and their evaluations.

The district has 20 employees and most of whom are cross-trained. The district has an unusually low employee turnover rate with an average of 15 plus years of service.

The District has two CPAs. One is a recently hired employee, and the other is an hourly contractor. For computerized accountancy software, GDPUD uses a program called Multiple Operations Manager (M.O.M.), while the Consultant uses the Solomon program. These two accounting programs are not compatible which may create problems with the exchange of data.

### **Findings -**

No Board of Supervisors response required.

- F1. The undesignated reserve funds are approximately three times the annual operating revenues.
- F2. Stumpy Meadows Reservoir is the only source of water for GDPUD.
- F3. The district operates with no written personnel procedures or formal policies for employees and their evaluations.
- F4. The District has two CPAs. One is an employee, and the other is an hourly consultant.
- F5. GDPUD uses an accounting software program called Multiple Operations Manager (M.O.M.), while the Consultant uses Solomon.

### **Recommendations**

No Board of Supervisors response required.

- R1. GDPUD should adopt and publicize their policy for accumulating undesignated reserve funds as well as the planned use of the funds.
- R2. GDPUD should look into secondary water sources for the anticipated growth within the District.
- R3. GDPUD should create a personnel policies and procedures manual. The manual should be updated periodically as required.

- R4. There should only be one CPA. The time frame of the contract with the Consultant should be reduced and a termination date established.
- R5. For efficiency purposes, there should be one accounting software program.
- R6. GDPUD should increase treated water storage capacities in the event of equipment breakdown or extended drought cycles.

**Commendation**

Management is very proactive in seeking to meet the needs of its customers and appears interested in the overall well being of the community.

**Responses Required for Findings**

F1 through F5	GDPUD Board of Directors GDPUD General Manager
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**Responses Required for Recommendations**

R1 through R6	GDPUD Board of Directors GDPUD General Manager
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## **AUDIT & FINANCE COMMITTEE**

### ***Georgetown Divide Public Utility District Accounting Practices***

Citizen Complaint #C1-02/03

#### **Reason for the Report**

A complaint was made against Georgetown Divide Public Utility District (GDPUD) for past accounting practices.

#### **Scope of the Investigation**

The members of the Grand Jury interviewed:

- The Complainant;
- GDPUD CPA (Consultant) for the period of 1976 to present;
- Two GDPUD board members;
- The prior GDPUD General Manager;
- The Current Auditor;
- The El Dorado County Auditor-Controller.

The Grand Jury also reviewed:

- The June 1, 1998, AICPA Code for independence as to audit services;
- The accounting records of GDPUD;
- The reports prepared by the in-house CPA;
- The annual audits for the fiscal years 1995 through 1998.

#### **Background**

Founded in 1946, Georgetown Divide Public Utility District is a public utility district operating under the State of California Public Utility Code and Special District Codes & Procedures. The District has a governing body of five elected Board of Directors and an appointed General Manager/Clerk of the Board. The District employs twenty full-time operations and administrative staff.

The first issue the complaint raised was the current Consultant conducted audits on his own work from 1981 through 1995. The committee found this to be true. GDPUD in-house personnel



performed the basic bookkeeping functions and the information was given to the Consultant to complete the necessary accounting records. The Consultant was not an employee of GDPUD and did not make management decisions. GDPUD's general manager signed the Consultant's Letter of Engagement.

During this period, the Generally Accepted Accounting Principles (GAAP), and Generally Accepted Auditing Standards (GAAS) conflicted with Government Auditing Standards (Yellow Book) regarding a self-audit. The 1994 Edition of the Yellow Book (Personal Impairment Chapter 3.16f, Note 3) does allow a self-audit under the following condition:

“An individual performs a substantial part of the accounting process or cycle, such as analyzing, journalizing, posting, preparing, adjusting and closing entries, and preparing the financial statements and later the same individual performs and audit. In instances in which the auditor acts as the main processor for transactions initiated by the audited entity, but the audited entity acknowledges responsibility for the financial records and financial statements, the independence of the auditor is not necessarily impaired.”

The second issue was the Consultant shared an office with the Auditor who performed the 1996 through 1999. A shared office arrangement would not necessarily violate the independence of the audit firm but could lead others to question the independence of the auditor.

The third issue was the current auditor did not obtain the mandatory Management Representation letter at the conclusion of the auditor's fieldwork for year ending June 30, 2000. The Grand Jury requested but was unable to obtain a copy of the Management Representative Letter from the auditor or GDPUD for the fiscal year ending June 30, 2000 therefore the Grand Jury was unable to determine whether the Management Representative Letter existed.

The fourth issue was for the fiscal year ending June 30, 2001, the fieldwork was completed in the fall of 2001, but the Management Representation letter was not prepared until January 7, 2002 and was ultimately signed by a person who was not employed by GDPUD during the audit period.

It was alleged that the Consultant made it difficult for the current auditing firm to proceed in a timely manner by ordering five rewrites. The current auditing firm has concluded that these rewrites were not the result of financial errors but of an interpretation nature.

The Consultant provided accounting services for GDPUD without a contract from 1976 through 2001 when the parties agreed to a written contract. An in-house CPA was hired in the fall of 2002 to provide financial information to the general manager and gradually assume the accounting functions of the Consultant.

## **Findings**

No Board of Supervisors response required.

- F1. The Consultant performed audits for GDPUD from 1981 through 1995 in addition to certain accounting functions with GDPUD management knowledge and approval.

- F2. Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS) do not allow a self-audit. Government Auditing Standards (Yellow Book) do allow self-audits under certain conditions. The Yellow Book was revised in January 2003 to disallow a self-audit and any appearance of same.
- F3. It appears no Management Representation Letter was presented to the auditor for the fiscal year ending June 30, 2000.
- F4. The General Manager signed a Management Representation Letter for the fiscal year ending June 30, 2002 covering a period of time prior to his employment.
- F5. The Consultant did not have a written contract for accounting services until 2001. There were Letters of Engagement only for the auditing functions signed by the General Manager.

**Recommendations**

No Board of Supervisors response required.

- R1. An independent audit firm should conduct the annual audit.
- R2. Proper letters of engagement and management representation should be prepared for the audit.
- R3. Board Members and the General Manager should not allow a self-audit or the appearance of a self-audit.
- R4. GDPUD should enter into contracting services with a clear statement and understanding by all parties of work to be done.

**Responses Required for Findings**

F1 through F5	GDPUD Board of Directors GDPUD General Manager
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**Responses Required for Recommendations**

R1 through R4	GDPUD Board of Directors GDPUD General Manager
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## AUDIT AND FINANCE COMMITTEE

### *Public Record Act*

Citizen Complaint #C4-02/03

#### **Reason for the Report**

A complaint was made against the El Dorado County Counsel (County Counsel) for not providing information as required by the Public Record Act in a timely manner. However, the investigation revealed the complaint should have been directed to the El Dorado County Auditor-Controller (Auditor-Controller).

#### **Scope of the Investigation**

The members of the Grand Jury:

- Interviewed the Complainant;
- Interviewed the Auditor-Controller;
- Reviewed Public Record Act;
- Reviewed data furnished by the Complainant;
- Reviewed accounting records furnished by the Auditor-Controller for payments made to a law firm (The Firm).

#### **Background**

A series of written and verbal exchanges occurred between the complainant and the Auditor-Controller dating from February 1999 through December 2001. The complainant attempted to obtain a record of payments made to The Firm for services in connection with the general plan and specific development proposals from the time of The Firm's start date (Summer 1995) to the present.

The complainant wanted to make sure the payments started with The Firm's start date of summer 1995. The Auditor-Controller never provided this information. The Auditor-Controller provided a series of correspondence of payment information that appears to be misleading and fragmented.

Several letters sent by the Auditor-Controller contained quotations referring to possible payments by others. Some of these statements are:

1. “It is important to remember that the County is reimbursed from developers for a significant portion of these payments.”
2. “The County is undergoing an accounting system conversion at this time, and it is unlikely that more complete information will be readily available for sometime.”
3. “We have not summarized any payments made by Third Party Administrator (TPA) of the County’s Self-Insurance Program. Specific payments made by the County’s TPA are not recorded in the County’s general or disbursements ledgers. It is my opinion that the County chooses to have the TPA make these ‘self insurance’ payments to make it more difficult for the public and the Auditor-Controller to identify and summarize the payment of claims and payments to outside counsel.”

Statement 3 prompted the complainant to write a letter to the County Counsel requesting a record of payments made through Risk Management to The Firm. The County Counsel replied by letter stating, “Risk Management has been contacted and they do not have any records of payments made by them.”

The complaint was investigated and the Auditor-Controller was asked to provide copies of invoices and payments from the summer 1995 to the present. After reviewing the invoices (never provided to the complainant) and payments made to The Firm, the Grand Jury was able to reconcile all invoices to payments.

The Grand Jury wrote a letter to the complainant summarizing invoices by The Firms and related payments by the County. The investigation did not find evidence that any payments were made to The Firm by the County Counsel or Third Party Administrator.

### **Findings**

- F1. Although the complaint was made against the County Counsel it should have been directed to the Auditor-Controller.

***Response to F1: The respondent disagrees wholly with the finding.*** The County attempts to insure that a public records request is responded to by the appropriate county departments, regardless of where the request was originally directed. Often a request asks for a variety of records that may be maintained by several departments, in which case each department may respond separately or the responses may be coordinated, whichever is more appropriate. In this case, the original request for payments to a specific law firm was directed to the Auditor-Controller, who responded in accord with County policy by providing a summary of the payments and dates, but did not release the raw bills because they contain information that the Board of Supervisors has previously determined to contain information protected by the attorney-client privilege that cannot be released. A later request was made to County Counsel’s Office which responded on behalf of Risk Management by advising that Risk had no records. Since it appears that the requests were answered appropriately, then no complaint was justified against either official.

- F2. The Public Record Act request was submitted in February 1999 but the complaint was made in February 2002, this request had not been satisfactorily answered.

***Response to F2: The respondent disagrees wholly with the finding.*** The two records requests were responded to properly. The complainant may not have been satisfied with the information received because it did not assist in her litigation against the County, but the complainant received a full and accurate response that contained everything that should be legally divulged. There is no specific time limit in the Public Records Act for production of documents. The nature of the request, for privileged documents relating to then-pending litigation at a time when the accounting system was undergoing a conversion process, in large part determined the nature and timing of the response.

- F3. On December 31, 2001, the Auditor-Controller furnished an accounting spreadsheet to the complainant showing all payments made to The Firm, but never identified a payment associated with The Firm's start date of summer of 1995.

***Response to F3: The respondent agrees with the finding.*** The complainant received a full and accurate summary of all payments made to the law firm, so the complainant could determine which payments were associated with certain events or dates.

### **Recommendations**

- R1. The Auditor-Controller should respond to Public Record Act requests in a timely manner and with accurate information.

***Response to R1: The recommendation has been implemented.*** In this case, and in every other case of which we are aware, the Auditor-Controller has responded to public records requests in a timely and accurate manner.

- R2. The Auditor-Controller should not attempt to shift responsibility to other departments.

***Response to R2: The recommendation has been implemented.*** Both the Auditor-Controller and the County Counsel's Office responded in a proper manner to the two specific public records requests mentioned in the grand jury report, and each takes responsibility for their respective actions.

### **Responses Required for Findings**

- F1 through F3  
El Dorado County Board of Supervisors  
El Dorado County Auditor-Controller

### **Responses Required for Recommendations**

- R1 and R2  
El Dorado County Board of Supervisors  
El Dorado County Auditor-Controller

## AUDIT AND FINANCE COMMITTEE

*Superior Court – Exhibit Room  
495 Main Street, Placerville*

### **Reason for the Report**

The Grand Jury selected the Superior Court Exhibit Room as a general review for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Superior Court on March 26, 2003;
- Was provided a brief tour of the non-physical Exhibit Room courtesy of the Court Operations Supervisor; Spoke informally with the two other staff members;
- Interviewed the Assistant Court Executive Officer;
- Reviewed previous Grand Jury reports and found no reports that dealt with the Exhibit Room.

### **Background**

The Grand Jury was briefed on the process for the filing and transfer of all exhibits (physical and non-physical). Non-physical exhibits consist of documents, pictures, courtroom charts, etc, which are entered into trial as exhibits. Physical exhibits are handled separately and are secured by the Sheriff's Department. Procedures exist for inventorying, handling and discarding of non-physical exhibits, however they are not always followed as no one is designated this responsibility.

The non-physical Exhibit Room appears to lack adequate space and shelving for storing exhibits. About 75 percent of the exhibits pertain to closed cases and therefore should be discarded. Court approval is required for disposition of closed case exhibits.

### **Findings**

F1. The non-physical Exhibit Room appears to lack adequate space and shelving. Exhibits appear to be in disorder and are placed on the floor in this small room.

***Response to F1: The respondent agrees with the finding.*** Superior court facilities are owned by the county, but court staff performs court functions in the facilities, including storing exhibits.

F2. Written procedures are not being followed for discarding closed-case exhibits. About 75% of exhibits in the storage area are beyond the retention period.

***Response to F2: The respondent agrees with the finding.***  
F3. There is no person designated to manage the exhibit process.

***Response to F3: The respondent agrees with the finding.***  
F4. No sprinkler system or fire extinguishers could be found in or near the Exhibit Room.

***Response to F4: The respondent disagrees partially with the finding.*** There is a fire hose outside the basement file room that is designated for use in both the file room and the exhibit room, which meets fire code requirements.

### **Recommendations**

R1. The Exhibit Room should have adequate shelving.

***Response to R1: The recommendation has not yet been implemented but will be implemented in the future.*** The County will work cooperatively with the Court to implement a solution to the court exhibit situation. The situation should be resolved by March 31, 2004.

R2. All exhibits should be inventoried and established procedures should be followed.

***Response to R2: The recommendation will not be implemented, because it is not warranted.*** . The County has no ability to control the manner in which court exhibits are inventoried. We understand that the Court is working on resolving this situation.

R3. A person should be designated to manage the exhibit process.

***Response to R3: The recommendation will not be implemented because it is not warranted***  
The County has no ability to control the manner in which court exhibits are inventoried or stored. We understand that the Court has designated a member of its staff to manage the exhibit process.

R4. A fire extinguisher should be installed in or near the Exhibit Room.

***Response to R4: The recommendation has been implemented.*** As noted above in the response to F4, there is a fire hose outside the basement file room that is designated for use in both the file room and the exhibit room, which meets fire code requirements. In addition, a fire extinguisher was installed on July 10, 2003.

### **Responses Required for Findings**

F1 through F4

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
Chief Executive Officer for Superior Court

**Responses Required for Recommendations**

R1 through R4

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
Chief Executive Officer for Superior Court



# **CRIMINAL JUSTICE**

## **CRIMINAL JUSTICE COMMITTEE**

### ***Inappropriate Tahoe Differential Pay***

Citizen Complaint #C19 – 02/03

#### **Reason for the Report**

A citizen's complaint was received alleging a former Undersheriff received Tahoe Differential Pay to which he was not entitled.

#### **Scope of the Investigation**

The members of the Grand Jury interviewed:

- The former Sheriff (Sheriff);
- The former Undersheriff (Undersheriff);
- Employees of the El Dorado County Sheriff's Department;
- Employees of El Dorado County Department of Human Resources.

The Grand Jury also reviewed:

- Appropriate payroll documents;
- Tahoe Differential pay policies for the County and Memoranda of Understanding (MOU);
- "Agreement to Appointment of Undersheriff" memo, signed by the Sheriff and the Undersheriff regarding Tahoe assignment.

#### **Background**

Early in 1999, the Sheriff and a Captain, about to be appointed Undersheriff, had a brief exchange regarding the Undersheriff's assignment to Lake Tahoe. The Captain's promotion to Undersheriff was based on the condition he leave the Department in January 2000. The Captain asked, upon his promotion to Undersheriff, if he could be assigned to Lake Tahoe and the Sheriff agreed. The Undersheriff prepared an agreement stating his assignment was to South Lake Tahoe, which was signed by both the Undersheriff and the Sheriff.

Subsequently, Sheriff's Payroll Department processed the Payroll/Personnel Action Form with the increase in pay for the Tahoe Differential to coincide with the promotion to Undersheriff. The Undersheriff signed the form as "employee" and a payroll clerk signed on behalf of the Sheriff. Although approval for promotional pay actions were purportedly documented, attached to the memo announcing the promotion, and allegedly filed in the appropriate personnel file, no written approval

is currently on file with the Sheriff's Department. The payroll clerk did not question the new Undersheriff receiving the benefit because he was second in command.

The Grand Jury investigation revealed that the usual work station assignment for an Undersheriff is Placerville. County policy and the relevant MOUs require an employee to spend more than 50 percent of his work time at South Lake Tahoe in order to qualify and receive Tahoe Differential pay. Based on the Grand Jury investigation it appears the Undersheriff in question did not spend the required time in South Lake Tahoe to qualify for the differential pay. The Undersheriff's retirement pay increased as a result of this benefit. It should be further noted the investigation revealed this to be an isolated case.

The Grand Jury investigation also revealed it is common practice for the Sheriff's Department Payroll Clerks to sign Payroll/Personnel Action Forms on behalf of Division Chiefs without obtaining their approval or written delegation of authority. This included those Payroll/Personnel Action Forms resulting in financial impact. Although it is common practice for the payroll clerks to sign on behalf of Division Chiefs, there were not any written authorizations for them to do so.

### **Findings**

No Board of Supervisors response required.

- F1. The Sheriff told the Undersheriff he could be assigned to Lake Tahoe, with the hours and days to be set by the Sheriff.
- F2. The Sheriff did not set days or hours for the Undersheriff to work in South Lake Tahoe.
- F3. The Undersheriff received Tahoe Differential pay without working primarily in the South Lake Tahoe area.
- F4. Payroll clerks, without written authorization, routinely sign Payroll/Personnel Action forms on behalf of Division Chiefs, including those resulting in financial impact.
- F5. The Tahoe Differential pay received by the Undersheriff impacted his final compensation, which in turn was used to calculate his retirement benefits.
- F6. The Grand Jury investigation revealed this was an isolated case.

### **Recommendations**

- R1. Payroll/Personnel Action Forms relating to the Undersheriff should be signed by the Sheriff.

***Response to R1: The recommendation has been implemented.*** Implementation was effective December, 2002. The Grand Jury previously received a copy of the written directives sent to Sheriff's managers and Payroll Clerks. The Sheriff currently signs all Payroll/Personnel Forms for the department including those relating to the Undersheriff.

- R2. Delegation of authority to Payroll Clerks to sign on behalf of Division Chiefs should be specific and exclude actions involving financial benefit.

***Response to R2: The recommendation has been implemented.*** Implementation was effective December, 2002. The Grand Jury previously received a copy of the written directive sent to Payroll Clerks. The Sheriff has delegated to the Captains (Division Chiefs) the authority to sign Payroll/Personnel Forms in his absence. However, it is his practice to review and initial these forms as well.

- R3. The County should be reimbursed for the Tahoe Differential paid to the Undersheriff.

***Response to R3: The recommendation has been implemented.*** A lawsuit was filed to collect the Tahoe Differential pay. It was settled for an amount which reflected the factual and legal factors.

- R4. The County Counsel should review with the Board of Supervisors the issues presented and take whatever action(s) is deemed appropriate.

***Response to R4: The recommendation has been implemented.*** The matter has been discussed with the Board of Supervisors in connection with the lawsuit referenced above. The Board feels that the new procedures implemented by the Sheriff are adequate to insure that a similar situation will not occur in the future.

### **Commendations**

It should be noted that the Sheriff's Department recently took action to establish procedures to minimize the opportunity for future abuse.

### **Responses Required for Findings**

F1 through F5 El Dorado County Sheriff

### **Responses Required for Recommendations**

R1 and R2 El Dorado County Sheriff  
El Dorado County Department of Human Resources

R3 and R4 El Dorado County Board of Supervisors

## ***Sheriff's Non Follow-Up Regarding Sick Leave Abuse***

Citizen Complaint #C20 – 02/03

### **Reason for the Report**

A citizen's complaint was received alleging the Sheriff failed to investigate the 200 hours of sick leave a former Undersheriff was paid. This complaint relates to a follow-up of a previous Grand Jury complaint (#00/01 – C021).

### **Scope of the Investigation**

The members of the Grand Jury interviewed:

- The former County Sheriff (Sheriff);
- The former Undersheriff (Undersheriff);
- Employees of El Dorado County Sheriff's Department;
- Employees of El Dorado County Department of Human Resources;
- Employees of El Dorado County Risk Management.

The Grand Jury also reviewed:

- Citizen complaint #00/01-C-021 alleging abuse of sick leave by the Undersheriff;
- Grand Jury Report 2000/2001 regarding complaint #00/01-C-021;
- The Sheriff's response to the Grand Jury Report 2000/2001;
- Appropriate payroll documents;
- All sick leave records of Sheriff's Department personnel who terminated service between January 1, 1999 and November 2002;
- Correspondence between Sheriff and former Undersheriff regarding abuse of sick leave ;
- Various memoranda regarding principals involved;
- Policies for the County and Memoranda of Understandings (MOUs) relating to sick leave;
- Medical records of the former Undersheriff.

### **Background**

The 2000/2001 Grand Jury received and investigated a citizen complaint concerning the alleged abuse of sick leave by the Undersheriff. In response to that Grand Jury Report, the Sheriff responded that he would investigate the Grand Jury's findings. He stated if it was determined that the Undersheriff was not ill, a demand for repayment of funds would be pursued. Subsequently, the 2002/2003 Grand Jury received another complaint regarding the status of the Sheriff's investigation and requested that the County seek reimbursement for the unauthorized sick leave. A second investigation commenced.

Early in 1999, because of differences between the Sheriff and one of his Captains, the Sheriff approached the Captain with an offer to which the Captain agreed. This agreement involved the Sheriff promoting the Captain to Undersheriff with the understanding the Undersheriff would retire from the Sheriff's Department at the end of January 2000.

Thereafter, the Undersheriff sent a memo to the Sheriff, confirming their conversation that he would be retiring on April 28, 2000. He also stated he would use his accrued vacation leave from January 31, 2000 until his retirement on April 28, 2000 with the Sheriff's approval.

The Salary & Benefits Resolution for Unrepresented Employees, amended effective July 3, 1999, allows all accrued vacation leave to be paid upon the employee's retirement. However, the Resolution allows a maximum of 504 hours of accrued sick leave to be paid upon retirement. Any accrued sick leave in excess of 504 hours is lost upon retirement.

Subsequently, during the period of time he was on vacation leave, the Undersheriff contacted payroll clerks in the Sheriff's Department and instructed them to change a substantial portion of his vacation leave to sick leave. Due to his rank and no written established procedures for unrepresented employees, the clerks followed his instructions without question.

Thus, on five occasions over a period of approximately three months, the Undersheriff instructed payroll to change a portion of his vacation leave to sick leave. It appears the Undersheriff's actions enabled him to manipulate the County sick leave policy wherein he received 200 hours of sick leave, valued at over \$10,000, he would have otherwise lost at retirement.

This Grand Jury contacted members of the Sheriff's Department regarding the status of the above-mentioned investigation into the abuse of sick leave. They were informed that the Sheriff wrote a letter to the former Undersheriff on August 20, 2001, requesting medical verification for the unauthorized sick leave. (It should be noted the Sheriff's Department does not have a receipt of delivery of the letter to the former Undersheriff and the Undersheriff claims he never received said letter.) The Sheriff failed to follow up on the matter until this Grand Jury inquired into the status of his investigation.

The Sheriff wrote a second letter on October 6, 2002, fourteen months later, again requesting medical verification of sick leave. The Undersheriff, in a written response dated October 9, 2002, claimed various illnesses. He also stated no one required medical verification prior to that date. The Undersheriff indicated he would like to provide specific documentation, however, he found the request unrealistic and unreasonable. Subsequently, the Undersheriff signed a medical release for the Grand Jury to obtain his medical records. The Grand Jury reviewed the medical records and concluded there did not appear to be any verification to substantiate his use of sick leave.

## **Findings**

F1. It appears the former Sheriff promoted a Captain to Undersheriff for personal reasons, rather than for the benefit of the County.

No Board of Supervisors response required.

F2. The Sheriff authorized the Undersheriff to use accumulated leave from January 31, 2000 through April 28, 2000.

No Board of Supervisors response required.

F3. The Undersheriff contacted the Payroll clerks with instructions to change his vacation leave to sick leave.

No Board of Supervisors response required.

F4. The 2000/2001 Grand Jury reported this Undersheriff was paid 200 hours for sick leave when he was not sick and resulted in the use of accumulated sick leave for which he would not have been entitled to be paid for upon retirement.

***Response to F4: The Respondent agrees with the finding.*** The 2001/2002 Grand Jury Report. Page 8, contains statements in Findings F3 and F4 which agree with the statement in the above Finding.

F5. The Sheriff, responding to the 2000/2001 Grand Jury Report, said he would investigate the Grand Jury's finding. If the Sheriff determined that the Undersheriff was not entitled to receive sick leave payment, he would demand repayment of funds.

***Response to F5: The Respondent agrees with the finding.*** The Sheriff referred to is retired. Demand for repayment has been made, and a lawsuit filed to recover the overpayment.

F6. The Sheriff alleges he sent a letter to the Undersheriff on August 29, 2001, requesting doctor's documentation. However he failed to follow up on said letter for a period of fourteen months until contacted by this Grand Jury.

No Board of Supervisors response required for F7-F9.

F7. The Undersheriff responded in a letter on October 9, 2002 that he was sick during the time in question.

F8. The Undersheriff's medical records reviewed by this Grand Jury do not appear to substantiate his claim.

F9. A review by this Grand Jury of Sheriff's Department sick leave records, between January 1999 and November 2002, revealed this apparent abuse of sick leave to be an isolated case.

F10. In January 2003, the County Counsel filed suit against the Undersheriff in small claims court to recover monies owed pursuant to the limitations of said court.

***Response to F10: The Respondent agrees with the finding.***

**Recommendations**

R1. Procedures should be established, implemented, and followed for obtaining appropriate approval to change any vacation leave to sick leave for all personnel, including management.

No Board of Supervisors response required for R1-R3.

R2. Written medical verification required for related sick leave should be obtained in a timely manner.

R3. Proper procedures should be established for follow-up of required written medical verification.

R4. County Counsel should review the issues presented and take whatever additional action they deem appropriate.

***Response to R4: The Recommendation has been implemented.*** A civil action to recover the payment was initiated. It was settled for an amount which reflected the legal and factual circumstances.

**Commendations**

County employees were cooperative with this Grand Jury's investigation. It should be noted that the Sheriff's Department has implemented procedures to ensure compliance to the sick leave policy.

**Responses Required for Findings**

F3 through F5	El Dorado County Sheriff
F4 through F5, and F10	El Dorado County Board of Supervisors

**Responses Required for Recommendations**

R1 through R3	El Dorado County Sheriff
R4	El Dorado County Board of Supervisors El Dorado County Counsel



## **CRIMINAL JUSTICE COMMITTEE**

### *Appearance of Inappropriate Actions by the El Dorado County District Attorney*

Citizen Complaint #C34-02/03

#### **Reason for the Report**

A complaint alleges inappropriate behavior by the El Dorado County District Attorney.

#### **Scope of the Investigation**

The Grand Jury interviewed:

- The Complainant;
- The El Dorado County District Attorney;
- The District Attorney's "girlfriend;"
- Attorneys currently and formerly associated with the District Attorney's Office;
- Several Judicial Officers;
- A Deputy Sheriff of El Dorado County;
- Current and former El Dorado County Employees;
- Director of Human Resources for El Dorado County;
- Auditor-Controller for El Dorado County;
- A representative of one of the El Dorado County employee unions.

The Grand Jury also reviewed:

- The Complaint;
- Numerous Court documents relating to Complainant and District Attorney's girlfriend (hereinafter referred to as "Friend");
- Various Court Orders of the El Dorado Superior and Municipal Courts  
Transcripts of Superior Court proceedings;
- Police and Sheriff's reports pertaining to Complainant, "Friend," and "Friend's" son;
- Various memoranda from the District Attorney;
- El Dorado County timesheets, payroll and expense records of the "Friend;"
- Criminal Court records of "Friend's" son;
- Letters to and from the California Judicial Council;
- Letter to and from the California State Bar;
- California Rules of Professional Conduct - State Bar Act;

- Applicable Penal Code Sections ;
- Applicable Government Code Sections;
- Applicable Business and Professions Codes Sections;
- *Professionalism a Sourcebook of Ethics and Civil Liability Principals for Prosecutors* by The Ethics Committee of the California District Attorneys Association;
- Recusal of District Attorneys – Attorney General Publications;
- District Attorney Department Handbook;
- Grand Jury Reports for years 1999/2000, 2000/2001 and 2001/2002;
- Additional information supplied by the District Attorney to “clarify” his previous testimony;
- Additional information supplied by the District Attorney’s “Friend” to “clarify” her previous testimony;
- Reviewed transcripts of District Attorney and “Friend’s “ testimony.

### **Background**

The complaint alleges inappropriate behavior by the El Dorado County District Attorney, various Court and County employees, and various judicial officers.

The Complainant is a former “live-in boyfriend” of the El Dorado County District Attorney’s “Friend.” The Complainant is the father of one of the children of “Friend.”

Both the Complainant and the District Attorney’s “Friend” have been and continue to be involved in convoluted and bitter proceedings in the El Dorado County Superior Court. The myriad of issues includes child custody, child visitation, child support, multiple restraining orders against both parties, and allegations regarding “who did what to whom.” At one point, the Court declared Complainant to be a “vexatious” litigant.

This Grand Jury’s investigation determined many of the Complainant’s allegations regarding Court and County employees and Judges to be without merit. However, the investigation did reveal issues enmeshing the District Attorney in potential conflicts of interest, appearances of impropriety, less-than-strict adherence to the ethical requirements of prosecutors, and violations of the Rules of Professional Conduct for Attorneys and the California Business and Professions Code.

This Grand Jury was concerned to find that sworn testimony by the El Dorado County District Attorney and other witnesses differed in important and significantly conflicting details.

The Grand Jury investigation revealed animosity exists between the District Attorney and the Complainant.

During the recent election the Complainant put offensive signs on his truck opposing the District Attorney’s reelection. In October 2002, the District Attorney filed a complaint with the Sheriff’s Department for damaged and missing election signs. The District Attorney told the Deputy Sheriff that because of his job anyone could have damaged/vandalized his signs. However, the District

Attorney identified only the Complainant as a possible perpetrator to the Deputy. The District Attorney told the Deputy that the Complainant's driver's license had been suspended.

The morning after filing his complaint, the District Attorney contacted the Deputy to inform him of the whereabouts of the Complainant. The Deputy stopped the Complainant, informed him of his suspended driver's license, and questioned him about the vandalism/theft of the election signs. Subsequently after receiving verbal consent, the Deputy searched the Complainant's vehicle and home. The Deputy found no evidence of the signs.

The Complainant contacted Child Support Services regarding the suspended license. Child Support Services told him the suspension had been lifted. Subsequently, this Grand Jury heard testimony that the District Attorney inappropriately commented at a Department Head meeting that the department should never have lifted the Complainant's suspension.

The District Attorney testified he spoke with the Deputy about a half a dozen times during the investigation. In addition, the District Attorney testified that he keeps a personal file relating to Complainant in his personal office. He mentioned this file is not maintained within the course of his duties as a District Attorney but only for his own personal records.

The 2002/2003 Grand Jury concluded certain other actions by the District Attorney, while probably not unlawful, are highly questionable given his relationship with his "Friend." For example, on June 18, 1999, the District Attorney signed a form of "proof of service" for documents he mailed to Complainant on his "Friend's" behalf. By injecting himself into a legal proceeding involving his "Friend," the District Attorney projected the appearance of impropriety. Another example involves a declaration signed under penalty of perjury by the District Attorney. The declaration was apparently filed in one of "Friend's" Court cases. It concerned a telephone conversation between Complainant and "Friend" that the District Attorney overheard. The District Attorney assumed his declaration could be used in a Court action involving his "Friend" and the Complainant. If the matter had gone to trial, the District Attorney could have been called as a witness. Injecting himself into Court proceedings involving his close personal "Friend" may create a conflict of interest.

The District Attorney also testified that he should not be disqualified from doing things that anyone else can do. Although the District Attorney does not give up his rights as a private citizen because he is the District Attorney, he is still bound by certain constraints precisely because he is the District Attorney of El Dorado County. The top prosecutor of the County is required to meet standards of candor and impartiality not demanded of other attorneys.

"Friend" has a son with a lengthy criminal court record. His El Dorado County cases were handled by the District Attorney's Office. Evidence of special consideration does not appear. This Grand Jury is concerned, however, about a public perception of an appearance of impropriety because of the close relationship between the District Attorney and his "Friend," and by extension, "Friend's" family. In the opinion of the Grand Jury, it should be the duty of the District Attorney to place himself above reproach in all legal matters relating to his "Friend" and her family.

In another matter, the Complainant filed two Orders to Show Cause requesting temporary restraining orders pertaining, in part, to possession of firearms by “Friend.” Complainant filed one of the Orders to Show Cause in 1999 and the other in the year 2000.

The 1999 temporary Court Order, among other things, required the District Attorney’s “Friend” to give up any firearm in or subject to her immediate possession or control within 24 hours. The Order also required “Friend” to surrender any firearms to local law enforcement and file a receipt with the Court showing compliance.

In testimony before the Grand Jury, the “Friend” stated she asked the District Attorney about the appropriateness and legality of the Order. She testified he told her it was legal. She then testified she delivered her gun, a .380 caliber Smith & Wesson semi-automatic pistol, to the District Attorney and he gave her a written receipt.

The District Attorney subsequently testified he purchased the .380 for his “Friend” as a gift in December 1998. He said she lives alone and he felt she needed a gun for her home so she had a means to protect herself. He also testified that he was not aware of her having any other firearms.

During his initial testimony on May 21, 2003, the District Attorney denied any memory of the “Friend” turning the gun into his office. Later when the Grand Jury inspected the official logbook of evidence held in the District Attorney’s Office, there was no record of the gun having been turned in.

At his request to clarify his earlier testimony, the District Attorney re-testified on June 4, 2003. In this testimony he recalled taking possession of the gun and provided the Grand Jury with a photocopy of his handwritten evidence log that showed he put the gun in his personal safe in his office.

The evidence log for the District Attorney’s personal safe contained five entries:

March 3, 1995	Envelope from Grand Jury	In
May 15, 1995	Envelope with \$1,254 cash	In
November 17, 1995	Envelope from Grand Jury	In
July 13, 1999	Smith and Wesson 380 caliber, A Serial number from [“Friend’s”] gun	In
November 15, 1999	Smith and Wesson 380 caliber, A Serial number from [“Friend’s”] gun	Out

The entries had log numbers and were initialed by the District Attorney. The entries on the evidence log, cited above, show receipt of a gun from “Friend” on July 13, 1999, and removal of the gun from the safe on November 15, 1999. These are the last two entries on the District Attorney’s current evidence log. The entry showing the gun going “out” is the only “out” entry recorded in the log in the previous eight years. The District Attorney did not have a copy of any Court Order to release the gun to “Friend” nor a receipt from “Friend” evidencing return of the gun. The District Attorney’s method of receiving “Friend’s” gun for safekeeping in his private office safe did not follow normally accepted procedures that are in place in his office. This procedure on behalf of “Friend” conveys an appearance of impropriety.

The District Attorney testified he did not know how accurate his evidence log was. He also testified the log did not accurately convey all the “in” and “out” activities of his personal safe. In addition, he maintained he was the only one with access and the combination to the safe.

The District Attorney also stated his personal safe currently contains more items than just the three remaining items listed in the evidence log. However he had no log of the additional files in his personal safe nor did he recall anything about the other items in his safe. While he knew from the evidence log who delivered the above items, he did not know if some of the items were still in his possession or even the reason for the cash being in the safe. Furthermore he was unaware if the cash was still in the safe. (Later, he informed this Grand Jury by telephone the cash was still in his safe.)

During the District Attorney’s testimony he mentioned he did not always record or keep records of guns stored or placed in his custody.

In April 2000, the Complainant filed another Order To Show Cause and Temporary Restraining Order. This Court Order required the “Friend” to surrender a .22 caliber pistol and all weapons to the Sheriff’s Department. The “Friend” testified to the Grand Jury that she had never seen this Court Order. However, the transcript of a later Court hearing (April 12, 2000) indicates she was aware of it.

The Grand Jury sent a subpoena to the Sheriff’s Department requesting information relating to any surrender of firearms by “Friend” between April 3, 2000 and April 26, 2000. The Sheriff’s Department search did not any find any record of such surrender. This clearly indicates “Friend” did not, in fact, surrender her weapons to the Sheriff’s Department as ordered by the Court.

The Grand Jury asked the District Attorney what he would do with a firearm the Court had directed be delivered to the Sheriff’s Department but was given to him instead. The District Attorney said he would usually give it to an investigator or put it into a locked safe. With reference to the fact that the Court Order directed the firearm be delivered to the Sheriff’s Department, the District Attorney testified his compliance with the Court Order would depend on the reason for the Order. If it involved evidence that required booking into the Sheriff’s Department, then the District Attorney indicated that he might deliver the firearm to the Sheriff. If it were just for safekeeping, the District Attorney said he might store the weapons in the District Attorney’s office. He added that even if he knew the Court had ordered his “Friend’s” gun be delivered to the Sheriff, he might have accepted the gun to lock it up to keep it away from her.

The Grand Jury evaluated the District Attorney’s testimony in light of his obligation to comply with ethical guidelines and to conform to standards of professionalism:

“In order to instill public confidence in the legal profession and our judicial system, an attorney must be an example of lawfulness, not lawlessness.”<sup>1</sup>

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<sup>1</sup> *PROFESSIONALISM, A Sourcebook of Ethics and Civil Liability Principles for Prosecutors*, by the Ethic Committee of the California District Attorneys Association; Chapter X, Page X-1.

After repeated questions about a Court Order that a firearm be delivered to the Sheriff, the District Attorney left this Grand Jury with the impression it would be his decision whether or not to follow the Court Order.

After the Temporary Restraining Order was issued on April 3, 2000, requiring the "Friend," among other things, to deliver all weapons to the Sheriff's Department, the Court held another hearing on April 12, 2000. Both parties were present at this hearing and the "Friend" admitted having received the Temporary Restraining Order discussed above.

During the April 12, 2000 hearing, the Court asked the "Friend" about a .22 caliber pistol. The "Friend" responded to the Court that she did not have a .22 pistol. However in her testimony before the Grand Jury, she testified she possessed a .38 caliber handgun. The District Attorney's personal evidence log indicates the District Attorney returned a .380 Smith and Wesson semi-automatic pistol to "Friend" in November of 1999. "Friend" said she did not inform the Court of her other weapons because the Court did not ask about them.

In addition, the "Friend" may have been in Contempt of Court for noncompliance with the April 3, 2000 Temporary Restraining Order because she did not deliver all of her weapons to the Sheriff's Department.

When the District Attorney assumed his elected position in 1995, Child Support Services was under the auspices of the District Attorney's Office. The District Attorney was thus his "Friend's" department head. In December of 1996, "Friend" moved from the Placerville office to the South Lake Tahoe Office of Child Support Services. Initially assigned as a supervisor, "Friend" was promoted to Family Support Branch Manager in October 1997. Just over two months after her promotion in December 1997, "Friend" transferred to another County department citing personal issues. According to "Friend," others had the perception that she was having a relationship with the District Attorney. "Friend" testified no such relationship existed at that time.

During their Grand Jury individual interviews, both the District Attorney and "Friend" testified "Friend" left Child Support Services and the District Attorney's Office about the end of 1996. The District Attorney and "Friend" also testified their relationship began in June 1998. The District Attorney said they became involved several years after "Friend" left Child Support Services. County payroll records, however, show "Friend" left the District Attorney's Office in December 1997, less than six months before they testified their relationship allegedly began.

The District Attorney later hired "Friend" to transcribe records for the District Attorney's Office on a part-time basis (from late 1999 through early summer 2001). During this time "Friend's" child support case was still under the auspices of the District Attorney. The District Attorney did not see any problem with an appearance of impropriety with "Friend's" case being handled by his office.

"Friend" worked for another County Department from March 2002 to November 2002. According to "Friend," the District Attorney told her his office was short-handed and asked if she would like an "Extra Help" position. The following day the District Attorney requested approval for the "Extra Help" position. He also requested "Friend's" position be upgraded from Legal Office Assistant I/II to Legal Secretary I/II. He based his request on the fact that vacancies existed in the office of one

full time Legal Secretary and 2.5 full time Legal Office Assistant positions. Since the new position was “Extra Help,” the District Attorney was allowed to hire without posting for the position or using a pool of five candidates supplied by Human Resources. “Friend” began working for the District Attorney in December 3, 2002, as a Legal Secretary II.

According to Human Resources, the District Attorney’s Office has been short three legal assistant/secretary positions since October 2002 and has not filled any of these positions as of May 2003. The District Attorney told this Grand Jury his office was down five to six clerical positions, which conflicts with Human Resources information that only three positions are currently open.

“Friend” testified she may work up to 40 hours a week as extra help. Records indicate she averages approximately 30 hours per week. When asked how it is determined the number of hours a week “Friend” works, the District Attorney testified it depended partially upon the needs in his office and partially upon her time commitment to another job she holds.

In addition to “Friend” currently working on a part time basis in the District Attorney’s office, “Friend” also works part time for a local family law attorney. The family law attorney is married to the Chief Assistant District Attorney who reports to the District Attorney. The District Attorney testified the Chief Assistant District Attorney is also the person who handles any cases involving “Friend,” “Friend’s” son and any criminal matters involving the Complainant and “Friend”.

The Grand Jury interviews established the personal relationship between the District Attorney and “Friend” is known to the staff in the District Attorney’s Office. The District Attorney testified his subordinate employees would tell him if work problems arose with regard to his “Friend’s” work performance. If “Friend’s” supervisor or co-workers have an issue with “Friend’s” work performance they are placed in the untenable position of having to raise their concern with their department head who is also “Friend’s” boyfriend.

The District Attorney denies that “Friend’s” employment creates the perception or appearance of impropriety. He testified that some people may perceive a conflict regardless of what he says or does and some people may be offended by the situation. He stated, however, his office operations would be in serious trouble without “Friend’s” extra help.

**Potential Violation of Rule 5-300 of the California Rules of Professional Conduct the State Bar Act (ex parte communications)**

“Rule [of Professional Conduct} 5-300. Contact with Officials . . .

(B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officers, except:

- (1) In open court; or
- (2) With the consent of all other counsel in such matter, or
- (3) In the presence of all other counsel in such matter, or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) In ex parte matters.”

In 1999, a court clerk apparently failed to delete a child's name on a temporary restraining order served on the El Dorado County District Attorney's "Friend." This caused the "Friend" to believe the Court had issued an Order restraining her contact with her child. She was upset and told her boyfriend, the District Attorney, about what had happened. The District Attorney then telephoned a Judge regarding this issue, and contacted the Commissioner presiding over the "Friend's" case. According to the Commissioner, the District Attorney contacted him as he was walking into the courthouse demanding to know why the Commissioner had changed custody.

The District Attorney initially claimed that his communication with the Commissioner presiding over his "Friend's" case was not a prohibited ex parte communication because he was not a party to the case and therefore he could speak [ex parte] with the Commissioner.

Rule 5-300 (B) clearly and affirmatively prohibits a "member" of the bar, such as the District Attorney, from communicating, ex parte, with a judge or judicial officer about a case. It does not matter that the District Attorney was not personally involved as a party. He is a "member" of the State Bar of California.

The District Attorney's communication with the Commissioner, according to the two Judges who spoke with the District Attorney about the incident, was an impermissible ex parte communication and therefore a violation of the Rules of Professional Conduct 5-300.

The District Attorney compromised his position by later testifying, under oath before this Grand Jury, that he contacted the Commissioner because of inconsistent terms within two separate copies of the same restraining order. He said he felt it was his duty to do so because he might be called upon to enforce the Court Order a violation of which would be a misdemeanor. However, the District Attorney could not recall any other time when he personally investigated a misdemeanor since he became the District Attorney of El Dorado County. He testified his conversation with the Commissioner was not on the merits of the case and that his demeanor was calm.

The Grand Jury investigation disclosed the District Attorney went to the general filing clerk's window to see the file in question. The file was unavailable (presumably it was still with the Commissioner's judicial assistant) and the clerks were unable, at that time, to retrieve it. According to a clerk who observed the interaction, the District Attorney was rude and acted in a manner unbecoming a District Attorney.

An attorney also witnessed the District Attorney's actions during this transaction. According to this attorney's testimony, the District Attorney came to the clerk and "proceeded to raise hell". The District Attorney wanted to see a file and was adamant about it. The attorney characterized the District Attorney's manner as abrupt and curt.

The Commissioner wrote that the District Attorney was outraged because of the Commissioner's Order. The Commissioner told the District Attorney he had no idea what the District Attorney was talking about. After the District Attorney left, the Commissioner went to the files to see what the problem was. At that point in time, the Commissioner saw the error and contacted the District Attorney to inform him of same.



Thus, it seems clear, if the Court file was not available to the District Attorney before he spoke to the Commissioner, it was not possible for the District Attorney to have or be aware of two Restraining Orders during his conversation with the Commissioner. This Grand Jury finds the District Attorney's sworn testimony to be untrue.

Another issue arose during the District Attorney's ex parte conversation with the Commissioner. The District Attorney told the Commissioner another Judge had temporarily vacated the Commissioner's Order. During his testimony to this Grand Jury, the District Attorney denied telling the Commissioner that he had spoken with another Judge who was going to vacate the Commissioner's Order.

The District Attorney testified to this Grand Jury that what he said to the Commissioner was that he spoke with a Judge and asked the Judge to temporarily put a temporary hold on any enforcement of the Order until the District Attorney had the opportunity to clarify which Order was correct. The evidence received by the Grand Jury does not support his testimony.

The Grand Jury reviewed e-mails between the Commissioner, the Judge, the District Attorney, and a letter from the Commissioner. These documents disclosed the District Attorney did telephone a Judge before his discussion with the Commissioner. His telephone conversation with the Judge, however, did not include anything about the Judge placing a temporary hold on any enforcement of the Commissioner's Order. This is contrary to what the District Attorney told the Commissioner and this Grand Jury. During that telephone conversation the District Attorney asked the Judge what to do regarding the Order. The Judge told the District Attorney to have his "Friend" type a declaration and seek an Ex parte Order from the Commissioner modifying the Order.

The Grand Jury finds the District Attorney's statement to the Commissioner, regarding the Order being vacated or regarding a temporary hold and his sworn statements to this Grand Jury concerning this incident, to be lacking in truth and veracity.

The District Attorney's statement to the Commissioner, about the Judge placing a "hold" on the Order, was a violation of Business & Professions Code, Section 6068 (d). That Section concerns attorneys and says, in part, a member of the Bar should:

“(d)... never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.”

The District Attorney's statement to the Commissioner was an attempt to mislead him by a false statement of fact. According to the Judge, as stated previously, the District Attorney never mentioned putting a hold or temporary stay on the Commissioner's Order to him.

**Of greater seriousness, in the view of the Grand Jury, are the statements the District Attorney made to the Grand Jury to exculpate or insulate himself from the communication he had with the Commissioner.**

After his second appearance before this Grand Jury, the District Attorney sent the Grand Jury a letter. His letter misquoted Rule 5-300 (B). He wrote, “A member **may** directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except...” [emphasis added]. The Rule actually states “A member **shall not** directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except...” [emphasis added].

During his testimony to the Grand Jury and in a letter he sent to the Grand Jury to “clarify” his testimony, the District Attorney again testified that the two Judges told him his communication with the Commissioner was not a prohibited ex parte communication.

The Grand Jury investigation determined both the Presiding Judge and the Assistant Presiding Judge met with the District Attorney because the Commissioner informed them of the District Attorney’s ex parte communication. The purpose of the meeting was to admonish the District Attorney about the improper nature of his communication and to ensure it did not occur again. The District Attorney misrepresented these facts to the Grand Jury.

Another issue concerns a letter the District Attorney wrote to the California State Bar. The District Attorney wrote the letter after the Complainant contacted the State Bar about the District Attorney’s ex parte communication discussed above. The District Attorney’s letter denied any misconduct and offered his explanations as to what happened.

The District Attorney’s letter to the State Bar was misleading. In his letter to the State Bar, the District Attorney wrote he spoke with the Presiding Judge and the Assistant Presiding Judge about his communications to the Commissioner and the Judges were satisfied that no inappropriate conduct took place. This statement in the District Attorney’s letter to the State Bar is not true. Both the Presiding Judge and the Assistant Presiding Judge advised the Grand Jury they characterized the District Attorney’s communication with the Commissioner as an “inappropriate ex parte communication.” They told this to the District Attorney during their meeting on this issue.

In his letter to the California State Bar, the District Attorney wrote he believed the Commissioner recused himself from his “Friend’s” case because of extensive frivolous litigation by the Complainant.

The District Attorney’s “belief” is not based on fact. The Commissioner signed a Minute Order saying the reason for his recusal arose from the unsolicited ex parte communication from the El Dorado County District Attorney’s Office. The Commissioner reported that he disqualified himself due to the District Attorney’s involvement and ex parte communication.

Based only on information received from the District Attorney, the State Bar wrote to the District Attorney and said it had completed the investigation of the allegations of professional misconduct and concluded the matter did not warrant further action. The State Bar closed the matter without prejudice to further proceedings as appropriate.

The Grand Jury finds that the District Attorney's communication with the Commissioner, and, more seriously, his misrepresentation of the facts to this Grand Jury and to the California State Bar, to be completely at variance with the conduct expected of attorneys in public office. This is especially true for the District Attorney because "Prosecutors are entrusted with great power and responsibilities. For that reason the public and the judiciary hold them to the highest ethical standards..."<sup>2</sup>

A District Attorney should at all times conduct himself in such a way as to be above reproach and to strictly adhere to the highest standards of conduct and avoid any appearance of self service or impropriety.

## **Findings**

No Board of Supervisors response required for Findings.

- F1. The District Attorney involved himself in "Friend's" Court proceedings with the Complainant.
- F2. The District Attorney's Office continues to handle "Friend's" son's criminal cases resulting in the appearance of impropriety to the public.
- F3. The District Attorney did not follow his office procedures relating to the logging in and custody of "Friend's" weapon.
- F4. The District Attorney has \$1,254.00 in his personal office safe for eight years and cannot explain this.
- F5. The District Attorney does not maintain a complete and proper evidence log of the contents of his personal office safe.
- F6. The District Attorney hired "Friend" to work in his office on several occasions, most recently December 2002, while involved in a personal relationship with her.
- F7. The District Attorney's "Friend" working in his office has created a perception of favoritism and an adverse effect on staff morale.
- F8. The District Attorney had an ex parte communication with a Court Commissioner in violation of Rule 5-300 of the California Rules of Professional Conduct for attorneys.
- F9. The District Attorney misled a Court Commissioner with a false statement of fact in violation of Business & Professions Code, Section 6068 (d).

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<sup>2</sup> *PROFESSIONALISM, A Sourcebook of Ethics and Civil Liability Principles for Prosecutors*, by the Ethic Committee of the California District Attorneys Association; Chapter X, Page X-1.

- F10. The District Attorney misrepresented facts regarding his communication with the Commissioner to the State Bar of California and to this Grand Jury.
- F11. The District Attorney sent a letter to the Grand Jury misquoting Rule 5-300 of the California Rules of Professional Conduct for attorneys.
- F12. Sworn testimony by the District Attorney and other witnesses conflicts in important and significant details.
- F13. Portions of the District Attorney's testimony and documentation were found to be lacking in truth and veracity.

### **Recommendations**

No Board of Supervisors response required for R1-R5.

- R1. The District Attorney should establish proper written procedures for all cases involving potential conflict of interest.
- R2. The District Attorney should establish written procedures pertaining to his "personal" safe whereby all items are properly logged in and out with the appropriate detailed information.
- R3. The personal safe and evidence locker should be audited annually.
- R4. All cash received should be maintained in "double" custody.
- R5. To avoid the appearance of a conflict of interest, the District Attorney should set up a written protocol regarding cases whenever the accused is related to or has a relationship with an employee in the District Attorney's Office, including the District Attorney.
- R6. The El Dorado County Board of Supervisors should revise the County's nepotism policy to include "significant others."

***Response to R6: The recommendation requires further analysis.*** The issue of defining significant others is a complex issue since relationships develop at all levels from that of platonic to sexual. An employer's attempts to create policy to control fraternization between employees or identify relationships between individuals must balance an employee's state and federal constitutional rights of privacy and association and the potential for litigation that comes with an unwarranted intrusion of these rights with that of the employer's interest in restricting conduct that harms the public service.

Public employers have a legitimate interest in regulating "romance" in the workplace in relationships between supervisors and subordinates to the extent that it can lead to claims of sexual harassment, third party claims of hostile work environment, or perceptions of favoritism, bias or unfair treatment. However, the U.S. and California Constitution bar public employers from unduly focusing on an individual's right to privacy, free speech, and

freedom of association. The main issue of the employer should be on the safety, security, and productivity of the workplace, i.e. the legitimate business concerns of the public employer.

