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 <u>was</u> 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."[1]

[1] *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…" [2]

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).

[2] *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.

Rl. 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