

El Dorado County Grand Jury 2014-15

Placerville Outpatient Mental Health Facility Inspection Response Case GJ 14-04

Background

The 2014-15 Grand Jury conducted an inspection of the West Slope outpatient mental health facility on October 15, 2014 and prepared a report based upon that inspection. The following is the County of El Dorado's response to the findings and recommendations of the Grand Jury in accordance with Penal Code §933 and §933.05.

Findings

1. The exterior stair way has been covered.

Response: The respondent agrees with this finding.

2. There are new signs showing parking and the locations of various departments.

Response: The respondent agrees with this finding.

3. There is ample ADA compliant parking.

Response: The respondent agrees with this finding.

Recommendations

There were no recommendations.

The County of El Dorado appreciates the efforts of the Grand Jury.

El Dorado County Grand Jury Report 2014-15

Juvenile Facilities Inspections Case GJ 14-05

Background

California Penal Code §919(b) requires that the Grand Jury inquire into the condition and management of the public prisons within the county. Juvenile facilities fall within the definition of such facilities. The Grand Jury conducted inspections of the Placerville juvenile facility and the South Lake Tahoe facility. The following is the County of El Dorado's response to the findings and recommendations of the Grand Jury in accordance with Penal Code §933 and §933.05.

Findings

1. Staff is professional and appears concerned about the welfare of the wards.

Response: The respondent agrees with the finding.

2. A wide variety of mental health counseling is provided to wards.

Response: The respondent agrees with the finding.

3. Facilities for individual or small group counseling are not adequate in Placerville.

Response: The respondent partially agrees with the finding. The Placerville facility is categorized by the Board of State and Community Corrections (BSCC), as "meeting standards" due to a current "grandfathered" exemption from the current applicable standard. The facilities do not meet the current standards, as established by the BSCC nor are they adequate by a community care standard.

4. School curriculum is provided to all wards and attendance is mandatory.

Response: The respondent agrees with the finding.

5. The facility is well maintained.

Response: Respondent agrees that both the Placerville and South Lake Tahoe Facilities are well maintained.

6. The Placerville south exercise area is in disrepair and no longer in use. Other outdoor areas provide sufficient exercise space.

Response: The respondent agrees with the finding.

7. Staff provides a grievance form to address complaints.

Response: The respondent agrees with the finding.

8. At the present time the existing room capacity is adequate due to the low population of the wards.

Response: The respondent agrees with the finding.

Recommendations

1. A study should be conducted to determine the need for a new Placerville facility or ways to improve the existing facility.

Response: The recommendation has been implemented. In December of 2014, a "Needs Assessment," as defined by the Board of State and Community Corrections (an oversight body responsible for local detention facilities), was commissioned to determine the level of need and composition for juvenile detention beds in El Dorado County. As determined by the assessment a recommendation was provided to replace the Placerville Juvenile Hall with a contemporary 40-bed detention and treatment facility. Subsequent to this finding a State construction grant was sought and acquired for \$9.2 Million. This financing would provide for approximately 50% of the estimated project costs. The County is considering the available options to address this need.

2. At a minimum, one or two ward rooms at the Placerville facility should be converted into small offices or conference room to ensure privacy when providing individual or small group counseling sessions.

Response: The recommendation requires further analysis. Consideration has been given to this option and within the next six months, the Department intends to request a capital project estimate to determine the cost of retrofitting between two and four (one - two on each wing) detention rooms into treatment office space for the privacy of minors and effective delivery of services.

El Dorado County Grand Jury Report 2014-15

Passing the Smell Test Case GJ 14-06

Background

In response to a citizen complaint, the Grand Jury undertook an investigation of claimed “sickening odor of raw sewage and strong chemicals” attributed to Wilkinson Portables which was located in an industrially zoned area bordering three residences. The following is the County of El Dorado’s response to the findings and recommendations of the Grand Jury in accordance with Penal Code §933 and §933.05.

Findings

1. County departments and agencies addressed this complaint properly with due diligence. Their efforts included field inspections, consulting with other departments and keeping detailed and accurate records with follow up.

Response: The respondent agrees with the finding.

2. The Air Quality Management District resolution was effective and reasonable.

Response: The respondent agrees with the finding.

3. Wilkinson Portables is licensed; its county business license is current.

Response: The respondent agrees with the finding.

4. Wilkinson Portables responded affirmatively to a Notice to Comply by stating it had eliminated odor leaving its property.

Response: The respondent agrees with the finding.

5. Wilkinson Portables is not currently emitting an odor beyond its premises and is therefore not required to have a special use permit.

Response: The respondent agrees with the finding.

6. The El Dorado County Zoning Ordinance imposes specific requirements for Special Use Permits.

Response: The respondent agrees with the finding.