The Human Resources department will work with County Counsel and the Chief Administrative Office to review the County's policy on nepotism and make amendments as necessary. Analysis of this recommendation will be completed by December 25, 2003. Any necessary amendments will be completed by April 30, 2004.

**Responses Required for Recommendations**

R1 through R5

El Dorado County District Attorney

R6

El Dorado County Board of Supervisors

## **CRIMINAL JUSTICE COMMITTEE**

### *Non-Action by District Attorney*

Citizen Complaint #C41-02/03

#### **Reason for the Report**

A citizen's complaint alleges the District Attorney failed to perform his job because he did not prosecute the alleged leader of the Women Helping Women organization in El Dorado County.

#### **Scope of the Investigation**

The members of the Grand Jury interviewed:

- The Complainant;
- Various participants of Women Helping Women;
- Law Enforcement Officials from El Dorado County, Placerville, and South Lake Tahoe;
- Deputy District Attorney for El Dorado County.

The Grand Jury also reviewed:

- Various written information including newspaper articles, Women Helping Women Newsletters, Faxes, notes provided by Women Helping Women participants;
- Law Enforcement Reports;
- Video tape of national television program featuring Women Helping Women type of organizations.

#### **Background**

Women Helping Women, determined by the District Attorney to be a pyramid scheme in violation of Penal Code 327, started operations in Placerville during the year 2000. Subsequently the organization moved from the Placerville City limits to various locations on the Western Slope of El Dorado County during 2001. This shift in location changed the jurisdiction from Placerville Police Department to the El Dorado County Sheriff's Department. The Women Helping Women activities then moved to Sacramento and Placer Counties. While a similar organization was started in South Lake Tahoe, it did not flourish.

Five participants of the El Dorado County Women Helping Women met with the District Attorney on February 13, 2002, to discuss the legality of the organization. During the meeting the District Attorney advised the group that Women Helping Women was a pyramid scheme and unlawful. He

informed the participants that, if they stopped all their group activities in El Dorado County as of that date, no charges would be brought against them. The alleged head of El Dorado County Women Helping Women was included in the offer as she was one of the five women in the meeting with the District Attorney.

Our investigation revealed it was difficult to substantiate the facts in the case. Individuals would use only first names and an initial for last names on Women Helping Women documents. To further complicate identifying the participants, many individuals did not use their real names, signed up friends and relatives without their knowledge, and blackened out names and phone numbers on documents. When asked to give names of witnesses, the information was refused because the individuals did not want to involve others. Also, it was difficult to prove the actual monetary value involved as all transactions were paid in cash.

There was an investigation underway by the Placerville Police Department when Women Helping Women moved activities out of their jurisdiction. Their investigative report was sent to the District Attorney.

The El Dorado County Sheriff's Department formed a task force comprised of two Sheriff's Detectives and one investigator from the District Attorney's Office in October 2002. The result of the investigation, which was conducted by the two Sheriff's Detectives, did not have sufficient evidence for criminal action. The investigative report was forwarded to the District Attorney's Office.

During our interview with the Deputy District Attorney, the Grand Jury was informed the Deputy District Attorney had reviewed the reports from both the Placerville Police and the Sheriff's Departments and determined there was insufficient evidence for further action. The reports, with the Deputy District Attorney's recommendation for no action, were given to the District Attorney for final review.

### **Findings**

No Board of Supervisors response required.

- F1. Investigations were conducted by both the Placerville Police Department and the El Dorado County Sheriff's Department into the activities of Women Helping Women in El Dorado County.
- F2. The Placerville Police Department and El Dorado County Sheriff's Department investigative reports were forwarded to the District Attorney.
- F3. On February 13, 2002 meeting with five members of Women Helping Women, the District Attorney advised the women no action would be taken if they stopped all group activities in El Dorado County as of that date.

- F4. The alleged head of El Dorado County Women Helping Women was one of the five women who met with the District Attorney and was told no charges would be brought against her if she stopped all her activities in El Dorado County as of that date.
- F5. The District Attorney has not taken any action against any members of Women Helping Women in El Dorado County.

**Responses Required to Findings**

F3 through F5

El Dorado County District Attorney

**No Recommendations**



**CRIMINAL  
JUSTICE  
(JAIL REPORTS)**

## **CRIMINAL JUSTICE COMMITTEE**

### ***El Dorado County Jail, Placerville***

#### **Reason for the Report**

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

#### **Scope of the Inspection**

Members of the Grand Jury made a comprehensive inspection of the Placerville Jail facility on February 28, 2003.

- The Jail Commander briefed jury members on Jail operations;
- The Jail Commander conducted a comprehensive tour of the facilities;
- Staffing levels were explained and discussed;
- Inspection Reports were reviewed;
- Recommendations of previous Grand Juries were discussed;
- Implementation of those recommendations was explained to and reviewed by the inspecting members;
- Grand Jury Reports for 2000/01 and 2001/02 were reviewed.

#### **Background**

The Placerville Jail facility was built in 1988 as a “direct supervision” jail wherein inmates have direct contact with staff. Original plans allow for the future expansion of a second wing.

Staffing for the facility totals 103.5. The total is comprised of a Captain responsible for both Placerville and South Lake Tahoe facilities, a Lieutenant in charge of the facility, Correctional Officers, Sheriff Assistants, and Cooks. The staff provides the coverage of the jail facility, the Work Program, Transportation, and the Bailiff/Court Security.

The jail facility is adequate and has an oversized booking area and kitchen in anticipating future expansion. The central control booth floor showed excessive wear. The original floor is old, worn and cannot be cleaned. In the main hall an antenna wire was exposed.

The jail holds a maximum of 243 inmates and is rarely filled to capacity. When this Grand Jury inspected the facilities, there were 185 inmates comprising of 160 males and 25 females. Of these

inmates, 180 were from El Dorado County, four were from Amador County, and one from the U.S. Marshall. Two additional Placerville inmates were being housed in Amador County Jail. In addition there were 23 inmates on the Electronic Monitoring Program.

The Work Program assists individuals convicted of drunk driving, driving with suspended license, white-collar crimes, or misdemeanor whose sentences require jail time of ten to fifteen days. The individuals are allowed to continue their jobs, live at home, and not be on the Electronic Monitoring Program. In exchange, individuals work off the sentence by performing grounds and maintenance work at the fairgrounds, El Dorado High School, Consumes Community College, Veterans Hall or other local places and pay \$20 for each day worked. Payments to participate in this program totaled \$56,580 for the fiscal year 2001/2002 and \$57,100 for the first nine months of the current fiscal year. The funds received are credited to the General Fund of the County.

Space is rented to the U.S. Marshall and other counties. If necessary for security needs, for example to separate gang members, inmates are sent to other county jails. The jail has housed no minors in the past three years.

The kitchen staff is comprised of one supervising cook and three cooks with several inmates assisting. A part-time dietician reviews the meal plans for nutritional value. During the inspection of the kitchen it was noted that some vegetables appeared to be old and need to be discarded. Two food containers lids are cracked. Similar conditions have been reported in the previous Grand Jury report.

Medical and dental needs are provided on site. Full time contract nursing services are available with a doctor on call. A contract dentist provides emergency dental care on premises.

### **Findings**

F1. The central control booth needs new floor covering.

***Response to F1: The respondent agrees with the finding***

F2. The antenna wire was exposed in the main hallway.

***Response to F2: The respondent agrees with the finding***

F3. Some produce was old and needed to be discarded.

***Response to F3: The respondent agrees with the finding.*** The response is qualified by noting that policy directs that food inspections are to be conducted regularly, and in the past no produce or leftovers have ever been found to be old or out of date. Respondent has no information to disagree with the particular conditions noted at the time of the finding except past experience.

F4. Two food storage bins had cracked lids.

**Response to F4: Respondent agrees with the Finding.**

**Recommendations**

R1. The central control booth floor covering should be replaced.

**Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.** General Services will contract with outside vendor to make the necessary replacement or repair. Completion is anticipated by August 31, 2003.

R2. The antenna wire in the main hall should be put in a conduit.

**Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.** General Services Department issued a service order on July 11, 2003 to cover the wire with conduit. Anticipated completion date is no later than October 30, 2003.

R3. Produce should be checked regularly.

**Response to R3: The recommendation has been implemented.** Produce is checked regularly, in addition to inspections by the Environmental Management Department and quarterly dietician inspections. These inspections have never found produce or leftovers to be old or out of date.

R4. Cracked food storage lids should be replaced.

**Response to R4: The recommendation has been implemented.** The cracked food storage lids have been replaced.

**Responses Required for Findings**

F1 through F4  
El Dorado County Board of Supervisors  
El Dorado County Sheriff

**Responses Required for Recommendations**

R1 through R4  
El Dorado County Board of Supervisors  
El Dorado County Sheriff

## **CRIMINAL JUSTICE COMMITTEE**

### ***El Dorado County Jail, South Lake Tahoe***

#### **Reason for the Report**

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

#### **Scope of the Investigation**

Members of the Grand Jury made a comprehensive inspection of the South Lake Tahoe Jail facility on September 20, 2002:

- Jury Members were briefed on Jail operations by the Jail Commander;
- The Jail commander conducted a comprehensive tour of the facilities;
- Staffing levels were discussed and explained;
- Recommendations of previous Grand Juries were discussed;
- Implementation of the recommendations was explained to and reviewed by the inspecting members;
- Plans and location for the new Juvenile Hall to be constructed next to the Jail were reviewed and discussed;
- Grand Jury Reports for 2000/01 and 2001/02 were reviewed.

#### **Background**

The South Lake Tahoe Jail premises appear to be well maintained and exceptionally clean. Renovation/construction is underway for a second sobering cell. Although plans had been made for a new juvenile hall to attach to the jail, current plans are for the premises to be adjacent and separate.

The staff appears well groomed and cooperative. Medical Staff, which is provided through contract, is available 24 hours and appears to be adequate. Dental services currently are obtained by transporting prisoners from South Lake Tahoe to Placerville Jail. However, dental services are available locally, which may be more cost effective.

Correctional officers are scheduled for 12-hour shifts three days one week and four days the next week (3/4). In addition, they routinely work additional overtime hours. The use of overtime to supplement staffing needs is a common practice raising a concern of safety and effectiveness. Since the inspection, the new Sheriff has modified and improved the work schedules.

The design and location of the ramp for the disabled which leads into the public area poses a safety hazard to the users and a potential liability to the County. During certain weather conditions the ramp must be closed. Since 1998, \$31,860 has been appropriated from the Criminal Justice Trust Fund for the ramp for the disabled as evidenced on the County of El Dorado Proposed Budget and

Workplan (General Services, Carry-over Facility Projects, 98-21 South Lake Tahoe Sheriff Handicap Ramp). The County has been aware of the problem with the ramp and considered possible solutions, however, it has failed to take action to correct the problem.

Security in the hallway between the jail and the Court Building needs to be improved. The hallway does not have adequate camera surveillance. The hallway is accessible from outside by key. Numerous County employees have access to the area.

### **Findings**

F1. Prisoners are transported from South Lake Tahoe to Placerville for dental services.

***Response to F1: The respondent agrees with the finding.***

F2. The correctional officers routinely work 12 hour shifts with substantial additional overtime.

***Response to F2: The respondent disagrees partially with the finding.*** Correctional officers were working 12-hour shifts due to the existence of position vacancies at the time of the Committee's inspection. They have since returned to a 9/80 schedule because vacant positions were filled.

F3. Although \$31,860 was appropriated from the Criminal Justice Trust Fund in 1998 and included in the County of El Dorado Proposed Budget and Workplan (General Services Carryover Facility Projects, 98-21 South Lake Tahoe Sheriff Handicap Ramp) necessary improvements to the ramp for the disabled entrance have not been made resulting in continued safety hazard to users and potential liability to the County.

***Response to F3: The respondent agrees with the finding.***

F4. Current camera surveillance in the hallway between the jail and Court Building is not adequate.

***Response to F4: The respondent disagrees with the finding.*** There is a distance of approximately 30 feet in the hallway that is not observable by the surveillance camera. Both the entry and exit to this hallway are observable on camera. Prisoners or inmates moving into, through, and beyond this area are under physical restraints at all times and are escorted by corrections staff who provide constant visible monitoring.

### **Recommendations**

R1. Local dental services should be utilized if appropriate.

**Response to R1: The recommendation will not be implemented because it is not warranted.** The County has a multi-year contract for medical services, including dental services, that requires all dental services to be provided in Placerville as that is the most cost-effective way of delivering the service. Prisoners are transported back and forth as part of the normal biweekly transfer of inmates between the Tahoe and Placerville facilities. Utilization of local dental services increases the need for inmates to be transported, increases the opportunity for escape and requires dentists to be willing to schedule inmate visits during off hours – something they have historically not been willing to do except in an emergency

R2. Staffing should be adequate to minimize the need for overtime.

**Response to R2: The recommendation will not be implemented because it is unreasonable.** The Board of Supervisors has authorized adequate staffing based on a plan approved by the California Department of Corrections. For a variety of reasons, the Sheriff's Office has been unable to keep all those positions filled, resulting in the periodic need for overtime and/or 12-hour shifts. While the department makes every effort to recruit and hire jail staff, vacancies are a reality and overtime and shift adjustments will be an ongoing cost of doing business.

R3. The ramp for the disabled should immediately be improved to meet safety conditions and the Americans with Disabilities Act ( ADA) requirements.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** The existing ramp is in a location that receives large deposits of snow from the jail roof area. In an attempt to resolve this condition, together with addressing other needed repairs, a design was prepared to relocate the ramp to the south end of the covered porch area. This route will not only alleviate the excessive snow loading but will also reduce the grades along the ramp. The design of the new ramp is now complete. The General Services Department is currently soliciting bids for construction in conjunction with completing agency review (TRPA). Construction of the new ramp is scheduled for completion prior to October 15, 2003.

R4. Camera surveillance in the hallway between the jail and Court Building should be properly and adequately upgraded.

**Response to R4: The recommendation will not be implemented because it is not warranted.** There is one camera in the hallway and it is monitored whenever prisoners are in the corridor. While moving through the corridor, inmates are dressed in orange and restrained in waist chains and leg shackles, or dressed in regular clothes with a restraining leg brace and handcuffs. Uniformed deputy sheriffs escort prisoners and the number of escorts is determined by the number of inmates being moved and the assessed risk presented by the particular group or individual. The addition of a second camera to cover the thirty feet that is currently "blind" would not result in any increase to security.

**Responses Required for Findings**

F1 – F4                    El Dorado County Sheriff  
                                 El Dorado County Board of Supervisors

F3                            El Dorado County Department of General Services

**Responses Required for Recommendations**

R1 – R4                    El Dorado County Sheriff  
                                 El Dorado County Board of Supervisors

R3                            El Dorado County Department of General Services



## **CRIMINAL JUSTICE COMMITTEE**

### ***El Dorado County Juvenile Hall – Placerville***

#### **Reason for the Report**

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

#### **Scope of the Inspection**

Members of the Grand Jury inspected El Dorado County Juvenile Hall - Placerville on August 21, 2002 and April 9, 2003.

- Jury members met with the Chief Probation Officer and the Deputy Chief Probation Officer;
- The Chief Probation Officer and the Deputy Chief Probation Officer jointly conducted comprehensive tours of the facility with the Grand Jury Members
- Inspection reports were reviewed;
- The Principal/lead teacher/counselor and teachers were interviewed;
- Kitchen supervisor and assistants were interviewed;
- Several wards were interviewed;
- Grand Jury reports for 2000/2001 and 2001/2002 were reviewed.

#### **Background**

Juvenile Hall was built in 1971 as a “direct supervision” jail for juveniles (wards) where they have direct contact with the staff. The facility, originally built to house 22 juveniles, has been expanded to house 40. When necessary, extra beds are used to accommodate additional wards. Due to Court Orders capping the number of juveniles housed at the facility at 42, Court approval is required and obtained for all exceptions. Juvenile Hall has housed as many as 56. Due to space limitations, counselors, who are contracted, are required to meet with the wards in open activity areas.

While currently there are not any plans for new or expanded juvenile facilities in Placerville, plans are underway for a new juvenile hall in South Lake Tahoe. Groundbreaking for the new facility is scheduled for April 30, 2003, with completion anticipated in about a year. This new facility which will accommodate up to 40 juveniles will help alleviate the periodic overcrowding condition of the current Placerville juvenile facility.

Juvenile Hall is used to house both male and female juveniles between the ages of 8 to 19. On the date of the Jury’s last visit there was a total of 36 juveniles comprised of 29 male and 7 female. Of these juveniles, 25 were from the west slope, 10 from South Lake Tahoe and one from Alpine County. Juvenile Hall does on occasion house, by contract, juveniles from Amador and Alpine Counties. Amador County does not have a juvenile hall facility. Special arrangements have been

made with Alpine County to house four wards a year, one at a time, for 30-day drug/substance abuse treatment.

While the average stay is between 28 to 30 days, some juveniles may stay a day while others up to a year. Juveniles requiring longer detention time are placed at a youth ranch within California as directed by Court Order. In addition, some juveniles are placed on electronic house supervision, which allows them to stay in their homes and continue to go to school.

Four supervisors and 16 permanent line employees staff the facilities. The facilities appear neat, clean, and well run. However, it is in need of painting, as it has not been painted in seven years. New baseboards are needed in the entry, halls, and general-purpose gym. Cell #14 has a cracked door window. In addition, the HVAC vents in the classrooms are dirty.

Juvenile Hall has an outstanding school program administered on premises by the Principal/lead teacher/counselor with three teachers in two classrooms. Individual school programs are prepared and administered for each ward, including Special Education. Juveniles attend school Monday through Friday and weekly meet with a teacher to review the individual's progress in work packets. When juveniles are to be released, their next school is contacted to help provide a smooth transition. In most cases the juveniles are placed back in their previous school.

All food for the juveniles is prepared on premises by the kitchen supervisor and two cooks with clean up performed by the juveniles. Menus are planned for several weeks in advance, and reviewed annually for nutritional value by a contract dietician. Special meals are provided as needed for diet, doctor's orders, allergies, and religious needs with medical related requests approval by the facility nurse.

Medical needs are provided through contracted nursing services with a medical doctor on call. Mental health counseling is provided through contract. In addition drug/substance abuse programs are available. The health facility room has no running water; the nurse has no water to wash her hands between patients.

While the facility is constructed of non-flammable material, any fire could create smoke conditions, which could cause serious harm to anyone in the facility. This Grand Jury concurs with the 2001/2002 Grand Jury recommendations that air packs (emergency breathing apparatus) should be available on premises and staff trained in their use. During our review of all the other correction facilities in the County, with the exception of Juvenile Hall, air packs are available and staffs are trained in their proper use.

## **Findings**

F1. Adequate space is not available for individual counseling.

***Response to F1: The respondent agrees with the finding.***

F2. The facility needs painting.

***Response to F2: The respondent agrees with the finding.***

F3. The baseboards in the entry, halls and general-purpose gym need to be replaced.

***Response to F3: The respondent agrees with the finding.***

F4. Cell #14 door window is cracked.

***Response to F4: The respondent agrees with the finding.***

F5. The HVAC vents in the classrooms are dirty.

***Response to F5: The respondent agrees with the finding.***

F6. No running water is available in the health facility room.

***Response to F6: The respondent agrees with the finding.***

F7. Air packs are not available in case of fire.

***Response to F7: The respondent agrees with the finding.***

### **Recommendations**

R1. The facilities should be painted.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** A work order was filed with General Services on July 3, 2003 to have the interior of the Juvenile Hall painted. General Services is in the process of obtaining proposals/bids. The painting is expected to be complete on or before December 15, 2003.

R2. Baseboards should be replaced as needed.

***Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.*** A work order was filed with General Services on June 30, 2003, to replace all damaged baseboards within the Juvenile Hall. Baseboards have been placed on order by General Services. Baseboards will be replaced as needed beginning October 1, 2003.

R3. Cell #14 door window should be replaced.

**Response to R3: The recommendation has been implemented.** The door window to Cell #4 was replaced on April 18, 2003.

- R4. The health facility room should have running hot and cold water and blankets.

**Response to R4: The recommendation will not be implemented because it is unreasonable.** The medical examination room is seriously lacking in square footage. Placing additional fixtures or storing additional items in an already undersized room is unreasonable. There are acceptable alternatives located in the immediate vicinity. The laundry room is directly across the hall, where blankets are available to the medical staff. When requested by medical personnel, Juvenile Hall staff have immediately provided blankets. Toilets and hot and cold running water are also available in the B-Wing bathroom and shower area located about 5-6 feet outside the clinic door and another restroom and sink is available in the B-Wing intake shower area directly next to the medical room. Although the medical examination room does not meet the new Title 24, California Code of Regulations pertaining to size and plumbing mandates, the Board of Corrections and California Youth Authority have “grandfathered” the medical examination room in our Juvenile Hall as acceptable.

- R5. The HVAC vents in the classrooms should be cleaned.

**Response to R5: The recommendation has not yet been implemented, but will be implemented in the future.** A work order was filed with General Services on July 10, 2003, to clean the HVAC vents in the classrooms in the Juvenile Hall. This work is expected to be completed on or before October 30, 2003.

- R6. Air packs should be available in Juvenile Hall for life safety and to limit potential liability.

**Response to R6: The recommendation will not be implemented because it is unreasonable.** Contact with the State Fire Marshall Consultant and the Board of Corrections indicates that there are no Juvenile Halls in the State of California that utilize Air Packs. Additionally, there are no mandates for either adult or juvenile detention facilities to have Air Packs. Although used in many jails, the specialized equipment and the ongoing training required to use it, makes the use impractical. It should be noted that in large detention facilities, Air Packs are a necessity due to the poor response time of the fire fighters. When considering the small size of the El Dorado County Juvenile Hall, and the quick response time of professional fire fighters, calling the local Fire Department is the preferred practice.

- R7. The staff should be trained in the use of air packs.

**Response to R7: The recommendation will not be implemented because it is unreasonable.** In addition to the statements provided in R6 above, there are inherent staffing and training problems associated with the decision to mandate detention staff to utilize Air Packs. In an issued paper prepared by the California State Sheriff’s Association on the use of Air Packs (issued April 18, 2002), it was learned that there are Fit Tests required for all staff assigned to use Air Packs, as well as a required medical evaluation. It states, “Persons assigned to

tasks that require the use of a respirator must be physically able to perform the work while using the respirator. Accordingly, employers have the responsibility of ensuring that employees are medically fit to tolerate the physical and psychological stress imposed by respirator use, as well as the physical stress originating from job and workplace conditions.” Further, it states, “Employees must be medically evaluated and found eligible to wear the respirator selected for their use prior to fit testing or first-time use of the respirator in the workplace.” A serious staffing and hiring issue would exist should existing staff fail to meet the physical and psychological mandates, and contract requirements would not allow the implementation of these new standards to existing employees. To meet the existing staffing, the Board of Corrections mandate of 1 staff per 10 minors in Juvenile Halls, at least 2 additional staff would need to be hired on each shift to utilize Air Packs, since our basic staffing would be needed to supervise the evacuated minors. During these already difficult fiscal times, the cost of Air Packs, additional staff, monthly mandated testing of equipment, additional physical and psychological requirements, and contractual conflicts, the use of Air Packs appears to be unreasonable.

### **Commendations**

The Chief Probation Officer and the staff of Juvenile Hall in Placerville provide outstanding service in an inadequate, old, facility, which is often over capacity. Special recognition is given teaching staff for the exceptional individual educational program.

### **Responses Required for Findings**

F1 through F7

El Dorado County Board of Supervisors  
El Dorado County Probation Department

### **Responses Required for Recommendations**

R1 through R7

El Dorado County Board of Supervisors  
El Dorado County Probation Department

## CRIMINAL JUSTICE COMMITTEE

### *Growlersberg Conservation Camp, Georgetown, CA*

#### **Reason for the Report**

The California Penal Code requires Grand Juries to inspect and report annually on operations of all public prisons located within boundaries of each county.

#### **Scope of the Investigation**

Members of the Grand Jury inspected the Growlersberg Conservation Camp on March 7, 2003. The Jury members met with the Camp Commander of the Department of Corrections and the Assistant Chief of Administration for the Department of Forestry and Fire Protections. The Camp Commander escorted the Jury Members on a tour of the facility. The following documents were reviewed:

- Inmate Orientation Handbook
- Camp Reports
- Inspection reports
- Staff and Inmates written reviews of meals
- Performance evaluations of inmates
- Grand Jury Reports for 2000/2001 and 2001/2002

#### **Background**

Growlersberg Conservation Camp (Camp), a minimum security correctional facility established in 1967, is one of 18 camps operated by the Sierra Conservation Center. The Camp is jointly maintained and administered by the California Department of Corrections and California Department of Forestry and Fire Protection. The California Department of Corrections is responsible for the inmates, laundry, and kitchen. The Department of Forestry and Fire Protection is responsible for the plant facilities, which include the buildings and fire fighting equipment.

The Camp appears to be very well run and maintained. The Camp is clean, quiet, and orderly. The addition of access ramps for the disabled to the indoor and outdoor visitation areas are now in compliance with Americans with Disability Act (ADA).

The Grand Jury Reports for 2000/2001 and 2001/2002 noted the need for an updated kitchen, with special concern regarding the kitchen-stove hood. This kitchen is part of the original 1967 construction. The Camp is scheduled for a new kitchen facility in the fiscal year 2003/2004. Due to State Budget constraints the scheduled construction may be postponed. The kitchen-stove hood will not be updated because of cost and the planned new kitchen facility. The State Fire Marshall, Department of Forestry, and Department of Correction have an agreement that until funds are allocated to either restore the hood to code or build a new dining room/kitchen facility, an inmate

specially trained to fight grease and chemical fires with special fire extinguishing apparatus must be on duty in the kitchen during cooking.

The Camp holds a maximum of 132 inmates. Inmates are thoroughly screened and classified. Sexual offenders, arsonists, and violent inmates are not classified for the Camp, as this is a minimum-security facility with open dorms and no fences. Inmates are required to have three years or less remaining on their sentences. The Camp is fully maintained by the inmates under staff supervision.

All inmates are required to work, with work ethic strongly emphasized. Work assignments, which include fire and rescue crews, laundry, kitchen, grounds, etc., are based on skill and needs. Inmates are given written job descriptions and written performance evaluations. They are paid a nominal hourly rate for their services.

Five fire crews, comprised of 16 to 17 inmates each, fight fires and help in rescues wherever needed in California and along the Nevada border. In addition, 22 inmates staff the Mobile Kitchen Unit, which can provide up to 3,000 meals at a time. Inmates also work in the Mill and Cabinet Shop, constructing desks, cabinets, tables, and other various wood furniture items for tax supported agencies at cost.

For the past eleven years the inmates have participated in “Helping Hands” where they raise funds through a comprehensive recycling program. Funds received from this program along with donations from the staff, civilians, and local businesses are used at Christmas to provide new bicycles, assembled by the inmates, and helmets for children in the community. The Superintendent of the local school district provides the Camp Commander with a list of parents and students to contact. The Camp Commander then contacts the parents asking if they wish to participate in the program. The bicycles and helmets are brought to a local school where the children make their selection.

### **Finding**

No Board of Supervisors response required.

F1. A solution to the code non-compliance of the kitchen hood has been agreed upon by the State Fire Marshall, Department of Forestry and Department of Corrections.

### **Response to Finding**

F1 California State Department of Forestry  
California State Department of Corrections

# EDUCATION



## **EDUCATION COMMITTEE**

### ***El Dorado County School Bus Transportation General Review***

#### **Reason for the Report**

The Grand Jury selected El Dorado County school bus transportation for general review.

#### **Scope of the Investigation**

The Grand Jury did the following:

- Surveyed transportation offices of each school;
- Analyzed data obtained from the surveys;
- Obtained information from the California Highway Patrol (CHP) pertaining to safety conditions of school busses.

#### **Background**

School bus transportation has not been reviewed by the Grand Jury in the recent past, therefore it was decided to undertake such an investigation.

A one-page survey was created and mailed to the transportation supervisors of each school providing bus transportation. All surveys were returned and analyzed. A total of 17 school districts provide bus transportation. Most school districts own their own busses. Expenses for maintenance of busses vary considerably from one school to another. The main finding is that none of the districts had any substantial safety problems to report regarding their bus transportation over the past two years

The California Highway Patrol (CHP) is responsible for annual safety inspections of each school bus operating in the State of California. The committee received a copy of the safety review (Exception report) from the CHP Safety Review officer for each bus operating in El Dorado County.

The CHP provided this committee with a report of exceptions to safety inspections, according to individual schools and school districts. This report, which notes any exceptions to approved safety conditions, revealed that no school district bus received a significant exception report during the past year although a few minor exceptions were noted and had been corrected.

**Findings**

No Board of Supervisors response required.

F1. School districts within El Dorado County offer school bus transportation to hundreds of students each day throughout the year.

F2 All school buses in the 17 school districts are inspected annually by a safety inspection program of the California Highway Patrol, and no substantial safety exceptions were noted during the past year.

**No Recommendations**

## **EDUCATION COMMITTEE**

### ***El Dorado Union High School***

#### ***Placerville***

#### **Reason for the Report**

The Grand Jury selected El Dorado High School (EDUHS) for a general review.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Interviewed the principal and the vice-principal;
- Toured the school, including the cafeteria, the library, the gymnasium and the computer laboratories.

#### **Background**

The Grand Jury met with and interviewed the principal and vice principal of the school on February 10, 2002. The current principal was appointed mid-year 2002. The vice-principal has been at the school in varying capacities for 31 years.

The school site was developed in 1905 and in 1928, the City of Placerville built the high school. The current physical plant includes 57 classrooms, 2 gyms, and several activity rooms. All of the buildings are permanent with the exception of 9 portables. A total of 345 storage lockers are available to students, but 84 of them are unassigned as many students do not want them. Lockers are assigned on a first come, first serve, basis.

Modernization funds have been helpful in bringing the buildings up to standard. School maintenance is excellent. The campus has the smallest acreage when compared with the other local schools. Maintenance is difficult due to the age of the buildings and the heavy use by the community. There are 5 daytime maintenance staff and 4.5 night staff. Swimming pool, gyms and athletic fields are all community shared.

At present, 1305 students are enrolled, this is down from 1600 students enrolled five years ago. There are 72 teachers, including a librarian. 47 teachers are classified. The student - teacher ratio is 30 - 1. In English/ Math the ratio is 20 to 1.

A Health Academy program is offered, in which students interested in the health fields are given special counseling. Another program, Advancement Via Individual Determination (AVID), identifies 20 students each year who are given special attention to assure their success in high school.

A Sustained Silent Reading Program is well established on the campus. Every student has required reading for 20 minutes each day following announcements. This program is unique to the school and has been very rewarding. It encourages students to read for pleasure.

The school has three computer labs and one computer in every classroom. The labs appear to be fully used by the students.

Vista High School is a new on-site high school located on the campus of EDUHS which offers alternative education. This alternative education program allows staff to keep these students on site. The students are given individual education plans and work with certified teachers. A total of 30 students are currently enrolled.

The campus offers a full-time drama and full time music teacher, and drama costumes are created in the Home Economic classes.

Special Education students include 135 resource students, 17 special day classes, 10 students who are severely handicapped and 16 speech and language students. Special education students comprise about 20 percent of the student body, -- most are "mainstreamed." This figure is high according to the principal.

The school has a significant Title I population. (Title I students include low-achieving low-income, limited English, American Indian, migrants, neglected or delinquent, students with disabilities, and those who need reading assistance.) Test results show El Dorado HS to be doing well when compared to similar school populations. The State testing is important, but results need to be more timely to be helpful.

An assigned school nurse is shared with another school. A full-time health aide is on duty. Three full-time counselors are also on staff, along with the Healthy Start program. Healthy Start provides supplemental tutoring after school among other activities.

Art and music are important programs at the EDUHS. The campus currently has a large amphitheater and a small theatre. A school and community planning committee has been formed to help design and build a 500 seat theatre, with an art gallery, and an amphitheater to accommodate 300 permanent seats. Private gifts and bond funding are being explored. The proposed complex would be shared with the Placerville community.

The Assistant principal is responsible for unifying an evacuation and lock down plan. The District is currently developing a uniform plan.

A full-time police officer and a full-time probation officer are assigned to the school. Strong relationships have been established with the fire and sheriff's departments.

The school has a 7-period day. Buses are shared with other schools. Students attend from as far away as Kyburz.

To assist in student discipline problems, an In-house suspension room is used. When this is used, students are not sent home and therefore do not lose a day of school. Teachers say "lack of respect" and "poor language" (commonly used in TV shows) are problems in the classrooms. The campus has Safe School Ambassadors, selected from the student body, who work to prevent campus confrontations from occurring.

Drugs and alcohol are always a continuing problem. The prescription drugs Rytalin and Vitagen are being sold illegally to young students for \$5 to \$10 a pill. Attempts to control this are three campus monitors, police and a full-time probation officer who has authority to search students.

The usual after school programs are offered, in addition to yoga, art, and dancing. The school also offers ski and snowboard team sports.

Buildings, classrooms, and grounds appeared to be very well maintained and attractive. Elevators and ramps are available for handicapped.

### **No Findings or Recommendations**

**EDUCATION COMMITTEE**  
***Indian Diggings Elementary School***  
***Somerset***

**Reason for the Report**

The Grand Jury selected Indian Diggings Elementary School for a general review:

**Scope of the Investigation**

Members of the Grand Jury:

- Visited the School on January 31, 2003;
- Were given on an extensive tour of the School by the Superintendent;
- Reviewed various school plans, including emergency procedures, funding, and staffing;
- Reviewed Grand Jury reports for 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to the school.

**Background**

Indian Diggings Elementary School, a two-room school with grades K - 8, has been in existence since 1856. The school burned down in 1958 and was rebuilt primarily with volunteer labor and materials. There are two classrooms, a multi-purpose room, small library, and office space. The school owns an acre of land that is not utilized. Suggestions for use of the land have included building a swimming pool and tennis courts for community use. However, the school is unable to fund these projects.

The facility consists of 4 full-time credentialed employees and one exchange teacher from Japan. The Superintendent functions as the principal and upper grade teacher. The faculty perform all positions necessary including yard duty attendant, Special Needs Instructor, school secretary, etc. The school building and grounds are well maintained by the part-time janitor.

Since the school population is small, special services are provided on a limited basis. A school nurse is available four days a year. The nurse tests vision, checks immunization records, tests hearing, and provides CPR training for the teachers. A music/dance instructor comes in to train the students for performances in performance arts. A karate teacher also comes in periodically to instruct the students and one teacher that continues the instruction and practices with the students.

The enrollment consists of 15 students in grades K - 3 and 21 students in grades 4 – 8. Of these total 36 students, 18 are inter-district transfers from Pioneer County and one from Amador County. Only

2 students have transferred this year to another district. Enrollment throughout the years varies from the lowest figure of 24 to the high of 44 students.

Educational opportunities in this small school are impressive. All students may participate in cross-country skiing with boots and skis available for all students. Weeklong field trips, planned with parents, are available for the upper grades with the lower grades joining for part of the time.

A financial reward program has been developed to encourage students to demonstrate good behavior and earn good grades. The students earn “Ono Bucks” and are required to maintain records of “Ono Bucks” earned. When students spend “Ono Bucks” at the General Store, which is supplied through donations, they are required to record the transactions in their checkbooks.

The school has a large multipurpose room, which was built in 1996-97 with grant funds. This room contains a kitchen, a full stage with curtain for play productions, a large-screen television, gym, craft room, and an elevator for the disabled. The elevator, which was not operable at the time of Committee’s visit, is being used for storage.

In the past seven years, the Superintendent applied for and received approximately \$750,000 in grant funds, part of which was used to build the multipurpose room. Other grants have provided for chain-link fencing (to keep bobcats out), water tanks (no public water), computers (each student has a computer), satellite dish, sets of classical literature, and grassed play areas and fields.

The Pioneer Lions Club of Somerset offers additional support to the school. Over the past seven years, the Club has donated funds for field trips, including Spring Camp Science Trip, a student store structure, provided picnic tables, and obtained a ball wall.

### **Findings**

No Board of Supervisors response required.

F1. The school owns an acre of land that is not being utilized due to funding.

F2. The elevator for disabled is not in working condition.

### **Recommendation**

No Board of Supervisors response required.

R1. The elevator should be repaired.

### **Commendations**

The Teaching Principal/Superintendent has obtained numerous grants to improve this unique school. He and his staff provide excellent opportunities for their students.

**Responses to Findings**

F1 and F2                      Indian Diggings School Teaching Principal/Superintendent

**Response to Recommendation**

R1                                Indian Diggings School Teaching Principal/Superintendent



## EDUCATION COMMITTEE

### *Latrobe School & Miller Hill School*

#### *Latrobe*

#### **Reason for the Report**

Since the Latrobe School District had not been visited in at least 5 years the Grand Jury decided it should be visited this year.

#### **Scope of the Investigation**

The Grand Jury:

- Visited Latrobe School;
- Visited Miller Hill School;
- Interviewed the Secretary and three teachers.

#### **Background**

Latrobe School is comprised of two schools, K through 3 and 4 through 8. The original school building, built in 1911, is still being used on the Latrobe School site. The newer building is several years old. All buildings are well maintained. Miller Hill School is two years old with a new library. There are 100 students on each campus. The schools have more than adequate space to house that number of students. Several classes were observed, including a Special Education class. Classes appeared to be well run and orderly.

School busses are contracted from the El Dorado High School District and function well.

#### **Commendations**

The schools are well run. We would like to commend the faculty and administration for their fine work.

#### **No Findings or Recommendations**

## EDUCATION COMMITTEE

### *Edwin Markham Middle School*

#### *Placerville*

#### **Reason for the Report**

The Grand Jury selected Edwin Markham Middle School to review the status of the building repairs recommended in the 2001-2002 Grand Jury Report, and for a general review.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Interviewed the Superintendent and the Principal;
- Toured the school grounds;
- Visited the special science laboratory and several classes including an 8th grade math class;
- Reviewed the Grand Jury report for 2001/2002.

#### **Background**

The school was opened in 1950, and has 756 students. According to the principal, the students consistently score above average on the State Administrative Tests.

The curriculum provides at least 2 elective activities for every student. These electives consist of art, music and drama. The school day begins at 7:44 a.m. and ends at 2:05 p.m. The classes that were visited were orderly and well run. Teachers appear to be involved and interested in the students.

The previous Grand Jury report identified dry-rot and drainage problems in several buildings. While the repair work has not been started to date, the recent passage of school bonds will enable a complete remodeling of the facility. This remodeling will correct the drainage and dry-rot. The architect's plan for the remodeling should be ready for approval by the end of summer 2003.

#### **Findings**

No Board of Supervisors response required.

- F1. Repairs reported by 2001-2002 Grand Jury have not been accomplished.
- F2. Passage of school bonds will enable a complete remodeling of the school.

F3. Repairs/remodeling will commence within the year.

**Recommendations**

No Board of Supervisors response required.

R1. Repairs should be accomplished within a reasonable time frame.

R2. Follow up with architect to confirm project is on target.

R3. Continuous monitoring of the project should be performed by the Superintendent.

**Responses Required for Findings**

F1 – F2	Superintendent Edwin Markham School
	Principal Edwin Markham School

**Responses Required for Recommendations**

R1 – R3	Superintendent Edwin Markham School
	Principal Edwin Markham School

## **Education Committee**

### ***Ponderosa High School***

#### ***Shingle Springs***

#### **Reason for the Report**

The Grand Jury selected Ponderosa High School for a general review.

#### **Scope of the Investigation**

The members of the Grand Jury interviewed the following Ponderosa High School staff:

- Principal;
- Vice Principal;
- Library Media Teacher;
- El Dorado County Sheriff School Resource Officer;
- Food Service Supervisor/Manager;
- Food Service worker.

The Grand Jury members:

- Reviewed El Dorado Union High School District 2000/02 Strategic Planning Goals;
- Visited Ponderosa High school, met staff, and toured campus.

#### **Background**

Ponderosa High School opened as a two-year high school in 1963 with 1100 students. The student population, which reached 2200 in the year 2000/01, was reduced with the opening of Union Mine High School. Today the campus, which is located in a semi-rural setting of 40 acres, is a four-year school with over 1800 students. It is one of five high schools in the El Dorado Union High School District and was selected to receive a California Distinguished School Award in 2001.

The current principal has been in his current position for the past 18 years. The school staff includes 7 management positions: 3 vice-principals that each assists 600 students and 4 counselors, each of whom assists 450 students. There are 92 full and part-time teachers with the student-to-teacher ratio of 30 to 1. All teachers, except two, have credentials and teach in their major or minor field. There are also 50 classified personnel that include clerical, kitchen, and maintenance positions.

The school ranks well above average on overall test scores and well above average compared to similar schools in State tests. The student dropout rate is approximately 1.8 percent while the State average dropout rate is 2.8 percent. Two-thirds of graduating students continue to college.

The campus is the District's magnet school for agriculture and special education students. The agricultural program has 160 students. The campus has classes for 110 special education students

for whom an integrated approach to classroom instruction is provided. These students come to this magnet campus from the Western Slope of the County.

The school hosts numerous after-school art and athletic programs. Arts include theatre/drama, orchestra, band, chorus, speech, debate, and photography. Athletics include traditional sports as well as rugby, swimming, boys' and girls' golf, softball, soccer and volleyball.

School facilities include 88 classrooms, of which 50 percent are modular portable structures. These buildings will remain at the Ponderosa campus due to the prohibitive cost of new construction. The District has been proactive in modernizing Ponderosa's physical plant by obtaining approximately \$2.5 million in grants. The State Modernization Grant has been used for landscaping projects, carpeting classroom, adding portable classrooms, building a permanent science laboratory building, replacing the gym ceiling, completing the county/school district joint project soccer field, and creating new plaza areas for student use. This summer the State Modernization funds will be used to enhance all campus permanent buildings by facing them with brick exteriors.

The campus has 250 student lockers available, but space per student is limited. Two students share a locker, while freshman students are not provided lockers.

The school's library is the largest high school library in the County with over 7,000 square feet of space and contains over 21,000 books. Students have continuous access to the facility from 7:00 a.m. to 4:30 p.m. as well as at home access to the school's online database resources at their Web site. Ponderosa has benefited from the California Library Grant, which contributes as much as \$28.00 per student. Today this grant has been reduced to \$1.99 per student.

The campus has a self-supporting cafeteria that provides a hot breakfast and lunch daily as well as a walk-up snack bar. Lunchtime is divided into two periods to accommodate all students. About 350 students purchase a cafeteria meal each day. Meals are affordable and do not exceed \$2.00. Free and reduced lunch programs are also available.

The campus is maintained with a limited staff. On a daytime basis, one person is assigned to all the athletic fields, one gardener for the grounds, one custodian for the buildings, and one maintenance person for equipment. Five custodians work in the evenings. Classrooms are cleaned on alternating days. A half-time employee cleans the cafeteria.

A full-time Deputy Sheriff is funded by grants from the County and the Sheriff's Department. Four paid adult campus monitors patrol the school either by foot or bicycle throughout the school day. Administrators and teachers monitor all evening activities on a rotation basis. The school safety committee meets several times a year to update the school's safety plan each year. The school is not far from the Shingle Springs Fire Department and emergency treatment is quickly available.

The district provides bus transportation used only by one-third of the student population. A majority of the students drive or carpool. Parking space offered on campus is inadequate; therefore many students park on adjacent roads. This often congests the two-lane road that fronts the school. In addition, there are no streetlights or stop lights at the two main entrances from Ponderosa Road. Only one School Zone warning sign is posted. Buses arrive and depart using a narrow circular

driveway that does not allow parking or access to parents who pick-up or drop-off students. Parents who wish to avoid the congestion stop on the street to unload passengers, thus blocking traffic and cause an unsafe situation for cars and pedestrians. The traffic and parking problems are expected to increase next year when all students begin and end school at the same time.

The school has developed a Web site (<http://bruin.eduhsd.k12.ca.us/>) which provides students and parents access to daily bulletins, calendars, online resources, art, and athletic schedules. In addition, next year each department will offer homework and project assignments to be accessible online.

### **Findings**

F1. The Science Laboratory Building is the only permanent building built in the last 18 years. All other additions have been modular classrooms.

No Board of Supervisors response required.

F2. Locker space is not available for all students.

No Board of Supervisors response required.

F3. Parking is a problem. Students park on the congested two-lane road in front of the school as well as adjacent roads. As the student population continues to grow, this problem will increase dramatically.

***Response to F3: The respondent agrees with the finding.*** The County does not have data confirming that enrollment will continue to increase. However, El Dorado County Department of Transportation (DOT) staff has enjoyed a close working relationship with the School's and District's staff over the last 10 years to address evolving parking issues along the County maintained roads in the vicinity of the high school.

F4. The limited vehicle entrances for students, buses, and visitors create unsafe and hazardous conditions on these roads.

***Response to F4: The respondent disagrees wholly with the finding.*** The current on-site facilities and circulation has contributed to "congestion" along Ponderosa and Meder roads, and numerous complaints from the nearby residents, but DOT does not have any data to suggest that current or past conditions should be termed "unsafe" or "hazardous".

F5. There is only one School Zone warning sign located near a blind curve on the south side of the campus.

***Response to F5: The respondent disagrees partially with the finding.*** There are two (2) School Zone signs on Ponderosa Road: one (1) north of the school on the southbound lane and one (1) south of the school on the northbound lane. The use of the word "blind" in

reference to the horizontal curve might be misleading in that it may imply that the sign is hidden from view due to the curvature of the road.

- F6. There is inadequate space to pick-up or drop-off students so students are frequently dropped off on the main roadway.

**Response to F6: The respondent agrees with the finding.**

- F7. There are no streetlights in front of the school on Ponderosa Road. This causes unsafe conditions for students and parents that attend evening after-school activities and for students arriving during early morning hours, especially in the winter months.

**Response to F7: The respondent disagrees partially with the finding.** It is agreed that there are no streetlights in front of the school. With respect to traffic conditions, the County's Department of Transportation does not have any evidence to suggest that conditions have historically been shown to be unsafe. However, the finding may be intended to relate to other aspects of public safety that could be addressed from the perspective of law enforcement.

- F8. The restrooms are not always clean and are not well stocked with supplies.

No Board of Supervisors response required.

### **Recommendations**

- R1. Additional student locker space should be provided.

No Board of Supervisors response required.

- R2. The current student parking needs should be evaluated.

**Response to R2: The recommendation will not be implemented because it is unreasonable.**

The response is qualified as follows. County Policy A-11 and Penal Code Section 933.05 require that we state the recommendation has been implemented, will be implemented, requires further analysis, or is not warranted. We state that "the recommendation will not be implemented because it is unreasonable" only because it is not within the County's purview to manage school parking and therefore the County cannot implement this recommendation.

The County has requirements for minimum amounts of parking for certain land uses. However, the County does not have authority to extend these requirements to public schools, such as Ponderosa High School. The County could potentially provide input into an evaluation of the situation, if it is deemed warranted and useful by the High School District.

One outcome of the past partnership between the County and the High School District was a project undertaken by the school to add additional on-site parking. It is believed that this

project added approximately 125 parking spaces bringing the current total to more than 500. The County commends the school for this very beneficial project.

- R3. An additional entrance on the south side of the lot should be considered and this entrance should have a three-way stop sign or traffic actuated stoplight.

**Response to R3: The recommendation will not be implemented because it is unreasonable.**

The response is qualified as follows. County Policy A-11 and Penal Code Section 933.05 require that we state the recommendation has been implemented, will be implemented, requires further analysis, or is not warranted. We state that “the recommendation will not be implemented because it is unreasonable” only because it is not within the County’s purview to manage this issue.

Before new access points are constructed, or traffic control devices installed, an appropriate engineering-based study is necessary. The purpose of the study would be to predict changes in traffic flow and the benefit or dis-benefit of traffic control devices on vehicle safety, pedestrian safety, traffic flow, etc. A cost-benefit analysis might also be warranted to determine the most feasible of alternatives that are identified. While the County views this as an obligation of the school to prepare any such study, we would be pleased to cooperate with the High School District by reviewing and commenting, if such a study were undertaken. Ultimately, improvements that require encroachments to the County roads, and or construction within the County road right-of-way, will require review and approval by County engineering staff.

- R4. Additional School Zone warning signs should be installed on Meder Road and the north side of the campus on Ponderosa Road.

**Response to R4: With respect to Meder Road, the recommendation has been implemented.**

Based upon the Grand Jury’s recommendation, DOT installed school zone warning signs on the eastbound lane of Meder Road in advance of the existing “STOP” sign at its intersection with Ponderosa Road.

**Response to R4: With respect to Ponderosa Road, the recommendation will not be implemented because it is not warranted.**

DOT will not install additional school zone signs on the “north side of the campus on Ponderosa Road” because there are existing signs and those signs have been posted in full conformance with the State’s mandated standards for signing school zones on public roads.

- R5. A turnout area should be added off Ponderosa Road for drivers to pick-up and drop-off students.

**Response to R5: The recommendation will not be implemented because it is unreasonable.**



The response is qualified as follows. County Policy A-11 and Penal Code Section 933.05 require that we state the recommendation has been implemented, will be implemented, requires further analysis, or is not warranted. We state that “the recommendation will not be implemented because it is unreasonable” only because it is not within the County’s purview to manage this issue.

Before a turnout is constructed, an appropriate engineering-based study is necessary. The purpose of the study would be to predict changes in traffic flow and the benefit or dis-benefit to vehicle safety, pedestrian safety, traffic flow, etc. While the County views this as an obligation of the school to prepare any such study, we would be pleased to cooperate with the High School District, by reviewing and commenting, if such a study were undertaken. Ultimately, this type of improvement would require review and approval by County engineering staff.

R6. Streetlights should be installed in front of the campus on Ponderosa Road.

***Response to R6: The recommendation will not be implemented because it is unreasonable.***

The response is qualified as follows. County Policy A-11 and Penal Code Section 933.05 require that we state the recommendation has been implemented, will be implemented, requires further analysis, or is not warranted. We state that “the recommendation will not be implemented because it is unreasonable” only because it is not within the County’s purview to manage this issue.

Typically, street lights in unincorporated El Dorado County are constructed and maintained either as on-site improvements or as a public facility owned and operated by another entity, such as a lighting and landscape district. The County would be pleased to review plans to install streetlights, if such a project is undertaken. It should be noted that there is often a mixed reaction from the public to proposals to install streetlights.

R7. Restrooms should be inspected for cleanliness and supplies by daytime maintenance staff each morning, especially in Building P.

No Board of Supervisors response required.

### **Commendations**

The Grand Jury commends the Principal, faculty, and staff for their enthusiastic school spirit and continued dedication to the academic performance and well being of the students at Ponderosa High School. We further commend the school for becoming a California Distinguished High School.

### **Responses Required for Findings**

F1 through F7                      Superintendent, El Dorado County Office of Education  
   Superintendent, El Dorado High School District

F1 through F8 Principal, Ponderosa High School

F3 through F7 El Dorado County Board of Supervisors  
El Dorado County Department of Transportation

**Responses Required for Recommendations**

R1 through R6 Superintendent, El Dorado County Office of Education  
Superintendent, El Dorado High School District

R1 through R7 Principal, Ponderosa High School

R2 through R6 El Dorado County Board of Supervisors  
El Dorado County Department of Transportation

# EL DORADO UNION HIGH SCHOOL DISTRICT

BOARD OF TRUSTEES

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10-02-03A11:07 RCVD

BOB FERGUSON

September 18, 2003

Honorable Suzanne N. Kingsbury  
Presiding Judge, El Dorado County Superior Court  
1354 Johnson Boulevard, Suite 2  
South Lake Tahoe, California 96150

Re: El Dorado Union High School District  
Responses to the Grand Jury Report 2002-2003

Dear Judge Kingsbury:

Enclosed please find the El Dorado Union High School District and Ponderosa High School's responses to the Grand Jury Report 2002-2003.

Sincerely,

  
Bob Ferguson  
Superintendent

/rp

Enclosure (1)

cc: El Dorado County Board of Supervisors

9/25/03  
To Judge  
Kingsbury

El Dorado Union High School District

Responses to El Dorado County Grand Jury Report  
2002-2003

Responses to Findings F1 through F7

The Superintendent of the El Dorado Union High School District concurs with the responses to Findings F1 through F7 contained in the Responses of Ponderosa High School.

Responses to Recommendations R1 through R6

The Superintendent of the El Dorado Union High School District concurs with the Responses to recommendations contained in the Responses of Ponderosa High School.

Ponderosa High School  
Responses to El Dorado County Grand Jury Report  
2002-2003

Responses to Findings:

#F1 - Page 61      *The Science Laboratory Building is the only permanent building built in the last 18 years. All other additions have been modular classrooms.*

Response:      This finding is correct. The "K" building contains four science/computer labs and one additional classroom

#F2 - Page 61      *Locker Space is not available for all students.*

Response:      The finding is accurate. However, the school has approximately 1,550 lockers to serve the needs of its student body of 1,896 students. Approximately 346 students must share lockers. This is many more lockers than the total of 250 mentioned in the report (page 60).

#F3 - Page 61      *Parking is a problem. Students park on the congested two-lane road in front of the school as well as adjacent roads. As the student population continues to grow, this problem will increase dramatically.*

Response:      Parking spaces are at a premium on campus and surface streets around the high school. Prior to the 2002-03 school year, on campus student parking spaces totaled 335. Expansion has since been undertaken and student parking capacity increased to 460 spaces. (See response to recommendation #R2)

#F4 - Page 61      *The limited vehicle entrances for students, buses, and visitors create unsafe and hazardous conditions on these roads.*

Response:      We do not agree that the current entrances and exits are unsafe. The school district has worked closely with the county transportation department to monitor the congestion during the morning arrival time and the school's dismissal time. Data that has been shared with the school does not indicate an "unsafe" or "hazardous" condition. The school's newly adopted bell schedule has helped mitigate the problem by establishing staggered beginning and dismissal times for students.

#F5 - Page 61

*There is only one School Zone warning sign located near a blind curve on the south side of the campus.*

Response: If additional signage is needed, we would cooperate with the County Transportation Department in the placement of additional signs. Two signs notifying drivers that they are entering a school zone presently exist on Ponderosa Road on the north and south boundaries of the school.

#F6 - Page 61

*There is inadequate space to pick-up or drop-off students so students are frequently dropped off on the main roadway.*

Response: The school agrees that student pick-up and drop-off creates congestion in and around the campus.

#F7 - Page 61

*There are no streetlights in front of the school on Ponderosa Road. This causes unsafe conditions for students and parents that attend evening after-school activities and for students arriving during early morning hours, especially in the winter months.*

Response: The school agrees that there are no streetlights on Ponderosa Road. However, the school has not been presented evidence that an unsafe condition exists due to the lack of streetlights. Lighting on campus is adequate to protect students who are awaiting the arrival of parents after activities. All exterior lighting, which is on a timer, is turned on prior to students' arrival at school each morning and sufficiently illuminates the campus.

#F8 - Page 61

*The restrooms are not always clean and are not well stocked with supplies.*

Response: The school partially agrees with this finding. A survey of restrooms last year indicated a need for installation of hand dryers or paper towels. That was done. During the summer of 2003, all restrooms in permanent buildings were totally refurbished and modernized. (3 boys & 3 girls bathrooms) All are cleaned nightly and are now stocked with supplies.

#### Responses to Recommendations

#R1 - Page 62

*Additional student locker space should be provided.*

Response: New lockers have been purchased and are awaiting installation.

They will replace the exiting lockers at the north end of the "B" building. This replacement of lockers will add to the total available for students but will not yet represent a locker for each student.

#R-2 - Page 62      *The current student parking needs should be evaluated.*

Response: During the 2002-03 school year, parking needs at Ponderosa were evaluated. As a result, a parking lot expansion project was contracted and a total of 125 new parking spaces were built on the east side of campus. This additional parking represented a 37% increase in available parking spaces.

#R-3 - Page 62      *An additional entrance on the south side of the lot should be considered and this entrance should have a three-way stop sign or traffic actuated stoplight.*

Response: This recommendation requires analysis before conclusions are drawn. An engineering/safety/feasibility study would be necessary to determine whether an additional entrance/exit would be beneficial. Several years ago, a similar recommendation was studied. The conclusion at that point in time was that a south entrance/exit would be too close to the curve in Ponderosa Road to be safe or legal.

The school and district would be happy to work with the county to accomplish such a study.

# R4 - Pg. 62      *Additional School Zone warning signs should be installed on Meder Road and the north side of campus on Ponderosa Road.*

Response: The school and district would approve of the placement of a "School Zone" warning sign on Meder Road. Since the issuance of the Grand Jury Report, a "School Zone" warning sign has been installed by the county on Meder Road. A "School Zone" sign is in existence on Ponderosa Road on the north side of the school.

#R5 - Pg. 62      *A turnout area should be added off Ponderosa Road for drivers to pick-up and drop-off students*

Response: A feasibility study regarding the construction of a turnout area for student pick-up and drop-off has been done. That study identified several design alternatives for such an area. At present, further steps are awaiting the identification of a funding source. When

funding becomes available, the district will cooperate with the County Transportation department and its engineers in selecting a final design alternative.

#R6 - Page 62

*Streetlights should be installed in front of campus on Ponderosa Road.*

Response

A feasibility study will be undertaken for the purpose of locating an onsite streetlight at the entrance/exit of Ponderosa High School. (The corner of Meder and Ponderosa Roads) In addition to illuminating the busy intersection, such a streetlight would provide greater safety for students parking along Meder Road and Ponderosa Road (North of Meder Road).

#R7 - Page 62

*(Restrooms should be inspected for cleanliness and supplies by daytime maintenance staff each morning, especially in Building P.*

Response

Recommendation agreed with. All restrooms are inspected each evening for necessary supplies. Special attention is paid to "P" building restrooms. The refurbishment and modernization of 6 restrooms, including all new tile, plumbing, plumbing fixtures, sinks and mirrors, has eliminated the appearance of dinginess or lack of care in those restrooms. (Summer, 2003)



## **EDUCATION COMMITTEE**

### ***South Tahoe Middle School***

### ***City of South Lake Tahoe***

#### **Reason for the Report**

The South Tahoe Middle School was chosen as part of a general review.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Interviewed the Principal;
- Toured the facility.

#### **Background**

South Tahoe Middle School is 40 years old. The school appears to be well managed and well staffed. There are three grade levels: 6-8. The school population numbers about 1200 students with faculty and staff of 56. School facilities include a television station, multi-purpose room, and a gymnasium. A wide variety of after-school activities are offered which include sports, music, cheerleading, dance, yearbook, and additional academic programs.

#### **No Findings or Recommendations**

## EDUCATION COMMITTEE

### *El Dorado County Library, South Lake Tahoe Branch Library*

Citizen Complaint #C43-02/03

#### **Reason for the Report**

A citizen's complaint was received alleging that the South Lake Tahoe Branch Library is not providing receipts for payments of fines and miscellaneous fees.

#### **Scope of the Investigation**

The members of the Grand Jury

- Made an unannounced visit to the South Lake Tahoe Branch library;
- Interviewed the Branch Supervisor;
- Toured the Library;
- Reviewed the accounting and computer system at the Library.

#### **Background**

The library is staffed by five and one-half full-time employees, and two part-time. It is open 41 hours each week. The hours are Tuesday and Wednesday, 10am to 8pm, and Thursday, Friday, and Saturday 10am to 5pm.

The library has an excellent system to record all income. Receipts are give to patrons on request for small amounts such as 25¢ fines and copy charges. Patrons who make larger payments may request a receipt and a printout for all past activity. Receipts are prepared at the time a fine is paid for overdue books the library clerk updates the patron's computer records to reflect that payment.

The Branch Supervisor advised the members of the Grand Jury that a new computer system will be installed in mid April 2003.

#### **Findings**

- F1. Receipts are issued upon request for all fees paid. Larger fines and fees are tracked by the Library's computer system.

#### ***Response to F1: The respondent agrees with the finding.***

The Library's new software allows us to print a receipt for all fines and fees associated with circulation transactions. Meeting room fees and lost book fees are receipted with a county receipt. Any other transactions, such as copy machine fees, microfilm printing fees can be issued a receipt by library staff on an in-house form.

F2. The staff includes five and one-half full time and two part time employees.

***Response to F2: The respondent disagrees partially with the finding.***

The South Lake Tahoe Library staff consists of five and one-half permanent employees, to maintain services at four public points (children’s department, adult reference, computer lab and circulation desk). Two extra-help employees are regularly scheduled to do shelving and outreach. Other extra-help employees are scheduled to substitute for sick leave, vacations, and exceptionally busy times.

F3. The library is open 41 hours per week.

***Response to F3: The respondent agrees with the finding.***

### **Recommendations**

R1. The Library should post a notice that receipts are available for all amounts paid to the Library.

***Response to R1: The recommendation has been implemented.***

All branches of the El Dorado County Library have posted the following notice:  
“Upon request, receipts are available for all amounts paid to the Library.”

R2. Employees should be scheduled to allow for extended hours of operation.

***Response to R2: The recommendation will not be implemented because it is unreasonable.***

The Library has made every effort to be open to the public as many hours as possible. For the convenience of our patrons, the Library is open two evenings per week until 8 pm as well as all day Saturday. On Tuesday and Wednesday, when the library is open from 10 am to 8 pm, two “shifts” of employees are required to accommodate the extended day. All staff has duties in addition to their public desk assignments including giving story-times and other programs for children, teaching computer classes, providing Spanish language outreach visits, leading book discussion groups, ordering library materials, and administrative duties.

Given the current financial situation of the County and due to State budget deficits, no expansion of Library services and hours is possible in the near future.

### **Commendation**

The library staff should be commended for a well-run and clean facility.

### **Responses Required for Findings**

F1-F3 Supervisor, South Lake Tahoe Branch Library

**Responses Required for Recommendations**

R1 and R2

Supervisor, South Lake Tahoe Branch Library

# **GOVERNMENT & ADMINISTRATION**

## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Purchase of a Doctor's Services for a "Fitness for Duty" Evaluation*

Citizen Complaint #C5-02/03

#### **Reason for the Report**

The complaint alleges that the process and procedures used to obtain the services of a consulting doctor contracted by the Department of Human Resources were inappropriate and improper. (The employee has a great disadvantage in this process of separation from service.)

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- Complainant;
- Director, Department of Human Resources, El Dorado County;
- Manager, Procurement and Contracts, Department of General Services, El Dorado County.

The Grand Jury also reviewed the following items:

- A memo from the Director of Human Resources regarding fitness-for duty examinations;
- Statistics of fitness for duty 2000/01 and 2001/02;
- Purchase Order for doctor's services;
- County's policies and procedures regarding purchases and contracts;
- Total Purchase Order List for every Department from Fiscal Year 2001-02 through 2002-03;
- General Services Department memos issued to all County Departments regarding confirming purchase orders, purchasing procedures, and new contracts.

#### **Background**

There are approximately 1800 El Dorado County employees. In fiscal years 2000/01 and 2001/02 ten fitness for duty examinations were conducted in Sacramento for County employees.

The El Dorado County Personnel Management Resolution 228-84 1105(b) authorizes a departmental representative to request a fitness-for-duty examination. The section states:

“An appointing authority who has reasonable cause to believe that there are physical or mental health conditions present in an employee which endanger the health or safety of the employee, other employees, or the public, or which impair the employee’s performance of duty, may order the employee to undergo at County expense and on the employee’s paid time a physical, medical, and/or psychiatric examination by a licensed physician and receive a report of the findings on such examination. If the examining physician recommends that treatment for physical or mental health problems, including leave, are in the best interest of the employee or the County in relation to the employee overcoming any disability and/or performing his or her duties, the appointing authority may direct the employee to take such leave and/or undergo such treatment.”

Fitness for duty examinations are to be used as last resort. They are initiated when an appointing authority observes serious performance and behavior difficulties and where they believe there may be a medical cause for employee’s non-performance. A manager initiates the process by contacting the Department of Human Resources where upon an alternative course of action may be recommended to them. If an alternate action is not recommended, the Community Nursing/Occupational Health Division Manager in the Department of Public Health performs a second review. If the opinions agree, the Department of Human Resources will initiate the evaluation process and schedule an appointment with the appropriate physician.

Employees must attend the appointment. If an employee fails to attend, they can be disciplined. To date, records indicate that no employee has ever refused. In some instances, the evaluating doctor may request medical records from an employee’s treating physician. In other cases, the evaluator may refer an employee back to the treating physician or health care provider for follow-up and/or additional treatment. If at the conclusion of the evaluation an employee requests a second doctor’s opinion, he may do so at his own expense. To date no employee has made the request for a second evaluation.

In fiscal year 2000/01, five fitness for duty examinations were conducted. One employee was found fit and returned to service; two employees were found not fit and separated from service (one of the two employees was evaluated initially, and subsequently reevaluated as a result of new information); and the fourth employee was found fit but subsequently separated from service.

In fiscal year 2001/02, five fitness for duty examinations were conducted. Three of the five employees were found not fit and separated from service; one was found fit, returned to work, and subsequently separated from service; one employee returned to work after initial review.

The Grand Jury investigated broader issues related to the County’s handling of purchase orders and contracts. The investigation revealed doctors currently being used for evaluations do not have a contract with the County, yet the County purchase orders are approved to pay them as individuals. The County claims they are using an existing contract with Sutter Occupational Health Services (SOHS). It includes services of a physician who can conduct a fitness-for-duty examination. Additional testing can be referred to specialists within the SOHS system. SOHS is not identified for payment on purchase orders for the evaluations. It appears therefore, the County is circumventing the contracting and purchase order system. Since no contract monitor is identified in the SOHS contract, the Public Health Occupational Health Manager reviews the services received and

evaluates invoices. It is our understanding a flat fee is charged by these doctors at a rate of \$300 per hour. The fee includes analysis of testing data and the report.

Since contracts and purchase order procedures were addressed by the previous Grand Jury, we followed up with County staff to determine if former recommendations had been followed. Most purchase orders in past years were prepared after the fact. At the time of this report, the problem appears to be corrected. Regarding “fitness for duty” evaluations, the Director of Human Resources is currently working with the County’s Purchasing Agent to determine the viability and feasibility of having contracts with the individual doctors.

## **Findings**

F1. Of the nine County employees tested during 2000/01 and 2001/02, five were found unfit for duty.

***Response to F1: The respondent agrees with the finding.***

F2. Employees must travel to the doctor’s office in Sacramento, including employees who reside and work in South Lake Tahoe.

***Response to F2: The respondent agrees with the finding.***

F3. Some departments do not consistently follow purchase order and contract procedures and policies set forth by the Board of Supervisors.

***Response to F3: The respondent agrees with the finding.***

F4. Department Directors are not held accountable for following policies and procedures related to purchase orders and contracts by the CAO and the Board of Supervisors.

***Response to F4: The respondent disagrees wholly with the finding.*** Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor “use of financial resources”, which would include the procurement of goods and services.

F5. The County did not appropriately contract for the doctor’s services directly and therefore the County was probably not protected from liability and potential litigation.

***Response to F5: The respondent disagrees partially with the finding.*** The County has potential exposure to litigation regardless of the existence of a written contract or purchase order. A contract or purchase order that contains indemnity language and insurance coverage helps transfer exposure risk to the contractor. The County’s standard indemnity language requires the contractor to hold the County harmless for any activity related to the contractor’s services, even without express indemnity language, the County could recover



under the doctrine of equitable indemnity. In addition, the County's standard insurance language requires that the contractor's insurance name the County as "additional insured" and be primary. This means that the contractor's insurer would act in the County's stead to defend the County and pay for the cost of defense and that the contractor's insurance would be used prior to the County's.

Regardless of the existence of indemnity language and/or insurance coverage in the contract or purchase order, it would be the County's position that the contractor is still responsible for actions related to the service; however, the Court could decide differently. Without the insurance, the contractor may not have sufficient funds to pay a large claim and the County may then be at risk. Without the additional insured language, the County would be responsible for its own defense costs.

The County purchases medical malpractice insurance and is therefore limited in its exposure to a medical claim. However, a large medical claim paid by our insurers would affect the future cost, and availability, of insurance. The County is self-insured for general liability claims and purchases excess insurance to pay for claims exceeding \$1 million.

### **Recommendations**

- R1. The Board of Supervisors, with the assistance of the County Counsel and the Manager of Procurement and Contracts' Office, should establish and enforce a procedure for departments to meet legal specifications and to be in compliance with procedures in awarding contracts for services.

***Response to R1: The recommendation has been implemented.*** County Counsel, Risk management, and the Procurement and Contracts office do have procedures in place providing departments with direction for how to meet legal specifications and to be in compliance with procedures for awarding contracts for services. These procedures are embedded in the Purchasing Ordinance, Board of Supervisors Policy, Purchasing Operating Practices Manual, and a Contract Manual prepared by County Counsel. County Counsel and the Procurement and Contracts Division are currently working to update this material, distribute, and conduct training for all departments.

- R2. The Board of Supervisors and the CAO should hold all County departments accountable for the policies and procedures established by the Manager of Procurement and Contracts' Office.

***Response to R2: The recommendation has been implemented.*** As stated above in F4 Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor "use of financial resources", which would include the procurement of goods and services. The Interim Chief Administrative Officer is currently working with a group of Department Heads to review/revise the evaluation instrument and criteria. Performance factors may be revised,

however, these financial and administrative factors, which include following Board of Supervisors and Chief Administrative Officer policies and procedures, will remain a priority.

- R3. The Department of General Services and the Procurement and Contracts' Office personnel should design and provide a series of training programs on purchase orders and contract procedures for County staff.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** Although the last formal department-wide, county-training on contracts occurred in 1999, administrative departments (Risk Management, County Counsel, and General Services) involved in the contracting process continually work with and train departments one-on-one. In addition the Procurement and Contracts Division does offer departmental training on purchase order procedures concurrently with training on the automated purchasing system on an "as requested" basis. A contract binder was developed and given to departments at the 1999 training. County procedures emanating from General Services, Risk Management, and County Counsel are added to the various sections of that binder.

Unless future budget and staff reductions prevent it, General Services will coordinate with Risk Management and County Counsel to conduct department-wide training annually. The first annual training will be developed subsequent to Board approval and adoption of the revised Purchasing Ordinance and conducted by June 2004.

- R4. Department Directors should be evaluated on their adherence to County procedures and their attendance at required training sessions.

**Response to R4: The recommendation been implemented.** As stated above in F4 Department Directors are charged with managing the departments overall administration which includes fiscal management, administration oversight, and work standards as well as implementing Board of Supervisor and CAO directives, policies, and procedures. The current evaluation instrument includes as a performance factor "use of financial resources", which would include the procurement of goods and services. The Interim Chief Administrative Officer is currently working with a group of Department Directors to review/revise the evaluation instrument and criteria. Performance factors may be revised, however, these financial and administrative factors, which include following Board of Supervisors and Chief Administrative Officer policies and procedures, will remain a priority.

- R5. Confirming purchase orders (after the fact purchases) should not be acceptable. A memo signed by the Department Director explaining the nature of the "confirming" requisition should accompany all confirming purchase orders. The CAO should be required to approve retroactive purchases not authorized by the Purchasing Agent.

**Response to R5: The recommendation has been implemented.** During the 2001/2002 fiscal year, the Purchasing Agent issued a series of memoranda requiring departments to adhere to purchasing procedures. While there was some improvement, the Purchasing Agent remained very concerned that departments continued to order goods and services without the

appropriate Purchasing Agent authority. On October 3, 2002, the Purchasing Agent issued an “all department” memorandum requiring all confirming, or after-the-fact, requisitions to be accompanied by a memo, written and signed by the department head, providing an explanation for the nature of the “confirming” requisition. Confirming requisitions not authorized by the Purchasing Agent now require Board of Supervisors approval. Any unauthorized fixed asset purchase, within the Purchasing Agent’s signature authority, must be approved by the Chief Administrative Officer. Any unauthorized purchase, in excess of the Purchasing Agent’s signature authority, must be approved by the Board of Supervisors.

During the 2000/2001 fiscal year, the Purchasing Agent determined that 74% of all requisitions were confirming and after-the-fact. At the close of the third quarter of the 2002/2003 fiscal year, statistical data showed that confirming requisitions were reduced to 1%. This is very encouraging as confirming purchase orders or requisitions should be the exception to procurement practices and not the rule. The Purchasing Agent would like to express thanks and appreciation to the Grand Jury for all of the support and encouragement it has provided to the Procurement and Contracts Division in correcting this deficiency in purchasing practices during the last two fiscal years.

**Commendations**

The Grand Jury wishes to commend Bonnie Rich, Manager of Procurement and Contracts, and her assistant, Donna Cademartori, for their commendable efforts to reduce the County’s confirming purchase orders from 74 percent in 2000-01 to less than 3 percent during 2002-03.

**Responses Required for Findings**

F1 through F5	El Dorado County Board of Supervisors El Dorado Chief Administrative Officer
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**Responses Required for Recommendations**

R1 through R5	El Dorado Board of Supervisors
R1, R2 and R5	El Dorado Chief Administrative Officer
R1, R2 and R3, R5	Director, Department of General Services, El Dorado County
R1	El Dorado County Counsel

## **GOVERNMENT & ADMINISTRATION COMMITTEE**

### ***City of South Lake Tahoe Transient Occupancy Tax (TOT)***

Citizen Complaint #C7-02/03

#### **Reason for the Report**

The Grand Jury received a citizen's complaint alleging that a City of South Lake Tahoe (SLT) vacation rental agency was not paying the full amount of the Transient Occupancy Tax (TOT) as required by Law. The complainant also raised the possibility that other rental agencies were not paying the full tax as well.

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- City Attorney, City of South Lake Tahoe;
- Two current City Council members, City of South Lake Tahoe;
- Senior Accounting Technician, City of South Lake Tahoe;
- Former City Council member, City of South Lake Tahoe;
- Complainant;
- County Counsel, El Dorado County;
- Chief Assistant District Attorney, El Dorado County;
- Auditor-Controller, El Dorado County;
- Former City Manager;
- Former Accounting Manager, City of South Lake Tahoe;
- Revenue Supervisor, City of South Lake Tahoe;
- Private Investigator/Auditor, contracted by the 2002-03 Grand Jury.

The Grand Jury also reviewed the following items:

- South Lake Tahoe City Occupancy/Lodging Code Sections (Chapter 28A et seq.);
- City of South Lake Tahoe Policy and Procedures regarding TOTs;
- Transient Occupancy Tax Code, El Dorado County, California;
- City of South Lake Tahoe & Lodging Association clarification of TOT;
- Transient Occupancy Tax Ordinance, Douglas County, Nevada;
- Videotapes of the City of South Lake Tahoe Council Meeting discussing TOTs;
- Transient Occupancy Tax Report Form;
- Audit report by the Private Investigator/Auditor;
- City of SLT Ordinance Amending Vacation Home Rentals ;
- A letter attempting to define SLT City Code 28A-3, which defines "rent," written by an attorney who represents two of the rental agencies;

- A legal opinion from County Counsel defining “rent” as it pertains to El Dorado County’s Code.

## **Background**

Chapter 28A-3 of the City of South Lake Tahoe’s City Code defining “rent” reads as follows: “‘Rent’ means the consideration charged, whether or not received, for the occupancy of space in a transient lodging facility valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefore whatsoever.”

Exactly what items are considered as “rent” under that code section is an apparent problem within the City. Some vacation home agencies charge Transient Occupancy Tax (TOT) on the extras, such as cleaning fees, booking fees, pet fees, spa maintenance fees, extra cots, etc. Others do not and take the position that “rent” means only the amount paid for the room. This leads to an unequal playing field. In addition, the City is inconsistent as to who owes “rent” and the definition of rent. Hotels and motels that delineate the extra charges are required by the City to pay the TOT of those charges. However, when it comes to rental agencies, that decision is left to the individual rental agencies. Therefore, some pay TOT on the additional charges, and others do not.

It appears that in May 2001 the City of SLT and the South Lake Tahoe Lodging Association arrived at a “clarification” regarding the TOT. This clarification states, in part:

“If a lodging property collects revenue for a room, then TOT tax be charged.” In addition, the “clarification” also states “If a property charges an additional amount for rollaway, refrigerator, utility surcharge, guest amenities, towels, etc., then that charge is taxable.”

The County of El Dorado has a TOT ordinance and the definition of rent is almost identical to that of SLT. At the request of the Grand Jury, County Counsel provided a legal opinion as to the definition of “rent”, as it pertains to the County of El Dorado. The opinion states, in part, “...the definition of taxable “rent”; focuses on what the renter is charged rather than what the facility owner, operator or subcontractor may receive, and it is written to be as broad as possible to capture everything “of any kind or nature” that the renter pays in order to occupy the premises “without any deduction therefrom whatsoever.”

The definition of “rent” pursuant to the SLT City Code, the “clarification” between the city of SLT and the South Lake Tahoe Lodging Association appears to include any revenue generated by the rental of the room is taxable.

However, in late February 2003, because of the inconsistencies in the interpretation of “rent,” this Committee asked the SLT City Attorney for her opinion as to the definition of “rent” and, although one was promised, as of May 31<sup>st</sup>, it has not been received.

Vacation rentals are private residences that are rented out for less than 30 days. The term also includes motels and hotels. A TOT is collected from all such vacation rentals as well as hotels and

motels. Although the TOT represents a significant portion of South Lake Tahoe's revenue, there has not been an audit of these businesses for many years.

The City began an audit on motels and hotels but declined the Grand Jury's request to reassign or hire an auditor for auditing vacation rentals until the motel/hotel audits were completed. The City Attorney made the suggestion that if the Grand Jury had the funds with which to hire an auditor, they would be happy to assist with the administrative subpoenas.

Based on the City auditor's preliminary reports on the collection of TOT at motels and hotels, it became apparent there was an under-collection of TOTs. These under-collections contribute to the ongoing shortfall of revenues for the City of SLT.

There is an inherent difficulty in determining the full amount of tax to be collected for the rental of vacation homes. An honor system prevails with the owners or their representatives informing the City when a given house has been rented. Most rentals are handled by rental agencies, which collect the rent, pay the TOT, and then forward the difference minus their fee and other costs to the respective owner.

On several occasions this committee requested the El Dorado County Auditor-Controller for assistance in conducting audits of several vacation rental agencies. These requests were denied.

In order to ascertain whether in fact the agencies have been collecting and/or paying the TOT, the Grand Jury had no other recourse but to retain the services of a skilled investigator/auditor. He was retained to conduct an audit on a representative sampling of five agencies doing business in the City of SLT.

In summary, the methodology used by the Investigator included the following steps:

- Met with the person in charge of overseeing the rental of vacation homes to receive an overview of the agency's rental procedures and the collection of TOT. This included identifying which charges the agency subjected to TOT collection and which they did not.
- Reviewed a sampling of rental records from June, July and August 2002 and compared the agency's actual practice with stated procedures. This included reviewing the following records:
  - All rental registration forms and renter bills for one month, of the sample period, to determine if the actual charges were consistent with the agencies stated procedures.
  - Ten percent of the "owner folders," which each agency maintains for the individual properties they represent. This was done to verify the accuracy of the rental activity recorded on the renter bills, to verify that all rental activity was being recorded and to determine if the charges for all rentals occurring in the entire three-month sample period were consistent with the agency's stated practices.

- Property cleaning records to determine if unreported rentals might be occurring.
- Month-end rental recaps to ensure TOT was remitted for all qualifying rentals during the sample period.
- Individual rental records to resolve discrepancies discovered during the review process.
- Records listing the amount of money collected for cleaning, booking and other fees during calendar year 2002.

During the course of the investigation, the Investigator determined that a large number of vacation homes were being rented directly by the owners.

City records reflect that in January 2003, there were a total of 1191 vacation homes registered with the City with 843 being handled by rental agents and 348 being handled by the owners directly. These numbers fluctuate slightly throughout the year as homes are added and removed but remain fairly constant.

One common way owners rent their homes is to advertise them on the Internet.

The Investigator checked Internet listings for “vacation homes in South Lake Tahoe” and located two large and many small Web sites with rental listings. The two largest sources of listings were found at <http://www.vrbo.com> and <http://www.avacationrental.com>.

The <http://www.vrbo.com> site stands for “vacation rentals by owner” and contains approximately 125 separate homes under their SLT listing. The <http://www.avacationrental.com> site stands for “A Vacation Rental” and lists 66 homes in the Lake Tahoe area. These Web sites list homes in the City of SLT, the unincorporated area of El Dorado County, as well as in Alpine County and Nevada.

Usually, an address is not part of the Internet listing so it is necessary to contact the owner to determine where the property is located.

In an attempt to determine how many of these owners collect and remit the required TOT, the Investigator posed as a potential renter and sent emails to 27 properties listed on the <http://www.vrbo.com> Web site. The e-mail requested the address of the home and a breakdown of all charges. The following results were achieved:

- Twenty of the 27 property owners responded to the Investigator’s inquiry:
- Of those 20:
  - 4 did not provide addresses as requested.
  - 11 were located within the City of SLT.
  - 5 were located outside the City of SLT.

- Of the 11 within the City of SLT, City records revealed that:
  - 4 had a history of paying TOT tax.
  - 7 were not remitting TOT.
- Of the 7 not remitting TOT:
  - 3 were also represented by rental agencies.
  - 2 indicated that tax was included in the quoted rate, however, TOT was not remitted to the City.
  - 2 were not registered with the City as vacation rentals as required by City law.

While sampling the rental records at the various rental agencies, the Investigator noted a number of properties with high usage by “guests of the owner.” Rental agency personnel believe that many of these uses were actually rentals booked directly by the owners.

The Investigator selected 12 properties with high “guest” usage and checked City records to determine if the owners were remitting TOT. Only 3 of the 12 of the owners paid TOT during 2002.

It should be noted that the failure to pay TOT by the owners of homes with high “guest” usage might not be improper. Non-renting guests may have used the homes. However, this type of usage most likely involves some amount of tax avoidance and is worthy of more in-depth scrutiny by City staff.

Presently, all homes used as vacation rentals are required to be registered with the City (SLTCC 28A). During 2002, there was no charge to register a home. However, on January 21, 2003, Ordinance No. 928 was adopted by the City Council. This ordinance enacts a \$75 fee to register a vacation home. It also places restrictions on the number of people who can stay in a vacation home, regulates parking and makes owners responsible for the conduct of their renters. City staff mailed a packet of information to all vacation rental property owners and managers in April 2003.

Rental agencies representing vacation homes are required to have a City business license.

Vacation rental agencies collect and remit the TOT for rentals they handle. Individual property owners are responsible for collecting and remitting the TOT for rentals they book on their own.

Vacation home rental agencies are required to remit TOT on a monthly basis. TOT for vacation homes rented directly by the owners is remitted on a quarterly basis. Payments are due by the tenth day of the month following the end of the reporting period. Late payments are subject to penalty and interest charges.

Remittance of TOT by vacation home rental agencies and owners can best be described as being based on the “honor” system. Historically, the remittance of TOT for vacation homes has not been the subject of audit by the City.



The City generates and sends TOT remittance forms to each rental agency and registered homeowner each billing cycle. The same form is used for both types of TOT payments.

The form contains a series of 8 lines that are filled out to calculate the proper amount of TOT. The lines include spaces to list the gross rent, allowable deductions, the tax due and any penalties and/or interest due. A payment envelope is attached to each form.

The rental of vacation homes is big business in the City of SLT. According to City records, there are 1191 vacation homes and over 20 rental businesses registered with the City. There are also a small number of additional homes being rented that are not registered.

TOT collected from all sources amounted to almost \$9 million in fiscal year 2001-02. This is approximately 40 percent of the entire City budget.

It would appear, however, that a substantial portion of TOT is not being collected. This is evident by the under-payment of TOT by most rental agencies based on their interpretation of which charges are subject to TOT collection and the non-payment of TOT by some homeowners who rent their homes without using an agent.

The 5 agencies surveyed for this report handled 426 of the 843 homes registered with the City as being represented by rental agents.

If the fees the 5 surveyed agencies charged for cleaning, booking and hot tub usage are subject to the 10 per cent TOT tax, those 5 agencies should have paid the following additional TOT in 2002:

Agency 1	\$ 7,600
Agency 2	61,327
Agency 3	27,020
Agency 4	360
Agency 5	<u>000</u>

Additional TOT due: \$ 96,307

Note: One of the above agencies, which handled 110 vacation homes, paid TOT on all extra costs. Therefore, the amount of unpaid TOT per home handled by the surveyed agencies is \$374.76 (426 total homes – 110 homes for which total tax was paid = 316 homes for which total tax was not paid. Additional tax owed of \$96,307 divided by 316 homes equals \$304.76 per home.).

The rental agencies not surveyed for this report handled 417 homes. For the purposes of this report, it has been assumed that the rental agencies not surveyed have similar charges to those surveyed, have a rental frequency similar to that of the surveyed agencies and only collect TOT on the daily rental rate. Based on those assumptions, the non-surveyed agencies owe an estimated additional TOT of \$127,085 (\$304.76 per home multiplied by 417 homes).

This makes the estimated additional TOT due from rental agencies \$223,392 (\$96,307 plus \$127,085).

Estimating the amount of tax owed by those owners who rent their homes directly is a difficult area in which to make an accurate estimate because there is no norm to follow and there is little documentation on which to predict the amount of rental activity.

City records reflect 348 vacation rental homes being rented directly by the owners.

City TOT payment records reflect that 201 individual property owners paid a total of \$209,330 in TOT during 2002. This equates to an average of \$1041 per home (\$209,330 divided by 201).

However, City records also disclosed that rental agencies were listed as handling 58 of the 201 properties. Therefore, 59 percent (205 of 348) of the property owners who are registered as handling their own rental bookings did not pay any TOT in 2002.

TOT payments were checked for 12 of the properties with the highest usage and only 3 were remitting TOT. The remaining 9 properties had 64 “guest of owner” uses totaling 479 days during the 3-month sample period.

Given the high level of non-payment in the above two examples, it would not be unrealistic to assume that half of the homeowners who did not remit TOT in 2002 had some unreported rental activity.

A conservative approach to estimating the amount of TOT those homeowners may not have remitted would be to multiply the average TOT paid by individual homeowners in 2002 (\$1041) by a number equal to 40 percent of homeowners who did not pay TOT in 2002 ( $205 \times 40\% = 82$ ). This makes the estimated additional TOT due from individual homeowners \$85,362 ( $\$1041 \times 82$ ).

Therefore, the total estimated additional TOT due from rental agencies and individual homeowners is \$308,754 ( $\$223,392 + \$85,362$ ).

A survey of 11 homes advertised for rent on the Internet revealed that 7 (64%) were not remitting TOT to the City. If this percentage is even close to actual number of the individual homeowners not remitting TOT, then the City is losing a significant amount of tax revenue. This area is worthy of additional scrutiny by the City.

There is a lack of consistency within the City in collecting delinquent accounts. Pursuant to Chapter 28 A, the City has several options available for this. These include (1) offer a prepayment plan, (2) place a lien on the property, (3) revoke the motel/hotel license or permit, and (4) arrange for the sale of the property to pay for delinquent back taxes. As of this date, options 3 and 4 have not been used.

In one instance, an owner owed the City \$65,000 for delinquent TOT payments and penalties. This party was habitually delinquent in paying the TOTs he collected on behalf of the City. Because of this, the City Attorney placed a lien to be placed on this particular property. Thereafter, the City Attorney met with the owner, who asked the City Attorney to remove the lien in order for him to re-finance that particular property. Although the owner refused to tell the

City Attorney the amount for which he was re-financing the property, she agreed to temporarily remove the lien based on his oral agreement to pay the money owed to the City. After the owner refinanced his property, he did not live up to the oral agreement and only paid \$5,000 towards his delinquent taxes. The City Attorney then placed another lien on the property. To date, the money is still owed.

It should be noted that the councilpersons interviewed stated they were not aware of the above transaction. In addition, one councilperson was under the mistaken impression that the City's lien on property for failure to pay taxes superseded the Mortgage holder of the property. However, all councilpersons interviewed said they would immediately pursue the TOT issues.

During this investigation it was discovered that the City of SLT is using "reserve funds" to cover budget deficits. This has amounted to approximately four million dollars in the past two years. If the City of SLT continues on its present course, the reserve fund will be depleted within the next two years.

### **Findings:**

No Board of Supervisors response required.

- F1. The City of South Lake Tahoe is inconsistent in their collection of TOTs due to the definition as to what is considered "rent."
- F2. At present, the City is not following their own clarification along with the South Lake Tahoe Lodging Association's recommendations as to what is to be considered as "rent."
- F3. City records show there are 1,191 vacation rental homes in SLT.
- F4. Rental agencies handle bookings for 843 of the registered vacation rental homes.
- F5. Individual homeowners account for the remaining 348 registered vacation rental homes.
- F6. Some individual homeowners are renting their property as a vacation home without registering with the City.
- F7. Some individual homeowners are renting their property without collecting TOT.
- F8. TOT collected from all rental sources amounted to almost \$9 million dollars in the fiscal year 2001-02.
- F9. The annual City budget is dependent on TOT revenues.
- F10. For the last two years, the City of SLT has had a budget shortfall in excess of \$ 2 million dollars a year.
- F11. Reserve funds are being used to balance the City's budget.

- F12. About \$ 4 million dollars is left in the City's reserve funds.
- F13. The City of SLT has not filled the Finance Director's position for the last 12 months. The City of SLT as of 5/03 presently has filled the position .
- F14. The City Council is not adequately informed regarding the delinquent TOTs.
- F15. Of the five rental agencies audited for this investigation, the Investigator estimated that nearly \$100,000 underpayment of TOT occurred in 2002.
- F16. It was further estimated that over \$224,000 was underpaid by all rental agencies in 2002.
- F17. Individual homeowners, as distinct from agencies, may have underpaid an additional TOT of approximately \$85,000.
- F18. This year the City hired an individual to audit the motels and hotels regarding payment of TOT.
- F19. In one period, from August 2002 to March 2003, this person found uncollected tax amounting to over \$375,000.
- F20. Motels, hotels, vacation homes, and rental agencies are responsible to pay their TOTs owed on an honor system.
- F21. Although the City has stringent methods of dealing with delinquent TOTs, the prevailing method used is to put a lien on the property.
- F22. There are no written guidelines as to the definition of "rent" as expressed in Chapter 28A-3 of the City Code.
- F23. Some agencies and motels pay TOT on all revenue generated by the rental of the room, and others do not.
- F24. On several occasions, this committee requested the El Dorado County Auditor-Controller for assistance to investigate the initial complaint filed. The requests were denied.

### **Recommendations**

No Board of Supervisors response required.

- R1. The City should immediately define the specific charges that are subject to the collection of TOT and inform the rental community so that all persons renting out properties are subject to the same rules.

- R2. The City should add criminal sanctions to the City Code provision dealing with the non-payment of TOT. Such a sanction would add a tool to be used with flagrant violators, particularly those who collect tax but fail to remit it to the City.
- R3. The City Council should receive monthly reports from the City Manager regarding the amount of TOT delinquencies, the length of time the facility has been delinquent and the efforts being utilized to collect those delinquencies.
- R4. The City Council should become more involved with the City Manager and City Attorney in overseeing and approving legal action against businesses and person's delinquent in their TOT payments, when it is agreed that full payment of the delinquent amount will not be made.
- R5. The City should implement a comprehensive and on-going audit program of vacation rental homes. This program should include the auditing of rental agency practices and records, the monitoring of advertisements on the Internet, in newspapers and in other publications and locations, and on-site checking of rental homes where tax avoidance is suspected.
- R6. The City should require vacation rental agencies to submit with their monthly TOT remittance, a copy of their internal month-end report which lists the specific properties rented, the dates of each rental, a breakdown of the total fees charged, by category, for each rental, and the dates any property was not available because the owner had blocked its use. This would allow City staff to be more proactive in their oversight duties without the need to go to a rental agency to review records. This would not create any additional work for most of the agencies.
- R7. A more in-depth scrutiny by the City staff should be made of high "guest" usage homes to ensure proper collection of TOT.
- R8. The City's TOT remittance form should be changed to allow sufficient space to permit the rental agents to list the total number of units rented each day and for property owners to list the total number of days the unit was rented.

### **Commendations**

As a result of the Grand Jury investigation, the City Council of South Lake Tahoe now appears to be actively pursuing the Transient Occupancy Tax issue.

The Grand Jury members wish to commend the Senior Accounting Technician hired in April 2003 for her outstanding work in auditing hotels and motels of the City of SLT.

**Responses Required for Findings**

F1 1-2, 6, 10-12, 14, 17, 19, 21-23	City Council of South Lake Tahoe
F2 1-2, 6-7,14-17, 19, 23	City Manager of South Lake Tahoe
F1 and F21	City Attorney of South Lake Tahoe
F24	Auditor-Controller of El Dorado County

**Responses Required for Recommendations**

R1 through R8	City Council of South Lake Tahoe City Manager of South Lake Tahoe
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**Addenda to South Lake Tahoe Transient Occupancy Tax (TOT)**  
**#C7-02/03**

**Applicable Law**

**Chapter 28 A** of the South Lake Tahoe City Code (SLTCC) regulates when TOT is to be collected.

The applicable sub-sections relating to the collection of TOT when vacation rental homes are involved have been paraphrased below:

**28 A-2 G** . . . many owners of residential buildings and owners of units in condominiums of community apartment buildings are renting to transients  
. . . without accounting to the City for tax imposed by SLTCC 28A-13;

Such rentals compete directly with the transient lodging facilities industry, which is a very substantial factor in the economy of the City;

Transients renting such units should pay the same tax as transients renting commercial units; and,

It is necessary to require rental agents to be accountable for the tax as an operator in order to achieve greater collection of the tax from transients renting such units.

**28 A-3** “ Rent” means the consideration charged, whether or not received, for the occupancy of space in a transient lodging facility valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefore whatsoever.

“**Transient**” means any person who exercises occupancy or possession or is entitled to occupancy or possession . . . for a period of 30 consecutive calendar days or less.

“**Transient lodging facility**” means any dwelling, motel, hotel, inn, vacation home rental . . . or other building . . . maintained, advertised or otherwise held out to the public in any manner as a place where sleeping, rooming or any other type of visitor accommodations are furnished to transients.

**28 A –13** – Effective December 1, 1988, the taxes to be collected from transients by all transient-lodging facilities within the City . . . shall be as follows:

. . . the amount of 12 percent of rent charged on all newly constructed visitor accommodations within the redevelopment project area and those existing properties within the redevelopment project area which undergo substantial renovation . . . and 10 percent of the rent charged on all other transient lodging facilities within the City.

(Note: In November 2002, the voters passed Measure Z that added an additional TOT of \$1.00 per lodging night on all transient-lodging units. The City Council voted to make collection of the additional dollar effective January 1, 2003.)

Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment to the operator or the City.

The transient shall pay the tax to the operator of the transient lodging facility at the time the rent is paid.

The unpaid tax shall be due upon the transient's ceasing to occupy space in the transient lodging facility.

**28 A-13.1** – Allocation of monies collected under the rates set forth in SLTCC 28A-13 shall be set forth by resolution of the City council.

**28 A-14**– All lodging operators and/or agents arranging for such lodging shall collect, at the time payment for the accommodations is made, the applicable transient occupancy tax.

**28 A-15** – Each transient shall receive a receipt for payment from the operator indicating the room rate and the amount of transient occupancy tax assessed.

No operator of a transient lodging facility shall advertise or state in any manner . . . that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent.

**28 A-17**– Within 30 days after first acting as a rental agent with respect to a unit of a transient lodging facility within the City, each rental agent shall register with the tax collector.

**28 A-19**– Each rental agent shall, on or before the tenth day of each month, or at the close of any different reporting period which may be established by the finance director, make a return to the finance department on forms provided by that office showing the total rent charged and received, the amount of tax collected, and the number of rooms occupied during the month or any other reporting period immediately proceeding. At the time the return is filed the full amount of the tax collected shall be remitted to the City.

**28 A-20 A**– Any operator who fails to remit any tax imposed by this article within the time required shall pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.



## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Mobile Homes/Senior Abuse*

Citizen Complaint #C12-02/03

#### **Reason for the Report**

A citizen's complaint alleged that the El Dorado County District Attorney did not respond in a timely manner to complaints regarding senior abuse in mobile home parks.

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- President of the Homeowners Coalition for Mobile Home Parks in El Dorado County and other witnesses;
- District Attorney;
- Chief Assistant District Attorney;
- Deputy District Attorney;
- Investigator with the District Attorney's Office;
- Senior Administrative Analyst, District Attorney's Office.

The Grand Jury also reviewed the following items:

- The citizen's complaint;
- The files of the Homeowners Coalition for Mobile Home Parks, which set forth 26 complaints against El Dorado County mobile home park owners;
- A criminal complaint against a mobile home park owner;
- The District Attorney's office procedures;
- The case management system used by the District Attorney (DAMION);
- All of the minutes of the Mobile Home Task Force meetings;
- Mobile Home Task Force Report to the Board of Supervisors, dated February 2003;
- Relevant California Code sections relating to mobile homes and senior abuse.

#### **Background**

On or about April 2001, the complainant delivered twenty-six separate complaints regarding mobile home parks and senior abuse to the District Attorney. The complaints alleged among other things; sewage leakage, abundance of rats, propane overcharges, and unlawful increases in rent.

Fifteen months later a complaint was received by this Grand Jury regarding the excessive delay by the District Attorney in connection with this matter.

The Grand Jury eventually learned the complaints had been languishing on a Deputy District Attorney's office floor during that fifteen-month period.

Thereafter, one of the complaints was assigned to the Chief Assistant District Attorney for prosecution. He successfully prosecuted the case and obtained a written stipulation creating a \$50,000 trust fund for future issues involving seniors in mobile homes.

During his testimony before the Grand Jury, the District Attorney said he did not prosecute the other 25 complaints because of "insufficient evidence" or they were "outside his purview."

The Grand Jury requested that the District Attorney's Office provide a copy of their written "office procedures." We received 17 internal memos dated from 1993 to 2002. The majority of these memos appear to relate to incidences that came up on that particular date. The memos were brief with some being no longer than a paragraph in length. The District Attorney also delivered a State of California "guidelines" manual that offered suggestions in operating a District Attorney's Office. From our review, it is apparent the District Attorney does not have an adequate internal policy and procedures handbook for his office.

The District Attorney, the Chief Assistant District Attorney, and the Deputy District Attorney informed the Grand Jury they are understaffed. According to the information received, attorneys type their own pleadings, file their own paperwork, answer telephones, and perform other clerical duties. Notwithstanding, the District Attorney's Office has 10.5 legal secretaries, 10 investigators, and 18.5 attorneys.

A DAMION case management system was purchased for over \$120,000. In addition, the purchase allowed for further consulting, training, customization, and implementation services from the vendor at an annual cost of \$100,000. The system was installed in June 2001. According to a September 17, 2002 internal memo, the District Attorney and his staff had not yet discussed or determined the elements to be entered into DAMION (convictions, cases dismissed, diversions, acquittals, mistrials, etc.). As of this report staff is still not fully trained on the use of the program.

It should be noted that the Board of Supervisors created a Mobile Home Task Force in May 2002 for a six-month period. Their purpose was to attempt to resolve issues relating to mobile home parks.

## **Findings**

- F1. A complaint languished in the District Attorney's Office for 15 months before being investigated.

### ***Response to F1: The respondent disagrees wholly with the finding.***

The typical function of the District Attorney's Office is to take completed investigation reports from law enforcement agencies or other agencies, review those reports and determine

whether there is any evidence of criminal wrongdoing that can be proved beyond a reasonable doubt. Our primary function is to enforce the criminal laws of this state and county. However, not every unlawful act is a criminal act. We receive many reports in a typical year that involve acts that may involve civil liability but not criminal. The District Attorney's office declines to file criminal charges on many cases each year that involve civil disputes and do not present criminal acts.

The majority of the complaints discussed in the Grand Jury Report were not received in April of 2001, but rather were received informally in July of 2001. Monica Hopkins, Elder Abuse Advocate for the Victim Witness Office had met with Mobile Home Tenant Advocates and had indicated that she would take any material pertaining to complaints regarding mobile home parks. She was given a large stack of documents, consisting of receipts, letters and other documents but no investigative report or summary. In July 2001, these documents were given by Ms. Hopkins to Lonnie Price, District Attorney Investigator, for his review. Mr. Price reviewed the documents and found them to be materials which did not amount to sufficient evidence of a criminal act. Based on those materials, Mr. Price could not tell if there were potential criminal matters involved or not, without substantial further investigation. Mr. Price made the decision to not further investigate the matter due to his heavy caseload.

As the Grand Jury Report noted, the District Attorney's Office has seen a dramatic increase in the number of cases handled by our office. Last year, our cases were up 17%. Yet, we have had chronic staff shortages throughout the period encompassed by this report. During that period, we have prosecuted numerous murders, felony assaults, robberies, burglaries, domestic violence cases, and the literally thousands of other crimes attendant to this growing community. The District Attorney's Office has attempted to meet this increase of serious crimes with fewer overall employees, and especially fewer Deputy District Attorneys. For the current fiscal year, we have four positions unfunded, including one Deputy District Attorney, one District Attorney Investigator, one Investigative Assistant, and one Legal Secretary. Given these realities, the District Attorney's Office must establish priorities in allocating our resources. Our priorities have been to effectively deal with dangerous criminals that victimize our citizens' homes and persons. Our one Deputy District Attorney who was assigned to prosecute the mobile home complaints was at the same time, also prosecuting numerous cases of physical and financial Elder Abuse, Environmental crimes, Fraud, Worker's Compensation fraud, Automobile and Insurance Fraud and an assortment of other non-traditional criminal and civil actions. The District Attorney's Office did not, and in the foreseeable future, will not have enough resources to examine, investigate and prosecute every complaint made in the County.

The finding of the Grand Jury that these complaints "languished in the District Attorney's Office for 15 months before being investigated" ignores the fiscal realities of the County. In a time of massive budget cuts, there are not enough resources to do everything that is asked of the District Attorney's Office. However, with what resources are available, the District Attorney's office will continue to protect our citizens from crime.

- F2. Written policy and procedures for handling complaints to the District Attorney's Office appear to be inadequate.

***Response to F2: The respondent disagrees partially with the finding.***

The District Attorney's Office has procedures in place to deal with complaints received by our office in a traditional manner. As noted in the response to Finding F1, our office typically receives investigative reports from law enforcement agencies and state and federal agencies that are charged with investigating criminal activity. These agencies then present the case to our office in a report form, which provides a summary of witness statements, and the course of the investigation, so that our office can evaluate the reports and determine whether criminal charges are appropriate. These procedures are well established and do not require written policy or procedures. In the case addressed by the Grand Jury, the matter came to our attention by the "back door". That is, an advocate for our office, who was not an attorney, nor ever responsible for logging in investigative reports, received documents from an individual who was not a trained investigator. These documents were not summarized, categorized or laid out in such a manner that a determination could be made that a crime had been committed. The advocate turned the documents over to one of our District Attorney Investigators who has a caseload of high volume, complex cases to handle. This investigator reviewed the documents and was unable to determine, without considerable investigative resources, what issues were presented by the documents. Therefore the documents were not processed by our usual procedures. In that respect, the Office procedures were not geared to handle these highly unusual circumstances. However, the District Attorney's Office disagrees with the sweeping nature of the finding, and asserts that overall, its procedures are more than adequate to handle our cases.

- F3. Several staff members, including the District Attorney, mentioned the office is understaffed. It appears to be a waste of taxpayer's monies for attorneys to perform clerical duties and, as a result, not have enough time to respond to the concerns of the public and their prosecutorial duties.

***Response to F3: The respondent agrees with the finding.***

- F4. The DAMION case management system, installed in June 2001, does not appear to be utilized to its full potential.

***Response to F4: The respondent disagrees partially with the finding.***

As noted in the Grand Jury Report, the DAMION system was implemented in late June of 2001. Because of staff shortages during this period, we have been slowly exploring the potential uses of the system, and its makeup to ensure that the database program is both useful and "user-friendly". As we experience the program by working with it on a daily basis, we are fine-tuning our use of the system. For example, we have traditionally had difficulty in tracking our numerous case files, creating a situation where a great deal of employee time is used in finding case files. We recently implemented a case tracking system

within DAMION, using bar coding, that enables us to more easily find our case files, and reduce staff time spent in this endeavor.

Further, this Fall we will be implementing an imaging system within DAMION which will allow us to scan all our documents into DAMION so that reports and other documents are available to be examined without having to track down the case file. This system also will allow us to receive our audio and video pieces of evidence from law enforcement, enabling our office to create digital discovery files, including film, photos, and police reports on CD-ROMS for delivery to the defendants in criminal cases. This will also allow employees of the office to examine all reports, videotapes, audiotapes and photos, in other words the entire case, without needing the case file in front of them.

To the extent the report suggests that the District Attorney's Office does not utilize the DAMION program effectively or with an eye toward its future benefits, the District Attorney's office disagrees wholeheartedly with that suggestion. To the extent that the report suggests we can do better, we would always agree that all things can be done better. We believe that we are carefully and consistently better using the program to make our tasks easier and more effective.

### **Recommendations**

- R1. The District Attorney's Office needs written procedures and policies for handling and tracking complaints in a timely and professional manner.

***Response to R1: The recommendation will not be implemented because it is unreasonable.***  
The Board of Supervisors can't formulate procedures for the District Attorney's office and has no choice but to respond by saying the recommendation will not be implemented by the Board of Supervisors. The Board of Supervisors expects the District Attorney to adopt appropriate procedures governing his department.

- R2. The District Attorney should assign one of his staff to be responsible for community relations to facilitate an open door policy between the public and his office.

***Response to R2: The recommendation will not be implemented because it is unreasonable***  
The Board of Supervisors can't formulate procedures for the District Attorney's office and has no choice but to respond by saying the recommendation will not be implemented by the Board of Supervisors. The Board of Supervisors expects the District Attorney to adopt appropriate procedures governing his department.

- R3. All relevant employees in the District Attorney's Office should be fully trained in the DAMION system.

***Response to R3: The recommendation will not be implemented because it is unreasonable***

The Board of Supervisors can't formulate procedures for the District Attorney's office and has no choice but to respond by saying the recommendation will not be implemented by the Board of Supervisors. The Board of Supervisors expects the District Attorney to adopt appropriate procedures governing his department.

- R4. The Mobile Home Task Force should investigate and mediate mobile home park issues. This would seem to be more cost effective than litigation.

***Response to R4: The recommendation has been implemented.***

Per direction of the Board of Supervisors, the Mobile Home Task Force will meet at least once annually; the Task Force additionally has determined to meet at least quarterly. Although limited by funding constraints, through the cooperative efforts of its members the Task Force continues to help mitigate mobile home park concerns through its investigative, educational, mediation and service efforts

- R5. An Ombudsman position for senior issues needs to be established in the Department of Community Services. All matters relating to mobile homes and senior issues should be directed to this office.

***Response to R5: The recommendation will not be implemented because it is unreasonable.***

Community Services currently has a state-funded Long Term Care Ombudsman who serves as an advocate for residents of skilled nursing and board and care facilities. The Department also has a range of information, referral and case management services for seniors. The Department does not have resources to provide for ombudsman services for all senior and mobile home park residents of the County. While the need and value of a senior/mobile home park ombudsman is evident, the County's current fiscal challenges preclude action on this recommendation at this time.

**Commendations**

The Grand Jury commends the efforts of John Litwinovich, Director of Community Services, for his leadership of the 2002 Mobile Home Task Force. The Task Force work led to a series of thorough investigations and responses to each mobile home park complaint.

**Responses Required for Findings**

F1 through F4

El Dorado County District Attorney

**Responses Required for Recommendations**

R1 through R4

El Dorado County District Attorney

R1 through R5

El Dorado County Board of Supervisors

## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Conflict of Interest/Employee Evaluations*

Citizen Complaint #C21 & #C22-02/03

#### **Reason for the Report**

A citizen's complaint alleges a conflict of interest exists because of the relationship between the Interim Chief Administrative Officer and the Director of Human Resources. The complaint also alleges a conflict of interest carried over into evaluations.

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- The Director of the Department of Human Resources;
- The Interim Chief Administrative Officer (CAO);
- Members of the Board of Supervisors individually;
- Various El Dorado County employees regarding performance evaluations.

The Grand Jury reviewed the following items:

- El Dorado County Charter (Charter);
- County Policies and Procedures;
- Various Memoranda of Understanding (MOUs).

#### **Background**

The Grand Jury agrees that a conflict of interest is possible because the CAO would need to evaluate a very close friend. However, no such evaluation took place. In this regard the Interim CAO treated the Director of Human Resources no differently than any other director in this respect.

Although the Charter states the CAO is responsible for evaluations of all the Department Directors, upon investigation it was found these evaluations were not being performed consistently. Some evaluations were not performed in a timely manner while others had not been done in the past eight years.

In addition, an MOU negotiated for July 1, 1999 to June 30, 2003 which in part stated: "Effective September 1, 1999 and for the trial period of two years, employee performance evaluations are eliminated...".

It was also determined Human Resources Department does not perform reference checks on any prospective County employee. In addition they do not verify experience or educational requirements.

Human Resources, relied on Department Directors to do background checks, and verify experience and education.

### **Findings**

- F1. The Board of Supervisors delegated responsibility for negotiating the MOU to the Director of Human Resources.

***Response to F1: The respondent agrees with the finding.***

- F2. Some El Dorado County personnel have not been evaluated in over eight years.

***Response to F2: The respondent agrees with the finding.*** The following information is provided as a context to this response. Performance evaluations were suspended in 1999 for a trial period based upon the respective negotiated Memorandum of Understandings (MOU) between the County and most of the bargaining units. This suspension of performance evaluations applied to the three bargaining units represented by the El Dorado County Employees Association (EDCEA), Local #1: the general bargaining unit, the professional bargaining unit, and the supervisory bargaining unit. The suspension of annual performance evaluations was also negotiated for two of the three bargaining units represented by Operating Engineers, Local #3: the Trades and Crafts bargaining unit and the Probation bargaining unit. The suspension of annual performance evaluations also applied to the unrepresented employees covered by the Salary and Benefits Resolution.

In response to the prior Grand Jury recommendation to re-institute annual performance evaluations, Human Resources met with the respective bargaining units to negotiate and implement the annual performance evaluation for employees. The negotiation process generated a new form for the employees in the three bargaining units covered under the EDCEA, Local #1 MOU. This new form is also used for employees in the confidential unit. The new form may also be used in lieu of the old management evaluation form for administrative management employees. This new electronic format for annual performance evaluations was distributed to all county Department Heads in October 2002.

There was a three-year gap in written performance evaluations due to this trial period of verbal feedback replacing written evaluations.

- F3. The majority of Department Directors do not annually evaluate their personnel.

***Response to F3: The respondent disagrees partially with the finding.*** Respondent agrees that performance evaluations were suspended for a period of three years. As stated in the response to Finding 2, performance evaluations were suspended in 1999 based upon the respective negotiated Memorandum of Understandings (MOU) between the County and most of the bargaining units, as well as the unrepresented employees.

Annual performance evaluations were re-instituted in October 2002 after a lengthy negotiation process. All county Department Heads were notified by memorandum from the



Director of Human Resources on or about October 17, 2002, with five training dates scheduled in November 2002. Human Resources provides a notice to each department two months before an evaluation is due. This notice contains a list of the employees for which a performance evaluation will need to be completed. Performance evaluations are received in Human Resources daily. As this new procedure has been in place for less than one year, staff cannot yet judge the accuracy of the Grand Jury finding.

- F4. Department Directors are not evaluated in a timely manner.

***Response to F4: The respondent agrees with the finding.***

- F5. Human Resources does not perform reference checks on employment applications.

***Response to F5: The respondent disagrees partially with the finding.*** In general, the Human Resources Department does not perform reference checks on employment applications. It has been the County's position that the appropriate time to conduct reference checks on an applicant is when a job offer has been made conditioned upon the results of the background check. Department Heads are instructed to verify relevant background on final candidates and are provided information on how to do so. Human Resources staff is available to assist when questions on background procedures arise. Human Resources staff **does** perform reference checks on employees hired within the Human Resources Department and on final Department Head candidates as requested by the Board of Supervisors.

The department heads act as the appointing authority for their departments as outlined by County Charter, resolution, code and the direction of the Board of Supervisors. Additionally there are some departments, including Sheriff, District Attorney and Department of Child Support Services, where there are currently specially trained investigators in place to handle in-depth background investigations on selected applicants.

- F6. Human Resources does not require submission of transcripts/diploma nor do they contact former employers to verify accuracy of the experience listed on the application.

***Response to F6: The respondent agrees with the finding.*** The following information is provided as a context to this response.

The El Dorado County Employment Application states in Section 17, EDUCATION:

“Written verification of education listed to meet minimum qualification will be required prior to offer of employment.”

Section 18 of the application, CERTIFICATES, LICENSES OR PROFESSIONAL REGISTRATION WHICH APPLY TO THIS POSITION, currently requests the applicant to attach a copy of the certificate, license, or registration.

Notice on the application which requires applicants to provide education verification (transcripts) prior to offer of employment is designed to allow applicants time to secure such evidence from schools, colleges, universities, etc. and permit the recruitment and testing process to continue expeditiously.

- F7. The Department Directors have the responsibility to ensure that reference checks are conducted and that other pertinent background evaluation are performed.

***Response to F7: The respondent agrees with the finding.***

### **Recommendations**

- R1. The CAO should have an experienced contractor negotiate future Memoranda of Understanding (MOUs).

***Response to R1: The recommendation has been implemented.*** In the past, the task of negotiating the MOUs with the respective bargaining units rested with the Human Resources Director, the Deputy Director, and one Senior Personnel Analyst – all experienced negotiators. A decision was made by the Board of Supervisors on July 22, 2003 to contract with an outside negotiator to conduct negotiations for all of the MOU's expiring in 2003.

- R2. Director of Human Resources should not be a negotiator for future MOUs, but serve as a technical advisor to these negotiations

***Response to R2: The recommendation has been implemented.*** A decision was made by the Board of Supervisors on July 22, 2003 to contract with an outside negotiator to conduct negotiations for all of the MOU's expiring in 2003.

- R3. County Counsel should be accountable for reviewing all issues contained in MOUs.

***Response to R3: The recommendation has been implemented.*** County Counsel reviews all contract language as to form only. The Board of Supervisors gives direction to the Negotiator as to the terms and issues to be negotiated in an MOU. County Counsel provides legal advise as necessary during the negotiation process.

- R4. The Auditor-Controller should be accountable for reviewing financial aspects for all issues that have a major financial impact on the County.

***Response to R4: The recommendation has been implemented.*** On March 25, 2003, the Board approved the recommendations of the CAO, Auditor-Controller and County Counsel, as set forth in their letter to the Board dated March 24, 2003, specifying two types of financial decisions to be reviewed by the County Auditor as follows:

- (1) Any commitments to the expenditure of \$500,000.00 or more, the actual cost of which, or ability of the County to pay for the commitment, depends upon projections of future costs, actuarial determinations and future projections of revenues. Examples would

include commitments to ongoing employee benefits, the cost of which is uncertain or may be subject to variability.

(2) Approval of any contracts involving the expenditure of more than \$100,000.00 and which are recommended for approval pursuant to provisions of the County Ordinance Code or State law that allow the award of the contract to be exempted from otherwise applicable competitive bidding requirements.

R5. All Department Directors should be evaluated yearly by the Chief Administrative Officer.

***Response to R5: The recommendation has been implemented.*** The Chief Administrative Office has been directed to evaluate all Department Directors on an annual basis.

R6. All Department Directors should be responsible for their employee evaluations and held accountable on their evaluation.

***Response to R6: The recommendation has not yet been implemented, but will be implemented in the future.*** Department Directors are already responsible for their employee evaluations. The format used to evaluate Department Directors has not specifically included holding them accountable for completing evaluations on their employees in a timely fashion. Human Resources will work with the Chief Administrative Officer on an evaluation format that includes performance evaluations as criteria of Director performance. As a note, this criteria has already been incorporated in the performance evaluation form used for supervisory and management personnel represented by Local #1.

The Interim Chief Administrative Officer is currently working with a group of Department Heads to review/revise the evaluation instrument and criteria. This recommendation will be implemented during October 2003 when it will be time to begin Department Head evaluations again.

R7. Human Resources should be responsible for obtaining all records required on application transmittals. (Licenses, college transcripts, diploma's, etc).

***Response to R7: The recommendation has not yet been implemented but will be implemented in the future.*** Human Resources received and processed 3,954 applications between July 1, 2002 and June 30, 2003. This response is based upon the expectation that all records should be required as part of the recruitment process.

Applications are screened for minimum qualifications prior to any testing and/or interviewing. A Human Resources representative screens the application and all additional information submitted to determine whether the candidate has provided information that shows they meet the qualifications listed in the job specification/recruitment flyer. For many licensed professions in California, verification of the licenses can be done through a State website. The application form does require a copy of the current license, however in many cases, candidates simply write down their license number. The El Dorado County job application requests applicants to provide copies of any professional licenses required as a

minimum qualification of the position for which they are applying. The El Dorado County job application requests applicants to provide copies of any professional licenses required as a minimum qualification of the position for which they are applying. In many recruitments, Human Resources verifies the validity of the licenses in order to ensure that the applicant meets the minimum qualifications for the position. The application states, "Written verification of education listed to meet minimum qualification will be required prior to offer of employment." This provides the applicant with notice that we will be requiring documentation of their relevant licensure and educational attainment. As many of our job postings are open for only two weeks, many applicants may not be able to readily obtain and provide copies of transcripts/certificates/licenses in time to submit them with the original application. As previously stated, a copy of a diploma can be so easily altered that it is not sufficient to prove educational attainment.

The County hires approximately 180 - 190 employees annually. It receives in excess of 3,000 applications (3,954 in FY02/03). An up front application verification process as recommended would require approximately one to two additional staff at an approximate cost of \$55,000 to \$93,000. Additional considerations in implementing this recommendation would include the following factors. An "up-front" investigation/inquiry process would necessitate a longer period of time within the recruitment process and prolong the time until a certification list could be provided to the hiring authority. A longer processing time within the "recruitment" period is not desirable to departments as vacant positions burden existing employees with increased workload demands, which, over time, can increase turnover or burnout.

In order to address the Grand Jury's concern, the CAO proposes that the application be amended to require evidence of required education, licensure and/or certification by the time an applicant becomes a finalist. (The Final Certification List) Verification will be completed by the Department Head with assistance by Human Resources. Because this could result in fewer qualified candidates the County will do this for a trial period of six months. Following the trial period, Human Resources will return with statistics to show the impact this change has on the recruitment process.

**Responses Required for Findings**

- |               |  |
|---------------|--|
| F1 through F7 | El Dorado County Board of Supervisors  |
| F2 through F7 | El Dorado County Chief Administrative Officer<br>Director, Department of Human Resources |

**Responses Required for Recommendations**

- |               |   |
|---------------|---|
| R1 through R7 | El Dorado County Board of Supervisors         |
| R1, R2 and R7 | El Dorado County Chief Administrative Officer |

R3

El Dorado County, County Counsel

R4 through R7

Director, Department of Human Resources

R4

El Dorado County Auditor/Controller

## GOVERNMENT & ADMINISTRATION COMMITTEE

### *County Fiscal Issues/Procedures*

Citizen Complaint #C23-02/03

#### **Reason for the Report**

A citizen's complaint alleges that the Board of Supervisors approved the County 2002-03 budget without adequately preparing for future cost increases and without addressing current deficits.

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- The Auditor/Controller, El Dorado County;
- The Account Manager, Department of Social Services;
- The Account Auditor, Auditor/Controller Office;
- The Former Interim Chief Administrative Officer (CAO), El Dorado County;
- The Former Auditor/Controller, El Dorado County;
- The Assistant Auditor/Controller, El Dorado County;
- The entire Board of Supervisors;
- The current Interim CAO.

The Grand Jury also reviewed the following items:

- Trust Fund Reconciled Per Department List for 2001-02;
- Various memos between the Auditor/Controller and the Department of Social Services;
- Various memos between the Auditor/Controller and Board of Supervisors;
- Various memos between the Auditor/Controller and the Interim Chief Administrative Officer;
- Memo's dated April 7, 22, and 23, 2003 from the Auditor/Controller to the Board of Supervisors, CAO, and the Grand Jury.

#### **Background**

The complaint alleges that the County has under funded CalPERS. If true this will significantly impact the County's financial condition in the years ahead. After interviewing the entire Board of Supervisors and the new Interim CAO, the committee has concluded that the CalPERS issue is of major importance as the majority of the CalPERS revenues will be affected by retirements and compounded by the current downturn of the Stock Market. To date the CalPERS funding issue has

not been fully resolved by the Chief Administrative Officer or the Board of Supervisors. To continue this course will result in bad news for taxpayers, since it means that the cost of basic government services will soar at the same time the services themselves are slashed.

The second issue addressed in the complaint is the County's trust funds deficit, which have not been resolved for 15 years.

Trust Funds are created for departments to operate particular programs that are often funded by State and Federal sources. In the late 1980s, an outside auditor discovered that the County trust funds were not being balanced and indicated that deposits may have been misplaced. In addition early handwritten ledger entries were incomplete. In the 1990s, an outside auditor noted that trust fund monies were missing. Currently, staff within the Auditor/Controller's Office is assigned to monitor the Trust Fund accounts. Neither staff in the various Departments nor the Auditor/Controller's Office have reconciled all accounts. The Auditor/Controller claims that the reconciliation of a trust fund is primarily the responsibility of the individual Department and the CAO.

The Board of Supervisors reviewed and agreed to transfer allocated monies during 2002/2003 for the deficit trust funds.

The Auditor-Controller's Office has not been consistent in the reporting of trust funds in deficit condition since 1988, and until January 2003 failed to help the departments reconcile these funds. Most County departments have Accounting Officer, but not professional accountants who would understand the technical scope of the work. Often the Departments allow accounting work to be performed by staff in a classification series that does not require extensive accounting background or education.

The Department of Social Services still has eleven deficit trust funds. This caused the Committee to investigate all trust funds in the County.

The Office of Risk Management is presently and appropriately under the direction of the CAO. Risk Management funds, on at least one occasion, have been used to balance the County budget. This appears to be an isolated incident.

## **Findings**

F1. Required funding for CalPERS has dramatically increase due to legislative formulae.

***Response to F1: The respondent wholly disagrees with the finding.*** The annual earning of CalPERS's investment portfolio has not met CalPERS's expectations in recent years due to low returns on investment, sluggish economy and slumps in the stock market. These factors have a direct impact on increases in the employer contribution rate. Further, between March 30, 1999, and December 12, 2000, the County amended its contract with CalPERS three times to provide enhanced retirement benefits to county employees. CalPERS calculated the present value cost of these enhanced retirement benefits to be \$32,675,767, which will be amortized over the next 20 years. Aside from low returns on investments, the enhanced retirement benefits is also a significant factor in the CalPERS rate increases.

- F2. The Department of Social Services still has eleven deficit trust funds.

***Response to F2: The respondent disagrees partially with the finding.*** In discussions with the Auditor/Controller he states that there are more than eleven trust funds that may have unlocated differences.

- F3. The Auditor/Controller Office has not been consistent in the reporting of trust funds in deficit condition since 1988.

***Response to F3: The respondent disagrees wholly with the finding.*** The Auditor/Controller first reported the deficit condition problems with the trust funds in 1989. concerns were voiced in 1990. In 1996 the Auditor/Controller required all trust funds to be reconciled by departments. In 2001 and 2002 the Auditor/Controller again reported deficit condition problems.

- F4. Most County departments have Accounting Officers, but not professional accountants who would understand the technical scope of the work.

***Response to F4: The respondent disagrees partially with the finding.*** Twelve departments have neither an “accounting officer” nor an accountant. These are normally small departments that assign such functions to management staff. Nine departments have an administrative classification that does not require being a professional accountant (Fiscal Administrative Manager, Administrative Services Officer, Administrative Analyst I/II/Sr or Department Analyst I/II), but to require financial experience and management abilities. Nine departments have a professional Accountant or Sr. Accountant on staff, often in addition to one or more of the positions listed above.

- F5. The current Auditor/Controller knew of the alleged trust account deficit since 1995; obviously prior to requesting the Board of Supervisors to authorize covering the account deficit from General Fund monies (\$958,000).

***Response to F5: The respondent disagrees with the finding.***

- F6. The Board of Supervisors reviewed and agreed to transfer allocated monies during 2002/2003 for the deficit trust funds without a full investigation by the Auditor/Controller

***Response to F6: The respondent disagrees wholly with the finding.*** The Board of Supervisors directed that County Counsel and the Interim Chief Administrative Officer work with the Auditor/Controller to investigate the trust fund deficit.

- F7. All but the Department of Social Service have deficit trust funds that are now accounted for and balanced (See attached Addendum provided by the Auditor/Controller Office).

***Response to F7: The respondent disagrees wholly with the finding.*** The Auditor/Controller states that there are still a significant number of trust funds that require balancing. However, they are not of the magnitude that existed in Social Services.



- F8. Funds allocated to Risk Management have on one occasion been utilized to balance the County budget.

***Response to F8: The respondent disagrees wholly with the finding.*** The respondent cannot recall an episode where Risk Management funds were used to balance the County budget.

### **Recommendations**

- R1. The CAO and the Board of Supervisors should immediately initiate a process to resolve the CalPers funding issue.

***Response to R1: The recommendation has been implemented.*** The actuarial costs received from CalPers have been incorporated into the County's 2003/04 budget. In addition, steps are being taken to project required funding for the next two fiscal years which will include estimated cost increases for CalPers based on preliminary information received during the 2003/04 budget process.

- R2. All financial issues, which have potential impact regarding the County's finances, should receive constant and sedulous attention from the Chief Administrative Officer and the Auditor/Controller's Office.

***Response to R2: The recommendation has been implemented:*** Cooperation and collaboration between the new Interim Chief Administrative Officer and the Auditor Controller is dramatically improved over recent years. While each department has distinct roles in the management and oversight of various financial issues, they are working closely together to review all matters which have a potential impact on County finances in order to provide the best possible information and recommendations to the Board. The new Interim Chief Administrative Officer and the Auditor Controller are committed to maintaining and strengthening their working relationship thereby improving the operational effectiveness of both departments and ultimately the County.

The Chief Administrative Officer and Auditor Controller positions, each in their respective roles, duties, and functions are designed so that a sharing, as well as separation of duties, provides an overall check and balance to ensure that all financial issues receive the appropriate level of review and attention.

The CSAC Guide to County government provides the following descriptions of the roles of the CAO and the Auditor/Controller. The primary function of the CAO is to oversee the preparation, adoption, and administration of the county budget. Working with the elected offices of auditor-controller, treasurer, tax collector and assessor, the CAO also acts as the chief financial officer of the county, coordinating the efforts of those finance-related offices in the preparation and administration of the county budget.

The primary function of the Auditor Controller is to establish the accounting policies and procedures for county government. The Auditor Controller serves as the chief accounting

officer of the county. The position is responsible for budget control, issuing checks, recording revenues, payroll, accounting for assets and liabilities, accounts receivable/payable, long-term debt, and preparation of the county's financial statements.

- R3. County Counsel and the Auditor/Controller should communicate on matters impacting the future of the County legally and financially with review and execution by the Chief Administrative Officer and the Board of Supervisors.

***Response to R3: The recommendation will not be implemented because it is unreasonable.*** With respect to this recommendation, the County Counsel and Auditor Controller do routinely communicate on financial and legal matters; however, read literally, this recommendation purports to reorder the primary functions of the three offices in a way that is unreasonable.

As noted above the primary function of the CAO is to oversee the preparation, adoption and administration of the County budget. The CAO has the primary responsibility to execute the Board's decisions in financial matters utilizing information and advice from all appropriate sources, including the Auditor Controller and County Counsel. In implementing and recommending Board policy, the CAO provides leadership, proposes direction, and establishes an environment within which County government operates, all of which goes far beyond reviewing and executing matters discussed by County Counsel and the Auditor Controller.

The Board of Supervisors establishes policy and provides overall direction to the operation of county government. In performing its duties the Board receives advice and information from the CAO, County Counsel, elected officials, and department heads as well as the public. Within the framework of its elected duties and recognizing the various interests and responsibilities of County government it makes decisions. Again, these duties all go beyond reviewing and executing matters discussed by County Counsel and the Auditor Controller.

The Auditor Controller establishes accounting policies and procedures and serves as the chief accounting officer. County Counsel provides legal advice to the Board and every county officer including the CAO and the Auditor Controller. In no way does the above response intend to diminish the respective roles of County Counsel and the Auditor Controller. Both of these offices are an integral part of creating and maintaining a healthy and well-functioning, local government.

- R4. Director of Human Resources, the Auditor/Controller, and the Chief Administrative Officer should study and recommend to the Board of Supervisors a new job classification series that would encourage the recruitment of more qualified accounting personnel in the Departments.

***Response to R4: The recommendation will not be implemented because it is not warranted.*** The County currently has professional accounting classifications consisting of Accountant I/II, Sr. Accountant, Accountant/Auditor and Supervising Accountant/Auditor. In addition, management classifications, as stated above, include financial management

education and experience requirements. These classifications are already available to any department within the County that has a need for professional accounting services. However, the Human Resources will administer an accounting skills test as part of the recruitment process.

R5. Risk Management funds should not be used to balance the County budget.

***Response to R5: The recommendation has been implemented.*** The respondent cannot recall when Risk Management funds were ever used to balance the County Budget. Risk Management funds will not be used to balance the County budget in the future.

**Commendations**

The Grand Jury commends the Board of Supervisors’ staff, the assistants, and the clerks for their fine cooperation and competence.

**Responses Required for Findings**

F1 through F8	El Dorado County Board of Supervisors El Dorado County Chief Administrative Officer
F1 through F7 F2	El Dorado County Auditor/Controller Director, Department of Social Services

**Responses Required for Recommendations**

R1 through R5	El Dorado County Board of Supervisors El Dorado County Chief Administrative Officer
R2 through R4 R3 R4	El Dorado County Auditor/Controller El Dorado County Counsel Director, Department of Human Resources

**Addendum to County Fiscal Issues**

**#C3-02/03**

**Furnished by Auditor/Controller**

**“Fund #41-550-305. Homemaker Chore \$241,937 Negative Unlocated Difference**

In the County’s last two independent audits, our outside auditor has recommended that General Fund Cash be transferred to this Trust Fund to eliminate this negative unlocated difference. As has been reported in the past to the Board of Supervisors, this unlocated difference dates back to before June 30, 1992. Although, a complete set of source documents are not available to support transactions recorded prior to July 1, 1993, we were able to determine that for the quarter ending March 31, 1988, \$47,623 of IHSS expenditures were incurred in excess of the allocation established by the State. A \$47, 623 transfer from the General Fund to this Trust Fund should have been recorded during the year ended June 30, 1988, but was not. Further, \$27,008 of advances in total that were due from the State were not recorded in this Trust Fund during the fiscal years ending June 30, 1985, and 1982. During the year ending June 30, 1992, the State reduced advances to this fund by \$47,055 or County’s portion of provider costs. A \$47,055 transfer from the General fund to this Trust Fund should have been recorded during the year ended June 30, 1992, but was not. These three accounting errors bring the unlocated difference down to \$120,251. It appears that the remaining unlocated difference of \$120,251 is the result of State adjustments to advances made prior to July 1, 1987, but, regardless, a \$241,937 cash infusion is needed to make this Trust Fund whole.

**Fund 41-550-302. Welfare Assistance \$758,767 Negative Unlocated Difference**

In the County’s latest independent audit, our outside auditor recommended that General Fund Cash be transferred to this Trust Fund to eliminate this negative unlocated difference. This \$758,767 unlocated difference dates back prior to July 1, 1992. Because a complete set of source documents are not available to support transactions recorded prior to July 1, 1993, it is extremely unlikely that this unlocated difference can be identified by either a county employee or an outside accounting firm.

**Fund 41-550-308. Food Stamp Advancement \$156,092 Positive Unlocated Difference**

In the County’s latest independent audit, our outside auditor recommended that the balance in this Trust Fund, along with a transfer from the General fund be combined to eliminate other negative unlocated differences discussed in this letter. This \$156,092 unlocated difference dates back prior to July 1, 1998. Because a complete set of source documents are not available to support transactions recorded prior to July 1, 1993, it is extremely unlikely that this unlocated difference can be identified by either a county employee or an outside accounting firm.

**Fund 41-550-304. MediCal and CMA, \$87, 527 Positive Unlocated Difference**

In the County’s latest independent audit, our outside auditor recommended that the balance in this Trust Fund, along with a transfer from the General Fund be combined to eliminate other negative unlocated differences discussed in this letter. This \$87,527 unlocated difference dates back prior to June 30, 1994. Because a complete set of source documents are not available to support transactions

recorded prior to June 30, 1994, it is extremely unlikely that this unlocated difference can be identified by either a county employee or an outside accounting firm.

Fund 41-550-303. Welfare Administration, \$200,989 Negative Unlocated Difference

In the County's latest independent audit, our outside auditor recommended that General Fund Cash be transferred to this Trust Fund to eliminate this negative unlocated difference. The vast majority of this \$200,989 unlocated difference dates back prior to July 1, 1998, all of it prior to July 1, 1993. Because a complete set of source documents are not available to support transactions recorded prior to July 1, 1993, it is extremely unlikely that this unlocated difference can be identified by either a county employee or an outside accounting firm."

## **GOVERNMENT & ADMINISTRATION COMMITTEE**

### *Measure Z*

Citizen Complaint #C35-02/03

#### **Reason for the Report**

The complaint stated that Measure Z was added to generate additional revenue from the Transient Occupancy Tax (TOT) for the City of South Lake Tahoe. It was voted on by the public on November 5, 2002 to go into effect no later than December 5, 2002. The City Council did not implement this measure until January 1, 2003 thereby losing revenue that the City needed.

#### **Scope of the Investigation**

The Grand Jury interviewed the following persons:

- The Complainant;
- County Counsel, El Dorado County;
- City Attorney, City of South Lake Tahoe;
- Supervisor Board Member, District 5, El Dorado County;
- Two current City Council members, City of South Lake Tahoe;
- A former City Council member, City of South Lake Tahoe.

The Grand Jury also reviewed the following items:

- City of South Lake Tahoe Ordinance No. 924 and No. 925;
- November 22, 2002, Measure Z Notice was sent to all motel, hotel and vacation home owners;
- December 3, 2002 Press Release “Measure Z Takes Effect December 5”;
- December 10, 2002 Staff Report to City Council members from the City Attorney re. Implementation of Measure Z;
- December 11, 2002 Measure Z Amended Notice sent to all motel, hotels and vacation home owners ;
- Tapes of City of South Lake Tahoe Council Meetings from the Office of the City Clerk regarding the estimated TOT revenue loss for Measure Z.

#### **Background**

The City of South Lake Tahoe voters passed Measure Z on November 5, 2002. The new ordinance would add a \$1 fee to the already existing Transient Occupancy Tax (TOT) that should be collected by all motel, hotel and vacation rentals. The City Manager mailed an announcement to all owners or managers of motel, hotel, and vacation rentals that the measure would become effective on December 5. At the December 10 meeting of the South Lake Tahoe City Council, council members voted unanimously that these tax monies collected between December 5, 2002 and January 1, 2003 would not be audited. This vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days not being audited.

The ballot measure once voted and approved should have gone into effect within 30 days according to election laws. Due to current budget problem within the State, the City should collect correctly the amounts owed on all TOT measures.

### **Findings**

No Board of Supervisors response required.

- F1. The City of South Lake Tahoe voters passed Measure Z on November 5, 2002 to add an additional \$1 dollar tax to the already existing TOT collection
- F2. The City Manager mailed an announcement to all owners or managers of motel, hotel, and vacation rentals that the measure would become effective on December 5, 2002.
- F3. The South Lake Tahoe City Council members unanimously voted on December 10, 2002 that these additional tax monies that were collected between December 5, 2002 and January 1, 2003 would not be audited.
- F4. The Council vote allowed the lodging industry to retain, refund, or pay the tax for the 26 days that were not being audited.
- F5. The City of South Lake Tahoe incurred an estimated loss of approximately \$22,038 as a result of the above action.

### **Recommendations**

No Board of Supervisors response required.

- R1 The City Council should follow the “six P’s”: Proper Prior Planning Prevents Poor Performance.
- R2 The ballot measure, once voted and approved, should have gone into effect within 30 days according to election laws.

### **Responses Required for Findings**

F1 through F5

South Lake Tahoe City Council  
South Lake Tahoe City Manager

South Lake Tahoe City Attorney

**Responses Required for Recommendations**

R1 through R2

South Lake Tahoe City Council  
South Lake Tahoe City Manager  
South Lake Tahoe City Attorney



## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Fallen Leaf Lake Community Services District*

Citizen Complaint #C36-02/03

#### **Reason for the Report**

The complaint alleges that the Fallen Leaf Lake Community Services District (FLLCSD) awarded a marina/store contract in an unethical and unprofessional manner.

#### **Scope of the Investigation**

The Grand Jury interviewed the following:

- Five current residents of Fallen Leaf Lake;
- Chief Assistant District Attorney of El Dorado County;
- Representative of Local Agency Formation Commission (LAFCO) from El Dorado County;
- A Board Member of Fallen Leaf Lake Community Services District (FLLCSD);
- County Counsel of El Dorado County.

The Grand Jury also reviewed the following items:

- By-laws of FLLCSD;
- FLLCSD Charter;
- *A Local Official's Guide to Ethics Laws*, Spring 2002, Institute for Local Self Government;
- Minutes of meetings of the Board of Directors, FLLCSD;
- Inventory of Local Agencies, LAFCO, El Dorado County;
- Numerous e-mail messages among residents regarding Board meetings, Marina/Store Request for Proposal (RFP), and awarding of contract;
- Five RFP for the Fallen Leaf Lake Store and Marina;
- Past Grand Jury complaint & investigation filed on 1992/93 regarding concession policies and practices of the Board of Directors, FLLCSD;
- Marina/Store gross receipts from 1999-2002;
- Various letters from Fallen Leaf Lake community residents.

## **Background**

The Fallen Leaf Lake Community Services District (FLLCSD) meeting of February 17, 2003 was to review responses from applications for a bid to operate the Fallen Leaf Lake concessions (marina, store, and related functions). This meeting was to be an open forum to review the recommendations from a committee of two Board members, which was a short list of three applications. The presentation was to be made to the full Board for action and to allow the public to participate in an open discussion. The complaint alleges that two of the three applicants were not given a full and fair hearing. It also alleges that the meeting was not conducted in a business-like and ethical manner.

The current marina/store operator refused to supply profit and loss data. Therefore, the profit and loss data was not included in the RFP application packet, which might well account for the lack of public response to the RFP.

It should be noted that only four of the five applicants supplied the financial data with their RFPs. The current operator of the marina/store refused to supply this information when he submitted his RFP.

The vote for the RFP was tied two to two and the tie was broken by the Board member whose close relative received the contract. The participation of a Board member, who is related to the successful bidder, while possibly legal, leaves the question regarding ethical standards expected of a public official. In reviewing the minutes, and other testimony offered, the question arises whether or not the bidding process was fair.

It was noted that the FLLCSD Charter does not include the position of a general manager. With the presence of a general manager some of these issues may have been avoided and the continuity of communication and focus of business matters would be enhanced. In addition, the Charter does not contain a Code of Ethics.

This Grand Jury's investigation revealed other issues of concern to community residents. Among those issues were a past action where Fire Department monies were "loaned" for use of parks and recreation development. This occurred approximately ten years ago. To this date these monies have not been completely repaid.

## **Findings**

No Board of Supervisors response required.

- F1. A Request For Proposal (RFP) was mailed to 50 applicants. Five responded. Three were interviewed.
- F2. Profit and loss statements of the marina/store from previous years were not made available to FLLCSD Board members or potential contract bidders.

- F3. A Board member, whose relative was one of the parties that submitted an RFP, cast the deciding vote breaking a 2 to 2 tie awarding the contract to a family member.
- F4. The FLLCSD Charter does not have a Code of Ethics.
- F5. Ten years ago, Fallen Leaf Lake Community Services District (FLLCSD) money was “loaned” from the Fire District to park and recreation functions and has still not been repaid.

**Recommendations**

No Board of Supervisors response required.

- R1. The procedures under which the Fallen Leaf Lake Community Services District (FLLCSD) adopted the current contract should be reviewed by the Board.
- R2. The current FLLCSD By-laws and Charter should be reviewed and revised as needed.
- R3. A Code of Ethics for elected officers should be written and adhered to.
- R4. The FLLCSD should obtain the assistance of the Institute for Local Self-Government on Community Service Districts to complete the two prior recommendations.
- R5. FLLCSD should hire a General Manager.
- R6. The elected officers should avoid any appearance of impropriety.
- R7. Newly elected FLLCSD Directors should participate in orientation and training sessions provided by the Association of Community Services District.
- R8. Money “loaned” from the Fire Department to parks and recreation should be repaid in a timely manner.

**Commendations**

The Grand Jury wishes to commend the homeowners in Fallen Leaf Lake for their concern, at this time, to resolve a community issue that has caused unnecessary divisiveness.

**Responses Required for Findings**

F1 through F5                                Fallen Leaf Lake Community Services District  
Board of Directors

**Responses Required for Recommendations**

R1 through R8                                Fallen Leaf Lake Community Services District  
Board of Directors

**Note:** In response to a widely disseminated e-mail critical of this Grand Jury from a FFL Board member to fellow Board members.

This Grand Jury has never publicly impugned the integrity of any witness in any case. We have done and will continue to do our very best in fact gathering from relevant sources from either side on a public issue presented to us. We are not a criminal Grand Jury. Our mission is to assist the public in improving the performance of the several levels of government. To those who feel otherwise, we can only pledge our consistent dedication to our mission.

fallen leaf lake community services district  
po Box 9415, south lake tahoe, california 96150

10-02-03A11:07 RCVD

Hon. Jerald Lasarow  
Supervising Grand Jury Judge  
El Dorado County Superior Court  
1354 Johnson Blvd, South Lake Tahoe, CA 96150

September 6, 2003

Dear Judge Lasarow:

The President of the Fallen Leaf Lake Community Services District (CSD) responds to the Final Report of the 2000-2001 El Dorado County Grand Jury as follows:

Fallen Leaf Lake Community Services District  
Citizen Complaint #C36-02/03

*Findings*

#F1: A Request For Proposal was mailed to 50 applicants. Five responded. Three were interviewed.  
Response: Respondent agrees with finding.

#F2: Profit and loss statements of the marina/store from previous years were not made available to FLLCSD Board members or potential contract bidders.  
Response: Respondent agrees with finding to the extent of its knowledge. Current CSD Board members do not have complete information as to what occurred prior to their tenure on the Board.

#F3: A Board member, whose relative was one of the parties that submitted an RFP, cast the deciding vote breaking a 2 to 2 tie awarding the contract to a family member.  
Response: Respondent agrees with finding.

#F4: The FLLCSD Charter does not have a Code of Ethics.  
Response: Respondent agrees with finding.

#F5: Ten years ago, Fallen Leaf Lake Community Services District (FLLCSD) money was "loaned" from the Fire District to park and recreation functions and has still not been repaid.  
Response: Respondent disagrees partially with finding. Many years ago, FLLCSD allocated tax funds among its accounts in good faith. When it was discovered that some funds were inappropriately allocated, money was budgeted for repayment to the Fire District. Eight thousand dollars has been repaid to date.

*Recommendations*

#R1: The procedures under which the Fallen Leaf Lake Community Services District (FLLCSD) adopted the current contract should be reviewed by the Board.

Response: This recommendation will not be implemented because it is not warranted. The procedure used by the FLLCSD was carefully considered and the Board believes it was fair and comprehensive. The Board does not believe further review would be productive.

#R2: The current FLLCSD Bylaws and Charter should be reviewed and revised as needed.

Response: The FLLCSD Bylaws and Charter will be reviewed within the next 12 months and will be revised as indicated by the results of review.

#R3: A Code of Ethics for elected officers should be written and adhered to.

Response: The FLLCSD will consider developing a Code of Ethics in 2003-2004.

#R4: The FLLCSD should obtain the assistance of the Institute for Local Self-Government on Community Services Districts to complete the two prior recommendations.

Response: The recommendation will be implemented when the reviews of Charter, Bylaws, and Code of Ethics are undertaken.

#R5: FLLCSD should hire a General Manager.

Response: This recommendation requires further study which will be completed by March 2004.

#R6: The elected Officers should avoid any appearance of impropriety.

Response: FLLCSD will endeavor to avoid the appearance of impropriety.

#R7: Newly elected FLLCSD Directors should participate in orientation and training sessions provided by the Association of Community Services District. [sic]

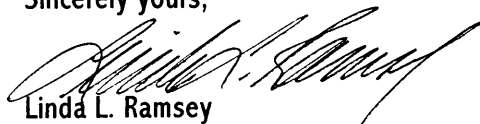
Response: FLLCSD Board members will participate in such sessions during the coming year as time and resources permit.

#R8: Money "loaned" from the Fire Department to parks and recreation should be repaid in a timely manner.

Response: Respondent believes the money was not "loaned" but allocated inappropriately due to a misunderstanding. This is being corrected as rapidly as resources permit, with a repayment of \$5,000 in 2002 and \$3,000 in 2003.

Please feel free to contact us should you wish additional information.

Sincerely yours,



Linda L. Ramsey  
President, Fallen Leaf Lake Community Services District

cc: Members, FLLCSD  
Dave Solaro, El Dorado Co. Board of Supervisors  
Judy Brown, Mayor of South Lake Tahoe

## GOVERNMENT & ADMINISTRATION COMMITTEE

### *Chief Administrative Officer's Contract*

Citizen Complaint #C44-02/03

#### **Reason for the Report**

The complainant believes that the County Charter was violated because the Chief Administrative Officers (CAO) contract did not identify a contract administrator, nor were useable fingerprints submitted or a background check performed prior to the starting date of the contract.

#### **Scope of the Investigation**

The Grand Jury interviewed the following:

- Complainant;
- County Counsel, El Dorado County ;
- Chief Administrative Officer (CAO);
- Sheriff, El Dorado County;
- All five members of the Board of Supervisors, individually.

The Grand Jury also reviewed the following items:

- Complaint;
- Contract between the Board of Supervisors and the CAO;
- El Dorado County Charter;
- Interoffice memo regarding policies and procedures.

#### **Background:**

The complainant alleged that the CAO contract violated the County Charter since the contract did not specify the contract administrator.

The allegation is of questionable merit since much as this issue could have been easily resolved with a short addendum to the contract specifying the Board of Supervisors as the contract administrator.

The complainant further has a difference of opinion with the contract concerning severance pay and hours of leave that were negotiated. The complainant was not a party to the contract and these conditions were agreed upon unanimously by the Board of Supervisors prior to the approval of the contract.

The complainant also specifies several differences of a financial nature concerning salary, leave compensation, and the deferred compensation plan provided in the contract. In addition the contract

makes mention of the PERS contributions which the County agreed to pay. The Board of Supervisors in negotiating the contract had the benefit of an outside firm with general knowledge of emoluments, benefits, and remuneration granted to other public officials in similar positions within the State of California. In interviews with Board members, the Committee accepts that both parties negotiated this contract in good faith. While the committee may differ with the details of any contract, there appears to be no basis to the charge that the Board of Supervisors acted inappropriately. Finally the complainant alleges that fingerprints of the CAO were not received in a timely matter. As a matter of fact, the fingerprints had to be taken four different times, through no fault of the applicant, and the requirement has been satisfied.

### **Findings**

F1. The contract as it stands does not specify a contract administrator.

***Response to F1: The respondent agrees with the finding.*** It is unclear whether Charter Section 602 applies to a contract of this type.

F2. The contract was negotiated for the County by the Chairman of the Board of Supervisors, assisted by County Counsel.

***Response to F2: The respondent agrees with the finding.***

F3. After also asking at least one other elected officials' opinion and getting his endorsement the contract was endorsed unanimously by the full Board.

***Response to F3: The respondent agrees with the finding.***

F4. Fingerprints of the applicant were taken and are on file.

***Response to F4: The respondent agrees with the finding.***

### **Recommendations**

R1. An addendum should be added to the contract to make the Board of Supervisors the contract administrator.

***Response to R1: The recommendation will not be implemented because it is not warranted.*** The person for whom the contract was developed no longer works for El Dorado County, so there is no reason to amend the contract. It is not clear whether Charter Section 602 applies to a contract of this nature.

R2. The Board of Supervisors should continue to find ways to work in the best interest of the County through the establishment of a positive working relationship with the CAO.

***Response to R2: The recommendation has been implemented.*** The County is currently operating with the Assistant Chief Administrative Officer working in an Interim capacity.



The Board of Supervisors has enjoyed a cooperative relationship with the Interim during this transition. Once a permanent Chief Administrative Officer is appointed the Board will continue to work to create a cooperative environment.

- R3. The CAO should be aware of his or her responsibility among other things. Recognize that El Dorado County is in a state of transition. While we cling to our history, we are also confronted with the reality of change.

***Response to R3: The recommendation has been implemented.*** The respondent agrees that El Dorado County is in a state of transition. It is experiencing accelerated population growth, dealing with development issues, requiring infrastructure growth, and realizing business expansion. At the same time we are seeing our financial base eroded by the State, working with potentially costly state court administration changes, maintaining law enforcement needs, and more. Recognizing the need for a top-notch executive to assist the Board in formulating and implementing policies, manage County programs, and provide a vision for the future, the Board of Supervisors hired a professional executive search firm. The Interim CAO is aware of these realities; they will be elements to consider when choosing a permanent one.

- R4 The Board of Supervisors shall not authorize payment of money or other compensation for performance of any service or function by a private entity except pursuant to a written contract meeting all applicable requirements of law pertaining to contracts of the County.

- (a) The Board of Supervisors should not authorize expenditure of County funds for membership dues or assessments in any private organization, unless the Board of Supervisors makes findings of specific public benefits anticipated to accrue to the County as a result of acquiring or renewing the membership. The text of these proposed findings shall be published in the agenda for any meeting at which such an expenditure will be considered.
- (b) If such a membership is to be at a cost level above the minimum membership level, these findings shall include a detailed explanation of the additional public benefits to the County that are anticipated to accrue from the additional expenditure. If the additional public benefits include a particular program or service, the Board of Supervisors shall enter into a written contract with the private entity to assure conduct of the program or performance to the service during the period of the membership.
- (c) This provision applies to all membership purchased by the County, regardless of whether the membership is in the name of the County or in the name of an officer or employee of the County.

No Board of Supervisors response is required.

**Responses Required for Findings**

F1 through F4                      El Dorado County Board of Supervisors  
   Chief Administrative Officer

**Responses Required for Recommendations**

1 through R3                      El Dorado County Board of Supervisors  
   Chief Administrative Officer

At the time of this writing, the CAO in question was released from the Contract.

# **HEALTH & SOCIAL SERVICES**

## HEALTH AND SOCIAL SERVICES COMMITTEE

### *El Dorado County Social Services Programs General Review*

#### **Reason for the Report**

The Grand Jury chose selected social service programs of El Dorado County for review.

#### **Scope of the Investigation**

The members of the Grand Jury interviewed:

- The Director of the CalWorks program;
- The Director of the Department of Social services (DSS);
- The temporary Director of Child Protective Services (CPS);
- The director of the Mental Health program;
- The director and assistant director of Community Services programs (CS);
- The recently appointed half-time directors of Child Protective Service/Child Welfare Service programs (CPS/CWS).

The Grand Jury :

- Reviewed program material from the CalWorks programs;
- Visited the offices of the Community Services programs and were given an extensive review of the Adult Protective Services programs, the Conservatorship programs, and a wide array of services for seniors;
- Reviewed the Grand Jury reports relating to DSS from 2001/2002.

#### **Background**

Members of the Grand Jury interviewed the directors and supervisory staff of programs in the Department of Social Services (DSS) and Community Services. The Grand Jury learned that the County had transferred the Adult Protective Services programs from DSS to CS. This program transfer has helped to resolve or reduce some personnel problems, which had been plaguing the DSS for several years. The Grand Jury observed that a new spirit of interdepartmental cooperation is working, allowing for better service to multi-problem populations.

The long-standing problem of lack of supervision in the CPS/CWS programs has been addressed so that program improvements will be forthcoming.

One notable improvement in CPS/CWS is the change in supervision of CPS at South Lake Tahoe. A supervisor will be directly available to CPS/CWS staff on a daily basis.

The Grand Jury learned that some program supervisors were reluctant to promote their programs to the county population, because they believed the County Supervisors would not approve promoting these programs, for both cultural and fiscal reasons. Upon investigation it appears to the Grand Jury that all members of the Board of Supervisors believe all federal/state/county social service programs should be actively promoted by the respective county departments to the citizens of the County.

### **Findings**

F1. The Department of Social Services has been reorganized, so that the Division of Adult Protective Services is now under the supervision of the Director of Community Services.

No Board of Supervisors response required.

F2. Some programs within the Department of Social Services have not been actively promoted to the citizens of the county.

#### ***Response to F2: The respondent disagrees partially with the finding.***

Child Protective Services (CPS) is actively promoted in the community by providing training to people who are required by law to report suspected child abuse.

In addition, CPS staff has many interactions and collaborations with other community agencies to actively promote the program, and the 24-hour CPS Hotline is advertised in agency brochures and community publications.

F3. Child Protective Services and Child Welfare Service programs in South Lake Tahoe now operate with improved direct supervision.

No Board of Supervisors response required.

### **Recommendation**

County programs of Social Service and Community Service, such as CalWorks, Child Protective Services, Child Welfare Services, Adult Protective Services, and Senior Services of all types, should be actively promoted by the respective department heads.

#### ***Response to Recommendation: The recommendation has not yet been implemented, but will be implemented in the future.***

The Department Director has requested DSS staff to submit written recommendations as to ways in which services can be promoted to the citizens of the county. The Department will review all recommendations and identify the most cost-effective ideas for implementation by December 1, 2003.

**Responses to Findings**

F2

Director, Department of Social Services  
El Dorado County Board of Supervisors

**Responses to Recommendation**

Director, Department of Social Services  
El Dorado County Board of Supervisor

# **INFORMATION SERVICES**

## INFORMATION SYSTEMS COMMITTEE

### *Information Services Billing Methods 360 Fair Lane, Placerville*

#### **Reason for the Report**

The Grand Jury selected Information Services (IS) Billing Methods as one of its general reviews for 2002/03.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an announced visit to the Information Services Department on December 4, 2002;
- Collectively interviewed the following IS representatives; Information Services Director, IT Manager/Contracts; IT Manager/ PC; and the Fiscal Administrative Manager ;
- Was briefed on the various operations of the department;
- Reviewed policies on Purchasing Operating Practices;
- Reviewed the El Dorado County Charter and Policies and Procedures Manual.

#### **Background**

In 1995, the County voted to implement Policy and Procedures B-8, called the “Intra-County Services Charges Policy.” It established the billing methodology for capturing the cost of applications running on the County’s mainframe computer. The amount IS charges to a particular department is based upon central processing unit (CPU) minutes, as determined by a 3270 Emulation Session by the mainframe. Thus, all costs associated with the operations and maintenance of the mainframe system are allocated to departments by IS, according to their CPU usage. Missing from the equation, however, are cost applied charges for departmental requests of mainframe-generated reports, and hard-drive space.

In 1998, Information Services introduced the “County Wide-Area Network” (WAN) to the County. WAN added Internet capabilities to existing departmental computers through a web browser, and thus improved access to information throughout the County. However, departments soon discovered that using the web server to access the County’s mainframe bypassed cost applied charges from IS. Departments accessing the mainframe through the 3270 Emulation Session are easily identifiable and charged accordingly for their CPU minutes. However, departments accessing the mainframe through a web browser cannot be identified, and accumulated CPU minutes from those sessions are alternatively allocated across the board to all County departments. Thus, there is an incentive for departments to avoid cost applied charges by accessing the mainframe through their web browser.



Another problem with WAN is that although improving upon data delivery via the mainframe-based system, its growth and popularity has rendered the billing methodology under County Policy B-8 obsolete. This is the result of the mainframe's inability to track WAN related charges through the 3270 Emulation Session, and by departments, using the web server loopholes previously mentioned. Departments that frequently access the mainframe through the WAN cannot be differentiated among those departments that are infrequent users. In addition, there are the inquiries generated by the public through the Internet. Thus, all accumulated mainframe CPU minutes via the WAN must be allocated in some method. The only available means at the present is through mainframe cost applied charges, which results in a misallocation of costs.

### **Findings**

- F1. With the addition of the County Wide-Area Network (WAN), there is no current billing methodology to accurately capture the costs of mainframe-based CPU minutes, and properly allocate these charges to those accessing the data.

***Response to F1: The respondent agrees with the finding.***

- F2. Departments are only billed for Central Processing Unit (CPU) minutes when accessing the mainframe for data, and are not charged for hard-drive storage, or for requests of printed reports.

***Response to F2: The respondent agrees with the finding.***

- F3. It appears departments are emphasizing the usage of Web browsers to access the mainframe over the cost applied billing methodology that easily identifies the user. This results in less identifiable mainframe CPU minutes through the 3270 Emulation Sessions, and more CPU minutes through the unidentifiable user-based web browser, WAN.

***Response to F3: The respondent agrees with the finding.***

- F4. Public access to the mainframe accrues CPU minutes that are indistinguishable from departmental inquiries using WAN. Since these charges are allocated to departments in accordance with mainframe cost applied charges (Policy B-8), the current billing methodology discourages departments from posting and uploading information for the Public to access.

***Response to F4: The respondent agrees with the finding.***

### **Recommendations**

- R1. The Board of Supervisors should create new Policies and Procedures that provide for a workable billing methodology for the "County Wide-Area Network" (WAN), and should

amend Policy and Procedure B-8 to include charges for measurable uses of resources from Information Services (IS).

**Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.** Information Services has been working with the CAO's office for the past two years in an effort to develop a billing methodology that reflects the current technologies deployed in the County, including the Wide-Area Network. In the FY2003/04 budget we have created a new line item for Network Support and separated network related charges from mainframe related charges.

In addition to this, the CAO's office will re-convene the Service Charge Review Committee to perform a review of the Wide-Area Network billing methodology and also to review policy B-8 and amend the policy if necessary. The Service Charge Review Committee will be re-convened by September 30, 2003 and any recommendations for changes in Wide-Area Network Methodology and Policy B-8 will be completed by November 30, 2003. The recommendations of the Service Charge Review Committee will be submitted to the CAO's office and any required methodology changes will be implemented as part of the FY2004/05 budget process. The Department will determine if Policy B-8 requires amending. Should amendments be necessary, they will be submitted to the Board of Supervisors for approval by November 30, 2003.

- R2. New County Policy and Procedures should establish methodologies that account for all the costs associated with WAN, or network related charges, and properly allocate these costs to the users of the system. The Board of Supervisors should work with IS to come up with a solution for this accountability problem.

**Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.** As stated in the response to R1 above the CAO's office will re-convene the Service Charge Review Committee to perform a review of the Wide-Area Network billing methodology and also to review policy B-8 and amend the policy if necessary. Any recommendations for changes in Wide-Area Network Methodology and Policy B-8 will be completed and submitted to the Board of Supervisors for approval by November 30, 2003. The recommendations of the Service Charge Review Committee will be submitted to the CAO's office and any required methodology changes will be implemented as part of the FY2004/05 budget process.

- R3. County Policy and Procedures B-8 should be amended to allow for the collection of revenues by IS, for measurable uses of resources, such as print copy, and the utilization of mainframe hard drive space by certain departments. The Board of Supervisors should work with IS to resolve this accountability problem.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** As part of the review performed by the Service Charge Review Committee on the Wide-Area Network as described in R1 and R2 above, the committee will review all measurable resources related to Information Services including print copy and utilization of mainframe hard drive space and determine a methodology for capturing these

costs and allocating them appropriately. The recommendations of the Service Charge Review Committee will be completed by November 30, 2003 and submitted to the CAO's office. Any required methodology changes will be implemented as part of the FY2004/05 budget process. Any recommendations for changes in Wide-Area Network Methodology and Policy B-8 will be completed and submitted to the Board of Supervisors for approval by November 30, 2003.

**Responses Required for Findings**

F1 through F4

El Dorado County Chief Administrative Officer  
El Dorado County Board of Supervisors  
El Dorado County Director of Information Services  
Department

**Responses Required for Recommendations**

R1 through R3

El Dorado County Chief Administrative Officer  
El Dorado County Board of Supervisors  
El Dorado County Director of Information Services  
Department

## INFORMATION SYSTEMS COMMITTEE

### *Information Services General Review*

#### **Reason for the Report**

The Grand Jury selected Information Services (IS) as one of its general reviews for 2002/03.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an announced visit to the IS Department on December 4, 2002;
- Interviewed collectively the following IS representatives; IS Director, Information Technology (IT) Manager/Contracts; IT Manager/ PC; and the Fiscal Administrative Manager;
- Toured the IS facility;
- Was briefed on the various operations of the department;
- Interviewed countywide IT departmental personnel on a random basis;
- Reviewed the District Attorney Management Information Integrated Office Network (DAMION) Contract;
- Reviewed Purchasing Operating Practices;
- Attended the Information Technology Steering Committee (ITSC);
- Attended the Information Technology Standard Sub-Committee (ITSSC).

#### **Background**

The Information Services (IS) Department operates and maintains the County's communication systems and its various programs. There are many services IS provides to County departments, such as training, communications, repairs and technical advice. One of the main problems encountered by IS is the lack of use of its services. Varying departmental budgets and the inability or "refusal" of some departments to adopt the current standards for technology protocol cause unnecessary complexities. Segmented purchasing of technology by individual departments has tended to perpetuate a trend toward departmental independence and has reduced the County's ability to leverage its bulk purchasing power. While some departments replace equipment in three-year cycles, others are working with 10-12 year old technology. The high cost of repairs, technical support, and training encourages departments to avoid IS altogether, and therefore creates more incompatibility issues over the long term.

The County standards for operating systems and various database programs are established by the IS department. However, because some departments provide a unique and specialized public service it is not cost efficient for IS to design, create, and service this type of database software. In these cases the utilization of an outside vendor is encouraged. The only other exception to the countywide standard evolves out of a compliance issue with State-run programs. In these circumstances, the State supplies computers and software to departments involved with their programs. Some

departments have many computers from such State-run programs and therefore feel less dependent of IS.

There are two conduits for the exchange of email, one Internet-based (outside the County network) and the other intranet-based (inside the County network). Because email software varies from one department to another, IS must keep abreast of compatibility issues and bridge email software together for the many types in use. In addition, vendors of these email programs release patches, fixes, and updates that create more compatibility issues for IS to resolve. Thus, departmental preference of email, according to manufacturer-type, has created unnecessary complexities associated with maintaining the system.

The IS department is also charged with scheduling and organizing the Information Technology Steering Committee (ITSC). The Committee's function is required as part of the Countywide Strategic Plan and is an integral part of County Policies and Procedures A-10 (2) (b). However, only four of 32 invitees attended the most recent meeting in April. When the Committee cannot properly convene, there is no venue for the review and approval of multi-departmental and new systems development projects exceeding \$10,000. The current dysfunctional status of the Committee creates a flawed process, and invalidates the provision of Policy A-10.

The acquisition of the DAMION Software license and Maintenance Agreement by the District Attorney's Office (DA) further illustrates this problem. The DA received a contract for DAMION from Constellation Justice Systems in late 2000. The department was seeking solutions for case tracking, legal support, scheduling, and victim/witness issues. The contract did not go before the ITSC, but rather was submitted to IS on January 11, 2001. The DA provided IS with only six hours to review the contract, and thus prevented IS from referring the \$138,370 software purchase to the ITSC for proper review. In addition, the contract was signed by the DA on January 9, 2001 (before its submittal to IS or the ITSC) and was scheduled for approval by the Board of Supervisors (BOS) on January 23, 2001. However, within the DA's six hour deadline, IS raised a very important countywide security issue i.e., the contractor was allowed dial-up and Internet access to all computers running the software. Apparently, the DA and/or the BOS did not consider these serious deficiencies, and the contract was subsequently signed on the scheduled date. Thus, recommendations and concerns of IS were ignored, and County Policies and Procedures were not followed.

## **Findings**

- F1. Some departments encourage employees to cross-train into the field of Information Technology (IT) to avoid the costs associated with the Information Services (IS) department's programming, training, and PC support services.

***Response to F1: The respondent disagrees partially with the finding.*** While it may be true that some departments have encouraged employees to cross-train into the field of Information Technology, it is not known if this has been done solely to avoid costs associated with Information Services' programming, training, and PC support services. Having specialized systems and having enough work to keep an employee working full-time in the department have also been given as reasons to utilize department IT employees.

- F2. IT functions are handled independently by departments, so the total cost to the County for IT equipment and staff are unknown.

***Response to F2: The respondent disagrees partially with the finding.*** Information regarding staffing of IT positions in each department should be available in the County's financial management system as well as the County Payroll System. Information regarding purchases of IT equipment should be available in the budget records of each department as IT equipment and software purchases have separate sub-object codes from other purchases.

- F3. Since budgets of departments vary, some departments are able to keep current with technology, while others are incapable of upgrading.

***Response to F3: The respondent agrees with the finding.***

- F4. In some cases, IS cannot produce or replicate industry specific software and the related service and support, so that departments must utilize outside vendors.

***Response to F4: The respondent agrees with the finding.***

- F5. There are no industry-specific requirements found within County departments, which might justify the wide array of email programs in use.

***Response to F5: The respondent agrees with the finding.***

- F6. The Board of Supervisors (BOS), Chief Administrative Officer (CAO), IS, and other departments have no venue to which they may refer purchases of multi-department or new systems development projects exceeding \$10,000.

***Response to F6: The respondent disagrees partially with the finding.*** The Information Technology Steering Committee is the venue to which the Board of Supervisors, the CAO, IS and other departments look to for review of multi-department or new systems development projects exceeding \$10,000. It is agreed that the Steering committee is not currently functioning at an oversight level and has been inadequate from time to time.

- F7. The Information Technology Steering Committee (ITSC) is controlled and directed by its members. These members are countywide Departmental Directors, and must abide by County Policies and Procedures A-10 (2) (b) when submitting approval requests for purchases of multi-departmental and new systems development projects exceeding \$10,000. By not attending the ITSC meetings, Departmental Directors invalidate the ITSC, and are thus incapable of enforcing decisions by the ITSC on themselves.

***Response to F7: The respondent agrees with the finding.*** Per Policy A-10 The Chief Administrative Officer (or designee) serves as the chairman for the Information Technology Steering Committee. The chairman should take a lead roll in making sure that the committee meets on a regular basis; that Department Directors assign appropriate staff to

participate as committee members; and that those members are available on an on-going basis to ensure the level of participation necessary for the committee to be successful and serve its purpose.

- F8. In January 2001 and again in 2003, the BOS and the District Attorney's Office (DA) together signed both the DAMION Software License and Maintenance Agreement contracts without the endorsement of IS through the ITSC.

***Response to F8: The respondent agrees with the finding.***

- F9. The DAMION contract was signed in 2001 by the BOS and the DA with full knowledge of a potential security breach for the County.

***Response to F9: The respondent agrees with the finding.***

- F10. The DA signed the contract for the DAMION Software License and Maintenance Agreement, and scheduled its submission to the BOS before giving it to IS for their approval.

***Response to F10: The respondent agrees with the finding.***

- F11. IS was given insufficient time (6 hrs) to review the DAMION Contract.

***Response to F11: The respondent agrees with the finding.***

### **Recommendations**

- R1. Since IS is in a position to provide the County with improved promotional decisions of IT workers, and provide ongoing testing and training of current technologies, departmental IT staff throughout the County should be trained and under the jurisdiction of the IS.

***Response to R1: The recommendation requires further analysis.*** As part of the Interim Chief Administrative Officer's commitment to review structural issues throughout the County, it has been noted that there are a significant number of IT related staff that do not currently fall under the jurisdiction of Information Services. The Chief Administrative Office and Human Resources will be reviewing this situation as part of its recommendation on the County FY 2005 and FY 2006 budgets. If a reorganization of IT related positions is warranted, the recommendation will be presented by December 31, 2003. Implementation will be incorporated into the FY 2004/05 budget.

- R2. Since the County stands to benefit from bulk purchasing, the technology budget should be consolidated and shifted to IS.

***Response to R2: The recommendation will not be implemented because it is unreasonable.*** The County's Purchasing department has mechanisms to purchase IT related hardware and software at bulk or reduced pricing which is similar to any number of other commodities that

are commonly used throughout the County (i.e. office supplies). This pricing is then available to all County departments.

- R3. In the event that the utilization of an outside vendor is required, IS should review hardware, software, and IT-related contracts before the departments go forward with purchases.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** Information Services is currently part of the review process for all hardware and software. This review of hardware and software is triggered through our Countywide Purchasing system (ADPICS).

In addition, IT related contracts are also reviewed by Information Services; however, the review is not triggered in the same way and is sometimes missed. In order to ensure that IT related contracts are reviewed, Information Services and the Chief Administrative office will review Policy A-10 and suggest amendments to the policy if necessary. Policy review will be completed by November 30, 2003 and any amendments to the policy will be completed by December 31, 2003.

- R4. IS should establish a countywide standard for both Internet and intranet email applications, along with standards for database and operating systems.

**Response to R4: The recommendation has been implemented.** Information Services has worked with the Information Technology Steering Committee and the Chief Administrative Office to implement the current County-standard email system. The County has established Microsoft products as the County standard for operating systems and databases; however, due to business requirements and/or fiscal resources, it may be necessary to deviate from this standard at times. In the event that a department requires the use of non-standard software, Information Services will review the request.

- R5. The Board of Supervisors should vote to amend Policy A-10 by either dissolving the Information Technology Steering Committee (ITSC) or include language to enforce its duties.

**Response to R5: The recommendation has not been implemented, but will be implemented in the future.** The duties of the Information Technology Steering Committee are defined within the scope of Policy A-10; however, Information Services will work with the Chief Administrative Office and the Information Technology Steering Committee to more clearly define Policy A-10, specifically the Information Technology Steering Committee duties. Policy review will be completed by March 30, 2004.

- R6. The District Attorney's Office and the Board of Supervisors should work with IS to ensure the DAMION system is equipped with the proper security tools for protecting the County's IT data.

**Response to R6: The recommendation has not been implemented, but will be implemented in the future.** The District Attorney's Office and Information Services will work together to



review the current security issues surrounding DAMION. The review will be completed by March 30, 2004 with recommendations implemented as soon as possible.

- R7. The Board of Supervisors should take seriously the recommendations made by IS as they relate to contracts or purchasing decisions, and ensure that departments allow IS reasonable time for this review process.

**Response to R7: The recommendation has not been implemented, but will be implemented in the future.** Refer to Response to R3 above.

### **Commendations**

The Information Technology Standard Sub-Committee (ITSSC) was well attended by departmental IT personnel and provided a useful format in the sharing of problems or information relevant to other County departments.

### **Responses Required for Findings**

- |                |   |
|----------------|---|
| F1 through F11 | El Dorado County Chief Administrative Officer<br>El Dorado County Board of Supervisors<br>El Dorado County Director of Information Services |
| F6, F7, F8     | El Dorado County Director of General Services   |
| F8 through F11 | El Dorado County District Attorney  |

### **Responses Required for Recommendations**

- |                   |   |
|-------------------|---|
| R1 through R7     | El Dorado County Chief Administrative Officer<br>El Dorado County Board of Supervisors<br>El Dorado County Director of Information Services |
| R2, R3 through R7 | El Dorado County Director of General Services   |
| R6                | El Dorado County District Attorney  |

**Response to Grand Jury Report, 2002/2003**

**Respondent: El Dorado County District Attorney**

**July 2003**

**Report: "Information Systems Committee"**

**Required Responses**

**Finding #F8: "In January 2001 and again in 2003, the BOS and the District Attorney's Office (DA) together signed the DAMION Software License and Maintenance Agreement contracts without the endorsement of IS through the ITSC."**

**Response: b) Respondent disagrees wholly with finding**

In January 2001 the DAMION contract was submitted to the BOS **with IS approval** – please see copy of Agenda Transmittal form attached. The Chief Administrator's Office (CAO) would not accept nor send to the BOS this item without IS sign off.

The 2003 submission to the BOS was Amendment I to the 2001 DAMION contract. The amendment provided for purchasing upgrades to the existing DAMION system provided for under the 2001 contract, language which had been unintentionally left out of the 2001 contract.

Since the language of County Policy A-10, 2, b. refers to IS approval of "new systems development projects..." we concluded, as apparently the CAO and BOS did, that the policy applied only to the original contract.

**Finding #F9: "The DAMION contract was signed in 2001 by the BOS and the DA with full knowledge of a potential security breach for the County."**

**Response: b) Respondent disagrees wholly with finding.**

The finding implies that we had no concern for a 'potential security breach.' We find this finding a very unfair characterization. We have always taken security seriously. That is why we have alarm systems in our offices and after hours access controls on all exterior doors. That is why we conduct background investigations on all potential new employees. That is why each personal computer user must use a password to access our office network. That is why access is denied to a DAMION user without the proper password.

As part of our conversion to the DAMION system, IS authorized and set-up the ability of DAMION support staff to dial-in to our DAMION server. The dial-up point of entry into the county is via a (Remote Access Server) RAS located in IS. Access has occurred since at least June 2001.

We assume that if IS had a security problem with this dial-in method - - either via the RAS server or within the D.A.'s portion of the county network - - they would have brought it to our attention during the last two years.

**Finding #F10: "The DA signed the contract for the DAMION Software License and Maintenance Agreement, and scheduled its submission to the BOS before giving it to IS for their approval."**

**Response: b) Respondent disagrees wholly with finding.**

Please read our response to Finding #F11.

**Finding #F11: "IS was given insufficient time (6 hrs) to review the DAMION Contract."**

**Response: b) Respondent disagrees wholly with finding.**

The time required to do a job is not rigid, but flexible to meet real world events.

In the case of the DAMION contract, time was critical!

Funding available for the DAMION contract needed to be spent by June 30, 2001 or be returned to the state. That required a successful conversion from the JALAN system to the DAMION system by June 30, 2001.

We appreciate the speed with which IS was able to review and sign off on the contract in January 2001, enabling us to present it to the board of supervisors on January 23, 2001, convert to DAMION by June 30, 2001, and ultimately save the county thousands of dollars.

With IS approval of the contract in January, just enough time remained for our office to work with the DAMION system staff for conversion analysis, required program modifications to meet our needs, installation of hardware, installation of Oracle and DAMION software, and training of our staff.

A successful conversion to DAMION occurred in mid-June 2001:

- Funding needs were met; all hardware and software were funded by grants,
- No money from the SLESF/COPS grant was returned to the state,
- This office upgraded to a state-of-the-art case management system.

Please note that in July 2000 a Request for Proposal (RFP #915-009) was sent out by the Purchasing Office of El Dorado County for a Prosecutor's Case Management System. Due date was August 18, 2000. DAMION (Constellation Justice Systems) was one of the responders to the RFP. An August 18 due date was consistent with our time-table to convert to a new system by June 2001. Unfortunately, review and agreement of a draft contract for the DAMION system, between county counsel and the legal staff at Constellation, took longer than planned. Contract review was requested of IS in January rather than December.

The RFP - - containing 15 pages of functional requirements - - was developed by this office and reviewed by IS (with suggested changes) prior to the publication of the RFP in July 2000.

Those same functional requirements were included in the DAMION contract. Thus, IS had already reviewed a large portion of the DAMION contract before January 2001.

**Recommendation #R6: "The District Attorney's Office and the Board of Supervisors should work with IS to ensure the DAMION system is equipped with the proper security tools for protecting the County's IT data."**

**Response: b) (3) The recommendation requires further analysis....**

This office has discussed this recommendation with IS and both departments agree that an evaluation is necessary to determine if any security issues exist. An IS specialist has already visited our office and spent time with our IT person. I expect that we can issue a report of our joint finding about September 1.

**Voluntary Responses:**

**Finding #F1: “Some departments encourage employees to cross-train into the field of Information Technology (IT) to avoid the costs associated with the Information Services (IS) department’s programming, training, and PC support services.”**

**Response:**

Cost avoidance may be one reason, and a valid business reason, departments employ their own IT staff. But there is a more fundamental reason which the Grand Jury failed to grasp clearly. And that has to do with the evolution, over the last 10 years, of decentralizing computer operations in many departments.

In the second paragraph of **Background** the Grand Jury reports reads:

However, because some departments provide a unique and specialized public service it is not cost efficient for IS to design, create, and service this type of database software. In these cases the utilization of an outside vendor is encouraged.

Here the Grand Jury recognizes that decentralization is important. But decentralization does not end with the specialized hardware and software – it only begins there.

Typically, the specialized systems mentioned operate on a data base server or servers located in the department. The server connects to individual personal computers of all departmental employees. All these components function to provide the information needed by department staff to respond to customers accurately and quickly. Servicing these department systems requires an on-site IT person - - because there are minute-by-minute, hourly, and weekly issues that department staff have with the systems that must be resolved immediately.

The point is that obtaining the specialized software, and successfully integrating with department personal computers, are one-half the requirement; keeping the systems running 24/7 is just as important. This can only be done by a local IT person working under the direction and within the mission of said department and fully trained on supporting the systems in use.

Osborne and Gaebler, in their book *Reinventing Government*, support this very point when they say at page 252:

Decentralized institutions have a number of advantages. First, they are far more flexible than centralized institutions; they can respond quickly to changing circumstances and customers’ needs.

**Recommendation R1: “Since IS is in a position to provide the County with improved promotional decisions of IT workers, and provide ongoing testing and training of current technologies, departmental IT staff throughout the County should be trained and under the jurisdiction of the IS.”**

**Response:**

That is like saying that every department Fiscal Tech in the county should report to the El Dorado County Auditor/Controller because Fiscal Tech’s do fiscal work and the auditor’s office does fiscal work.

The logic of the above recommendation R1 is clearly flawed, and again, contradicts the Grand Jury’s recognition that decentralization is necessary (as noted above in the comments to Finding #1):

- A. IS can’t provide ongoing testing and training of local department specialized software developed by outside vendors. They have limited knowledge and no training in this area.
- B. This concept violates practical management principles of effective supervision. Imagine a person working for the Grand Jury being supervised by the Assistant Auditor/Controller, or Undersheriff.

EL DORADO COUNTY  
BOARDS OF SUPERVISORS  
AGENDA TRANSMITTAL  
MEETING OF JANUARY 23, 2001

AGENDA TITLE: RFP #01-915-009 - CASE MANAGEMENT SYSTEM  
AGREEMENT #317-S0111 - CONSTELLATION JUSTICE SYSTEMS

GENERAL SERVICES  
G.F. Martin, Director

DATE: January 10, 2001

CAO USE ONLY

CONTACT: Denae Bennett

PHONE: 5833

AD *orp*

FAM *not*

*Suzanne 1/16/01*

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION: General Services recommending the Board: 1) award RFP #01-915-009 for an application software product for case management and tracking within the District Attorney's Office; 2) make findings that it is more economical and feasible to "contract out" the services in accordance with County Ordinance 3.13, Section 3.13.030; 3) approve Agreement #317-S0111 with Constellation Justice Systems to provide an application software for case management and tracking for the District Attorney's Office; and 4) authorize the Chairman to execute Agreement #317-S0111.

CAO RECOMMENDATION: Concur. The source of funding for the DA's Case Management project is the State Supplemental Law Enforcement Services Fund (SLESF), as approved by the Board of Supervisors on September 26, 2000 (58#). It is the District Attorney's (DA) intent to fund the system's future annual operating costs (eg annual software license) with the DA's annual State SLESF allocation.

Financial impact? (X) Yes ( ) No

Funding Source: (X) Gen Fund ( ) Other

Index/Subobject: 220400/4262 & 4300

BUDGET SUMMARY

Total Est. Cost  
Funding  
Budgeted  
New Funding  
Savings\*  
Other  
Total Funding Available  
Change in Net County Cost

*FY 2000-01: \$121,505*  
*\$138,370.00*  
*\$138,370.00 / 121,505*  
\$ -0-  
\$ -0-  
\$ -0-  
*121,505*  
*\$138,370.00*  
\$ -0-

CAO Office Use Only:

4/5's Vote Req'd ( ) Yes (X) No  
Change in Policy ( ) Yes (X) No  
New Personnel ( ) Yes (X) No

CONCURRENCES:

Risk Management ✓  
County Counsel ✓  
Other ✓

\*Explain: *FY 2001-02 \$14,865. Total 2 yrs \$138,370*

BOARD ACTIONS:

JAN 23 2001 - CHAIRMAN AUTHORIZED TO EXECUTE AGREEMENT NO. 317-S0111 IN AN AMOUNT NOT TO EXCEED \$138,370 FOR SAME.

JAN 17 8 30 AM '01  
EL DORADO COUNTY

Vote: Unanimous \_\_\_\_\_ or \_\_\_\_\_

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors.

Ayes: DUPRAY, SOLARO, BORELLI, BAUMANN, HUMPHREYS

Noes: NONE

Date: \_\_\_\_\_

Abstentions: NONE

Attest: DIXIE L. FOOTE, Board of Supervisors Clerk

Absent: NONE

By: \_\_\_\_\_

# 36

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SR

# **PLANNING & ENVIRONMENT**



## PLANNING AND ENVIRONMENT COMMITTEE

### *El Dorado County Fleet Maintenance Facility*

#### **Reason for the Report**

The Grand Jury selected the County Fleet Maintenance facility for one of its sites to review.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Visited the facility on February 25, 2003;
- Was briefed on the operations of the fuel dispensers, computerized fueling system (Gas Boy) and the vehicle repair facilities by the Fleet Maintenance Supervisor;
- Interviewed the Special Services Department Head Fleet Maintenance Manager;
- Interviewed the Fleet Maintenance Superintendent;
- Interviewed the Fleet Maintenance Accountant.

#### **Background**

The facility is located within the El Dorado County Transportation Department yard. The Grand Jury visited the facility to inspect the area for environmental issues. The Grand Jury saw no environmental violations with the possible exception that gasoline cans were stored on an open shelf in the sign shop without being placed in a metal cabinet. There are several environmental problems currently being added within the County Environmental Department which are associated with Gas Boy, gas pumps and the storage tanks.

The Grand Jury was informed that an accountability problem exists with Gas Boy. The system was out of service and had been for at least seven months. All aspects of Gas Boy including billing, calibration, monitoring usage, and dispensing have been out of order from time to time for two and one half years. The Gas Boy system is obsolete, since hardware and software are difficult to maintain. When Gas Boy is inoperative, fuel is dispensed on the honor system and lacks security. During the times that Gas Boy is down department billing was very difficult due to the fact that the collected fuel data covers only 40 percent of the fuel being dispensed by the County.

The County uses approximately 16,000 gallons of gasoline and 5,000 gallons of diesel fuel per week. The Committee observed that no one at the facility met the tanker truck upon its arrival and during the unloading of fuel. Some County vehicles using the fueling system are neither marked nor numbered making it difficult to identify them from private vehicles. The County maintains 600 plus vehicles including Sheriff's Department vehicles.

The front gates of the Fleet Management facility are open until midnight on weekdays, at which time Department of Transportation staff locks the gates using a combination lock. The gate is to remain closed on weekends. An electric gate is locked at the rear of the facility and is used by the Sheriff's Department after midnight and on weekends. The electric gate may be opened by remote gate control or key. Sheriff vehicles have remote gate openers which are permanently affixed to the visor. This gate is frequently left open by the Sheriff Officers, exposing all DOT equipment and fuel to vandalism and or theft.

Fleet maintenance of the County's 600 plus vehicles is performed in a two-bay garage that was part of DOT when built in the 1950's. Of the two hydraulic lifts, only one can be used on most of the fleet vehicles. The larger in-ground lift was designated for the larger DOT trucks. With only one designated lift, less repair work on fleet vehicles is possible. The second lift that is above ground is rated at only 7,000 pounds.

Currently, repair orders for County vehicle maintenance are manually written, making it time consuming to maintain a comprehensive maintenance record. A software program for computer maintenance records have been purchased and not used at this time.

There has been no personal performance evaluations given and no in-depth job descriptions are available. The new manager is working on personal evaluations and new job descriptions to improve work performance.

### **Findings**

F1. Gasoline cans are stored on open shelves in the sign shop.

***Response to F1: The respondent agrees with the finding.***

F2. The fuel dispensing facility has inadequate security, is not always locked and accountability is often based on the honor system.

***Response to F2: The respondent agrees with the finding.***

F3. The Gas Boy system has been out of order from time to time for two and one-half years.

***Response to F3: The respondent agrees with the finding.***

F4. The Gas Boy hardware and software are out-dated and difficult to maintain.

***Response to F4: The respondent agrees with the finding.***

F5. Fleet maintenance staff did not meet with the tanker truck driver to verify fuel meter.

***Response to F5: The respondent agrees with the finding.***

- F6. The fuel dispensers have not been calibrated; therefore the readings are not accurate which makes cross-checking the usage and purchase of fuel impossible.

***Response to F6: The respondent disagrees partially with the finding.*** The fuel dispensers are not able to be calibrated as they are outdated and need to be replaced. However, the usage and purchase of fuel is monitored and checked daily (manually). General Services measures each tank, which is tied to a specific pump, by using a “stick dip” method which provides a very accurate reading.

- F7. Billing for fuel usage by fleet management depends on entries made on the clipboard sheets kept at each fuel dispenser and best guesses by office employees. County departments are charged for fuel they did not use because of inaccurate accountability.

***Response to F7: The respondent disagrees partially with the finding.*** When the automated fueling system (Gasboy) is off-line, manual entries are made by County employees. It is true that if the manual entry is not legible, Fleet office personnel must follow-up with the department to obtain accurate information.

- F8. Not all County vehicles are marked making it difficult to differentiate between County and private vehicles at the pumps.

***Response to F8: The respondent disagrees partially with the finding.*** It is true that not all County vehicles are clearly marked as County vehicles; however, those that are unmarked have California exempt license plates identifying them as a County vehicle. Those vehicles that do not have California exempt plates are Sheriff undercover or narcotics detective vehicles. Most vehicles without the California exempt license plates can be visually identified by vehicle make, model, and color as there is generally a specification standard for the type of fleet vehicles that are purchased.

- F9. The gate nearest the fuel dispensers is not locked until midnight when DOT swing shift leaves at which time a combination lock is used. The combination is known by the Sheriff Deputies past and present.

***Response to F9: The respondent disagrees partially with the finding.*** The gate nearest the fuel dispensers (or the gate located furthest to the East of the dispensers) is locked at 8:00 pm in the evening by Department of Transportation staff. The combination is known by Sheriff Deputies past and present. The gate located west of the fuel dispensers is not a combination lock, but rather a key locked gate that access is limited to Fleet and Department of Transportation personnel.

- F10. An electric gate located in the rear of the yard is used after midnight and on weekends by the Sheriff Deputies. Their vehicles have remote gate openers which are permanently affixed to the visor of the patrol cars. However, to close the gate the drivers must get out of the car and use their key. This gate is frequently left open, including on weekends, exposing all DOT equipment to potential vandalism and theft.

**Response to F10: The respondent disagrees partially with the finding.** There is an electric gate located in the rear of the yard that is used after normal business hours and on weekends for the purpose of allowing Sheriff Deputies that are on patrol during those hours to gain access for fueling vehicles. Their patrol vehicles do have remote openers. The remote openers will close the gate as well as open the gate. In the event a Deputy has misplaced his/her remote opener, there is a Knox box on the gate that can be used to gain entry to the fuel yard, and must be manually closed. General Services notes that there have been occasions that the a Deputy fails to close the gate. In that event, General Services notifies the Sheriff's Department so that another occurrence is minimized.

- F11. Fleet maintenance of County vehicles is performed in a two-bay garage, one bay of which is a hydraulic lift that cannot be used for many of the county vehicles, limiting the amount of repair work capable of being performed.

**Response to F11: The respondent agrees with the finding.**

- F12. Repair orders for County vehicle maintenance are manually written making it time-consuming to maintain a comprehensive maintenance record for all 600 plus County maintained vehicles.

**Response to F12: The respondent agrees with the finding.**

- F13. Management of the facility does not always conduct annual performance evaluations of all personnel.

**Response to F13: The respondent disagrees partially with the finding.** All performance evaluations were suspended based upon the respective negotiated Memorandum of Understandings (MOU) between the County and most of the bargaining units. This suspension of performance evaluations applied to the three bargaining units represented by the El Dorado County Employees Association (EDCEA) Local #1---the general bargaining unit, the professional bargaining unit, and the supervisory bargaining unit. The suspension of annual performance evaluations was also negotiated for two of the three bargaining units represented by Operating Engineers Local #3---the Trades and Crafts bargaining unit and the Probation bargaining unit. The suspension of annual performance evaluations also applied to the unrepresented employees covered by the Salary and Benefits Resolution.

In response to the prior Grand Jury recommendation to re-institute annual performance evaluations, Human Resources met with the respective bargaining units to negotiate and implement the annual performance evaluation for employees. The negotiation process generated a new form for the employees in the three bargaining units covered under the EDCEA, Local #1 MOU. This new form is also used for employees in the confidential unit. The new form may also be used in lieu of the old management evaluation form for administrative management employees. This new electronic format for annual performance evaluations was distributed to all county Department Heads in October 2002.

The employees covered under the Trades and Crafts bargaining unit MOU will be evaluated pursuant to the original paper performance evaluation format.

All county Department Heads were notified by memorandum from the Director of Human Resources on or about October 17, 2002, with five training dates scheduled in November 2002. The annual evaluation process has again been implemented.

### **Recommendations**

- R1. Gasoline cans should be stored in closed metal cabinets.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** The Department of Transportation will begin storing all gasoline cans in metal storage cabinets by September 30, 2003.

- R2. The facility should be secure at all times. Place a video camera in the yard to video-tape the area day and night.

***Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.*** Most of the Fleet yard is owned and operated by the Department of Transportation. Fleet Management is currently working with the Procurement and Contracts staff to determine the most appropriate placement of security cameras for Fleet purposes and to determine what equipment should be purchased to best suit Fleet's needs. The purchase and installation of a security camera will take place shortly after adoption of the 2003/2004 budget. Placement of any cameras outside of the area generally occupied by Fleet Management would be at the discretion of the Department of Transportation. The recommendations will be completed by January 31, 2004.

- R3. Replace fuel dispensers and Gas Boy so the monitoring of fuel is computer maintained and can be audited.

***Response to R3: The recommendation requires further analysis.*** The Department of General Services is currently working with the Department of Environmental Management to determine the feasibility of remaining in the fuel business. Current and future environmental requirements will make it extremely cost prohibitive. We concur that the fuel dispensers and Gasboy system are outdated and need to be replaced. However, we do not want to make the capital investment if we will make a determination that it is more economical and feasible to contract out off-site fueling services. This determination will be made by October 31, 2003.

- R4. Replace software for Gas Boy and repair order maintenance records with updated computer programs.

***Response to R4: The recommendation requires further analysis.*** The Department of General Services is currently working with the Department of Environmental Management to determine the feasibility of remaining in the fuel business. Current and future environmental requirements will make it extremely cost prohibitive. We concur that the fuel dispensers and Gasboy system are outdated and need to be replaced. However, we do not want to make the capital investment if we will make a determination that it is more economical and feasible to contract out off-site fueling services. This determination will be made by October 31, 2003.

R5. Monitor the amount of fuel placed in the storage tanks during delivery.

**Response to R5: The recommendation has been implemented.** Fleet personnel monitor the amount of fuel placed in the storage tanks during delivery in order to avoid spillage, as well as monitoring the fuel usage on a daily basis.

R6. The repair order process should be computerized

**Response to R6: The recommendation has not been implemented, but will be implemented in the future.** Fleet personnel are currently testing a repair order/vehicle maintenance data base for implementation. If the current database will not function, another software product may need to be purchased. The implementation of an automated repair order process will be implemented by October 31, 2003.

R7. All County vehicles should be marked with clearly visible I.D. numbers, except for those used in undercover law enforcement.

**Response to R7: The recommendation has been implemented.** All County vehicles are marked with visible identification numbers, except for those used in undercover law enforcement.

R8. Recode all currently used remotes and change gate pad locks.

**Response to R8: The recommendation has not yet been implemented, but will be implemented in the future.** In order to ensure better security, General Services will work with the Sheriff's department to re-code all currently used remotes which are permanently affixed to the visors in all Sheriff's vehicles. In addition, the easterly gate pad locks will be changed. This recommendation will be implemented by December 31, 2003.

In order to ensure better security, especially after hours, General Services will look into the need of changing the combination or recoding remotes at such times that an employee is separated from County service

R9. Replace or modify the electric gate so it will automatically close after it has been opened.

**Response to R9: The recommendation has been implemented.** The electric gate does automatically close when opened by a remote opener.

R10. Replace larger DOT hydraulic lift with the appropriate lift for maintaining the fleet vehicles.

**Response to R10: The recommendation will not be implemented because it is unreasonable.** While we concur that the larger hydraulic lift is not functional for Fleet Management's needs, funding is not currently available and given the current fiscal outlook, it is unreasonable to replace this equipment at this time. Should funding become available in the future this recommendation will be included as part of the Fleet budget request.

R11. Annual performance evaluations should be completed.

***Response to R11: The recommendation has been implemented.*** The prior Grand Jury recommendation to implement performance evaluations was negotiated with the respective union representatives and has been implemented. The Director of Human Resources notified all County Department Heads on or about October 17, 2002 to implement the annual performance evaluation process along with instructions and training on how to do the evaluations. Human Resources sends notice to each department two months before an evaluation is due. This notice contains a list of the employees for whom a performance evaluation will need to be completed.

**Responses Required for Findings**

F1 through F13	El Dorado County Department of General Services El Dorado County Board of Supervisors
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**Responses Required for Recommendations**

R1 through R11	El Dorado County Department of General Services El Dorado County Board of Supervisors
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## PLANNING AND ENVIRONMENT COMMITTEE

### *South Lake Tahoe Vacation Home Rentals*

Citizen Complaint #C14 - 02/03

#### **Reason for the Report**

A complaint alleges that the City of South Lake Tahoe (SLT) allows short-term vacation rental of homes in areas not properly zoned for such business (specifically the Tahoe Keys area) and collects Transit Occupancy Tax (TOT) on these vacation rental homes.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Conducted interviews with SLT City Attorney;
- Attended several SLT City Council meetings;
- Conducted an interview with SLT City Manager;
- Reviewed relevant SLT ordinances and codes;
- Reviewed relevant Tahoe Regional Planning Agency (TRAP) ordinances and codes.

#### **Background**

The Governors and lawmakers of California and Nevada approved a compact creating a planning agency to oversee development at Lake Tahoe. In 1969, the United States Congress ratified the agreement and created TRPA. The compact, as revised in 1980, gives TRPA authority to adopt environmental quality standards, called thresholds, and to enforce ordinances designed to achieve these thresholds. The Governing Board of TRPA adopted the thresholds in 1982.

The ordinance codes of TRPA, Chapter 18, sets forth allowable uses for the land areas within the Tahoe Region. This chapter defines Tahoe Keys as Area 102 and states that this area should continue to maintain the existing residential and commercial character of the neighborhood. This ordinance does not allow for vacation rentals, tourist accommodations, and transit lodging within the Tahoe Keys area.

SLT City Code (Chapter 32) includes the TRPA's ordinances regarding area plan use in the Tahoe Keys. However a conflict exists between Chapter 32 and Chapter 28A, which regulates the rental of housing. The SLT City Attorney recognizes this conflict in a letter to this Grand Jury, dated September 2, 2002, by stating, "TRPA's Plan Area Statements prohibit renting houses for vacation rentals in a portion of the Tahoe keys area as well as portions of many other areas within the city limits. I will calendar this matter for further communication to the Grand Jury on or before March 31,2003 as this conflict still exists".



The City Attorney, in a staff report to the SLT City Council dated November 19, 2002 stated, "Under the TRPA rules, tourist accommodation uses are not allowed in all plan area statements within the city limits". She further stated, "City staff is beginning to work with TRPA staff to address the issue of vacation home uses outside the specifically designated areas". This Grand Jury has received no further guidance or communication from the SLT City Attorney.

The Grand Jury is aware of the revenue difficulty this situation presents to the SLT City Council. Over the years the taxes produced by the renting of houses in the Tahoe Keys area has grown to represent a sizeable figure. A significant financial impact on the city's budget would occur should this be eliminated. Furthermore, should the renting of these houses be disallowed the owners who purchased or built houses for the purpose of renting them would incur a loss of income and probable reduction in the value of their properties. In apparent contradiction to TRPA and SLT ordinances houses continue to be rented and taxes continue to be collected.

### **Findings**

No Board of Supervisors response required.

- F1. Neither SLT nor the TRPA are enforcing the prohibition of transit lodging in Tahoe Keys (area 102).
- F2. SLT is collecting Transit Occupancy Tax on the vacation rental homes in the Tahoe Keys (area 102).
- F3. SLT has passed further ordinances to regulate, but not ban the use of homes that are used as vacation rentals. These ordinances include the Tahoe Keys (area 102).
- F4. In apparent contradiction to TRPA and SLT ordinances houses continue to be rented and taxes continue to be collected.

### **Recommendations**

No Board of Supervisors response required.

- R1. SLT should negotiate with TRPA either to change the prohibition against transit lodging in the Tahoe Keys or enforce the existing law.
- R2. The SLT ordinance should be rewritten to be consistent with TRPA regarding transit lodging in the Tahoe Keys (area 102).

### **Responses Required for Findings**

F1 through F4  
South Lake Tahoe City Council  
Tahoe Regional Planning Agency (TRAP)

### **Responses Required for Recommendations**

R1 and R2  
South Lake Tahoe City Council  
Tahoe Regional Planning Agency (TRAP)

## PLANNING AND ENVIRONMENT COMMITTEE

### *El Dorado County Waste Disposal System*

#### **Reason for the Report**

The Grand Jury selected the waste disposal system of the County for a 2002/2003 general review.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Interviewed the El Dorado County Director of Environmental Management;
- Visited the Diamond Springs waste disposal facility on February 18, 2003;
- Was briefed on the process of sorting recyclables;
- Inspected the buildings and grounds of the Diamond Springs facility;
- Reviewed Grand Jury reports for 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to waste management.

#### **Background**

The County was mandated by the State of California to reduce, by 50 percent, the amount of waste going to landfills by 2002. An extension was allowed to July 2005, with a good faith review in July 2004. The Grand Jury investigation revealed that the County of El Dorado is not making good progress toward meeting the State mandate. The contractor is recycling about 25 percent of total waste while other waste removal companies are recycling at least 45 percent. A \$10,000 per day fine for violation of the State's mandate is possible after the July 2004 state review.

The County is reviewing the contract with the contractor to determine if the contractor is moving toward compliance with the State mandate. To help meet this mandate, the contractor replaced upper management in November 2002 at the Diamond Springs facility. The new manager has stated they are now recycling at least 25 percent of the waste. New programs such as Blue Bags and Yellow Bags for recycling material are being considered.

Non-recycled trash is trucked to a landfill near Reno, Nevada. Mixed recyclables are sent to the contractor's sorting facility near Lodi, California. Some of cardboard and newspapers are baled at the Diamond Springs facility for resale to recycling companies. All measurements are tracked by incoming and outgoing weights. With County growth on the rise the Diamond Springs facility may not be able to meet the demand. The entire facility will probably need to be replaced or modernized to increase capacity.

At present the facility, with approximately 63 employees, operates from 6:00a.m to 6:00p.m. seven days a week. It is closed only two days a year, Independence Day and Christmas Day.

## **Findings**

F1. The waste management contractor is currently reducing the waste to landfills by 25%.

***Response to F1: The respondent agrees with the finding.***

F2. The State of California has extended the County's required date of compliance with the State mandate to July 2005, with a good faith review to be conducted in July 2004.

***Response to F2: The respondent disagrees partially with the finding.*** The California Integrated Waste Management Board (CIWMB) has extended the required date of compliance to July 2004. If necessary, the County may request an additional extension to July of 2005.

F3. The fine to the County for not meeting the mandate is \$10,000 per day.

***Response to F3: The respondent agrees with the finding.*** The County "may" face fines "up to" \$10,000 per day for not meeting the mandate. There are many factors that the CIWMB uses in determining whether or not to issue a fine, as well as the amount of the fine. One factor is whether or not the County has made a "good faith effort" to increase the diversion of solid waste from the landfill. El Dorado County has implemented a multitude of programs aimed at increasing recycling throughout the County.

F4. The County is reviewing its contract with the contractor.

***Response to F4: The respondent agrees with the finding.*** The County is presently in the process of writing a new franchise agreement with the contractor.

F5. The contractor is trucking non-recycled waste to a landfill near Reno, Nevada, and mixed recyclables to their facility near Lodi, California.

***Response to F5: The respondent agrees with the finding.***

F6. The Diamond Springs facility has new management.

***Response to F6: The respondent agrees with the finding.***

F7. The growth of the County may exceed the capacity of waste processing at the Diamond Springs facility in three or four years.

***Response to F7: The respondent agrees with the finding***

## **Recommendation**

The County should establish, in conjunction with the contractor, a plan that will guarantee compliance.

***Response to Recommendation: The recommendation has been implemented.***

The County issued a notice of default to the contractor, Waste Management, in July of 2002, for failure to meet its contractual obligations per the conditions of the franchise agreement, regarding the collection and processing of mixed solid waste within Waste Management's franchise area. Since the issuance of the default notice, and as of June, 2003, Waste Management has replaced the management team at the Diamond Springs facility, improved the efficiency of the facility, and proposed, tested, and begun the implementation of a 3-cart solid waste and recycling collection system within its franchise area.

The El Dorado County Solid Waste Management Task Force evaluated the County's current system of solid waste collection and, of the proposed options, concluded that the 3-cart system of collection would have the greatest impact on meeting the County's diversion goals. The 3-cart collection system is currently in use in many other cities and counties throughout California, and has been proven to help jurisdictions meet the 50% diversion required by AB 939. On June 24, 2003, the El Dorado County Board of Supervisors approved the implementation of a 3-cart system within Waste Management's service area.

The County is currently in the process of drafting a new franchise agreement with Waste Management. Waste Management has agreed to guarantee a minimum of 50% diversion of the waste stream within its franchise area, and contractually indemnify the County against any penalties assessed by the CIWMB for failure to meet the mandated diversion goal.

**Responses Required for Findings**

F1 through F7                      El Dorado County Environmental Management Department

F2 through F4                      El Dorado County Board of Supervisors

**Responses Required for Recommendation**

El Dorado County Environmental Management Department  
El Dorado County Board of Supervisors

# **PUBLIC BUILDINGS**

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

### ***Community Services / Senior Nutrition Center– Building 470 937 Spring Street Placerville***

#### **Reason for the Report**

The Grand Jury selected the Community Services/Senior Nutrition Center (Senior Center) (Building 470) as one of its general reviews for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Senior Center on November 7, 2002;
- Toured the facilities and grounds with the Assistant Director of Community Services;
- Were briefed on the Senior Center operations, including the Senior Nutrition program, Storm-window program, and senior activities;
- Interviewed various members of staff;
- Inspected the building, grounds, and programs;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

#### **Background**

The building, originally constructed in the 1950's, was converted to the Senior Center in 1980. Meals served to seniors in the cafeteria, as well as meals for "Meals-on-Wheels," are prepared in the center's kitchen. It is also a meeting place for senior activities. The basement is used for storage and has a workshop for the Storm-window Program.

The parking lot is shared with the Senior Day-Care Center, Psychiatric Health Facility, and the Health Department. The poor condition of the parking lot surface poses a safety hazard to users. Parking is limited, directional markings go against traffic flow, and overall surface is in poor condition. This poses a safety hazard to users, especially seniors and disabled individuals.

The kitchen area is exceptionally clean and neat. Meal preparation and meal assembly appears to be well organized.

It should be noted that the electrical system and restrooms, though functional, are antiquated.

## **Findings**

F1. The building exterior paint is peeling.

***Response to F1: The respondent agrees with the finding.***

F2. The parking lot surfaces are severely checked and cracked. The parking lot surface poses a danger to users and potential liability to the county.

***Response to F2: The respondent disagrees partially with the finding.*** General Services agrees that the subject parking lot is in need of repairs. General Services does not feel that there is any extraordinary damage to the parking lot (such as severe raised bumps) that would subject the County to anything other than the normal liability that parking lots present.

F3. The parking lot directional markings contradict the parking lot traffic flow and are severely faded.

***Response to F3: The respondent agrees with the finding.***

F4. The parking lot is inadequate and limits the full use of the facility.

***Response to F4: The respondent agrees with the finding.***

F5. Sidewalk to exterior patio is cracked and uneven.

***Response to F5: The respondent agrees with the finding.***

F6. The exterior patio is visually uninviting.

***Response to F6: The respondent agrees with the finding.***

F7. The carpeting is stretched with age resulting in long ripples that may be hazardous to users and is a potential liability to the county.

***Response to F7: The respondent agrees with the finding.***

F8. Several doors have been relocated resulting in incorrect signage.

***Response to F8: The respondent agrees with the finding.***

F9. Entry/hallway ceiling tiles are sagging and hanging loose.

***Response to F9: The respondent agrees with the finding.***

F10. The interior paint is showing signs of age and wear.

***Response to F10: The respondent agrees with the finding.***

F11. The building HVAC vents and registers are dirty with the exception of the kitchen.

***Response to F11: The respondent agrees with the finding.***

F12. The hall exit sign to the sidewalk leading to the patio is not illuminated.

***Response to F12: The respondent agrees with the finding.***

F13. The dining room ceiling evidences various stages of leakage which results in a stained saggy condition.

***Response to F13: The respondent agrees with the finding.***

F14. A fire extinguisher is blocked behind the furniture in the dining room storage area.

***Response to F14: The respondent agrees with the finding.***

F15. Hair nets/hats are not worn by all food handlers.

***Response to F15: The respondent agrees with the finding.***

F16. The caulking on the kitchen hand sink is aged, cracked and discolored.

***Response to F16: The respondent agrees with the finding.***

F17. The stairwell to the basement is dirty.

***Response to F17: The respondent agrees with the finding.***

F18. The basement space is utilized, but cluttered.

***Response to F18: The respondent agrees with the finding.***

F19. The transit heat shield of the pottery kiln is broken in two, resulting in asbestos fiber exposure.

***Response to F19: The respondent agrees with the finding.***

### **Recommendations**

R1. The building exterior should be painted.



**Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.** Funding for this project is not included in the FY 2003/04 budget. General Services will obtain funding in the FY 2004/05 budget and will paint the exterior of the building by April 30, 2005.

R2. The parking lot should be repaired and resurfaced.

**Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.** A detailed topographic survey has been conducted of the parking lot together with the existing drainage structures. Improvement plans together with technical specifications are nearly complete with bid solicitation to follow. Repair and resurfacing of the parking lot is scheduled for completion by October 31, 2003.

R3. Directional arrows should show proper traffic flow.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** The parking lot together with the driveway will receive new striping (paint) as a component of the parking lot repair and resurfacing project as described in R2 above. New directional arrows will be placed in the project and completed by October 31, 2003.

R4. The sidewalk to exterior patio should be repaired.

**Response to R4: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled the sidewalk to the exterior patio for repair and will complete the necessary work by November 30, 2003.

R5. The carpeting should be replaced.

**Response to R5: The recommendation has not yet been implemented, but will be implemented in the future.** General Services recently met with Community Services and are moving forward with carpet replacement with an anticipated date of completion of October 2003.

R6. Incorrect signage should be removed.

**Response to R6: The recommendation has not yet been implemented, but will be implemented in the future.** Community Services will correct the signage by September 30, 2003.

R7. Sagging and hanging ceiling tiles in entry/hallway should be replaced.

**Response to R7: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled the sagging and hanging

ceiling tiles in the entry/hallway for repair and will complete the work by September 30, 2003.

- R8. The interior should be repainted.

**Response to R8: The recommendation has not yet been implemented, but will be implemented in the future.** General Services will paint the interior of the building and complete the work by July 31, 2004.

- R9. All HVAC vents should be cleaned.

**Response to R9: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled the cleaning of all HVAC vents and will complete the work by October 31, 2003.

- R10. The hall exit sign to the sidewalk leading to the patio should be repaired.

**Response to R10: The recommendation has been implemented.** General Services has scheduled the repair of the exit sign and work will be completed by July 31, 2003.

- R11. The roof should be inspected for leaks and repaired as needed.

**Response to R11: The recommendation has been implemented.** The roof was replaced in 1998 and is inspected annually as a preventive maintenance item. At the last inspection no leaks or damage were noted.

- R12. The dining room ceiling should be replaced.

**Response to R12: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled the dining room ceiling for replacement. The work will be completed by November 30, 2003.

- R13. The dining room storage area fire extinguisher should be made accessible.

**Response to R13: The recommendation has been implemented.** The fire extinguisher in the dining room storage area has been made accessible

- R14. All kitchen food handlers should wear hair nets/hats.

**Response to R14: The recommendation has been implemented.** The department policy has been for all food handlers to wear hair nets/hats. Due to this finding Community Services has re-affirmed the policy, with no exceptions, to all staff involved in food handling.

- R15. The kitchen hand sink should be re-caulked.

***Response to R15: The recommendation has been implemented.*** The kitchen sink has been re-caulked.

R16. The stairwell to the basement should be cleaned and maintained on a regular basis.

***Response to R16: The recommendation has been implemented.*** General Services will have custodial staff clean periodically and maintain on a regular basis.

R17. The basement clutter should be addressed.

***Response to R17: The recommendation has been implemented.*** Community Services has cleared the clutter. Limited storage space and extensive storage needs make this an on-going concern. Community Services will research the storage needs of its various programs to determine if records retention is still required and to ascertain if other methods of storage such as microfiche, computer disks, etc. can be utilized. In addition, Community Services will work with General Services Records Management section to remove as many files as possible to central storage areas.

R18. The broken pottery kiln transite heat shield should be replaced.

***Response to R18: The recommendation has not yet been implemented, but will be implemented in the future.*** Community Services will inspect the heat shield and repair or replace it by December 31, 2003.

### **Commendations**

The Grand Jury commends the Senior Center for apparent outstanding job performance under challenging circumstances. The staff was competent, courteous and very open.

### **Responses Required for Findings**

F1 through F19	El Dorado County Board of Supervisors El Dorado County Department of General Services El Dorado County Department of Community Services
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### **Responses Required for Recommendations**

R1 through R18	El Dorado County Board of Supervisors El Dorado County Department of General Services El Dorado County Department of Community Services
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## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

*District Attorney - Building 221*

*515 Main Street*

*District Attorney Annex - Building 226*

*525 Main Street*

*Victim/Witness Assistance Program - Building*

*520 Main Street*

*Placerville*

### **Reason for the Report**

The Grand Jury selected the offices of the District Attorney, Placerville, as one of its general reviews for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the offices of the District Attorney, Placerville, including the District Attorney Annex and Victim/Witness Assistance Program on December 5, 2002;
- Were given an extensive tour of the facilities and grounds by the Chief Assistant District Attorney;
- Were briefed on the District Attorney operations;
- Inspected the buildings and grounds;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002.

### **Background**

Premises for the District Attorney Offices are divided between three locations in close proximity to each other. The premises consist of the Main, Annex, and Victim/Witness Assistance Program Buildings. The premises' interiors appear clean and adequate; however, all three premises have dirty HVAC vents/registers, which pose health concerns.

Several areas of concern were noted for the main building. The first front entry step is too high and has a separation between it and the sidewalk, creating a safety hazard to users and a potential liability to the County. The size of the parking lot is inadequate for use of the building. In addition, the paint on the building exterior is peeling and the paint on the exterior wrought iron fixtures is chipped and rusting.

The main building basement is not fully utilized due to previous flooding. Several concerns were noted for the utilized area. The conference and map rooms are cluttered. In addition, the conference room ceiling paint is chipping. Two rooms being used for storage appear disorganized and cluttered. One of these rooms is full of older computer equipment waiting disposition by Information Services.

While the Annex has a fire sprinkler system, the other two premises do not. Although procedures are established, fire drills are not periodically conducted. In the Main Building the hallways are utilized for storing files, which may pose a fire exit hazard.

## **Findings**

### **District Attorney, Placerville – Building 221**

F1. First front entry step is too high and there's a separation between it and sidewalk, creating a potential liability.

***Response to F1: The respondent agrees with the finding.***

F2. The size of the parking lot is inadequate for the use of the building.

***Response to F2: The respondent agrees with the finding.***

F3. The building exterior paint is peeling.

***Response to F3: The respondent agrees with the finding.***

F4. Paint on exterior wrought iron fixtures is chipped and rusting.

***Response to F4: The respondent disagrees partially with the finding.***

F5. The building HVAC vents/registers are dirty and pose health concerns.

***Response to F5: The respondent disagrees partially with the finding.*** The respondent agrees that HVAC vents and registers are dirty and in need of cleaning. The respondent is not aware of any health issues relevant to the HVAC vents and registers being dirty.

F6. The conference room and the map room are cluttered.

***Response to F6: The respondent agrees with the finding***

F7. The conference room ceiling paint is chipping.

***Response to F7: The respondent agrees with the finding***

F8. There is a room full of older computer equipment waiting disposition by Information Services.

***Response to F8: The respondent agrees with the finding***

F9. Hallways are utilized for storing files.

**Response to F9: The respondent agrees with the finding**

F10. Although there are fire drill procedures, no fire drills have been held.

**Response to F10: The respondent agrees with the finding**

F11. The building has no fire sprinkler system.

**Response to F11: The respondent disagrees partially with the finding.** The response is qualified as follows: Due to the age of the building, fire code does not require a sprinkler system until a major remodel is done.

**District Attorney Annex – Building 226**

F12. The exterior walls are cracked.

**Response to F12: The respondent agrees with the finding.**

F13. There is evidence of previous water leaks on the ceiling.

**Response to F13: The respondent agrees with the finding.**

F14. The building HVAC vents/registers are dirty and pose health concerns.

**Response to F14: The respondent disagrees partially with the finding.** The respondent agrees that HVAC vents and registers are dirty and in need of cleaning. The respondent is not aware of any health issues relevant to the HVAC vents and registers being dirty.

F15. Although there are fire drill procedures, no fire drills have been held.

**Response to F15: The respondent agrees with the finding**

**Victim/Witness Program - Building**

F16. Ceiling tiles are cracked and/or chipped.

**Response to F16: The respondent agrees with the finding**

F17. The building HVAC vents/registers are dirty and pose health concerns.

**Response to F17: The respondent disagrees partially with the finding.** The respondent agrees that HVAC vents and registers are dirty and in need of cleaning. The respondent is not aware of any health issues relevant to the HVAC vents and registers being dirty

F18. Although there are fire drill procedures, no fire drills have been held.

**Response to F18: The respondent agrees with the finding.**

F19. The premises have no fire sprinkler system.

**Response to F19: The respondent disagrees partially with the finding.** The response is qualified as follows: Due to the age of the building, fire code does not require a sprinkler system until a major remodel is done.

Recommendations

**District Attorney, Placerville - Building 221**

R1. First front entry step and sidewalk should be corrected to meet current code requirements.

**Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.** The sidewalk falls under the City of Placerville's jurisdiction. General Services will request that the City of Placerville repair the sidewalk, and meanwhile will place a "caution" sign on steps. General Services will make the request to the City of Placerville by September 1, 2003, but will place the caution sign on the steps immediately. General Services will follow-up with the City of Placerville until the condition has been corrected.

R2. The building exterior and wrought iron paint should be properly maintained.

**Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.** General Services is in the process of awarding a contract for the painting of the entire exterior of this building. An element of this work will include the painting of the wrought iron fixtures. The repainting of the building and wrought iron fixtures is scheduled to be complete by September 2003.

R3. The building HVAC vents/registers should be periodically cleaned.

**Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled to clean the vents and registers. The work will be completed by October 31, 2003.

R4. The conference room and map room should be clear of clutter.

**Response to R4: The recommendation has implemented.** The conference room has been cleared of all clutter except for computer stations set up on the conference table. These computer stations are used for training purposes. The map room has also been cleared of clutter with the exception of on-going projects or work in progress.

R5. The conference room ceiling paint should be properly maintained.

**Response to R5: The recommendation has not yet been implemented, but will be implemented in the future.** General Services is currently requesting proposals for this project. The work will be completed by October 31, 2003.

R6. The unutilized older computer equipment should be removed from the building.

**Response to R6: The recommendation has not yet been implemented, but will be implemented in the future.** The District Attorney's office will initiate the Surplus Property procedures. The unutilized computer equipment will be surplus by September 30, 2003.

R7. Fire drills should be held on a periodic basis.

**Response to R7: The recommendation has not yet been implemented, but will be implemented in the future.** Per Board Policy K-3, Emergency Management Policy, all County departments will conduct fire drills twice annually. A fire drill will be conducted prior to October 30, 2003.

**District Attorney – Annex – Building 226**

R8. The building HVAC vents/registers should be periodically cleaned.

**Response to R8: The recommendation has not yet been implemented, but will be implemented in the future.** General Services has scheduled the cleaning of the vents and registers. The work will be completed by October 30, 2003.

R9. The exterior walls should be properly maintained.

**Response to R9: The recommendation has not yet been implemented, but will be implemented in the future.** General Services is in the process of awarding a contract for the repair of this crack together with the painting of the exterior of the building. The work will be completed by September 30, 2003.

R10. Water leakage source should be investigated and repaired as needed.

**Response to R10: The recommendation has been implemented.** The roof leak was repaired in January 2003.

R11. Fire drills should be held on a periodic basis.

**Response to R11: The recommendation has not yet been implemented, but will be implemented in the future.** Per Board Policy K-3, Emergency Management Policy, all County departments will conduct fire drills twice annually. A fire drill will be conducted prior to October 30, 2003.



**Victim/Witness Assistance Program – Building**

R12. The building HVAC vents/registers should be periodically cleaned.

**Response to R12: The recommendation has not yet been implemented, but will be implemented in the future.** General Services will notify the building owner of its responsibility to maintain the HVAC system under the terms of the County’s lease agreement with the Lessor and request compliance within 30 days of notification. General Services will make notification by September 1, 2003, and follow-up to ensure the 30 day compliance.

R13. Cracked and chipped ceiling tiles should be replaced.

**Response to R13: The recommendation has not yet been implemented, but will be implemented in the future.** While there are some cracked and/or chipped ceiling tiles in the facility, General Services does not believe they represent a health or safety issue. General Services will request the building owner replace said ceiling tiles when the lease is renegotiated in March 2004 and will follow up to make sure that the ceiling tiles are replaced by May 31, 2004.

R14. Fire drills should be held on a periodic basis.

**Response to R14: The recommendation has not yet been implemented, but will be implemented in the future.** Per Board Policy K-3, Emergency Management Policy, all County departments will conduct fire drills twice annually. A fire drill will be conducted prior to October 30, 2003.

**Responses Required for Findings**

F1 through F19

El Dorado County Board of Supervisors  
El Dorado County District Attorney  
El Dorado County General Services

**Responses Required for Recommendations**

R1 through R14

El Dorado County Supervisors  
El Dorado County District Attorney  
El Dorado County General Services

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

*Public Health Department – Building 441  
931 Spring Street  
Placerville*

### **Reason for the Report**

The Grand Jury selected the Public Health Department (Building 441) as one of its general reviews for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Public Health Department on November 7, 2002;
- Toured the facilities and grounds with the Assistant Director and the Nurse Practitioner;
- Were briefed on the Public Health Department services offered;
- Inspected the building and general programs;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

### **Background**

The Public Health Department building, which was built in 1952, is currently undergoing renovations to be completed in 2003. The building appears to be in excellent condition and well utilized.

The parking lot of the Public Health Department is shared with the parking lots for the Psychiatric Health Facility, Community Services/Senior Nutrition Center, and the Senior Day- Care Center. Parking lot directional markings go against traffic flow, and the overall surface is in poor condition.

### **Findings**

F1. The parking lot surface is severely checked and cracked. The parking lot surface poses a hazard to users and is a potential liability to the county.

***Response to F1: The respondent disagrees partially with the finding.*** The parking lot shows signs of surface cracking, the majority of which are located in areas of previous repairs, or are the result of utility installations which required the cutting and re-surfacing of the original asphalt. Although these conditions warrant maintenance, they do not present additional liability to the County outside.

F2. The parking lot directional markings contradict the parking lot traffic flow and are severely faded.

***Response to F2: The respondent agrees with the finding.***

F3. Some hallways are cluttered.

***Response to F3: The respondent agrees with the finding.***

### **Recommendations**

R1. The parking lot should be repaired and resurfaced.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** General Services will schedule maintenance activities for this parking lot to include the replacement of damaged wheel stops, the truing of any irregular surfaces and the sealing of cracks. The parking lot maintenance will be completed by October 31, 2003.

R2. Directional arrows should show proper traffic flow.

***Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.*** The directional markings will be re-painted to prevent any conflicts. The new directional arrows will be coordinated with R1 above and the work will be completed by October 31, 2003

R3. All clutter should be removed from hallways when renovation is finished.

***Response to R3: The recommendation has been implemented.*** The hallways were cluttered at the time of the visit due to renovations. Once the renovation work was completed the hallways were cleared and are now clutter free.

### **Responses Required for Findings**

F1 through F3  
El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Public Health Department

### **Responses Required for Recommendations**

R1 through R3  
El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Public Health Department

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

*Update of Pat Riley Family Court (Building 180)  
Formerly the Logan Building  
768 Pleasant Valley Road  
Diamond Springs*

### **Reason for the Report**

The Grand Jury selected the Pat Riley Family Court Building (The Building) as one of its general reviews for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an announced visit to The Building on April 17, 2003;
- Toured the facility with the Facilities Manager from El Dorado County General Services;
- Interviewed the General Manager of El Dorado County General Services;
- Reviewed various Board of Supervisors meeting minutes, memos and renovation plans;
- Reviewed previous Grand Jury Reports for the year's 1999/2000, 2000/2001 and 2001/2002.

### **Background**

The Building, located in Diamond Springs, was designed and constructed by the contractor for his personal and company use. Due to the death of the contractor, the incomplete building and adjacent parcels were put up for sale in 1997.

Although it was appraised at \$1,675,000 in May 2000, the County purchased The Building and adjacent parcels for \$1,860,679 without having a plan for its use. The acquisition, which resulted in controversy, was investigated by the Grand Juries of 1999/2000 and 2000/2001. Their findings were included in their respective reports.

Seventeen months later, in November 2001, an offer to purchase The Building for \$729,000 was received along with the purchase price analysis. The Board of Supervisors rejected the offer. Instead they approved the following on November 21, 2001:

- (a) Expand and relocate Superior Court Family Law facilities from the Main Street Placerville Courthouse to the main level of The Building, and move the Court Administration Unit from Building C to the upper level of The Building;
- (b) Authorize the General Services Department to engage an architectural firm to work with the Superior Court to refine project space, layout(s) and The Building's retrofit cost estimates. The Building was to accommodate two courtrooms, the Family Law Department, and the Court Administrative Unit;
- (c) Approved the potential funding and designated \$2,557,517 for this undertaking;
- (d) Appoint a Board of Supervisors Court Facilities Committee to monitor the project development and finances in coordination with the Superior Court and General Services Department. In addition, they would pursue the prospect of State reimbursement of the County General Fund expenditures as proposed in the October 2001 Final Report of the State Task Force on Court Facilities.

The Grand Jury members toured The Building, which is located approximately seven miles from the County Government Center to observe the condition and use of the building. The Building has three levels:

- The main level (10,500 square feet) has not been used because of its major renovations/retro-fitting requirements.
- The lower level (3,573 square feet) is occupied by personnel of the Sheriff's Department, after a retro-fitting cost of \$108,000. However, plans for the Family Court Center requires the Sheriff's Department personnel to be relocated.
- The upper level (2,648 square feet) has five office spaces of which only one is used. The remaining four offices are in need of renovations.

During the tour of The Building, it was noted there is no interior access from the main level to the other two levels. There is no elevator. The building does not meet standards for the American with Disabilities Act (ADA).

### **Findings**

F1. The Building is not conveniently located to the County Government Center.

***Response to F1: The respondent agrees with the finding.***

F2. The Building needs major renovations to be usable for County purposes.

***Response to F2: The respondent agrees with the finding.***

F3. Seventy-five percent of The Building has not been used since the purchase in May 2000.

***Response to F3: The respondent agrees with the finding.***

- F4. In November 2001 the Board of Supervisors approved use of The Building for Superior Court Family Law; however, no actual plans have been implemented.

***Response to F4: The respondent disagrees partially with the finding.***

The Superior Court has been working with the County's General Services Department, and their consultant, and has been in routine communications with County officials regarding the Pat Riley Family Court since November 2001. The Court was included in the selection of consultants, has been involved in the review of the feasibility analysis performed by the chosen consultant and has also participated on the design. The building evaluation has been completed and a conceptual plan has been developed which identifies proposed building modifications.

**Recommendations**

- R1. In light of the countywide office space need, the Board of Supervisors should reconsider their options and move forward expeditiously.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** As noted in finding F3 listed above, the building will require major renovations before it will meet the needs for either the County or the Courts. As described in finding F4, the County has been working with the Courts and consultants and has performed a feasibility analysis, which includes a conceptual plan that identifies building modifications which must be completed before the Courts can move in.

Actual plans have not been implemented, relative to plan development, however, the General Services Department is working diligently with the Planning Department to address CEQA issues as they relate to the use of this building by the Courts. In conjunction with this activity, the General Services Department intends to contract with an outside consulting firm to prepare the necessary plans as required for the renovation of the building. General Services anticipates that the CEQA and Plan preparation will be complete by December 2003. General Services anticipates accepting bids for the project in March 2004, with construction starting in May 2004. Occupancy is estimated for December 2004.

**Responses required for Findings**

F1 through F4	El Dorado County Board of Supervisors Chief Executive Officer Superior Court
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**Responses for Recommendations**

R1	El Dorado County Board of Supervisors Chief Executive Officer Superior Court
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## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

*El Dorado County Museum – Building 577  
104 Placerville Dr.  
Placerville*

### **Reason for the Report**

The Grand Jury selected the El Dorado County Museum as one of its general reviews for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Museum on January 9, 2003;
- Received an extensive facilities and grounds tour by the Museum Administrator-Director;
- Were briefed on the various operations of the facility;
- Inspected the building and grounds;
- Reviewed previous Grand Jury reports for the year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

### **Background**

The El Dorado County Museum, Building 577, is located on the County Fair Grounds in Placerville. The Museum building, built in 1972, functions as the County's main archival repository. It is comprised of the main museum building, Shay Engine Shop, a barn, maintenance workshop, various storage sheds, and outside displays.

The Main Museum building houses exhibits of early artifacts of local and California interests and functions as the main storage location for genealogical information, marriages, and obituaries. Various organizations and citizens throughout the county access valuable maps, pictures, and property items. Since space is limited and artifacts are numerous, the displays are periodically changed.

The condition of the Main Museum building appears to be adequate. Public restrooms are clean and functional. Some of the floorboards in the attic above the office are substandard. Since the area is accessible by the staff, this poses a safety concern and potential liability to the County. Although fire extinguishers and smoke detectors are visible throughout the structure, the building did not have a fire sprinkler system.

The Shay Engine Shop was built to reflect the time period of the engine. Inside the building, restoration of the engine to operating condition is in progress. Visitors to the shop are able to view the work in progress. The restoration of the engine is being accomplished through donations and

volunteer labor. The restored Shay Engine is a valuable historical asset to the County because it is an antique.

The landscaping is well designed and creatively done. The sheds are old and deteriorating, and many of the outdoor artifacts are exposed to the elements.

### **Findings**

F1. Some of the floorboards in the attic above the office, which is accessible to the museum staff, are substandard and pose a safety hazard and potential liability to the County.

***Response to F1: The respondent agrees with the finding.***

F2. Although fire extinguishers and smoke detectors are visible throughout the main building, there is no fire sprinkler system.

***Response to F2: The respondent agrees with the finding.***

F3. The outside sheds are old and deteriorating.

***Response to F3: The respondent agrees with the finding.***

F4. The outdoor artifacts are exposed to the elements causing deterioration.

***Response to F4: The respondent agrees with the finding.***

### **Recommendations**

R1. Floorboards in the attic above the office should be strengthened or replaced.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** General Services has done an assessment of the area. Due to their findings, access to this area is currently prohibited. A tape barrier has been placed over the area. The flooring will be repaired or replaced by August 30, 2003.

R2. Most outside sheds should be replaced.

***Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.*** The condition of the outside sheds has been noted with a preliminary plan for a replacement building drawn by Facilities Engineering. The timetable for replacing the outside sheds is currently dependent on completing plans for the satellite museum site for the antique railroad artifacts, thereby making adequate space for construction in the museum yard. This project will be completed by December 31, 2004.



- R3. All outside artifacts should be under cover and additional space and housing for artifacts are needed.

**Response to R3: *The recommendation has not yet been implemented, but will be implemented in the future.*** The Museum Commission has formulated a long range plan for the Museum yard to include a new exhibit building, a roof extension to provide covered exhibit space, and an interpretative center in an existing building. In the interim, Museum staff is currently working on a proposal to share the use of the Floriculture Building, owned by the Fair. If this proposal is successful, all wagons and carriages currently out in the elements will be exhibited inside the building by winter, 2003/04. The Museum Commission's long range plan is dependent on the successful completion of the plan to establish a satellite museum for the antique railroad artifacts. This will place all railroad artifacts under cover, as well as free up space to construct the new facilities. Due to the scope of this project, it is estimated that the work will be completed by December 31, 2004.

- R4. A modern zoned sprinkler system is needed to protect valuable artifacts and irreplaceable records.

**Response to R4: *The recommendation has not yet been implemented, but will be implemented in the future.*** An assessment is currently being conducted to establish the kind of sprinkler system to install. This project will be completed by July 31, 2004.

### **Commendations**

The Administrator-Director is doing an excellent job taking responsibility for maintaining and organizing diverse county records.

### **Responses Required for Findings**

F1 through F4	El Dorado County Museum Administrator El Dorado County Department of General Services El Dorado County Board of Supervisors
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### **Responses Required for Recommendations**

R1 through R4	El Dorado County Museum Administrator El Dorado County Department of General Services El Dorado County Board of Supervisors
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## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

### ***Library (General Services) Building 160 Placerville***

#### **Reason for the Report**

The Grand Jury selected the Library (General Services) Building 160 as one of its general reviews for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Library and General Services Complex on January 16, 2003;
- Were guided on an extensive tour of the facilities by the Administrative Technician, Store Keeper II, Assistant Coordinator, and Library Director;
- Inspected the facilities for cleanliness, neatness, and compliance to safety regulations;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

#### **Background**

The Library (General Services) Building appears to be adequately designed. Located in the building are the County Main Library and its Technical Services, General Services Warehouse, Print Shop, Purchasing Department, Mail Room, Archival Record Storage, and General Services Administration. The building is currently adequate, clean, neat, and well utilized.

Overall, the Library appears to be functional, attractive, and adequately lighted. Use of the computers accessed by the public has outpaced availability resulting in increased waiting time. The carpet in the Library is original to the Building (1976) and is showing wear. The carpet has areas of rippling and disintegration that pose a safety hazard to the users and a potential liability to the County. Funds are budgeted this year to replace the carpet, however, no plans for replacement have been made.

The Print Shop appears adequate for usage. It appeared neat, clean and well organized. However, the fire extinguisher was partially blocked and the exit sign was not illuminated.

#### **Findings**

- F1. The Library carpet is old, rippling, and disintegrating, thus posing a safety hazard to users and a potential liability to the County.

***Response to F1: The respondent agrees with the finding.***

F2. The Print Shop exit sign is not illuminated.

***Response to F2: The respondent agrees with the finding.***

F3. The Print Shop fire extinguisher is partially blocked.

***Response to F3: The respondent agrees with the finding.***

F4. The wall in the southwest corner of the Archival Record Storage area shows evidence of prior water leakage.

***Response to F4: The respondent agrees with the finding.***

### **Recommendations**

R1. The carpet should be replaced.

***Response to R1: The recommendation has not been implemented, but will be implemented in the future.*** General Services has completed the bidding procedure for the carpet replacement at the Main Library in Placerville and are in the final stages of contract approval. Re-carpet is scheduled for completion prior to September 2003.

R2. The exit sign should be repaired.

***Response to R2: The recommendation has not been implemented, but will be implemented in the future.*** A service ticket has been issued to repair the exit sign in the Print Shop. The anticipated date of completion is October 2003.

R3. The print shop fire extinguisher should be unblocked for easier emergency use.

***Response to R3: The recommendation has been implemented.*** The partial blockage around the fire extinguisher in the Print Shop has been removed. The area around the fire extinguisher will remain clear in the future.

R4. The possible leakage in the southwest corner of the Archival Record Storage Area should be monitored.

***Response to R4: The recommendation has been implemented.*** The wall in the Archival Record Storage Area was sealed in December 2002. We will continue to monitor this area for leakage in the future.

### **Responses Required for Findings**

F1 through F4

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Library Director

**Responses Required for Recommendations**

R1 through R4

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Library Director

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

### ***Psychiatric Health Facility – Building 440 935A Spring Street Placerville***

#### **Reason for the Report**

The Grand Jury selected the Psychiatric Health Facility (Building 440) as one of its general reviews for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Psychiatric Health Facility on November 7, 2002;
- Toured the facility with the Nursing Supervisor;
- Were briefed on the Psychiatric Health Facility operations;
- Interviewed Discharge Planner;
- Inspected the building and grounds;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

#### **Background**

The building, originally constructed in the 1960's, has been used as the Psychiatric Health Facility since the early 1980s. It has the capacity for 15 patients who are admitted on an emergency basis for short-term stays. Twenty-four hour care is provided by the staff of 22 employees that include a psychiatrist, nurses, and a social worker.

The interior of the building appears neat and well maintained; however, the laundry room appears dirty and cluttered. Kitchen facilities are limited, which require meals be provided by the Senior Nutrition Center. The basement is unusable due to asbestos issues. Paint on the exterior of the building is peeling.

The observation area is utilized for observing new patients. The support column in this area has sharp edges/corners, which for safety concerns should be padded. The only furniture in this room is a rubber couch; a rubber table is needed for patient use. The current surveillance system for the lock up rooms should be updated to cover the entire day room area.

The parking lot is shared with the Senior Day-Care Center, Community Services/Senior Nutrition Center, and the Health Department. The poor condition of the parking lot poses a safety hazard to users, especially seniors and disabled individuals. Parking is limited, directional markings go against traffic flow and overall surface is in poor condition.

## **Findings**

F1. The building exterior paint is peeling.

***Response to F1: The respondent agrees with the finding.***

F2. The parking lot surfaces are severely checked and cracked. The parking lot surface poses a danger to users and potential liability to the County.

***Response to F2: The respondent disagrees partially with the finding.*** The respondent agrees that the observable condition of the parking lot indicates the need for repair and resurfacing. The respondent disagrees with the finding in that all parking lots pose some potential for liability under any conditions.

F3. The parking lot directional markings go against the parking lot traffic flow and are severely faded.

***Response to F3: The respondent agrees with the finding.***

F4. The parking lot is inadequate and limits the full use of the facility.

***Response to F4: The respondent disagrees partially with the finding.***

The full use of the Psychiatric Health Facility for its intended functions is not impaired by conditions of the parking lot. The respondent agrees that the parking lot at its present size and configuration does not provide at all times enough space for employees and the public who may seek access to the building.

F5. The laundry room is dirty and cluttered.

***Response to F5: The respondent agrees with the finding.***

F6. The support column in the observation area has sharp edges/corners.

***Response to F6: The respondent disagrees partially with the finding.***

The corners of the support column are typical of standard construction and finishing surfaces.

F7. The surveillance system for the lock up rooms for the observation area is inadequate.

***Response to F7: The respondent disagrees wholly with the finding.***

The finding does not define what is inadequate about the surveillance system. The cameras in the two seclusion (observation) rooms were recently upgraded and purposefully allow for the privacy of patients when using the toilet.

F8. The water fountain in hall outside the activity room is inoperative.

**Response to F8: *The respondent agrees with the finding.***

The water fountain was inoperative at the time of the Grand Jury visit to the facility. Normally the water fountain is maintained in full operation with a good stream of water.

### **Recommendations**

R1. The building exterior should be painted.

**Response to R1: *The recommendation has not yet been implemented, but will be implemented in future.***

General Services Department will paint the structure by May 2004.

R2. The parking lot should be repaired and resurfaced.

**Response to R2: *The recommendation has not yet been implemented, but will be implemented in the future.***

General Services Department has scheduled the parking lot for repair and resurfacing with completion in late summer, 2003.

R3. Directional arrows should show proper traffic flow.

**Response to R3: *The recommendation has not yet been implemented, but will be implemented in the future.***

Directional arrows will be aligned to show proper traffic flow on completion of the parking lot repair and resurfacing in late summer, 2003.

R4. The support column in the observation area should be padded.

**Response to R4: *The recommendation has not yet been implemented, but will be implemented in the future.***

Mental Health Department plans to issue a request to General Services Maintenance Division by July 31, 2003, for alternatives to the standard wall corners of this support column. Padding is not recommended as the first choice, in that acute psychiatric patients tend to shred soft padding and sometimes even consume the material. The two Departments will discuss and determine appropriate measures to be taken that consider issues of liability, patient safety, feasibility of installation, and cost. Completion is anticipated to be not later than November 30, 2003.

- R5. A rubber table should be provided in the observation area.

***Response to R5: The recommendation requires further analysis.***

The observation area must remain a secure area and any objects within that area must not be available for use as a weapon against another patient, the staff, or used by a suicidal patient to injure themselves. The existing rubber furniture currently used for sitting cannot be lifted or thrown by one, or even two, large adults. The alternative of stationary furniture, such as a table bolted to the floor, creates other unacceptable hazards in this secure area. The Department will research options to determine if there is a table that can be provided that is available and affordable for purchase, and that will maintain the required safety and security needed to protect staff and patients in this area. A determination will be made not later than November 30, 2003.

- R6. Surveillance system should be replaced with an updated version to cover the entire area of each lock up room.

***Response to R6: The recommendation will not be implemented because it is not warranted.***

Cameras in the seclusion rooms have been recently upgraded. The entire area is not intended to be viewed on camera in the nursing station in order to allow privacy for the psychiatric patients when using the toilets in these locked rooms. Safety of patients in seclusion is provided by required fifteen-minute checks through windows in the doors of the room or by staff entering the room, if needed.

- R7. The water fountain should be repaired.

***Response to R7: The recommendation has been implemented.***

The drinking fountain has been repaired.

- R8. The laundry room should be cleaned and maintained on a regular basis.

***Response to R8: The recommendation has been implemented.***

The laundry room has been cleaned. The Department is reviewing bids for new janitorial service to provide regular maintenance at this location in the facility. It is anticipated that regular cleaning and maintenance will commence with a recommendation of the qualified low bidder and approval of a contract by the Board of Supervisors by November 30, 2003.



**Responses Required for Findings**

F1 through F8

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Department of Mental Health

**Responses Required for Recommendations**

R1 through R8

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Department of Mental Health

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

### ***Senior Day-Care – Building 440A 935 Spring Street Placerville***

#### **Reason for the Report**

The Grand Jury selected the Senior Day-Care (Building 440A) as one of its general reviews for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Senior Day-Care on November 7, 2002;
- Toured the facilities and grounds with the Assistant Director of the Senior Day-Care Center;
- Were briefed on the Senior Day-Care operations, including transportation, food and programs;
- Inspected the building and grounds;
- Reviewed previous Grand Jury reports for year's 1999/2000, 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to this building.

#### **Background**

The Senior Day-Care Center provides, at a nominal cost, a much-needed day care facility for seniors. Similar to Child Day-Care, this is a place where the seniors who cannot be left without supervision may be placed in supervised care during the day. The seniors participate in activities that provide mental and physical stimulation. Meals served are provided by the Senior Nutrition Center.

The premises are clean, well maintained, and inviting. The premises, which are fully utilized, have an exercise room, social room, and a quiet room furnished with recliners and afghans.

The parking lot for the Senior Day-Care Center is shared with the Psychiatric Health Facility, Community Services/Senior Nutrition Center, and the Public Health Department. The poor condition of the parking lot poses a safety hazard for seniors and disabled individuals. Parking is limited, directional markings go against traffic flow and overall surface is in poor condition.

## **Findings**

F1. The building exterior paint is peeling.

***Response to F1: The respondent agrees with the finding.***

F2. The parking lot surface is severely checked and cracked, and poses a potential danger to users and potential liability to the county.

***Response to F2: The respondent agrees with the finding.***

F3. The parking lot directional markings contradict the parking lot traffic flow and are severely faded.

***Response to F3: The respondent agrees with the finding.***

F4. The parking lot size is inadequate and limits the full use of the facility.

***Response to F4: The respondent agrees with the finding.***

## **Recommendations**

R1. The building exterior should be painted.

***Response to R1: The recommendation has not yet been implemented, but will be implemented in the future.*** General Services will complete painting the building exterior by April 30, 2004.

R2. The parking lot should be repaired and resurfaced.

***Response to R2: The recommendation has not yet been implemented, but will be implemented in the future.*** A detailed topographic survey has been conducted of the parking lot together with the existing drainage structures. Improvement plans together with technical specifications are nearly complete with bid solicitation to follow. Repair and resurfacing of the parking lot is scheduled for completion September 30, 2003.

R3. Directional arrows should show proper traffic flow.

***Response to R3: The recommendation has not yet been implemented, but will be implemented in the future.*** The parking lot together with drive will receive new striping (paint) as a component of the parking lot repair and resurfacing project as described in R2 above. This is scheduled for completion September 30, 2003.

**Commendations**

The Grand Jury commends the Senior Day-Care Staff for apparent outstanding job performance. The staff appears to be competent, courteous and caring to the seniors.

**Responses Required for Findings**

F1 through F4

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Department of Community Services

**Responses Required for Recommendations**

R1 through R3

El Dorado County Board of Supervisors  
El Dorado County Department of General Services  
El Dorado County Department of Community Services

## **PUBLIC BUILDINGS AND PROPERTY COMMITTEE**

*Superior Court – Building 321  
3221 Cameron Park Dr.  
Cameron Park*

### **Reason for the Report**

The Grand Jury selected the Superior Court - Cameron Park as a general review for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made unannounced visits to the Superior Court – Cameron Park on December 12, 2002 and March 24, 2003;
- Toured the facilities and grounds with the Clerk and the Bailiff ;
- Was briefed on the various judicial operations of the facility;
- Inspected the building and grounds;
- Spoke informally with various staff members;
- Reviewed previous Grand Jury reports and found no findings or recommendations for year's 1999/2000, 2000/2001 and 2001/2002.

### **Background**

The building was constructed in 1982. The building served as a criminal court until January 2003 when it was converted for use as a civil court. This change was made to consolidate the criminal courts at the main courthouse in Placerville.

The landscaping appears modern and adequately maintained. The overall condition of the building is acceptable, however, there are some outstanding maintenance issues that need to be addressed as listed in the findings.

### **Findings**

F1. The prisoners' entrance door is rusting.

***Response to F1: The respondent agrees with the finding.*** The County agrees that the identified condition exists. However, the existence of the condition does not render the building deficient or unsuitable as a court facility. As the grand jury's Background section points out, the "overall condition of the building is acceptable." The County provides

necessary and suitable facilities for the courts, taking into account the reasonable needs of the court and the county's fiscal condition. The County also maintains the facilities at an appropriate and adequate level to support the designed level of service. None of the conditions described in the grand jury's findings present a significant threat to life, safety or health; there is no unacceptable seismically hazardous condition; and the conditions alone or in their totality are not significant to the functionality of the facility, so the conditions do not render the court facility legally deficient.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund.

F2. The prisoners' entrance wooden door frame is deteriorating.

***Response to F2: The respondent agrees with the finding.*** Please see response to F1, above.

F3. The downspouts at rear of the building are not connected to the drainage field pipes.

***Response to F3: The respondent agrees with the finding.*** Please see response to F1, above.

F4. The rain gutters are full of leaves and pine needles.

***Response to F4: The respondent agrees with the finding.*** Please see response to F1, above.

F5. The HVAC vents/registers are dirty.

***Response to F5: The respondent agrees with the finding.*** Please see response to F1, above.

F6. The courtroom ceiling tiles are water stained.

***Response to F6: The respondent agrees with the finding.*** Please see response to F1, above.

F7. The courtroom and office area walls have cracks.

***Response to F7: The respondent agrees with the finding.*** Please see response to F1, above.

F8. The drinking fountain fascia plate is improperly attached.

***Response to F8: The respondent agrees with the finding.*** Please see response to F1, above.

### **Recommendations**

R1. The prisoners' entrance door should be repaired and painted.

**Response to R1: The recommendation has not yet been implemented but will be implemented in the future.** General Services has scheduled the repair and painting of the door to be completed in September, 2003. However, it should be noted that the grand jury found that the overall condition of the building is “acceptable” in its current state.

The existence of the identified condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury’s findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will *soon* undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes fund. R2. The prisoners’ entrance door frame should be repaired.

**Response to R2: The recommendation has not yet been implemented but will be implemented in the future.** General Services has scheduled the repair and painting of the door to be completed in September, 2003. Please see the response to R1, above.

- R3. The downspouts at rear of the building should be reconnected to the drainage field pipes.

**Response to R3: The recommendation has not yet been implemented but will be implemented in the future.** Rain gutters and downspouts are inspected, cleaned and repaired every fall in accord with an annual maintenance schedule. The County expects that the condition will be inspected and appropriate work completed by the end of October, 2003. Please see the response to R1, above.

- R4. The rain gutters should be cleaned.

**Response to R4: The recommendation has not yet been implemented but will be implemented in the future.** Rain gutters and downspouts are inspected, cleaned and repaired every fall in accord with an annual maintenance schedule. The County expects that the condition will be inspected and appropriate work completed by the end of October 2003. Please see the response to R1, above.

- R5. The HVAC vents/registers should be periodically cleaned.

**Response to R5: The recommendation has been implemented** Court facilities are periodically cleaned according to a maintenance schedule. The vents should be cleaned in September 2003. Please see the response to R1, above.

R6. The source of the water staining the ceiling tiles of the courtroom should be investigated and repairs should be made.

***Response to R6: The recommendation has been implemented.*** The roof was repaired in January 2003. The County does not believe that there is any active leak at this time. Please see the response to R1, above.

R7. The cracks in the courtroom and office area walls should be repaired.

***Response to R7: The recommendation has not been implemented, but will be implemented in the future.*** General Services will consider adding this recommendation to its Capital Improvement Project. It is not clear when any repair will be completed. As explained in the response to R1, above, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriated maintenance standard it wishes to fund. It is impossible to predict at this time how long this process will take nor when it will be completed. All maintenance and repair issues will be affected by this negotiation. Please see the response to R1, above.

R8. The drinking fountain fascia plate should be properly reattached.

***Response to R8: The recommendation will not be implemented because it is unreasonable.*** Court facilities are periodically cleaned, maintained and repaired according to a maintenance schedule. The drinking fountain fascia should be rectified in September 2003. Please see the response to R1, above.

### **Responses Required for Findings**

F1 through F8

El Dorado County Department of General Services  
Chief Executive Officer for Superior Court

### **Responses Required for Recommendations**

R1 through R8

El Dorado County Department of General Services  
Chief Executive Officer for Superior Court



## **PUBLIC BUILDINGS AND PROPERTY**

*Superior Court – Building 220  
495 Main Street  
Placerville*

### **Reason for the Report**

The Grand Jury selected the Superior Court Building as one of its general reviews for 2002/2003.

### **Scope of the Investigation**

The members of the Grand Jury:

- Made an unannounced visit to the Superior Court on November 21, 2002;
- Received an extensive facilities and grounds tour by the Court Operations Supervisor;
- Were briefed on the various judicial operations of the facility;
- Inspected the building and grounds;
- Spoke informally with various staff members;
- Reviewed previous Grand Jury reports.

### **Background**

The Superior Court Building was built in 1912. Over the years the building has undergone renovations while still trying to maintain the historic construction of the original building.

The current condition of the building exterior is in need of maintenance and repair. While some exterior wall tiles are damaged, the roofline corbel brackets and tiles are loose, missing or in poor repair. Walls and windows on the shaded side of the building have mold and mildew growing and the window and doorframes are rusting. The metal fire escape structure is rusting and its landings are dirty. The plastered-wall area around basement windows is deteriorating. The awning over the rear door entry is damaged.

Parking is very limited and inadequate. Several parking spaces have been removed from use, due to the danger of falling corbel brackets and tiles which further complicates the parking situation.

The premises' interior appear clean but far from adequate for its usage. The security checkpoint is inadequate for the heavy traffic situations. The lobby areas are too small. They are used as waiting area for the courts, conference area for clients/attorneys, juries, and the public. In addition, office areas are extremely cramped and lack storage space. Air circulation is inconsistent and makeshift throughout the building. The heating and cooling system (HVAC) is inadequate during heavy usage. In addition to the HVAC, window heating/cooling units, personal fans and space heaters are also used throughout the building. These conditions, combined with asbestos in the walls, result in some

employees believing the working environment is unhealthy. However, environmental tests have not substantiated these beliefs. Employees are concerned because they believe the restroom configuration results in vandalism by the public and is an inconvenience for them.

## **Findings**

F1. The roofline corbel brackets and tiles are loose, missing, and/or in poor repair.

***Response to F1: The respondent agrees with the finding.*** The County agrees that the identified condition exists. However, the existence of the condition does not render the building deficient or unsuitable as a court facility. The County provides necessary and suitable facilities for the courts, taking into account the reasonable needs of the court and the county's fiscal condition. The County also maintains the facilities at an appropriate and adequate level to support the designed level of service. None of the conditions described in the grand jury's findings present a significant threat to life, safety or health, there is no unacceptable seismically hazardous condition, and the conditions alone or in their totality are not significant to the functionality of the facility, so the conditions do not render the court facilities legally deficient.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund.

F2. Valuable parking space has been lost, due to the danger of falling corbel brackets and tiles.

***Response to F2: The respondent agrees with the finding.*** Please see the response to F1, above. It is assumed that the finding refers to those parking spaces around the immediate exterior of the main street courthouse which were blocked from use when a fence was erected to protect the public from the possibility of injury from a falling corbel or tile.

F3. The parking lot is inadequate.

***Response to F3: The respondent disagrees wholly with the finding.*** Please see the response to F1, above. It is not clear what "parking lot" the finding refers to; the parking spaces surrounding the exterior of the main street courthouse which are reserved for court personnel, or the adjoining city lot which is open to the public. The county has no obligation to provide parking spaces for a courthouse. The limited amount of public parking downtown is a problem caused by and suffered by every commercial, governmental and private activity in Placerville. The limited parking situation downtown has existed for years, and while inconvenient, it has not rendered the historic Main Street Courthouse unsuitable for its designed level of service. The statute governing the transfer of court facilities from the county to the court requires that the county transfer only those parking spaces of comparable convenience, number and type as were made available for court use as of October, 2001.

F4. Mold and mildew are growing on the shaded exterior side of the building walls and windows.

***Response to F4: The respondent agrees with the finding.*** Please see the response to F1, above.

F5. The door and window frames on the exterior shaded side of the building are rusting.

***Response to F5: The respondent agrees with the finding.*** Please see the response to F1, above.

F6. The fire escape metal structure is rusting and the landings are dirty.

***Response to F6: The respondent agrees with the finding.*** Please see the response to F1, above.

F7. The exterior plaster area around basement windows is deteriorating.

***Response to F7: The respondent agrees with the finding.*** Please see the response to F1, above.

F8. Some exterior wall tiles are damaged.

***Response to F8: The respondent agrees with the finding.*** Please see the response to F1, above.

F9. The awning over the rear door entry is damaged.

***Response to F9: The respondent agrees with the finding.*** Please see the response to F1, above.

F10. The handicap sign on the front wall near the sidewalk is bent outward and is a potential liability.

***Response to F10: The respondent agrees with the finding.*** Please see the response to F1, above.

F11. The security checkpoint is inadequate room for heavy traffic situations.

***Response to F11: The respondent disagrees partially with the finding.*** Please see the response to F1, above. The county agrees that space in the main street courthouse is generally cramped, but disagrees with the characterization that the amount of space used by the court for security is “inadequate.” The cramped space has not rendered the main street facility unsuitable for its designed level of service.

F12. The space in the three lobbies is inadequate for current use.

**Response to F12: The respondent disagrees partially with the finding.** Please see the response to F1, above. The county agrees that space in the main street courthouse is cramped, but disagrees with the characterization that areas used as lobbies are “inadequate.” The facilities provided by the County to the Court are suitable for their purpose and support the designed level of service. The County and the Superior Court have always worked together to efficiently utilize the space in the court facilities.

F13. The office areas are extremely cramped and lack storage space.

**Response to F13: The respondent agrees with the finding.** Please see the response to F1 and F12, above.

F14. No fire protection sprinkler systems or smoke detectors exist throughout the building.

**Response to F14: The respondent agrees with the finding.** Please see the response to F1, above.

F15. Some fire extinguisher locations are not clearly marked.

**Response to F15: The respondent agrees with the finding.** Please see the response to F1, above.

F16. No fire drills are held.

**Response to F16: The respondent agrees with the finding.** Fire drills are a court function, not a county responsibility. Because the county is required to either agree or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary. Please see the response to F1, above.

F17. The light diffusers on some lighting fixtures are sagging and ill fitted. In addition, one diffuser is missing in the CASA children’s room.

**Response to F17: The respondent agrees with the finding.** Please see the response to F1, above.

F18. Air circulation is inconsistent and makeshift throughout the building.

**Response to F18: The respondent disagrees wholly with the finding** County General Services has assessed the air circulation many times and has found that it meets standards. Please see the response to F1, above.

F19. Several employees are concerned about the perceived unhealthy working environment in the building.

***Response to F19: The respondent agrees with the finding.*** Respondent has no knowledge of whether several court employees have expressed to the grand jury that they currently perceive their working environment as unhealthy. Because the county is required to either agree or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary. Court employees have complained about air quality in the past. When General Services receives such a complaint, it makes an assessment and consults with *County* Risk Management, Environmental Management, and in some cases an outside consultant. The environment in the main street courthouse has been found to meet standards. Please see the response to F1, above.

- F20. Employees are concerned that the restroom configuration results in vandalism by the public and inconvenient for them.

***Response to F20: The respondent agrees with the finding.*** Respondent has no knowledge of whether court employees have expressed to the grand jury that they are concerned about vandalism in the restroom and they feel the restroom is inconvenient. Because the county is required to either agree or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary. Please see the response to F1, above.

### **Recommendations**

- R1. Roofline corbel brackets and tiles should be replaced or repaired.

***Response to R1: The recommendation will not be implemented because it is unreasonable.*** The roofline corbel brackets and tiles have been in a similar condition for a number of years. General Services has previously researched the availability and cost of replacing them, and has found that since the brackets are internal to the building, modifications or repairs would be complex and costly. Budget considerations resulted in the decision that replacement would be unreasonable. Public safety has been protected by erecting a fence outside the building to keep people away from any danger.

The existence of the identified condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can determine the appropriate maintenance standard it wishes to fund. R2. Adequate parking should be provided

***Response to R2: The recommendation will not be implemented because it is unwarranted and unreasonable.*** The recommendation does not identify what type of parking should be

provided, nor for what use. The parking spaces around the exterior of the main street courthouse have been reserved for court personnel for some time. Some of these spaces were lost when the county erected a fence to protect against the potential danger of falling corbels or tiles. As noted above, the limited area available for parking in the general vicinity of the main street courthouse is a problem caused by and suffered by every commercial, governmental and private activity in Placerville. Limited parking downtown is a problem for court workers, jurors, litigants, attorneys and others who use the courthouse. The parking situation has existed for years, and while inconvenient, it has not rendered the historic Main Street Courthouse unsuitable for its designed level of service. The parking situation does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine whether to supply additional parking spaces.

- R3. Mold and mildew should be removed from the exterior building walls and windows.

**Response to R3: The recommendation will not be implemented because it is unwarranted and unreasonable.** Mold or mildew on the exterior of an older building is a common situation. The existence of this condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service. The County is about to commence negotiations with the State to transfer ownership of local court facilities to the State. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund

- R4. Rusted exterior door and window frames should be properly repaired and maintained.

**Response to R4: The recommendation will not be implemented because it is unwarranted and unreasonable.** The existence of this identified condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund. R5. Rusted fire escape metal structures should be properly repaired and maintained.

**Response to R5: The recommendation will not be implemented because it is unwarranted and unreasonable.** The existence of this condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund.

R6. The exterior plaster area around windows should be properly repaired.

**Response to R6: The recommendation will not be implemented because it is unwarranted and unreasonable.** The existence of the identified condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund.

R7. Damaged exterior tiles should be replaced.

**Response to R7: The recommendation will not be implemented because it is unreasonable.** This item is similar to R1, above, since the exterior tiles and the corbels have remained in this condition for a number of years. Please see the response to R1, above. Replacement of the exterior tiles would be quite costly and the County has decided it would be unreasonable to replace them because of budget constraints. The existence of the identified condition does not present a significant threat to life, safety or health, nor does it present an unacceptable seismically hazardous condition, nor does it alone, or when combined with the other conditions identified in the grand jury's findings, significantly affect the functionality of the facility. The existence of this condition does not mean that the building cannot sustain its designed level of service.

As the result of recent legislative enactments, the County will soon undertake the process of negotiating an agreement with the State to transfer ownership of local court facilities to the State, and for future payments representing historic maintenance and operations costs. Once the facility is transferred, the State will assume the obligation to maintain it, and can then determine the appropriate maintenance standard it wishes to fund

- R8. The rear door awning should be repaired.

***Response to R8: The recommendation has been implemented.*** The awning was replaced in May 2003 as part of the county's ongoing maintenance.

- R9. The bent handicap sign on the front wall near the sidewalk should be replaced.

***Response to R9: The recommendation has not been implemented, but will be implemented in the future.*** General Services has ordered a new sign, and expects that the work will be completed by September 30, 2003.

- R10. Fire extinguisher locations should be clearly marked.

***Response to R10: The recommendation has not been implemented, but will be implemented in the future.*** General Services has ordered new fire extinguisher signs, and expects that the work will be completed by September 30, 2003.

- R 11. Fire drills should be periodically conducted.

***Response to R11: The recommendation has not been implemented because it is unwarranted and unreasonable.*** The County no longer provides risk management nor loss prevention services to the Superior Court, and cannot unilaterally conduct fire drills for court personnel. However, the County Risk Management Department has invited the Court Safety Coordinator to its next meeting concerning how to conduct an emergency evacuation drill, and can assist the County in any fire drill it undertakes.

- R12. The lighting fixtures diffusers should be properly installed and/or replaced as necessary.

***Response to R12: The recommendation has not been implemented, but will be implemented in the future.*** General Services expects to replace the damaged diffusers by September 30, 2003 as part of ongoing maintenance.

- R13. Air circulation should be reviewed to ensure a healthy working environment.

***Response to R13: The recommendation will not be implemented because it is not warranted.*** The air circulation in the main street courthouse has been addressed by General Services many times in the past and has been found to meet standards.



R14. When juvenile cases are on calendar, restrooms should be monitored.

***Response to R14: The recommendation will not be implemented because it is unwarranted and unreasonable.*** The Sheriff's Department provides bailiffs in courtrooms, and contracts with the Superior Court for other security services in the courthouse and its perimeter. The court determines the appropriate level of security within its budget constraints. The County is in the process of working with the Superior Court on security issues, but it cannot unilaterally commit to monitor specific areas without Court concurrence.

**Responses Required for Findings**

F1 through F20	El Dorado County Board of Supervisors El Dorado County Department of General Services Chief Executive Officer for Superior Court
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**Responses Required for Recommendations**

R1 through R14	El Dorado County Board of Supervisors El Dorado County Department of General Services Chief Executive Officer for Superior Court
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# County of El Dorado

OFFICE OF AUDITOR-CONTROLLER

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JOE HARN, CPA  
Auditor-Controller

BOB TOSCANO  
Assistant Auditor-Controller

August 29, 2003

Honorable Jerald Lasarow  
El Dorado County Superior Court  
1354 Johnson Boulevard  
South Lake Tahoe, CA 96150

Your Honor:

The following is my response to the recently issued 2002-2003 Grand Jury report:

#### Public Records Act

- F1. Although the complaint was made against the County Counsel it should have been directed to the Auditor-Controller.

#### Auditor-Controller's Response

I disagree wholly with the finding. The complainant was frustrated with the County Counsel because the County was exerting attorney/client privilege over the information contained on the Remy, Thomas, and Moose invoices related to the general plan litigation.

- F2. The Public Record Act request was submitted in February 1999 but the complaint was made in February 2002, this request had not been satisfactorily answered.

#### Auditor-Controller's Response

I disagree wholly with the finding. The finding states that "this request had not been satisfactorily answered." Actually, the information provided by the Auditor-Controller to the complainant exceeded the requirements of the California Public Records Act. The complainant was a party to a law suit and seeking a judgement in excess of \$1,300,000 from the County. Since the complainant was involved in significant litigation with the County that was directly related to her California Public Records Act request I sought and received the advice of the County Counsel before my responses were delivered to the complainant. The Auditor-Controller mailed responses to the complainant in February and March 1999, and December 2001.

- F3. On December 31, 2001, the Auditor-Controller furnished an accounting spreadsheet to the complainant showing all payments made to The Firm, but never identified a payment associated with The Firm's start date of summer of 1995.

#### Auditor-Controller's Response

I agree with the finding. The relevance of the finding is not apparent. The California Public Records Act does not require the County to identify payments to individuals that are suing the County for \$1,300,000. Since my three responses to this individual's information request exceeded the requirements of the California Public Records Act.

- R1. The Auditor-Controller should respond to Public Record Act requests in a timely manner and with accurate information.

Auditor-Controller's Response

I agree with the recommendation. The recommendation was implemented nine years ago. How the Grand Jury determined the need to include this recommendation is a mystery. The Grand Jury has not identified one instance where the Auditor-Controller's Office has failed to comply with a Public Record Act request in a timely manner and with accurate information.

- R2. The Auditor-Controller should not attempt to shift responsibility to other departments.

Auditor-Controller's Response

I agree with the recommendation. The recommendation was implemented nine years ago. How the Grand Jury determined the need to include this recommendation is a mystery. The California Public Records Act does not require the County to distribute records that are attorney/client privileged. The complainant, who was party to a \$1,300,000 law suit against the County, was disappointed with County Counsel's determination that certain records related to the law suit were attorney/client privileged.

City of South Lake Tahoe Transient Occupancy Tax

- F24. On several occasions this committee requested the El Dorado County Auditor-Controller for assistance to investigate the initial complaint filed. The requests were denied.

Auditor-Controller's Response

I disagree partially with the finding and I disagree fully with what the finding intends to imply. At a meeting with the Grand Jury on January 27, 2003, I offered to make an on site revenue review of at least one property management firm of the Grand Jury's choosing that manages vacation rentals within the unincorporated area of the County. I followed this offer up with a letter confirming my offer to "audit" a property management firm. Further, I told individual members of the Grand Jury that they should consider requesting the County Tax Collector perform the requested "TOT audit" because her office has experience conducting the County's "TOT audits".

Conflict of Interest/Employee Evaluations

- R4. The Auditor-Controller should be held accountable for reviewing all financial aspects for all issues that have a major financial impact on the County.

Auditor-Controller's Response

I do not have the authority to implement this recommendation. Former members of the Board of Supervisors, the County Counsel, the former Human Resources Director, and various former CAOs have opposed including the Auditor-Controller in most major financial decisions. In various closed sessions, former Supervisors committed the County to new retirement benefits that will cost the County tens of millions of dollars without any input from the Auditor-Controller. To this day, I am unaware of any meaningful financial analysis that was conducted by any staff member to explain how these benefits were to be paid for. I am willing to implement this recommendation if the Board of Supervisors grants me the authority to do so.

County Fiscal Issues/Procedures

F1. Required funding for CalPERS has dramatically increased due to legislative formulae.

Auditor-Controller's Response

I disagree wholly with the finding. Required funding for COVERS has dramatically increased due to the former Board of Supervisors agreeing to provide to County managers and employees with huge increases in retirement benefits. Also, the annual earnings of CalPERS's investment portfolio have not met CalPERS's expectations in recent years.

F2. The Department of Social Services still has eleven deficit trust funds.

Auditor-Controller's Response

I disagree partially with the finding. All 17 of the Department of Social Services trust funds have a positive balance. The Department of Social Services has numerous trust funds that have positive unlocated differences.

F3. The Auditor-Controller's Office has not been consistent in the reporting of trust funds in deficit condition since 1988.

Auditor-Controller's Response

I disagree partially with the finding. During 1989, the previous Auditor-Controller transmitted a report to the Board of Supervisors that clearly described the lack of reconciliation of the County's trust funds. Twice during 1990, the previous Auditor-Controller transmitted reports to the Board of Supervisors that clearly described the lack of reconciliation of the County's trust funds. Upon receiving these reports, there is no evidence of any action taken by the then Supervisors or then Chief Administrative Officer to address the problem. I am unaware of any other communications regarding the trust fund reconciliation problem that took place from between 1988 and 1994, when I assumed the position of Auditor-Controller.

In June, 1996, I requested the then Director of Social Services, as I did every County Department Head, to verify that all of Social Services trust funds were reconciled. My request was never complied with by Social Services or by a number of other departments. Each year since 1996, the results of the annual request for trust reconciliations gradually improved with the significant exception of Social Services. Almost every year since 1996, the Director of Social Services has committed to having the trust funds reconciled "soon." Since February, 2001, the Board of Supervisors have received several reports describing problems with Social Services trust funds.

F4. Most County departments have Accounting Officers, but not professional accountants who understand the technical scope of the work.

Auditor-Controller's Response

I disagree partially with the finding. It is my opinion, that for many years, the Human Resources Department certified a number of unqualified individuals as eligible for financial management and professional level accounting positions. The past few years, however, in general, the results of recruitments have produced better qualified candidates.

- F5. The Auditor-Controller knew of the alleged trust account deficit since 1995; obviously prior to requesting the Board of Supervisors to authorize covering the account deficit from General Fund monies (\$958,000).

Auditor-Controller's Response

I disagree wholly with the finding. In 1996, 1997, 1998, and 1999, I received written assurances from the Director of Social Services that he would direct his staff to work towards the reconciliation of the trust funds in question. Until early 2001, I was unaware that any of the trust funds contained unreconcilable negative differences. Since February, 2001, this matter has been brought to the Board's attention on many occasions.

- F6. The Board of Supervisors reviewed and agreed to transfer allocated monies during 2002/2003 for the deficit trust funds without a full investigation by the Auditor-Controller.

Auditor-Controller's Response

I disagree wholly with the finding. Hundreds of hours were spent investigating these trust funds in an attempt to reconcile them. Further, prior to the transferring the monies to recognize the \$958,000 deficit balance problem, the County's independent CPA firm and the GAO's Office agreed with the recommendation.

- F7. **All but the Department** of Social Services have deficit trust funds that are now accounted for and balanced.

Auditor-Controller's Response

I disagree wholly with the finding. A number of County Departments have trust funds that are not balanced or accounted for. None of the "problems" are of the magnitude of the problems at the Department of Social Services.

- R2. All financial issues, which have potential impact regarding the County's finances, should receive constant and sedulous attention from the Chief Administrative Officer and the Auditor/Controller's Office.

Auditor-Controller's Response

I agree with the recommendation. However, I believe that neither the Chief Administrative Officer nor I have the authority to implement this recommendation. The Chief Administrative Officer may be aware of attorney-client privileged information that is related to a significant financial matter that is upcoming. At this time, to the best of my knowledge, the Chief Administrative Officer has not been authorized to share this type of information with me. In order for the Chief Administrative Officer to share attorney-client privileged information with me, he would need authorization from the Board of Supervisors.

Honorable Jerald Lasarow  
El Dorado County Superior Court  
RE: Responses to Grand Jury Report  
August 29, 2003  
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- R3. County Counsel and the Auditor-Controller should communicate on matters impacting the future of the County legally and financially with review and execution by the Chief Administrative Officer and the Board of Supervisors.

Auditor-Controller's Response

I agree with the recommendation. However, I believe that neither the County Counsel nor I have the authority to implement this recommendation. The County Counsel may be aware of attorney-client privileged information that is related to a significant financial matter that is upcoming. At this time, to the best of my knowledge, the County Counsel has not been authorized to share this type of information with me. In order for the County Counsel to share attorney-client privileged information with me, he would need authorization from the Board of Supervisors.

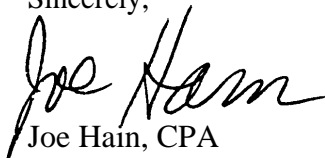
- R4. Director of Human Resources, the Auditor-Controller, and the Chief Administrative Officer should study and recommend to the Board of Supervisors a new job classification series that would encourage the recruitment of more qualified accounting personnel in the Departments.

Auditor-Controller's Response

The recommendation has not yet been implemented, but will be implemented in the future if the Chief Administrative Officer and Director of Human Resources cooperate with the implementation of this recommendation.

If you have any questions, please call me at 621-5456.

Sincerely,



Joe Hain, CPA  
Auditor-Controller

cc: Laura Gill, CAO  
Board of Supervisors

**RESPONSE TO 2002/2003 EL DORADO COUNTY GRAND JURY REPORT  
CRIMINAL JUSTICE COMMITTEE  
CITIZEN COMPLAINT #C34-02/03  
August 22, 2003**

**Respondent: Gary L. Lacy, District Attorney, El Dorado County**

**Preface**

The Grand Jury is a valuable tool for the citizens of a county to ensure that their elected and appointed representatives are conducting themselves appropriately. Additionally, it allows some oversight of the operations of government and its effectiveness. As with any tool, the Grand Jury can be useful and productive when used properly. When used improperly however, it can be harmful and destructive. The success of a Grand Jury is dependant upon the ability of its members to focus on relevant issues and fend off the influences of special interests and agendas. Additionally, the Grand Jury must be able to skillfully use all available means within the law to conduct its investigations. The assistance of an attorney who is well versed in the law, investigative techniques, and the internal processes of local government is therefore critical to the effectiveness of the Grand Jury's investigation and their final report.

The importance of this legal assistance has long been recognized and as a result the California Legislature enacted a law which requires training for the grand jury. California Penal Code Section 914(b) states in relevant part:

“...the court in consultation with the district attorney, ... shall ensure that a grand jury that takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.”

**The 2002/2003 Grand Jury did not receive appropriate training** within the meaning of Penal Code Section 914(b). Since 1995 when I was sworn in as District Attorney of El Dorado County, and every year thereafter, I have participated at the request of the El Dorado County Superior Court with training for the new incoming grand jurors. This is the first year that neither I nor anyone associated with my office has participated in this training because the courts did not contact me as required by Penal Code Section 914(b). The first opportunity I had to introduce myself to this grand jury was when I called them requesting a meeting with them which was several months into their term. At that time I explained the importance and availability of legal counsel for the grand jury in their work and offered to provide any assistance they might desire for investigative training. Their lack of training in investigations and their lack of proper legal counsel is quite evident in the type of investigation this grand jury conducted and the report it submitted.

This report was prepared by the Criminal Justice Committee of the El Dorado County Grand Jury. The Criminal Justice Committee has made some egregious errors in the course of its investigation. These errors were not all innocent mistakes but some resulted from extreme negligence if not an intentional malicious act. This work of this committee has been manipulated and the committee may well have misled the rest of the Grand Jury membership. Shortly after my testimony before the Grand Jury, I sent a letter to the foreperson alerting him of this fact but it apparently was not deemed important. Attached as **Exhibit A** is a copy of this letter.

In my response to this portion of the 2002/2003 Grand Jury report, I am quite critical of the Grand Jury Criminal Justice Committee. Wherever I make reference to the "Grand Jury." I am referring the Criminal Justice Committee of the Grand Jury and not the entire membership unless otherwise specified.

## **FINDINGS:**

**F1.** *The District Attorney involved himself in "Friend's" Court proceedings with the Complainant.*

**The respondent disagrees partially with the finding.**

The name of my "Friend" is Jeanette McDonald and the "Complainant's" name is David Gallo. There is a very long history of court proceedings between Ms. McDonald and Mr. Gallo regarding child custody and child support issues. Mr. Gallo has filed false police reports on several occasions and he has also filed numerous frivolous and harassing motions with the court which required Ms. McDonald to appear in court over 30 times in the last five years. A visiting judge from another county finally recognized what Mr. Gallo was doing through his abuses of the legal processes and on March 5, 2001, declared Mr. Gallo to be a "**Vexatious Litigant**" (see **Exhibit B** attached). This is defined in section 391 of the California Code of Civil Procedure as a person who:

*In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.*

Mr. Gallo has harassed and intimidated anyone who attempted to assist Ms. McDonald, including me. This report he has made to the Grand Jury is a continuation of these tactics.

I did sign a proof of service for some court papers Ms. McDonald had to file due to a frivolous motion Mr. Gallo filed. Because of his past conduct in harassing anyone who



got involved in assisting Ms. McDonald (including subpoenaing these people into court for no apparent reason), I offered to serve the paperwork by mail upon Mr. Gallo and sign the necessary proof of service.

The declaration I signed was due to the fact I was a witness to certain conduct by Mr. Gallo which was relevant to issues in the civil court proceedings associated with the child custody matter. Therefore, I did not voluntarily interject myself into the proceedings in this regard but rather was a witness who became involved because I heard certain statements made by Mr. Gallo.

Since the child custody matters were civil proceedings, the fact I served and signed a proof of service **did not** create a possible conflict of interest with the handling of criminal matters which are our responsibility. Additionally, the possibility that I may become a witness in a civil case **did not** create a possible conflict of interest for the same reasons.

Normally the District Attorney is the legal advisor to the Grand Jury. However, if the Grand Jury is investigating the District Attorney, as in this case, the Grand Jury must either proceed without legal counsel or ask the court to appoint outside legal counsel. The fact that the Grand Jury believed there were potential conflicts of interest here would seem to indicate the Grand Jury was acting without the advice of legal counsel. A competent attorney should have recognized there was no potential for a conflict of interest.

It is an unfortunate aspect of this Grand Jury investigation and a very poor reflection on the integrity of their entire process that the Grand Jury did not care to investigate the credibility of Mr. Gallo upon whom they heavily relied for their information. I informed the Grand Jury of the fact that Mr. Gallo was declared to be a "Vexatious Litigant" as well as the fact he had engaged in other aberrant conduct including filing false police reports, but they disregarded these facts or did not understand the importance of them. This information received very little comment from the Grand Jury in their report other than a very brief reference on page 21 that Mr. Gallo was found to be a "vexatious litigant." Additionally, Mr. Gallo was ultimately determined by the El Dorado County Superior Court to be in need of psychological counseling.

**F2.** *The District Attorney's Office continues to handle "Friend's" son's criminal cases resulting in the appearance of impropriety to the public.*

**The respondent disagrees partially with the finding.**

While it is true that Ms. McDonald's son's cases continue to be prosecuted by this office, I have no direct or indirect input, contact, or knowledge of the cases. Other prosecutors in our office have been instructed to keep me completely isolated from these cases and to

prosecute these cases using the same standards and guidelines as any other cases we handle.

This method of handling cases which have the appearance of a “conflict of interest” is in accordance with the statewide standard procedure developed by the California Attorney General’s Office for handling cases of this nature. To ensure that we were acting in conformity with the law, we have referred these cases to the California Attorney General’s Office (which prosecutes any cases deemed to be a conflict of interest for a county prosecutor’s office) for their review. They have consistently maintained that it is **not a conflict of interest** for our office to handle these cases as long as the protocol is followed and I am isolated from the cases. For this reason, the Attorney General’s Office has refused to assume prosecution responsibilities for the cases. Attached as **Exhibit C** is a letter from the California Attorney General’s Office stating there **is no conflict of interest** in our office prosecuting the cases and consequently, the Attorney General will not accept prosecution.

There is no other reasonable or legal option for handling these cases. If we were to fail to prosecute them, there would be no prosecutions at all of this person, and that is not an option I am even willing to consider.

The irony here again is that I have no desire whatsoever to protect Ms. McDonald’s son and I even assisted law enforcement on one occasion in having him arrested when he had an outstanding warrant for his arrest.

I delivered to the Grand Jury a copy of the Attorney General’s guidelines for handling these types of cases and explained the process we used in the El Dorado County District Attorney’s Office to handle Ms. McDonald’s son’s cases. The Grand Jury however, either chose to ignore it or did not understand how such cases must be handled.

**F3.** *The District Attorney did not follow his office procedures relating to the logging in and custody of “Friend’s” weapon.*

**Respondent disagrees wholly with the finding.**

The firearm belonging to Ms. McDonald which I took possession of and logged into a safe in the District Attorney’s Office, was done in accordance with the law and office procedures. The log clearly shows when it was received and when it was returned. Further, paperwork filed with the court is consistent with these facts. Attached as **Exhibit D** is a copy of a court document showing Ms. McDonald turned her firearm over to me pursuant to the court order and consistent with the entry on the property log I prepared which the Grand Jury cited on page 23 of their report.

The Grand Jury, despite several trips to my office to see our processes, still was not aware that we had two secure locations in the office wherein property is stored. The Grand Jurors who visited my office were reported by my staff to be very secretive about what they were seeking, and consequently, did not ask the right questions of my staff. They only asked about our main evidence room and looked for evidence of the firearm being logged into the main evidence room. Further, while my testimony before the Grand Jury explained the differences in the types of property we store and the different procedures used to log them in, the Grand Jury never inquired about the safe I have in my office and where the weapon was logged into. The Grand Jurors assumed the firearm must have been logged into the main evidence room if it was logged in at all. I did not know this was a particular issue with them until the report came out. Consequently, I was not able to clarify the matter for them. It is quite apparent the Grand Jury did not understand the procedures we utilize in logging and storing property and their attempt to be secretive caused them to miss some important information as was apparent in many aspects of their investigation.

**F4.** *The District Attorney has \$1,254.00 in his personal office safe for eight years and cannot explain this.*

**The respondent disagrees partially with the finding.**

I have \$1,254.00 in the safe in my personal office but I know precisely where it came from and why it is there. This again is another example of how the Grand Jury only asked limited questions and therefore only received limited responsive information. The Grand Jury then proceeded to make assumptions based upon incomplete information and the result is a completely inaccurate finding. To further explain how this happened, which should give greater insight into the faulty investigative techniques used by this Grand Jury, I will describe the sequence of events during their investigation.

In response to the Grand Jury's inquiry about the safekeeping of the firearm (see F3 above), I provided a copy of my records for the property which had been placed in the safe. Some of the Grand Jurors noticed the entry in the record about the money. When I testified, I was asked about this money and at that time did not recall what it was for since it had been logged into the safe in 1995. After testifying, and wanting to ensure that every question the Grand Jury had about this money was answered, I returned to my office, confirmed the money was still in the safe and determined that it was evidence from an old death penalty murder case that had been reversed on appeal and was retried by our office. I called the Grand Jury on the telephone and advised them the money was still in place. The Grand Jury did not ask me during the telephone conversation what the money was from or why it was in the safe. From this, the Grand Jury states that I "cannot explain" anything about the money. The Grand Jury either was so inept that it could not ask the right questions to get the information it needed or just jumped to conclusions

when it did not have the necessary information to develop the conclusion regardless of the availability of the information.

**F5.** *The District Attorney does not maintain a complete and proper evidence log of the contents of his personal office safe.*

**The respondent disagrees wholly with the finding.**

During my testimony before the Grand Jury, I discussed the safe in my office and a general description of its contents. I mentioned that there were files in my safe which were not listed on the property log. These were personnel files with confidential information that I stored in the safe in a separate compartment. They do not constitute stored evidence or property and therefore are not listed on the report. This should not be equated with any deficiency in the record keeping for the stored property. The evidence and other property which has been placed into the safe is completely accounted for and the other space in the safe is merely used for a secure storage place for confidential files just as a locked file cabinet would be used.

**F6.** *The District Attorney hired "Friend" to work in his office on several occasions, most recently December 2002, while involved in a personal relationship with her.*

**The respondent agrees with the finding.**

For many years, the El Dorado County District Attorney's Office has had need for transcription services to transcribe taped interviews of suspects and witnesses. Meeting this need has required this office to hire extra-help employees to transcribe the tapes. Qualifying for the job required not only the job skills but also the clearance of a criminal background check since we are a law enforcement agency. The background check is conducted by our criminal investigators and is a lengthy, laborious and expensive process. Ms. McDonald was hired as an extra-help (extra-help employees do not get any benefits such as vacation, paid sick time, health or dental insurance, etc. and do not become permanent employees) employee after passing the background investigation. She was well qualified for the work in that she had previously been employed by the District Attorney's Office in the Family Support Division and worked her way up through the ranks to a supervisory position. She had been transcribing tapes for our office for some time before December of 2002. When the crisis developed with the staffing shortage, I asked her if she would help out as an extra-help employee (at the lowest pay step of her classification) until we were able to hire additional permanent employees. We had sufficient funds in our budget to pay for this since we had considerable salary savings as a result of the vacancies.

*F7. The District Attorney's "Friend" working in his office has created a perception of favoritism and an adverse effect on the staff morale.*

**The respondent disagrees partially with the finding.**

I am not personally aware of what specific complaints if any, the Grand Jury received about adverse effects on morale that Ms. McDonald working on a temporary basis as an extra-help employee may have caused. I am certainly sensitive to staff morale and I realize that the morale of a few employees may have been effected. However, I took every reasonable precaution to ensure that Ms. McDonald was not given any special consideration or treatment. I was faced with a crisis situation which required immediate attention and my options were very limited by the budget crisis and the new Chief Administrative Officer of the county. I proceeded in the fashion that I felt would be in the best interest of the safety of the citizens of this county and would have the least financial impact on the taxpayers. That is, to get our clerical staff some immediate assistance to keep the work flowing and reduce the possibility of overworking my employees and thereby possibly subjecting the county to additional financial liability.

Here is how our office found itself in a difficult situation as far as the employee staffing. In the later part of 2002, the clerical functions of the El Dorado County District Attorney's Office were severely impacted through the loss of several clerical personnel. These individuals either retired, left for other jobs, or moved out of the area. Their departure left the staffing of the clerical unit down by approximately 30%. At the same time, the county was anticipating a serious financial situation as a result of the budget deficit on the state level. Additionally, the county had a new Chief Administrative Officer who was trying to become familiar with the county departments and was being very cautious in authorizing any new employees to be hired in anticipation of possible layoffs of county personnel.

This "perfect storm" of events left my office in a dire situation wherein our workload was increasing while our staffing was decreasing without the ability to hire replacements. Several employees had stress related claims associated with the workload demands being placed upon them. The only viable option I saw was to hire extra-help employees. The catch however, was to find people who were not only qualified and could pass the background check, but who also had sufficient knowledge of our operations and technology systems to be able to quickly integrate into the working structure.

I was well aware my critics and political enemies would use this as an issue against me, but I felt I had no other choice if I were to keep the office running as efficiently and productively as possible.

**F8.** *The District Attorney had an ex parte communication with a Court Commissioner in violation of Rule 5-300 of the California Rules of Professional Conduct for attorneys.*

**The respondent disagrees wholly with the finding.**

During the ongoing child custody matters I alluded to earlier, Ms. McDonald had primary custody of the daughter she shares with Mr. Gallo. This daughter's name is Holly. Mr. Gallo had visitation on a periodic basis with Holly. On July 8, 1999, Mr. Gallo sought and received a restraining order from the El Dorado County Superior Court against Ms. McDonald. Ms. McDonald was served with a copy of the restraining order upon picking her daughter up from a visitation with Mr. Gallo. The copy of the restraining order she was served with is attached as **Exhibit E**. This restraining order prohibited Ms. McDonald from any contact with Holly.

The following day, I went over to the court to find out what allegations Mr. Gallo had made to support the issuance of this restraining order. Upon locating the court's copy of the restraining order (attached **Exhibit F**), I discovered that the copy of the restraining order in the court's file (**Exhibit F**) was **different than** the copy which had been served upon Ms. McDonald (**Exhibit E**). The orders differed in paragraph 4b, in that the court's copy of the order (**Exhibit F**) has Holly's name crossed out whereas, Ms. McDonald's copy of the order (**Exhibit E**) has Holly's name without a line through it. As will be noted, both of the orders are "Certified," meaning they are declared by the court and by law to be a "true copy", of the documents which are in the court file. **Exhibit E was certainly not a "true copy" of Exhibit F.**

These differences in the wording of the orders meant that under the terms of **Exhibit E**, Ms. McDonald who was the primary custodial parent of her daughter Holly, would be prohibited from having any contact with her daughter. Under the terms of **Exhibit F**, Ms. McDonald would still be lawfully allowed to have contact with her daughter.

I then requested to speak with Commissioner Emery who was the one who issued the orders to find out which one was the correct order and how there could be **two different "Certified" copies of the same order**. Commissioner Emery was not sure how the different orders resulted and said he would get back to me with the information. He later called me and explained that it was a clerical error that resulted in the different orders and Holly's name should have been deleted from both orders.

Shortly thereafter, Commissioner Emery recused himself from any further dealings with the custody and child support issues between Ms. McDonald and Mr. Gallo contending that I had engaged in improper ex parte communications with him about the court orders. I was contacted by Superior Court Judges Kingsbury and Keller who inquired about the communication I had had with Commissioner Emery. After explaining my actions and expressing that the contact was for administrative purposes only (which is an allowable

basis upon which to contact a judicial officer about a case according to State Bar rules and California case law), I felt the judges agreed with me and decided not to take any further action.

In November 2000, the California State Bar contacted me as a result of a complaint Mr. Gallo had made about this contact with Commissioner Emery. The California State Bar conducted a thorough investigation into the matter to determine whether I had engaged in improper ex parte communications with a judicial officer, in violation of State Bar Rules. If I had engaged in an ex parte communication which was found to be in violation of the State Bar rules, I would have been subject to discipline. In April 2003, the State Bar sent me a letter indicating their investigation would be closed and the “matter does not warrant further action.” This means the **California State Bar found that I did not engage in an ex parte communication in violation of State Bar Rules with the Commissioner.** Attached as **Exhibit G** is a copy of the State Bar’s letter concluding their investigation.

This investigation was conducted by the statewide organization responsible for ensuring the proper professional conduct of attorneys. They have investigators and attorneys who are specially trained and experienced in this work on their staff. They are very knowledgeable about the legal and ethical aspects of these types of communications.

When I provided the reports the State Bar relied on for their investigation along with their letter clearing me of any wrongdoing to the Grand Jury, the Grand Jurors appeared to be disinterested. It became clear that the Grand Jury had their own agenda and would not be swayed by the State Bar’s investigation and findings. The Grand Jury, without the legal training or knowledge of what constitutes an improper ex parte communication, reached a conclusion which is contrary to the State Bar and contrary to the law. What the Grand Jury has consistently failed to realize, but the California State Bar readily recognized, is that not all ex parte communications with a judicial officer by a member of the State Bar are improper under the State Bar Rules. The communication must be “upon the merits of a contested matter” to be in violation of Rule 5-300. In this case, the discussion about the court orders with the Commissioner was not “upon the merits of a contested matter,” but was administrative to correct the clerical error on one of the court orders. Presumably, Judges Kingsbury and Keller who spoke with me about this communication recognized this as well since it is the correct application of the law.

**F9.** *The District Attorney misled a Court Commissioner with a false statement of fact in violation of Business & Professions Code, Section 6068 (d).*

**The respondent disagrees wholly with the finding.**

It is unknown what the Grand Jury is referring to by this finding other than the reference on page 28 of the report wherein the Grand Jury states that I am reported to have told Commissioner Emery that I asked another Judge to vacate the Commissioner's order. This is absolutely untrue. I never asked another Judge to vacate Commissioner Emery's order nor did I say or imply that I had asked another Judge to vacate his order. I don't know where this is coming from but if Commissioner Emery has said that I told him these things, I suggest Commissioner Emery's credibility be scrutinized. In this regard, I would note that shortly after this incident with the conflicting court orders, Commissioner Emery was fired from his job as a Court Commissioner. I have no idea if his termination was in any way related to this incident but it is a matter of record that the California State Bar suspended Greg Emery's (former Commissioner Emery) license to practice law for some type of misconduct. I have never been disciplined by the State Bar of California for any type of misconduct.

*F10. The District Attorney misrepresented facts regarding his communication with the Commissioner to the State Bar of California and to this Grand Jury.*

**The respondent disagrees wholly with the finding.**

This is absolutely an untrue statement and relates to F8 and F9 above. I have never intentionally misrepresented any facts to either the State Bar of California or the Grand Jury. As I have shown thus far and will continue to show, this Grand Jury was completely inept in their investigation of these matters and even more inept in their interpretation of the information they collected. It also appears the Grand Jury intentionally refused to consider any evidence which contradicted their desired outcome. By misconstruing, misinterpreting and misunderstanding the evidence they did collect, and misunderstanding the applicable law, the Grand Jury has reached findings which are inconsistent with the truth. I have never in my 20 years of practice as an attorney and my 18 years as a prosecutor, seen a more egregious abuse of a government process designed to ferret out the truth for the benefit of the public.

*F11. The District Attorney sent a letter to the Grand Jury misquoting Rule 5-300 of the California Rules of Professional Conduct for attorneys.*

**The respondent disagrees partially with the finding.**

Upon the conclusion of my Grand Jury testimony, I was given the standard admonition given to all witnesses about not discussing my testimony with anyone until the



investigation was concluded. There was however, some additional information I wanted to provide to the Grand Jury regarding the law on ex parte communications with judicial officers. I felt this was necessary because it became apparent during their questioning of me that the Grand Jurors were unfamiliar with the proper application of this rule of Professional Conduct and the California Court decisions interpreting this rule. I decided to send the Grand Jury this information in a letter. Normally, I dictate my letters to my secretary who types and prepares the letter for mailing. In this case however, I was unable to have my secretary assist me with preparing the letter because it would have violated the Grand Jury admonition. I therefore typed my own letter to the Grand Jury. The letter I prepared is attached as **Exhibit H**. The second paragraph of the letter is the subject of this finding by the Grand Jury.

In preparing the letter, I intended to quote a portion of a widely recognized legal publication from Witkin which helped explain the application of Professional Rule of Conduct 5-300. The page from the legal publication I was quoting from is attached as **Exhibit I**. In preparing the letter to the Grand Jury, the second paragraph of **Exhibit H** was supposed to be a quote from paragraph (b) of **Exhibit I**. This quote however, due to a clerical error on my part, was incomplete and would appear on its face to be an incorrect statement of the law.

It is clear to a reasonable person that this was an honest mistake and certainly not an intentional act to mislead or deceive as the Grand Jury would characterize it. I confess that I am guilty of poor typing and letter preparation skills. To illustrate that anyone, including this Grand Jury can make clerical errors, I would point out that **the Grand Jury misquoted my misquote** in their report. Note that on page 29 of the report in the third full paragraph, the Grand Jury misquotes a portion of my letter as follows:

“He wrote, ‘A member may directly or indirectly communicate with or argue to a judge or judicial officer, except...’”.

My letter which is **Exhibit H**, says:

““An attorney may directly or indirectly communicate with or argue to a judge or judicial officer on the merits of a contested matter pending before that judge or judicial officer, only in the following circumstances:””

**F12.** *Sworn testimony by the District Attorney and other witnesses conflicts in important and significant details.*

**The respondent is unable to agree or disagree with this finding because I was not present to hear whether there were discrepancies in the testimony taken.**

The first observation I would make is that the events which were investigated by this Grand Jury and reported in this report occurred some 4-6 years ago. There are always some discrepancies in the statements of witnesses observing the same recent incident and the discrepancies increase as time passes. This fact is even set forth in a jury instruction for trial jurors. When taken in consideration with the numerous errors this Grand Jury made in collecting and interpreting other evidence in this investigation, I seriously question the validity of this finding. For example:

The credibility of the Grand Jury's main witness, the Complainant (David Gallo), was not scrutinized by this Grand Jury and they appeared to accept as true everything Mr. Gallo told them. What the Grand Jury did not find out or take an interest in was the fact Mr. Gallo has raised these same issues to the El Dorado County Superior Court, the California State Bar Association and the California Attorney General's Office on numerous occasions and each time they were found to be without merit. Mr Gallo has filed a false police report alleging that Ms. McDonald and I were conspiring to kidnap and murder Ms. McDonald's daughter and blame Mr. Gallo for it. On June 16, 2003, Commissioner Gregory Dwyer of the El Dorado County Superior Court found that Mr. Gallo filed this false report for "no legitimate purpose other than to harass Ms. McDonald." As result, Commissioner Dwyer determined Mr. Gallo needed psychological counseling (see **Exhibit J**, pages 9-11). On July 26, 2000, the Honorable Harold Bradford, Judge of the Superior Court for El Dorado County, found that Mr. Gallo prepared under penalty of perjury and filed with the court, false financial documents (see **Exhibit K**).

These factors bearing on credibility are important to any jury in a criminal or civil trial or any judge who is hearing evidence in a case, and they **should have been important** to this Grand Jury as well.

Another witness whose credibility should have been scrutinized is former El Dorado County Superior Court Commissioner Greg Emery. Mr. Emery appears to have also testified before the Grand Jury. Mr. Emery has no particular affinity for me since I embarrassed him by bringing to the public's attention the serious error he made in issuing two substantially different copies of the same restraining order. Not only were these orders with differing terms issued, but they were "Certified" by the court as being true and accurate copies of the documents in the court's file. After this was brought to light, Mr. Emery was terminated from his position as a Superior Court Commissioner (again, I don't know if this was related to his termination). After the termination, the State Bar of California suspended Mr. Emery's license to practice law for misconduct.

A former prosecutor with the El Dorado County District Attorney's Office and my opponent in last November's election for District Attorney, Erik Schlueter was also a witness for the Grand Jury. Mr. Schlueter's bias and interest in testifying is obvious. I terminated Mr. Schlueter from his employment as a prosecutor with this office due to incompetence and insubordination for his involvement with the "Women Helping

Women” illegal pyramid scheme. The termination was upheld by the El Dorado County Civil Service Commission on a unanimous vote.

This Grand Jury on at least one occasion that I am aware of, obtained conflicting statements from witnesses because they did not ask the same questions of each of the witnesses on the same topic. For example:

When questioned during my testimony before the Grand Jury about the reasons I hired Ms. McDonald as an extra-help employee, I informed the Grand Jurors about the crisis situation with the short staffing levels in my clerical units. I testified as to the total number of vacant clerical positions which included both Legal Secretary and Legal Office Assistant classifications. The Grand Jury then subpoenaed Mary Kimbell-Smith, an employee with the El Dorado County Department of Human Resources. They questioned Ms. Kimbell-Smith on the same topic but asked her very different questions. Naturally, the Grand Jurors received a different answer. From this, the Grand Jury tries to make it look like I lied to them (see page 26, the second full paragraph). The attached **Exhibit L** is an email I received from Mary Kimbell-Smith after the Grand Jury report came out on this issue wherein she makes comment on this fact.

On other occasions, the Grand Jury got the evidence completely wrong and consequently drew improper conclusions which resulted in negative comments about Ms. McDonald or me. Some examples are:

Ms. McDonald owned a handgun which was a .380 caliber Smith & Wesson pistol. This is the only handgun she has owned, but due to information the Grand Jury received from Mr. Gallo, the Grand Jury was convinced Ms. McDonald owned more than one handgun and had kept that information from the court. In questioning her, the Grand Jury kept referring to a .22 caliber handgun. Ms. McDonald thought (but was not sure) her handgun was a .38 caliber (as indicated on page 25 of the Grand Jury report) but was certain it was not a .22 caliber gun.

When I was questioned by the Grand Jury on this issue, I informed them Ms. McDonald was not very knowledgeable about guns but that her pistol was a .380 caliber Smith & Wesson. I knew this since I was with her when she purchased it and I had taken her out to teach her how to shoot it.

The Grand Jury in their report on this on page 25, makes it look like Ms. McDonald was not being truthful with someone, although who is not clear.

In the fourth full paragraph on page 25, the **Grand Jury makes a false statement which is contradicted by the Court record.** Here, the Grand Jury grossly misstates the evidence and erroneously attributes some possible wrongdoing to

Ms. McDonald as a result. The Grand Jury states: "In addition, the "Friend" may have been in Contempt of Court for noncompliance with the April 3, 2000 Temporary Restraining Order because she did not deliver all of her weapons to the Sheriff's Department." Attached is **Exhibit M** which is a copy of a Minute Order from a proceeding on April 26, 2000, presided over by the Honorable Joseph B. Harvey, Judge of the El Dorado County Superior Court, relating to the gun and the restraining order. In it Judge Harvey clearly states that Ms. McDonald's "gun shall remain in her residence and she shall not carry the gun in her possession." The court never ordered Ms. McDonald to turn her gun into the Sheriff's Department as claimed by the Grand Jury. This is just one of the many examples of how this Grand Jury has completely botched their investigation and damaged their credibility.

I don't know all of the witnesses who testified before the Grand Jury nor do I know all of the evidence they considered because of the secrecy of the Grand Jury process. The errors committed by this Grand Jury as set forth above, are likely only the tip of the iceberg. I could go on with many more examples, most of which are supported by documentary evidence in my possession. I believe the case has already been made however. The inescapable conclusion that anyone who analyzes the conduct of this Grand Jury should reach is that the Grand Jury made some serious errors in this investigation and report. Whether the conduct of the Grand Jury was intentional or negligent, the result is the same. In attacking me the Grand Jurors have manipulated, misconstrued and misinterpreted evidence. Further, they have ignored any evidence which undermined their mission of trying to discredit me. Ironically, their work has discredited this Grand Jury and the product of their year's worth of work.

***F13. Portions of the District Attorney's testimony and documentation were found to be lacking in truth and veracity.***

**The respondent disagrees wholly with the finding.**

**I did not testify falsely before the Grand Jury, nor did I provide any false documentation to them.** If I had, it would have been a crime and the Grand Jury should have indicted me. The fact that they did not indict me nor even mention in their "Recommendations" anything about misconduct on my part, speaks volumes to the **complete lack of any truth to this finding.** This Grand Jury is lacking in truth and veracity. Had any other governmental agency or body other than the Grand Jury committed the acts this one did, there would undoubtedly be sanctions suffered by the guilty parties.

## **Recommendations:**

**R1:** *The District Attorney should establish proper written procedures for all cases involving potential conflict of interest.*

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

As discussed above, the California Attorney General's Office publishes a manual for the handling of cases involving a potential conflict of interest. In conjunction with the current written procedures the District Attorney's has, these types of cases are dealt with according to the proper legal and ethical guidelines.

**R2:** *The District Attorney should establish written procedures pertaining to his "personal" safe whereby all items are properly logged in and out with the appropriate detailed information.*

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

Written procedures are created to ensure that everyone is aware of what procedures are to be followed and there is consistency in the way each person conducts business. Since I am the only person who knows the combination to the safe and I am the only one who has access to the safe, written procedures are not necessary. I currently have a procedure which logs the property in and out of the safe and this process has worked well for many years.

**R3:** *The personal safe and evidence locker should be audited annually.*

**The recommendation has not yet been implemented, but will be implemented in the future.**

We will establish a written procedure for the auditing of the evidence room of the District Attorney's Office as well as the safe in my office. This audit will be conducted at the beginning of each fiscal year.

**R4:** *All cash received should be maintained in "double" custody.*

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

There is currently a procedure in place within the District Attorney's Office for all cash which is received by the office to be counted by two different employees before it is stored for safe keeping. It is unclear what exactly the Grand Jury means when it says

“maintained in ‘double’ custody.” The current procedures are sufficient to ensure the accountability for cash received.

*R5. To avoid the appearance of conflict of interest, the District Attorney should set up a written protocol regarding cases whenever the accused is related to or has a relationship with an employee in the District Attorney’s Office, including the District Attorney.*

**The recommendation requires further analysis.**

I am very concerned about the appearance of a conflict of interest in the work we perform. While the law does not recognize an appearance of a conflict of interest as a legal basis for recusal of a prosecutor’s office, the El Dorado County District Attorney’s Office has always attempted to avoid appearances of a conflict of interest. The California Attorney General’s Office has set forth standards for how a prosecutorial agency should deal with such cases and our office has always abided by those standards. We have not had a problem in the past regarding the application of these standards but I am open to the possibility of improving our handling of cases wherein either an appearance or an actual conflict of interest exists. I will explore whether a separate office policy tailored to our specific office is helpful. This question will be resolved within six months.



OFFICE OF THE  
**DISTRICT ATTORNEY**  
EL DORADO COUNTY, CALIFORNIA  

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**GARY L. LACY, DISTRICT ATTORNEY**

**MEMORANDUM**

**SEAN O'BRIEN**  
Chief Assistant District Attorney

**PAUL S. SUTHERLAND**  
Assistant District Attorney  
Placerville

**HANS M. UTHE**  
Assistant District Attorney  
South Lake Tahoe

**DAVID J. KREPS**  
Chief Investigator

**TERESE V. CLUSIAU**  
Office Manager  
Criminal Division

**TERESA WHEELER**  
Victim/Witness Coordinator  
Placerville

**SUE MEYER**  
Victim/Witness Coordinator  
South Lake Tahoe

**TO:** Richard Brunner, Foreman, El Dorado County Grand Jury 2002/2003  
**FROM:** GARY L. LACY, District Attorney  
**DATE:** May 28, 2003  
**RE:** Supplemental Information to Grand Jury Testimony

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Subsequent to my testimony before your Grand Jury on May 21, 2003, I had an opportunity to review various documents, records, and materials which lead me request another meeting to provide clarifying and supplemental information relevant to areas of your inquiry. Due to the fact some of the questions misstated foundational facts, some of the questions erroneously assumed certain foundational information to be true, and some questions involved topics which I either did not have any knowledge of or did not have a clear recollection of due to the length of time which has passed, I could not provide responses which were as clear, concise and accurate as I would like. Based upon telephone discussions with both you and Louise Closs, it was arranged I could appear again before your Grand Jury on June 4, 2003, at 11:00 a.m..

In preparation for my further testimony, Ms. Closs requested that I prepare a summary of the information which I wish to cover. While a summary is not feasible, I have prepared a binder with various documents which I wish to discuss and which should be relevant to your overall understanding of the issues which were raised during my testimony on May 21, 2003. While the contents of this binder are not all inclusive of the information and material which is available for your consideration, it should provide you greater insight into the sources of your information, the validity of your previously acquired information and the legal basis upon which you should evaluate the performance of my duties as District Attorney.

I maintain that every aspect of the operations of the El Dorado County District Attorney's Office have been in full compliance with the law and the principles of ethics required of prosecutors. Further, I have not abused my authority as District Attorney nor have I abused the authority of the District Attorney's Office. I recognize based upon the nature of the questioning that there are potentially serious issues which must be investigated with respect to the operations of the District Attorney's Office. The confidence and respect of the citizens of this community in the integrity of their District Attorney's Office is

Please Reply To:

■ 515 Main Street  
Placerville, CA 95667  
(530) 621-6472  
fax (530) 621-1280

□ 1360 Johnson Blvd., Ste. 105  
South Lake Tahoe, CA 96151  
(530) 573-3100  
fax (530) 544-6413

VEB  
www.c... dorado.ca.us/eldoda

**EXHIBIT A**

maintained by a thorough and fair investigation. However, I am concerned about the objectivity and impartiality of some of the members of the Grand Jury in this investigation. The manner in which many of the questions were posed to me along with the erroneous assumption of certain untrue facts leads me to believe some of the members are predisposed to the fact I have engaged in some type of misconduct and are focused on trying to prove it rather than ferreting out the true facts.

For example, Ms. Closs made inappropriate editorial comments during some of her questions in regards to conflict of interest issues wherein she gratuitously commented, "Oh like you did in the Getchel case?". As referenced in Exhibit 21, this matter has been fully explored by a previous Grand Jury and found to have been handled in accordance with the law. Additionally, when I explained that both Judge Harold Bradford of the El Dorado County Superior Court and the California Attorney General did not find that there was sufficient legal basis to recuse the El Dorado County District Attorney's Office Family Support Division from handling the *Gallo vs. McDonald* child support case, Ms. Closs would not or could not accept the fact that the law does not require nor even recommend recusal of our office in that case (see Exhibit 4, pages 78-82). She even went so far as to comment inappropriately that Judge Bradford is under investigation for some unknown type of misconduct (apparently in an attempt to discredit Judge Bradford's judgement). An allegation is not proof of the charge but again, Ms. Closs appears to have that mind set, even as to Judge Bradford. Finally, when I explained I had assigned other prosecutors in the office to handle any case which involved David Gallo, Jeanette McDonald, or Edward McDonald, Ms. Closs kept repeating, "But they answer to you, don't they?", or "You are still their supervisor aren't you?". This, as is illustrated in Exhibit 4, pages 23-24, is still not a proper basis upon which to recuse an entire prosecutor's office if an "ethical wall" can insulate a single prosecutor from a particular case or cases. This applies even if the prosecutor is the District Attorney.

Over zealous advocacy is appropriate in the courtroom where there is an adversarial process, but it is inappropriate in a fact finding process such as a grand jury investigation. Such advocacy amounting to leading, suggestive, and argumentative questions, combined with the interjection of incorrect facts and editorial comments can and does improperly influence the minds of other jurors. This often results in a conclusion in the minds of the grand jurors which was induced, not by the facts but by the persuasive abilities of the person leading the investigation.

Pursuant to Penal Code section 939.5, the foreman of the Grand Jury "shall direct any member of the grand jury who has a state of mind in reference to a case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire." I trust this has been done and that Ms. Closs and every member will abide by the law.

Upon review of these materials, please advise if there is any other information I can provide to help your Grand Jury fully understand the issues in this investigation. Thank you for your conscientious efforts in this matter.



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

MINUTE ORDER

FILED MAR 7 2001  
BY [Signature]  
Deputy

CASE NO: PD4254  
DATE: 03/02/01

DAVID GALLO VS. JEANETTE MCDONALD  
TIME: 11:00 DEPT: 12

HEARING: COURT'S MOTION RE TO DECLARE PETITIONER A VEXATIOUS  
LITIGANT

---

The Honorable HAROLD BRADFORD (assigned), presiding. Clerk: Kristeen  
R. Dehnen. Court Reporter: Sylvia L. Smith, CSR #1398. Bailiff:  
Michael Koring.

DAVID GALLO not present.

JEANETTE MCDONALD present in Pro Per.

JEANETTE MCDONALD appears by telephone with the express authorization  
of the Court.

COUNTY OF EL DORADO present by counsel DAVID BURNS, Deputy District  
Attorney.

Having advised the Court by telephone that he is experiencing car  
trouble and that he will not be able to appear until 4:00 p.m. or 4:30  
p.m. today, plaintiff DAVID GALLO requests this matter be continued  
until he is able to appear. The Court denies plaintiff's request to  
continue this matter and orders this matter to proceed as schedule.

Defendant JEANETTE MCDONALD presents argument.

The Court reads for the record plaintiff's RESPONCE [sic] TO MOTION BY  
JUDGE BRADFORD CLAIMING PETITIONER VEXATIOUS LITIGANT.

THE COURT FINDS:

Plaintiff confuses ex parte communications with ex parte hearings.

At no time has the Court conducted an ex parte communication in this  
matter.

Plaintiff has filed unmeritorious documents causing delay and  
harassment and has misused the court process.

Plaintiff DAVID GALLO is a vexatious litigant.

Plaintiff has shifted from litigating this matter to attacking the  
Court, the District Attorney Family Support Division, and the

EXHIBIT B

defendant JEANETTE McDONALD.

THE COURT ORDERS:

Plaintiff DAVID GALLO is prohibited from filing any documents with the El Dorado County Superior Court without the express written consent of the Presiding Judge of the El Dorado County Superior Court

Violation of this Court order may result in a finding of contempt of court.

The Clerk shall not file any documents in this matter from the plaintiff DAVID GALLO without the express written consent of the Presiding Judge of the El Dorado County Superior Court.

Motion Granted.

Date Signed ----- 3/5/01 -----

Judge's Signature ----- *Suzanne N. Kingsbury PJ* -----  
Honorable SUZANNE N. KINGSBURY  
Presiding Judge of the Superior Court  
for the Honorable HAROLD BRADFORD  
Assigned Judge of the Superior Court

**BILL LOCKYER**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

Public: (916) 324-5267  
Telephone: (916) 324-5261  
Facsimile: (916) 324-2960

March 18, 2002

Sean O'Brien  
Chief Assistant District Attorney  
1360 Johnson Blvd., Ste. 105  
South Lake Tahoe, CA 96151

RE: People v. Eddie T. MacDonald

Dear Mr. O'Brien:

This letter is to confirm our recent conversation concerning your office's pending prosecution of Mr. Eddie T. MacDonald. As I indicated on the phone, the Attorney General's Office will not be accepting the prosecution of Mr. MacDonald's case in that there is insufficient evidence of a conflict of interest to warrant your office recusing itself. Accordingly, no further action in this matter is contemplated.

Sincerely,

*Jo Graves*

JO GRAVES  
Senior Assistant Attorney General

For **BILL LOCKYER**  
Attorney General

EXHIBIT C

1 Jeanette McDonald  
3441 Mira Loma Drive, #24B  
2 Cameron Park, California 95682  
(530) 676-4618  
3 Respondent, In Pro Per

99 JUL 17 11:10 AM  
SUPERIOR COURT  
BY \_\_\_\_\_ DEPUTY

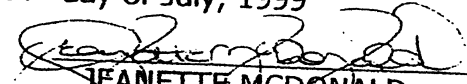
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF EL DORADO**

10 In re  
11 DAVID M W GALLO,  
12 Petitioner,  
13 and  
14 JEANETTE MCDONALD,  
15 Respondent

: Case No PD-4934  
: **DECLARATION & NOTICE OF**  
: **COMPLIANCE -RELINQUISHMENT OF**  
: **FIREARMS**

16  
17 I, Jeanette McDonald, respondent in the above titled action, declare that I have  
18 surrendered all firearms in or subject to my immediate possession or control, pursuant  
19 to the Order to Show Cause and Temporary Restraining Order filed July 8, 1999 by  
20 Petitioner David Gallo, and personally served on me on July 12, 1999, receipt of which  
21 is attached hereto and incorporated by reference.  
22  
23  
24  
25

26 Dated this 14<sup>th</sup> day of July, 1999

27   
28 JEANETTE MCDONALD  
IN PRO PER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): ADDRESS WHERE YOU WANT MAIL SENT: DAVID GALLO 4907 MT AUKUM RD Placerville CA 95667 TELEPHONE NO. (Optional): 530 644-3238 FAX NO. (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY JUL 08 1999 DEPUTY
SUPERIOR COURT OF CALIFORNIA COUNTY OF PLACER Family Law Department STREET ADDRESS: 495 Main Street MAILING ADDRESS: Placerville, CA 95667 CITY AND ZIP CODE: BRANCH NAME:		
PERSON SEEKING ORDER: DAVID GALLO		
PERSON TO BE RESTRAINED: JEANNETTE McDONALD		
TYPE OF ACTION (check all that apply) <input type="checkbox"/> DISSOLUTION/LEGAL SEPARATION/NULLITY <input checked="" type="checkbox"/> DOMESTIC VIOLENCE PREVENTION ACT <input type="checkbox"/> JUVENILE <input type="checkbox"/> UNIFORM PARENTAGE ACT <input type="checkbox"/> DISTRICT ATTORNEY FAMILY SUPPORT <input type="checkbox"/> OTHER (specify):		
ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER (CLETS) (Domestic Violence Prevention)		CASE NUMBER: PD.

THIS ORDER SHALL EXPIRE AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX BELOW UNLESS EXTENDED BY THE COURT.

- To (name of person to be restrained): JEANNETTE McDONALD
- A court hearing has been set at the time and place indicated below. You may attend this hearing, with or without an attorney, to give any legal reason why the orders requested in the attached application should not be granted. If you do not appear at this court hearing, the court may grant the requested orders for up to three years without further notice to you.

Date: 7-28-99 Time: 8:30 am Dept.: 5 Room:

3. If child custody or visitation is an issue in this motion and in dispute, the parties are ordered to attend orientation and mandatory custody mediation services as follows:

Date: JUL 08 1999

GREGORY S. EMERY

SIGNATURE OF JUDICIAL OFFICER

TEMPORARY RESTRAINING ORDER

THE COURT FINDS:

4. a. The restrained person is (name): JEANNETTE McDONALD

Sex:  M  F Ht.: 5' Wt.: 140 Hair color: BRN Eye color: GRN Race: W Age: 38 Birth date: 2/20/62

b. The protected person(s) are (list names of all persons to be protected by this order):

DAVID GALLO GARRETTE GALLO  
 HOLLY GALLO MICHELLE MARTIN  
 CATHY GALLO

UNTIL THE TIME OF HEARING, IT IS ORDERED:

- RESTRAINING ORDERS The restrained person
  - shall not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy the personal property of, disturb the peace of, keep under surveillance, or block movements in public places or thoroughfares of:
    - the person seeking the order
    - the other protected persons listed in item 4b

(Orders continued on reverse)

EXHIBIT E

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  
 ADDRESS WHERE YOU WANT MAIL SENT:  
 DAVID GALLO  
 4907 MT AUKUM RD  
 Placerville CA 95667

TELEPHONE NO. (Optional): 530 644-3238 FAX NO. (Optional):  
 ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA IN AND FOR PLACERVILLE COUNTY Superior Court  
 STREET ADDRESS: Family Law Department  
 MAILING ADDRESS: 495 Main Street  
 CITY AND ZIP CODE: Placerville, CA 95667  
 BRANCH NAME:

PERSON SEEKING ORDER: DAVID GALLO

PERSON TO BE RESTRAINED: JEANNETTE McDONALD

TYPE OF ACTION (check all that apply):  
 DISSOLUTION/LEGAL SEPARATION/NULLITY  UNIFORM PARENTAGE ACT  
 DOMESTIC VIOLENCE PREVENTION ACT  DISTRICT ATTORNEY FAMILY SUPPORT  
 JUVENILE  OTHER (specify):

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER (CLETS)  
 (Domestic Violence Prevention)

FOR COURT USE ONLY  
 FILED  
 99 JUL -8 AM 8:1  
 PLACERVILLE COUNTY SUPERIOR COURT  
 BY: [Signature] .DEP

CASE NUMBER:  
 PD -4934

THIS ORDER SHALL EXPIRE AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX BELOW UNLESS EXTENDED BY THE COURT.

- To (name of person to be restrained): JEANNETTE McDONALD
- A court hearing has been set at the time and place indicated below. You may attend this hearing, with or without an attorney, to give any legal reason why the orders requested in the attached application should not be granted. If you do not appear at this court hearing, the court may grant the requested orders for up to three years without further notice to you.

Date: 7-28-99 Time: 8:30 am Dept.: 5 Room:

3. If child custody or visitation is an issue in this motion and in dispute, the parties are ordered to attend orientation and mandatory custody mediation services as follows:

Date: JUL 08 1999

[Signature]  
 SIGNATURE OF JUDICIAL OFFICER

THE COURT FINDS: TEMPORARY RESTRAINING ORDER

4. a. The restrained person is (name): JEANNETTE McDONALD

Sex:  M  F Ht.: 5' Wt.: 140 Hair color: BRN Eye color: GRN Race: W Age: 38 Birth date: 2/20/62

b. The protected person(s) are (list names of all persons to be protected by this order):

DAVID GALLO  
~~GILLY GALLO~~ GABRIELLE GALLO  
 CATHY GALLO MICHELLE MARTIN

UNTIL THE TIME OF HEARING, IT IS ORDERED:

- RESTRAINING ORDERS The restrained person
  - shall not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy the personal property of, disturb the peace of, keep under surveillance, or block movements in public places or thoroughfares of:
    - the person seeking the order
    - the other protected persons listed in item 4b

119

(Orders continued on reverse)

EXHIBIT F



THE STATE BAR  
OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639

OFFICE OF THE CHIEF TRIAL COUNSEL  
ENFORCEMENT

TELEPHONE: (415) 538-2000  
TDD: (415) 538-2231  
FAX: (415) 538-2220

DIRECT DIAL: (415) 538-2345

April 16, 2003

**PERSONAL AND CONFIDENTIAL**

Gary Lee Lacy  
District Attorney of El Dorado County  
515 Main St.  
Placerville, CA 95667

RE: 00-O-10834

Dear Mr. Lacy:

This letter is sent to you based upon information that you are not currently represented by counsel in this matter. If this is incorrect, please advise me within **five** days so that future communications may be directed to your counsel.

The State Bar has completed the investigation of the allegations of professional misconduct reported by and determined that this matter does not warrant further action. Therefore, the matter is closed.

The decision to close this matter is without prejudice to further proceedings as appropriate pursuant to rule 2603 of the Rules of Procedure of the State Bar of California.

Very truly yours,

Donald R. Steedman  
Supervising Trial Counsel

EXHIBIT G



OFFICE OF THE  
**DISTRICT ATTORNEY**  
EL DORADO COUNTY, CALIFORNIA  

---

---

**GARY L. LACY, DISTRICT ATTORNEY**

**MEMORANDUM**

**SEAN O'BRIEN**  
Chief Assistant District Attorney

**PAUL S. SUTHERLAND**  
Assistant District Attorney  
Placerville

**HANS M. UTHE**  
Assistant District Attorney  
South Lake Tahoe

**DAVID J. KREPS**  
Chief Investigator

**TERESE V. CLUSIAU**  
Office Manager  
Criminal Division

**TERESA WHEELER**  
Victim/Witness Coordinator  
Placerville

**SUE MEYER**  
Victim/Witness Coordinator  
South Lake Tahoe

TO: Richard Brunner, Foreman of the 2002/2003 EDC Grand Jury

FROM: GARY L. LACY, District Attorney

DATE: June 5, 2003

RE: Points and Authorities on Ex Parte Communications

I offer the enclosed information to your Grand Jury for discussion with your legal counsel on the issue of whether or not my discussions with Commissioner Gregory S. Emery concerning the *Order to Show Cause and Temporary Restraining Order* issued on July 8, 1999, constituted a violation of Rule 5-300 of the Rules of Professional Conduct for attorneys. I feel the submission of this information is necessary because it was readily apparent during my continued testimony before your Grand Jury yesterday that Grand Juror, Louise Closs does not fully understand the concepts of what constitutes an impermissible or improper ex parte communication. Combined with the fact Ms. Closs is a licensed member of the State Bar of California and thereby may be perceived by other members of the Grand Jury as having some expertise in this area, I request your legal counsel (preferably not Ms. Closs) be consulted on this issue to properly guide the members in their assessment of my conduct.

Rule of Professional Conduct 5-300(b) states: "An attorney may directly or indirectly communicate with or argue to a judge or judicial officer *on the merits* (emphasis added) of a contested matter pending before that judge or judicial officer, only in the following circumstances:"

A corollary of this rule applicable to judicial officers is contained in Canon 3B(7) of the Code of Judicial Ethics which states that judges must "Accord a full right to be heard to every person having a legal interest in the proceeding, but refrain from initiating, permitting or considering ex parte communications except as authorized." A case from the California Court of Appeals, *People v. Hernandez* (1984) 160 C.A.3d 725, at page 739 commented on this Canon by saying, "The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, *and other persons* (emphasis added) who are not participants in the proceeding, ..."

It should be noted that Exhibit 22 (which I submitted yesterday as an addition to the binder I presented to the Grand Jury) is a copy of a report from the

EXHIBIT 22

**Please Reply To:**

■ 515 Main Street  
Placerville, CA 95667  
(530) 621-6472  
Fax (530) 621-1280

□ 1360 Johnson Blvd., Ste. 105  
South Lake Tahoe, CA 96151  
(530) 573-3100  
Fax (530) 544-6413

WEB SITE:  
[www.co.el-dorado.ca.us/eldoda](http://www.co.el-dorado.ca.us/eldoda)



El Dorado County Sheriff's Department wherein a Deputy Lynn Weston engaged in an ex parte communication with Judge Douglas Phimister (who issued the restraining order at issue) about clarification of conflicting matters within the restraining order. This, as will be discussed, is an ex parte communication which would be prohibited by Canon 3B(7) if it were pertaining to the merits of the matter rather than an administrative act.

As the California Supreme Court said in *People v. Seaton* (2001) 26 Cal.4th 598, at page 695, "A trial court may engage in ex parte communications for 'scheduling, **administrative purposes**, (emphasis added) or emergencies that do not deal with substantive matters' ...".

The California court of Appeal in *Mathew Zaheri Corp. v. New Motor Vehicle Board*. (1997) 55 Cal.App.4th 1305, at page 1317 said with reference to the standards of improper ex parte communications: "The basic standard is stated several different ways, e.g., 'regarding any issue in the proceeding,' upon the merits of a contested matter,' concerning a pending or impending proceeding.' We do not assign significance to the varying terminology. ... It extends to **communication of information** (emphasis added) in which counsel knows or should know the opponents would be interested. Construed in aid of its purpose, we conclude the standard generally bars any ex parte communication by counsel to the decisionmaker of information relevant to the issues in the adjudication."

I submit my communication with Commissioner Emery did not fall within one of the listed "circumstances" of Rule 5-300. However, I maintain the communication was not "**on the merits**" of the contested matter. My contact with Commissioner Emery did not involve a communication of information. It was limited solely to ascertaining whether there was a clerical error in one of the copies of the restraining order since the copy of the order served on Ms. McDonald (contained in Ex. 12 of the binder I presented to the Grand Jury) had *Holly Gallo* named in item 4b yet, the copy of the restraining order in the courts file (contained in Ex. 13 of the binder I presented to the Grand Jury) had *Holly Gallo* stricken from item 4b.

Notwithstanding Ms. Closs' determination that I violated Rule 5-300 of the Rules of Professional Conduct, two El Dorado County Superior Court Judges and the California State Bar (which is the statewide agency responsible for disciplining attorneys for misconduct) found that my conduct was not in violation of the restrictions on ex parte communications with a judicial officer. This type of communication occurs each and every day as a necessity for law enforcement personnel seeking clarification of mistakes or confusing terms in court orders. It is a communication on an administrative matter which is permissible under both the Rules of Professional Conduct and the Code of Judicial Ethics.

View Witkin California Procedure. 4th Table of Contents

TABLE OF CONTENTS--Witkin California Procedure  
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ALBA WITKIN, executor  
of the estate of BERNARD E. WITKIN

CHAPTER I - ATTORNEYS

IX. RULES OF PROFESSIONAL CONDUCT  
F. Advocacy and Representation.  
6. Contact With Officials (Rule 5-300).

1 Witkin Cal. Proc. Attys § 523

[§ 523] Contact With Officials (Rule 5-300).

(a) *Gifts and Contributions.* An attorney may not directly or indirectly give or lend anything of value to a judge, official, or tribunal employee unless the personal or family relationship between the attorney and these individuals is such that gifts are customarily given and exchanged. However, an attorney may contribute to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to these contributions. (Rules of Professional Conduct, Rule 5-300(A).)

(b) *Communications With Judge.* An attorney may directly or indirectly communicate with or argue to a judge or judicial officer on the merits of a contested matter pending before that judge or judicial officer, only in the following circumstances:

- (1) In open court. (Rules of Professional Conduct, Rule 5-300(B)(1).)
- (2) With the consent of all other counsel in the matter. (Rules of Professional Conduct, Rule 5-300(B)(2).)
- (3) In the presence of all other counsel in the matter. (Rules of Professional Conduct, Rule 5-300(B)(3).)
- (4) In writing with a copy thereof furnished to the other counsel. (Rules of Professional Conduct, Rule 5-300(B)(4).)
- (5) In ex parte matters. (Rules of Professional Conduct, Rule 5-300(B)(5).)

As used in Rule 5-300, "judge" and "judicial officer" includes law clerks, research attorneys, or other court personnel who participate in the decision-making process. (Rules of Professional Conduct, Rule 5-300(C).) (On A.B.A. Model Rules of Professional Conduct, Rule 3.5 (impartiality and decorum of tribunal), see *supra*, § 446.)

SUPPLEMENT:

(b) *Communications With Judge.* In *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 C.A.4th 1305, 64 C.R.2d 705, counsel for a party to an administrative proceeding informed the administrative law judge (ALJ) ex parte that the opposing party had been crying during a witness' testimony and that counsel was concerned for his and cocounsel's safety. *Held*, the prohibition on ex parte communication applies to an ALJ, and the communication was improper.

EXHIBIT 

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

---oO---

In Re the Matter of:

PETITIONER: DAVID GALLO

AND

No: PD4254

RESPONDENT: JEANETTE McDONALD

---oO---

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

JUNE 16, 2003

---oO---

**COPY**

A P P E A R A N C E S

FOR THE PETITIONER:

DAVID GALLO, PRO PER

FOR THE RESPONDENT:

JEANETTE McDONALD, PRO PER

REPORTED BY:

CINDY BELLALON, CSR # 10618

EXHIBIT J

1 PLACERVILLE, CALIFORNIA

2 MONDAY, JUNE 16, 2003, (AM SESSION)

3 DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

4 ---oOo---

5 THE COURT: Okay. We're back in session. I will  
6 order the fee waiver filed, madam clerk.

7 Mr. Gallo, I'll grant a fee waiver of the court  
8 reporter fees on this as it relates to your share. I'll  
9 order that filed now.

10 All right. The issue of -- we're ready to proceed on  
11 the issue of custody and visitations issues. The Court is  
12 prepared to rule and rules as follows in this matter: This  
13 is a request for modification of custody and visitation by  
14 Ms. McDonald, as well as the request for attorneys fees, as  
15 well as it was a reservation of attorneys fees as to previous  
16 hearings in this matter.

17 This is an unfortunate five-year custody battle that  
18 commenced in approximately 1996. The Court has heard the  
19 testimony. What brings us here today primarily is the  
20 incident wherein Mr. Gallo filed a police report indicating  
21 that he believed that Ms. McDonald was going to attempt to  
22 kidnap and kill their daughter. I have previously issued  
23 an order based upon the mediator's report of 4-11 -- that  
24 being Mr. Banks' order wherein legal and physical custody  
25 of Holly was awarded to the mother, as well as supervised  
26 parenting to the father -- and that was a temporary order  
27 pending further order of this court. The parties have  
28 stipulated into evidence the mediator's reports which the

1 Court considers as evidence in this matter, that being the  
2 mediator's report of January 22nd of 2003 and April 11th,  
3 2003. Also incorporated by reference into those reports is  
4 a previous report of January 7th, '03, by Ms. Wilson. The  
5 Court has also considered the testimony of the parties, as  
6 well as Mr. Bank's testimony that he once again testified  
7 reiterating his position that the father should be on  
8 therapeutic or professionally supervised parenting. All  
9 the evidence that this court has received in this case points  
10 to -- clearly demonstrates that there is a conflict between  
11 the parents which is affecting the health, safety and welfare  
12 of this child. The Court is disturbed by the most recent  
13 incident which brought us here today of the alleged fear of  
14 kidnapping of the daughter.

15 And Mr. Gallo, basically I think the Court leans  
16 heavily on Mr. Barks' perception of this issue in that I do  
17 appreciate that you and Ms. McDonald have your conflicts  
18 and your disagreements, but for you to come to the conclusion  
19 that Ms. McDonald would in any way harm this child is indeed  
20 disturbing.

21 If there is anything that is clear to this court is  
22 that both of you have a very strong affection for this  
23 child. The evidence also supports the mother's allegations  
24 and her contention that the father has used guilt and verbal  
25 manipulation to attempt to influence the child both in  
26 mediation and as to her preference. And the Court finds  
27 that the father does continue to make disparaging remarks  
28 about the mother. This court concludes as to the issue of

1 the most recent incident that the filing of the report in  
2 this matter as to the mother's -- Mother and her significant  
3 other's possible kidnap of Holly was not made in good faith.  
4 And the Court concludes that this report to law enforcement  
5 was designed and perpetrated to harass and annoy Ms. McDonald  
6 and it served no legitimate purpose.

7 It is also of concern to the Court that the most recent  
8 hiatus in the father's parenting seems to be a pattern, the  
9 same pattern back in the year before where parenting was  
10 interrupted by a three-month hiatus or interruption of the  
11 parenting.

12 The financial -- current financial situation of  
13 Mr. Gallo has been considered in this Court's ruling today,  
14 but it would appear that part of the financial limitations  
15 of Mr. Gallo are self-imposed in that he has a job that  
16 only generates 20 hours a week -- 20 or 21 hours a week.

17 Is that right, Mr. Gallo, 21, 22 hours?

18 MR. GALLO: Yes, sir.

19 THE COURT: The Court is going to continue its order  
20 of legal and physical custody to the mother. I feel there  
21 is a showing of an inability from a legal custodial  
22 standpoint regarding the educational issues and one parent  
23 clearly needs to be able to be responsible for the decision.

24 Ms. McDonald, I am going to order that any significant  
25 legal decision regarding this child that Mr. Gallo be  
26 advised of it not less than 10 days after it is made. And  
27 I would prefer that he be advised prior thereto.

28 MS. McDONALD: Understood.

1 THE COURT: Any medical decision would be advised to  
2 Mr. Gallo not less than two weeks before the medical  
3 procedure so you have a right to address the Court if you  
4 object to it.

5 On the parenting, I'm going to authorize --

6 Mr. Gallo, I'm going to authorize you to use the  
7 Child Connect program for the next 60 days. That is a low  
8 cost program through Seventh Day Adventist church and it's  
9 two hours on Sundays. That is for the next 60 days. I'm  
10 also going to authorize you to have parenting through  
11 professional parenting agencies. I'll authorize Summit,  
12 Family Connections or Tim Rood. That will be up to two  
13 hours; that will be at your cost.

14 MR. GALLO: Two hours a week? A day?

15 THE COURT: That's two hours a week. That's the four  
16 hours. Child Connect is only \$10, but it's only two hours  
17 a session. Okay?

18 Now, I will make a finding that the father is in need  
19 of counseling, as well as age-appropriate parenting classes  
20 in order to deal with the developmental needs of Holly.

21 It is unclear, Mr. Gallo, if you have the funds to  
22 attend either a parenting class or attend counseling, but I  
23 would consider -- if you go to up to two months of counseling,  
24 eight sessions of counseling, and attend a parenting class  
25 successfully, I would be willing to revisit supervised  
26 parenting. Can you afford counseling?

27 MR. GALLO: No, Your Honor, I can't afford it.

28 THE COURT: I feel, Mr. Gallo, that -- I'm going to

1 indicate to you that if you do -- I'm not going to order  
2 the counseling because you're telling me you can't afford  
3 it and based on the limited financial information that is  
4 here, 3190 would require findings that you can financially  
5 afford it. I'm telling you you're going to have to come  
6 forward to court with some indication if you wish to have  
7 something other than supervised parenting at this point.  
8 This unfortunate conflict that you have with Ms. McDonald  
9 has reached the point where I agree with Mr. Banks. This  
10 child is -- her whole personality appears to be in danger  
11 of being influenced by this constant -- I mean, it is -- it  
12 borders on warfare. That's probably a poor word. It is a  
13 child custody dispute of the highest degree that I think  
14 one can have. I think that some of the things that have  
15 been said in this hearing or that have been told to Mr. Banks  
16 or I've heard through testimony here demonstrate that you  
17 would profit greatly from taking a class in order to learn  
18 how to deal with a teenage daughter. Some of the things  
19 that are taking place clearly are not -- are harmful to  
20 her, harmful to her emotional and psychological health.

21 And I respectfully disagree with you as to the need  
22 for you to file a police report and create the issue which  
23 primarily brought us here. If anything, Mr. Gallo, that  
24 seems to focus the issue of your intense distrust of the  
25 mother has reached the point where it almost has no basis in  
26 reality. For you to think that Ms. McDonald is going to  
27 kill or kidnap Holly is absolutely incredulous to me. It is.

28 And as I said, if anything, one of the reasons why I



1 keep trying to encourage you in terms of your parenting is  
2 the child does have an affection for you. The child does  
3 want to spend time with you. And I'll make that finding on  
4 the record. It's clear that this child loves you and I  
5 would indicate loves you despite all of the conduct which  
6 has taken place. If these problems continue, we'll have to  
7 readdress these issues, but you need to come back to court.  
8 I would like to see you get off of supervised parenting;  
9 you're going to have to come back to the Court and indicate  
10 -- show the Court that something is changing; that there's  
11 a reason for us to get you off of the supervised parenting.  
12 I gave you a 60-day order on the Child Connect because I'm  
13 not going to -- that's a low cost service to the community  
14 that gives you just enough time to obtain some kind a  
15 counselor and address some of these issues.

16 And, quite frankly, I would authorize -- if you seek  
17 counseling, I would authorize Holly to participate in that  
18 counseling to the extent that the counselor felt that that  
19 was appropriate.

20 MR. GALLO: Thank you, Your Honor. I appreciate that.

21 MS. McDONALD: May I clarify? You're authorizing,  
22 not ordering?

23 THE COURT: No, I'm not ordering. If the counselor  
24 indicates that this would be a benefit to you and to Holly.  
25 But I would like to see that in writing and I'm sure  
26 Ms. McDonald would too.

27 MR. GALLO: So we would have to schedule another  
28 court date to have a counselor approved?

1 THE COURT: No. I'm not saying that at all. I'm not  
2 saying that at all. You know, Mr. Gallo, all you need to  
3 do is find a counselor who wants to work with you. Okay?  
4 Wants to work with you and your relationship with Holly,  
5 not Ms. McDonald and not Mr. Lacy. You and Holly working  
6 out a parenting plan where you two can resume a parenting  
7 plan that you started with that you enjoyed originally. I  
8 believe your conduct is causing significant emotional  
9 psychological harm to this child; so does Mr. Banks; so  
10 does Ms. Wilson; so does Ms. McDonald. When everybody  
11 starts coming to that conclusion, at some point in time you  
12 at least ought to investigate that as a possibility, wouldn't  
13 you agree?

14 MR. GALLO: Yes, sir. I will.

15 THE COURT: If you get some counseling, that's eight  
16 sessions, there's any number of sliding scale places --  
17 sliding scale agencies that will assist you on that. Even  
18 mental health would assist you with that. Come back with  
19 some parenting plan, give me something back that these issues  
20 are being worked on, even worked on.

21 Mr. Gallo, as far as this court is concerned they  
22 don't even have to be resolved, they have to be worked on.  
23 I want to see that you're serious about addressing some of  
24 these issues. You know, so much of the litigation between  
25 you and Ms. McDonald addresses issues that are far outside  
26 the scope of this court and far outside of what I'm trying  
27 to do. I'm trying to create a situation where you and Holly  
28 and Ms. McDonald can share this child and this child can

1 have the benefit of two parents. And if they're fighting  
2 tooth and claw all the time, it's difficult, if not  
3 impossible, to engineer such a parenting plan and you need  
4 to recognize that. You need to get a different perspective.  
5 Because as I said --

6 And I want to point out, you know, Mr. Gallo, that  
7 everything I've said the mother is shaking her head in  
8 agreement. She wants you to have a relationship with your  
9 daughter.

10 MR. GALLO: No, sir, she doesn't.

11 THE COURT: You don't believe that.

12 MR. GALLO: No.

13 THE COURT: But she does and I do. Come back to  
14 court showing that you're working on these issues and it  
15 would be my pleasure to address an increased parenting plan  
16 lifting the supervised. All these things I feel compelled  
17 to do for the safety of your daughter.

18 MR. GALLO: Can we schedule a court date instead of  
19 me having to file a motion 60 days out?

20 THE COURT: Are you going to go get the counseling?

21 MR. GALLO: I'll do the best that I can, Your Honor.

22 MS. McDONALD: Your Honor, I would hate to have a  
23 pending court date if nothing has been changed when we come  
24 in.

25 MR. GALLO: Your Honor, they'll be changed. Again,  
26 the negativity of Ms. McDonald.

27 MS. McDONALD: I just want my life back, Your Honor.  
28 I don't want a pending court date out there if Mr. Gallo

1 isn't serious about obtaining counseling.

2 THE COURT: I'll do this, Mr. Gallo: You come back  
3 when you've taken a parenting class and you've gotten into  
4 some counseling and you show the Court by attachments, okay,  
5 I will -- that has to go through Judge Kingsbury, of course,  
6 but I will authorize an order shortening time. I'll put  
7 the thing right on calendar. And, in fact, if I know it's  
8 coming in, I'll even call the PJ just so it has to go  
9 through her that you did what I asked you to do and I'd like  
10 to get this on as soon as possible.

11 MS. McDONALD: I would stipulate to an order shortening  
12 time right now.

13 THE COURT: She wants to work with you. I want to  
14 work with you, but something has got to change.

15 MR. GALLO: I have one problem though with the  
16 counseling. When the counselor agrees that Holly and I  
17 need to meet, I'm unclear on how to accomplish that.

18 THE COURT: Okay. This is what you need to do. If  
19 you get a counselor and you started work on these issues  
20 and the counselor feels that Holly's involvement would be  
21 beneficial to the counseling and you get that in writing,  
22 you give it to Ms. McDonald; Ms. McDonald will assist you  
23 in these issues. There are psychological issues that are  
24 starting to emerge in this case where it may benefit her  
25 greatly to have you in a therapeutic counseling session  
26 together, but first you need to set up the counseling protocol  
27 with yourself and then involve her.

28 And so if you get a letter, then, Ms. McDonald, you

1 will -- unless you need to bring that back to court for  
2 some reason, you can arrange for that. We're only talking  
3 about eight sessions here.

4 MR. GALLO: I understand that, but my fear is, Your  
5 Honor, we'll get it set up, I'll be making positive  
6 movements in the right direction, submit the letter from  
7 the psychologist to Ms. McDonald and like with Tim Rood  
8 she'll refuse to deliver her child to the session like she's  
9 supposed to.

10 THE COURT: Then what would happen is you and  
11 Ms. McDonald would and the therapist would arrange a mutually  
12 convenient time. Okay?

13 And I'm going to direct you, Ms. McDonald, not to be  
14 unreasonable in working out a schedule.

15 MS. McDONALD: Absolutely not. I will do everything  
16 I can to facilitate the counseling. However, I don't want  
17 to get a letter next week saying joint counseling is going  
18 to commence. I want Mr. Gallo to understand counseling for  
19 him and then Holly will come in at the point when the  
20 counselor feels is necessary.

21 THE COURT: I would like you to be in counseling at  
22 least four sessions before there's any considering her being  
23 brought in the counseling.

24 MS. McDONALD: I will absolutely facilitate it.

25 THE COURT: On the issue of 271 sanctions.

26 Mr. Gallo, I believe that there has been a showing, as  
27 I indicated on the record, that the filing of that police  
28 report was in bad faith and served no legitimate purpose

1 other than to harass Ms. McDonald. However, based upon the  
2 information I have in front of me, you don't have the  
3 financial ability to respond to a sanction, which is a  
4 second requirement under 271. So I'm not going to order  
5 sanctions.

6 MR. GALLO: Thank you, sir.

7 (Proceedings were concluded.)

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEPARTMENT NO. 5

HON. GREGORY WARD DWYER, JUDGE

---oOo---

In Re the Matter of:

PETITIONER: DAVID GALLO

AND

NO. PD4254

RESPONDENT: JEANETTE McDONALD

\_\_\_\_\_ /

STATE OF CALIFORNIA )  
COUNTY OF EL DORADO )

I, CINDY BILLALON, Certified Shorthand Reporter of the State of California, do hereby certify the foregoing pages 1 through 11 are a true and accurate transcription of my said stenographic notes taken in the above-entitled matter or:

DATE OF PROCEEDINGS: JUNE 16, 2003

Dated at Placerville, California, this 7th day of July, 2003.

Cindy Billalon  
CINDY BILLALON, CSR 10618

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF EL DORADO  
HAROLD BRADFORD, JUDGE PRESIDING

CERTIFIED COPY

DAVID GALLO,

Plaintiff,

vs.

No. PD-4254

JEANETTE McDONALD

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
HEARING  
JULY 26, 2000  
SOUTH LAKE TAHOE, CALIFORNIA

APPEARANCES:

For the Plaintiff:	In Pro Per
For the Defendant:	In Pro Per
For the DA's Office:	DAVID BURNS, Deputy District Attorney

REPORTED BY:	MICHEL DOTY LOOMIS, California CSR #6863
--------------	---



1 Mr. Gallo is letting on.

2 THE COURT: Well, a review of his income and expense  
3 declaration and particularly coupled with the Exhibit 2, the  
4 declarations he made with respect to a small claims action  
5 reveal that Mr. McDonald's --

6 MR. GALLO: Mr. Gallo, sir.

7 THE COURT: Excuse me, Mr. Gallo, excuse me.  
8 Ms. McDonald -- Mr. Gallo's statements on his income and  
9 expense declaration inherently ought not to be trusted.

10 MR. BURNS: I wouldn't think so, your Honor.

11 THE COURT: You do not make \$3,250 expenses on a  
12 thousand dollars a month gross.

13 MR. GALLO: That's absolutely true, sir, with the  
14 respect of, if I may clarify, there are three people that are  
15 contributing to the total of these bills. The first one is  
16 Michelle Martin who receives child support and has a savings  
17 account.

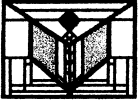
18 THE COURT: No, no. You previously said she makes  
19 no contribution.

20 MR. GALLO: No, sir, I said she was unemployed. I  
21 did not say she did not contribute to the family.

22 THE COURT: Mr. Burns, I guess you have a whole  
23 tawdry of wealthy people to look in to here.

24 MR. BURNS: Yes, your Honor.

25 MR. GALLO: These, actually three people in the  
26 house, the first would be myself which I make about a thousand  
27 dollars a month, the second would be my mother who's been a  
28 full-time resident with me for roughly three years who



**Mary Kimbell-Smith**  
Sent by: Mary I  
Kimbell-Smith

To: Gary L Lacy/PV/EDC@TCP  
cc: Gay M Fisher/PV/EDC@TCP  
Subject: Vacancies

07/21/2003 11:37 AM

I have listed below the vacancies that Human Resource records show as of 11/26/02 - the date requested of me by the Grand Jury.

There were three vacancies on that date in the allocation of Legal Secretary I/II. Your allocation is for 7.0 in this position and our records show that on that date, you had four incumbents: Landroche, Hayes, Tenley, and Long.

In Legal Office Assistant, Human Resources show the following incumbents as of 11/26/02: Ronquillo-Ruhnke, Harrington, Cimino (.5), and Leonard. This would mean 1.0 vacancies. There was also an incumbent (Roybal) in this classification underfilling a Legal Secretary allocation. She must be counted at one of the levels. I had not included her as a Legal Secretary so if we count her as a Legal Office Assistant, it means that you did not have any vacancies in your 4.5 allocation of Legal Office Assistant I/II as of 11/26/02.

Niebauer was underfilling the Senior Legal Secretary allocation, so I didn't count her as a Legal Secretary I/II. Hunt was underfilling a vacancy Legal Secretarial Services Supervisor position, so I didn't count her as a Legal Secretary.

As I said on the phone, it may be worth mentioning that when two different questions are asked of two different people and they are given to different dates to use in providing their answer, the answers will never be the same. Especially when the question is on a subject where the numbers can change each and every day depending on when paperwork is filed/received.

Hope this gives you what you need.

Mary Kimbell-Smith  
Personnel Analyst

EXHIBIT L

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF EL DORADO

MINUTE ORDER

CASE NO: PD4254  
DATE: 04/26/00

DAVID GALLO VS. JEANETTE MCDONALD  
TIME: 8:30 DEPT: 12

HEARING: ORDER TO SHOW CAUSE RE: TEMPORARY RESTRAINING ORDER  
FILED BY DAVID GALLO

---

Honorable JOSEPH B. HARVEY, Judge (assigned) presiding. Clerk,  
Kristeen R. Dehnen. Court Reporter, Christy Hamrey, CSR #11721.

DAVID GALLO present in Pro Per.

JEANETTE MCDONALD present in Pro Per.

Both sides present argument.

Either party may remove the minor from El Dorado County for a period not to exceed 24 hours without prior written permission from the Court or other party.

Defendant's gun shall remain in her residence and she shall not carry the gun in her possession.

The court grants Mutual Restraining Orders finding the parties primary aggressors and neither primarily acted in self defense; order expires 04/26/03.

The parties shall have no contact except to arrange for visitation.

Findings and Order After Hearing to be prepared by JEANETTE MCDONALD.

CC: DAVID GALLO, 4907 Mt. Aukum Road, Placerville, CA

CC: JEANETTE MCDONALD, 3441 Mira Loma Drive, #24B, Cameron Park, CA

EXHIBIT M



**JEFF NEVES**  
SHERIFF - CORONER - PUBLIC ADMINISTRATOR  
COUNTY OF EL DORADO  
STATE OF CALIFORNIA

REPLY TO:

O HEADQUARTERS  
300 FAIR LANE  
PLACERVILLE  
CA 95667  
530621-5655  
FAX 626-8163

C JAIL DIVISION  
300 FORNI ROAD  
PLACERVILLE  
CA 95667  
530 621-6000  
FAX 626-9-172

O TKHOE DIVISION  
1360 JOHNSON BLVD., SUTTE 100  
SOUTH LAKE TAHOE  
CA 96150  
530 573-3000  
FAX 544-6809

August 4, 2003

The Honorable Jerald Lasarow  
Supervising Grand Jury Judge  
El Dorado County Superior Court  
1354 Johnson Blvd.  
South Lake Tahoe, CA 96150

Dear Judge Lasarow:

Enclosed is my written response to the FY 2002-03 Grand Jury Findings and Recommendations that pertain to the El Dorado County Sheriffs Office.

If you have any questions about the material, please contact me at 621-5678.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeff Neves", is written over a horizontal line.

**JEFF NEVES**

Sheriff - Coroner  
Public Administrator

Enclosure

cc: Each member - Board of Supervisors  
Interim Chief Administrative Officer

INAPPROPRIATE TAHOE DIFFERENTIAL PAY  
CITIZEN COMPLAINT #C19 - 02/03

**Findings**

F1. The Sheriff told the Undersheriff he could be assigned to Lake Tahoe, with the hours and days to be set by the Sheriff.

*Respondent is unable to comment as the Sheriff referred to in the finding is retired Sheriff Hal Barker and the respondent is Sheriff Jeff Neves, the current Sheriff. Sheriff Neves was not privy to conversations between retired Sheriff Hal Barker and retired Undersheriff Ed Newman about Undersheriff Newman's assignment to Tahoe and is therefore unable to respond to this finding.*

F2. The Sheriff did not set days or hours for the Undersheriff to work in South Lake Tahoe.

*Respondent is unable to comment as the Sheriff referred to in the finding is retired Sheriff Hal Barker and the respondent is Sheriff Jeff Neves, the current Sheriff. Sheriff Neves was not privy to conversations between retired Sheriff Hal Barker and retired Undersheriff Ed Newman about Undersheriff Newman's assignment to Tahoe and is therefore unable to respond to this finding.*

F3. The Undersheriff received Tahoe Differential pay without working primarily in the South Lake Tahoe area.

*Respondent agrees partially with finding. Retired Undersheriff Newman's payroll file indicates he received Tahoe Differential pay from February 27, 1999 until he retired on May 5, 2000. Respondent, current Sheriff Jeff Neves, has no personal knowledge as to whether Undersheriff Newman worked primarily in the South Lake Tahoe area while receiving that pay or not as Sheriff Neves was not retired Undersheriff Ed Newman's supervisor during that time. However, current Sheriff Neves is aware, based on reports from other Sheriff's managers assigned to Tahoe during the period in question, that retired Undersheriff Newman spent little, if any, time in the Tahoe office.*

F4. Payroll clerks, without written authorization, routinely sign Payroll/Personnel Action forms on behalf of Division Chiefs, including those resulting in financial impact.

*Respondent disagrees partially with finding. There was a point in time when payroll clerks signed Payroll/Personnel Action forms resulting in*

*financial impact, but that has not been the case since December 2002. The Sheriff or Undersheriff now signs all Payroll/Personnel Action forms resulting in Financial impact.*

F5. The Tahoe Differential pay received by the Undersheriff impacted his final compensation, which in turn was used to calculate his retirement benefits.

*Respondent agrees.*

### **Recommendations**

R1. Payroll/Personnel Action Forms relating to the Undersheriff should be signed by the Sheriff.

*Recommendation has been implemented effective December 2002. The Grand Jury previously received a copy of the written directives sent to Sheriff's managers and Payroll Clerks.*

R2. Delegation of authority to Payroll Clerks to sign on behalf of Division Chiefs should be specific and exclude actions involving financial benefit.

*Recommendation has been implemented effective December 2002. The Grand Jury previously received a copy of the written directive sent to Payroll Clerks.*

**SHERIFF'S NON FOLLOW-UP REGARDING SICK LEAVE ABUSE  
CITIZEN complaint #C20-02103**

**Findings**

F3. The Undersheriff contacted the Payroll clerks with instructions to change his vacation leave to sick leave.

*Respondent agrees with finding. The Undersheriff referred to is retired Undersheriff Ed Newman.*

F4. The 2000/2001 Grand Jury reported this Undersheriff was paid 200 hours for sick leave when he was not sick and resulted in the use of accumulated sick leave for which he would not have been entitled to be paid for upon retirement.

*Respondent agrees with finding. The Undersheriff referred to is retired Undersheriff Ed Newman.*

F5. The Sheriff, responding to the 2000/2001 Grand Jury Report, said he would investigate the Grand Jury's finding. If the Sheriff determined that the Undersheriff was not entitled to receive sick leave payment, he would demand repayment of funds.

*Respondent agrees with finding. The Sheriff referred to is retired Sheriff Hal Barker and the Undersheriff referred to is retired Undersheriff Ed Newman.*

**Recommendations**

R1. Procedures should be established, implemented, and followed for obtaining appropriate approval to change any vacation leave to sick leave for all personnel, including management.

*Recommendation has been implemented effective December 2002. The Grand Jury previously received a copy of the written directive sent to all Sheriff's managers and Payroll Clerks.*

R2. Written medical verification required for related sick leave should be obtained in a timely manner.

*Recommendation has been implemented.*

R3. Proper procedures should be established for follow-up of required written medical verification.

*Recommendation has been implemented.*



CRIMINAL JUSTICE COMMITTEE  
EL DORADO COUNTY JAIL - PLACERVILLE

**Findings**

F1. The central control booth needs new floor covering

***Respondent agrees.***

F2. The antenna wire was exposed in the main hallway.

***Respondent agrees.***

F3. Some produce was old and needed to be discarded.

***Respondent disagrees.***

F4. Two food storage bins had cracked lids.

***Respondent agrees.***

**Recommendations**

R1. The central control booth floor covering should be replaced.

***Recommendation requires further analysis that will be completed by December 31, 2003. General Services staff is checking with local carpet vendors about the feasibility of recarpeting the panels and are also obtaining quotes for new and used replacement panels.***

R2. The antenna wire in the main hall should be put in a conduit.

***Recommendation has not been implemented but will be by the end of August 2003.***

R3. Produce should be checked regularly.

***Recommendation has been implemented. Produce is checked regularly, in addition to inspections by the Environmental Management Department and quarterly dietician inspections. These inspections have never found produce or leftovers to be old or out of date.***

R4. Cracked food storage lids should be replaced.

***Recommendation has been implemented.***

CRIMINAL JUSTICE COMMITTEE  
EL DORADO COUNTY JAIL - TAHOE

Findings

F1. Prisoners are transported from South Lake Tahoe to Placerville for dental services.

**Respondent agrees.**

F2. The correctional officers routinely work 12-hour shifts with substantial additional overtime.

**Respondent disagrees partially with finding. Correctional officers were working 12-hour shifts at the time of the Committee's inspection, but have since returned to a 9/80 schedule because vacant positions were Filled.**

F3. Although \$31,860 was appropriated from the Criminal Justice Trust Fund in 1998 and included in the County of El Dorado Proposed Budget and Workplan (General Services Carryover Facility Projects, 98-21 South Lake Tahoe Sheriff Handicap Ramp) necessary improvements to the ramp for the disabled entrance have not been made resulting in continued safety hazard to users and potential liability to the County.

**Respondent agrees.**

F4. Current camera surveillance in the hallway between the jail and Court Building is not adequate.

**Respondent disagrees.**

Recommendations

R1. Local dental services should be utilized as appropriate.

**Recommendation will not be implemented because it is not warranted or reasonable. The County has a multi-year contract for medical services, including dental services, that requires all dental services to be provided in Placerville as that is the most cost-effective way of delivering the service. Prisoners are transported back and forth as part of the normal biweekly transfer of inmates between the Tahoe and Placerville facilities. Utilization of local dental services increases the need for inmates to be transported, increases the opportunity for escape and requires dentists to be willing to schedule inmate visits during off hours - something they have historically not been willing to do except in an emergency.**

R2. Staffing should be adequate to minimize the need for overtime.

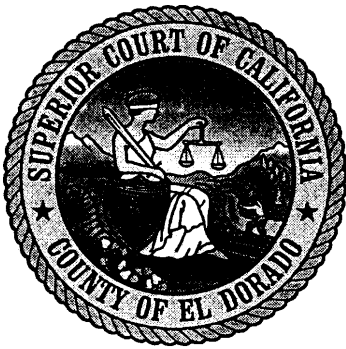
*Recommendation will not be implemented because it is not warranted or reasonable. The Board of Supervisors had authorized adequate staffing based on a plan approved by the California Department of Corrections. For a variety of reasons, the Sheriff's Office has been unable to keep all those positions filled, resulting in the periodic need for overtime and/or 12-hour shifts. While the department makes every effort to recruit and hire jail staff, vacancies are a reality and overtime and shift adjustments will be an ongoing cost of doing business.*

R3. The ramp for the disabled should immediately be improved to meet safety conditions and the American with Disabilities Act (ADA) requirements.

*The Sheriff is unable to respond as responsibility for implementing this recommendation lies with the Department of General Services.*

R4. Camera surveillance in the hallway between the jail and Court Building should be properly and adequately upgraded.

*Recommendation will not be implemented because it is not warranted or reasonable. There is one camera in the hallway and it is monitored whenever prisoners are in the corridor. Inmates are dressed in orange and restrained in waist chains and leg shackles or dressed in regular clothes with a restraining leg brace and handcuffs while moving through the corridor. Uniformed deputy sheriffs escort prisoners and the number of escorts is determined by the number of inmates being moved and the assessed risk presented by the particular group or individual. The addition of a second camera to cover the thirty feet that is currently "blind" would not result in any increased security.*



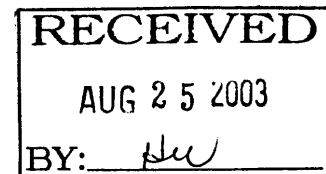
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF EL DORADO

2850 Fairlane Court, Bldg. `C`  
Placerville, California 95667-5699

Reply To: Stephen P. Cascioppo, Court Executive Officer  
[Email: cascioppAco.el-dorado.ca.us](mailto:cascioppAco.el-dorado.ca.us)

Voice: (530) 621-7478  
Fax: (530) 295-2733

July 25, 2003



Hon. Jerald Lasarow  
Supervising Grand Jury Judge  
El Dorado County Superior Court  
1354 Johnson Boulevard  
S. Lake Tahoe, CA 96150

Dear Judge Lasarow:

Enclosed you will find my response to the 2002/2003 Grand Jury Report.

Sincerely,

Steph P. Cascioppo  
Court Executive Officer

Enclosure

Cc: Hon. Suzanne N. Kingsbury

**The Court Executive Officer responds to the Final Report of the 2002-2003 El Dorado County Grand Jury as follows:**

**Audit and Finance Committee**

Superior Court - Exhibit Room  
495 Main Street, Placerville

**Findings:**

The non-physical Exhibit Room appears to lack adequate space and shelving. Exhibits appear to be in disorder and are placed on the floor in this small room.

**Response:** Respondent agrees with the finding.

F2. Written procedures are not being followed for discarding closed-case exhibits. About 75% of exhibits in the storage area are beyond the retention period.

**Response:** Respondent agrees with the finding.

F3. There is no person designated to manage the exhibit process.

**Response:** The respondent disagrees partially with the finding. The Court Operations Supervisor is designated to manage the exhibit process. However, specific staff are currently not assigned to work on a regular basis in discarding closed-case exhibits due to staffing shortages.

F4. No sprinkler system or fire extinguishers could be found in or near the Exhibit Room.

**Response:** The respondent disagrees partially with the finding. There is a fire hose outside the basement file room that is designated for use in the file room and exhibit room and meets fire code requirements.

**Recommendations:**

R1. The Exhibit Room should have adequate shelving.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendation.

R2. All exhibits should be inventoried and established procedures should be followed.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court will review the findings and work with staff to implement the recommendation. Anticipate full implementation within six months.

R3. A person should be designated to manage the exhibit process.

**Response:** The recommendation has been implemented. The Court Operations Supervisor is designated to manage the exhibit process. The Court will work with staff to implement the recommendation.

R4. A fire extinguisher should be installed in or near the Exhibit Room.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court is currently working with County General Services for installation of a fire extinguisher in or near the Exhibit Room.

### **Public Buildings & Property Committee**

Update of Pat Riley Family Court (Building 180)

Formerly the Logan Building

768 Pleasant Valley Road, Diamond Springs

#### **Findings:**

F4. In November 2001 the Board of Supervisors approved use of The Building for Superior Court Family Law; however, no actual plans have been implemented.

**Response:** The respondent disagrees wholly with the finding. The Superior Court has been working with the County General Services Department, and their consultants, and has been in routine communications with County officials regarding the Pat Riley Family Court since November 2001. The Court has been included in the selection of consultants, has reviewed their feasibility analysis and has provided input on the design. A plan design has been drafted by the County's consultant.

#### **Recommendations:**

R1. In light of the countywide office space need, the Board of Supervisors should reconsider their options and move forward expeditiously.

**Response:** The recommendation will not be implemented because it is not warranted. By moving the Court's Family Law function along with Court Administration to the Riley Court facility, the County does address its need for additional office space. A number of offices will be vacated in Building C when Court Administration moves to the Family Law Center.

### **Superior Court - Building 321**

**3221 Cameron Park Dr., Cameron Park**

#### **Findings:**

F1. The prisoners' entrance door is rusting.

**Response:** The respondent agrees with the finding.

F2. The prisoners' entrance wooden doorframe is deteriorating.

**Response:** The respondent agrees with the finding.

F3. The downspouts at rear of the building are not connected to the drainage field pipes. **Response:** The respondent agrees with the finding.

F4. The rain gutters are full of leaves and pine needles

**Response:** The respondent agrees with the finding.

- F5. The HVAC vents/registers are dirty. **Response:** The respondent agrees with the finding.
- F6. The courtroom ceiling tiles are water stained. **Response:** The respondent agrees with the finding.
- F7. The courtroom and office area walls have cracks. **Response:** The respondent agrees with the finding.
- F8. The drinking fountain fascia plate is improperly attached. **Response:** The respondent agrees with the finding.

**Recommendations:**

- R1. The prisoners' entrance door should be repaired and painted.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R2. The prisoners' entrance doorframe should be repaired.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of Court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R3. The downspouts at rear of the building should be reconnected to the drainage field pipes.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R4. The rain gutters should be cleaned.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.

- R5. The HVAC vents/registers should be periodically cleaned.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R6. The source of the water staining the ceiling tiles of the courtroom should be investigated and repairs should be made.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R7. The cracks in the courtroom and office area walls should be repaired.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R8. The drinking fountain fascia plate should be properly reattached.  
**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to implement the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.

**Superior Court - Building 220  
495 Main Street, Placerville**

**Findings:**

- F1. The roofline corbel brackets and tiles are loose, missing, and/or in poor repair.  
**Response:** The respondent agrees with the finding.
- F2. Valuable parking space has been lost, due to the danger of falling corbel brackets and tiles. **Response:** The respondent agrees with the finding.
- F3. The parking lot is inadequate. **Response:** The respondent agrees with the finding.



- F4. Mold and mildew are growing on the shaded exterior side of the building walls and windows. **Response:** The respondent agrees with the finding.
- F5. The door and window frames on the exterior shaded side of the building are rusting. **Response:** The respondent agrees with the finding.
- F6. The fire escape metal structure is rusting and the landings are dirty. **Response:** The respondent agrees with the finding.
- F7. The exterior plaster area around basement windows is deteriorating. **Response:** The respondent agrees with the finding.
- F8. Some exterior wall tiles are damaged. **Response:** The respondent agrees with the finding.
- F9. The awning over the rear door entry is damaged. **Response:** The respondent agrees with the finding.
- F10. The handicap sign on the front wall near the sidewalk is bent outward and is a potential liability. **Response:** The respondent agrees with the finding.
- F11. The security checkpoint is inadequate room for heavy traffic situations. **Response:** The respondent agrees with the finding.
- F12. The space in the three lobbies is inadequate for current use. **Response:** The respondent agrees with the finding.
- F13. The office areas are extremely cramped and lack storage space. **Response:** The respondent agrees with the finding.
- F14. No fire protection sprinkler systems or smoke detectors exist throughout the building. **Response:** The respondent agrees with the finding.
- F15. Some fire extinguisher locations are not clearly marked. **Response:** The respondent agrees with the finding.
- F16. No fire drills are held. **Response:** The respondent agrees with the finding.
- F17. The light diffusers on some lighting fixtures are sagging and ill fitted. In addition, one diffuser is missing in the CASA children's room. **Response:** The respondent agrees with the finding.
- F18. Air circulation is inconsistent and makeshift throughout the building. **Response:** The respondent agrees with the finding.
- F19. Several employees are concerned about the perceived unhealthy working environment in the building. **Response:** The respondent agrees with the finding.

- F20. Employees are concerned that the restroom configuration results in vandalism by the public and inconvenient for them. **Response:** The respondent agrees with the finding.

**Recommendations:**

Roofline corbel brackets and tiles should be replaced or repaired.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.

- R2. Adequate parking should be provided. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations.
- R3. Mold and mildew should be removed from the exterior building walls and windows. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R4. Rusted exterior door and window frames should be properly repaired and maintained. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R5. Rusted fire escape metal structures should be properly repaired and maintained. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.

- R6. The exterior plaster area around windows should be properly repaired. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R7. Damaged exterior tiles should be replaced. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R8. The rear door awning should be repaired. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R9. The bent handicap sign on the front wall near the sidewalk should be replaced. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.
- R10. Fire extinguisher locations should be clearly marked. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations.
- R11. Fire drills should be periodically conducted. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court has brought this to the attention of the County Risk Management department in the past. The Court had previously been a County department and currently contracts with Risk Management for Safety and Loss Prevention services. No fire drill had been conducted. The Court anticipates working with County Risk Management to implement the recommendation.

R12. The lighting fixture diffusers should be properly installed and/or replaced as necessary. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court anticipates working with the County to assist them in implementing the recommendations. The Court does not have the ability to unilaterally make repairs or structural changes to the building, as the County is currently responsible for maintenance of court facilities. Therefore we must work cooperatively to accommodate the recommendations of the Grand Jury.

R14. When juvenile cases are on calendar, restrooms should be monitored. **Response:** The recommendation has not yet been implemented, but will be implemented in the future. The Court contracts with the Sheriff Department for court security. The Court anticipates working with the Sheriff to implement the recommendation.

## **AUDIT AND FINANCE COMMITTEE**

### ***Georgetown Divide Public Utility District Georgetown***

#### **Reason for the Report**

The Grand Jury selected the Georgetown Divide Public Utility District (GDPUD) as a general review for 2002/2003.

#### **Scope of the Investigation**

The members of the Grand Jury:

- Made an announced visit to GDPUD on January 23, 2002;
- Interviewed the General Manager and other staff members;
- Attended two GDPUD board meetings;
- Reviewed the GDPUD certified Incorporation Documents created in 1946;
- Reviewed the Five Year Facilities and Financial Planning Study dated February 1, 1999;
- Reviewed financial statements for fiscal year 2001/2002;
- Reviewed the budget for fiscal year 2002/2003;
- Reviewed previous Grand Jury reports and found no reports that dealt with GDPUD.

#### **Background**

The GDPUD is a special independent enterprise district. It is considered “independent” because it is a self-governed body, and the term “enterprise” means it can charge the public directly for services without relying on property taxes. As such GDPUD is more resistant to economic fluctuations. It maintains designated reserve funds for the servicing and replacement of fixed assets as well as undesignated reserve funds for future projects. For the fiscal year ending June 2002, designated reserve funds were \$2,661,358 and the undesignated reserve funds were \$9,847,331 (approximately three times the annual operating revenue of \$3,242,206). Net income for fiscal year 2001/2002 was \$542,254.

As a special district, GDPUD receives assistance from local, state and federal governments in the form of grants and low interest loans for special projects.

The water supply comes from Stumpy Meadows Reservoir and amounts to 20,000 acre-feet (or 327 surface acres). Approximately 3000 water connections and 1,100 wastewater disposal accounts exist within the district. Both Auburn Lake Trails and Walton Lake treatment plants are approximately 30

years old, and have a 4.5 million gallon capacity. Nine storage tanks cumulatively hold about 3 million gallons. The general manager believes the district is prepared to accommodate the predicted one to two percent growth rate within its service area for the immediate future, however, the demand is estimated to exceed supply by 2025.

The district operates with no written personnel procedures or formal policies for employees and their evaluations.

The district has 20 employees and most of whom are cross-trained. The district has an unusually low employee turnover rate with an average of 15 plus years of service.

The District has two CPAs. One is a recently hired employee, and the other is an hourly contractor. For computerized accountancy software, GDPUD uses a program called Multiple Operations Manager (M.O.M.), while the Consultant uses the Solomon program. These two accounting programs are not compatible which may create problems with the exchange of data.

### **Findings -**

No Board of Supervisors response required.

- F1. The undesignated reserve funds are approximately three times the annual operating revenues.
- F2. Stumpy Meadows Reservoir is the only source of water for GDPUD.
- F3. The district operates with no written personnel procedures or formal policies for employees and their evaluations.
- F4. The District has two CPAs. One is an employee, and the other is an hourly consultant.
- F5. GDPUD uses an accounting software program called Multiple Operations Manager (M.O.M.), while the Consultant uses Solomon.

### **Recommendations**

No Board of Supervisors response required.

- R1. GDPUD should adopt and publicize their policy for accumulating undesignated reserve funds as well as the planned use of the funds.
- R2. GDPUD should look into secondary water sources for the anticipated growth within the District.
- R3. GDPUD should create a personnel policies and procedures manual. The manual should be updated periodically as required.

- R4. There should only be one CPA. The time frame of the contract with the Consultant should be reduced and a termination date established.
- R5. For efficiency purposes, there should be one accounting software program.
- R6. GDPUD should increase treated water storage capacities in the event of equipment breakdown or extended drought cycles.

**Commendation**

Management is very proactive in seeking to meet the needs of its customers and appears interested in the overall well being of the community.

**Responses Required for Findings**

F1 through F5	GDPUD Board of Directors GDPUD General Manager
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**Responses Required for Recommendations**

R1 through R6	GDPUD Board of Directors GDPUD General Manager
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**EDUCATION COMMITTEE**  
***Indian Diggings Elementary School***  
***Somerset***

**Reason for the Report**

The Grand Jury selected Indian Diggings Elementary School for a general review:

**Scope of the Investigation**

Members of the Grand Jury:

- Visited the School on January 31, 2003;
- Were given on an extensive tour of the School by the Superintendent;
- Reviewed various school plans, including emergency procedures, funding, and staffing;
- Reviewed Grand Jury reports for 2000/2001 and 2001/2002 and found no findings or recommendations pertaining to the school.

**Background**

Indian Diggings Elementary School, a two-room school with grades K - 8, has been in existence since 1856. The school burned down in 1958 and was rebuilt primarily with volunteer labor and materials. There are two classrooms, a multi-purpose room, small library, and office space. The school owns an acre of land that is not utilized. Suggestions for use of the land have included building a swimming pool and tennis courts for community use. However, the school is unable to fund these projects.

The facility consists of 4 full-time credentialed employees and one exchange teacher from Japan. The Superintendent functions as the principal and upper grade teacher. The faculty perform all positions necessary including yard duty attendant, Special Needs Instructor, school secretary, etc. The school building and grounds are well maintained by the part-time janitor.

Since the school population is small, special services are provided on a limited basis. A school nurse is available four days a year. The nurse tests vision, checks immunization records, tests hearing, and provides CPR training for the teachers. A music/dance instructor comes in to train the students for performances in performance arts. A karate teacher also comes in periodically to instruct the students and one teacher that continues the instruction and practices with the students.

The enrollment consists of 15 students in grades K - 3 and 21 students in grades 4 – 8. Of these total 36 students, 18 are inter-district transfers from Pioneer County and one from Amador County. Only



2 students have transferred this year to another district. Enrollment throughout the years varies from the lowest figure of 24 to the high of 44 students.

Educational opportunities in this small school are impressive. All students may participate in cross-country skiing with boots and skis available for all students. Weeklong field trips, planned with parents, are available for the upper grades with the lower grades joining for part of the time.

A financial reward program has been developed to encourage students to demonstrate good behavior and earn good grades. The students earn "Ono Bucks" and are required to maintain records of "Ono Bucks" earned. When students spend "Ono Bucks" at the General Store, which is supplied through donations, they are required to record the transactions in their checkbooks.

The school has a large multipurpose room, which was built in 1996-97 with grant funds. This room contains a kitchen, a full stage with curtain for play productions, a large-screen television, gym, craft room, and an elevator for the disabled. The elevator, which was not operable at the time of Committee's visit, is being used for storage.

In the past seven years, the Superintendent applied for and received approximately \$750,000 in grant funds, part of which was used to build the multipurpose room. Other grants have provided for chain-link fencing (to keep bobcats out), water tanks (no public water), computers (each student has a computer), satellite dish, sets of classical literature, and grassed play areas and fields.

The Pioneer Lions Club of Somerset offers additional support to the school. Over the past seven years, the Club has donated funds for field trips, including Spring Camp Science Trip, a student store structure, provided picnic tables, and obtained a ball wall.

### **Findings**

No Board of Supervisors response required.

F1. The school owns an acre of land that is not being utilized due to funding.

F2. The elevator for disabled is not in working condition.

### **Recommendation**

No Board of Supervisors response required.

R1. The elevator should be repaired.

### **Commendations**

The Teaching Principal/Superintendent has obtained numerous grants to improve this unique school. He and his staff provide excellent opportunities for their students.

**Responses to Findings**

F1 and F2                      Indian Diggings School Teaching Principal/Superintendent

**Response to Recommendation**

R1                                 Indian Diggings School Teaching Principal/Superintendent

# **Indian Diggings School District**

6020 Omo Ranch Rd. . Somerset, CA 95684

(530)620-6546

To: Presiding Judge of the Superior Court (El Dorado County)  
From: J. Rusty Vardy  
Subject: Response to Grand Jury's Final Report of 2002-2003

July 7, 2003

Dear Honorable Judge James Wagoner,

This letter serves as the official response of Indian Diggings School District to the 2002-2003 Grand Jury Report for El Dorado County. I wish to compliment the members of the Grand Jury for their thorough review at Indian Diggings School. We were able to use some of the time they were here as an opportunity for students to learn about local government accountability. It was a positive experience for both our students and district as a whole.

Recommendation of the Grand Jury: F2: The elevator for disabled is not in working condition. RI: The elevator should be repaired.

Response: Indian Diggings School District will contact a company capable of repairing our elevator and have the elevator repaired within 90 days from this date (7/7/03). The person responsible for carrying out this duty is J. Rusty Vardy. Teaching Principal/Superintendent.

Once again, thank you for your visit and findings. Best wishes for a successful conclusion to the Grand Jury Report process.

Sincerely  
Rusty Vardy  
Teaching Principal/Superintendent