7. Review of a business and its business practices can be initiated upon receipt of a complaint.

Response: The respondent agrees with the finding.

Recommendations

1. Investigate business license procedures and practices, particularly business change of address and businesses without business licenses.

Response: The recommendation will not be implemented because it is not warranted or reasonable at this time. The 2015-16 Grand Jury is not making a recommendation to the County regarding business license procedures, but is asking that the next Grand Jury (2016-17) investigate, as stated in their report: "...it is recommended that an investigation of Business License change of address procedures, and others, be initiated by the 2015-16 Grand Jury."

El Dorado County Grand Jury Report 2014-15
Board of Supervisors Neglects Human Resources
Case GJ 14-07

Background

In the course of a number of investigations, the Grand Jury received numerous allegations that employees did not take their concerns of harassment or retaliation to the Human Resources Department and that qualified applicants are reluctant to apply to El Dorado County for employment because of the County's reputation for tolerating harassment and retaliation. The Grand Jury undertook an investigation of these allegations. The following is the County of El Dorado's response to the findings and recommendations of the Grand Jury in accordance with Penal Code §933 and §933.05.

Findings

1. El Dorado County does not follow generally recognized best practices for Human Resources.

Response: Respondent wholly disagrees with this finding. This statement is vague and ambiguous and fails to identify any specific best practice that the County is alleged to not follow. The County Human Resources Staff has stabilized over the past years and has received training on best practices. The Human Resources Department works cooperatively with other County Departments and the County Counsel's Office to ensure that personnel issues are dealt with in a prompt and legally responsible manner. The County has recently updated its Personnel Rules to bring them up to date with current industry practice.

2. El Dorado County does not have an Employee Policy Manual.

Response: Respondent partially disagrees with this finding. Although there is not a *manual* of employee policies, all employment related policies, personnel rules and labor agreements are located on the County website (intranet and internet).

3. The Human Resources Department has no mandated training for employees appointed to supervisory positions.

Response: Respondent wholly disagrees with this finding. The County conducts supervisory training annually and provides year round access to ongoing training of various topics through CSAC (California State Association of Counties) and other organizations.

4. The County is not in compliance with requirements that employees be trained in employment rules and practices. Department Directors report that new employees are not given adequate training on county policies but instead are merely given a stack of policies and required to sign an acknowledgement of receipt of those policies.

Response: Respondent wholly disagrees with this finding. The County is in compliance with training requirements. Every new employee participates in orientation to receive information about County policies and processes. The Human Resources Organizational Development Division sends notices to employees regarding training which is available on an ongoing basis. Department Heads take responsibility for providing regular ongoing policy updates to staff as they deem appropriate.

5. No effort has been made to comply with AB 2053 requirements. That effort is on hold while a new staff member is trained. In the meantime, staff and supervisors are not complying with it and other statutes mandating specific training. However, the legal requirements continue. They are not on hold.

Response: Respondent wholly disagrees with this finding. Countywide training has already been completed and exceeded the requirements set forth in State law.

6. Department Directors report using the Human Resources Department staff as little as possible, both when recruiting staff and when dealing with employee discipline or complaints. Instead, they rely on their own expertise or that of County Counsel.

Response: Respondent wholly disagrees with this finding. There is no alternate method for a Department Head to recruit staff and/or discipline employees without utilizing Human Resources. The County has a committee comprised of Human Resources/Risk Management, County Counsel and the Chief Administrative Office (on an as needed basis) which reviews personnel matters to provide counsel to department heads at every stage of a personnel matter.

In the past some Department Heads attempted to circumvent the civil service process which Human Resources is now preventing. There have also been circumstances in the past when a Department Head would consult with County Counsel rather than Human Resources. However, with the advent of the Personnel Review Committee and the revitalization of the Human Resources Department that practice has diminished.

7. Failure to strengthen the Human Resources Department has resulted in personnel issues being handled inappropriately by managers and supervisors who are not fully informed of their obligations under California employment law.

Response: Respondent partially disagrees with this finding. The seated Board of Supervisors is committed to improving the County culture and strengthening Human Resources. The effectiveness of Human Resource processes will be

facilitated by continuity of Human Resources staffing. As previously stated, the County through the Human Resources Department created a Supervisor's Academy which is a four day course presented twice per year to introduce supervisors and managers to generally accepted and County personnel practices. The Supervisor's Academy consists of four modules including courses on Leadership, Communication, Service Delivery, and Personnel Management. As part of this training, supervisors and managers are instructed to work within their Department structure to reach out to the County's Human Resources Department when they encounter a personnel matter which presents a unique or difficult situation.

8. Members of the Board of Supervisors fail to comply with the legal requirement to notify the HR Department when they become aware of alleged unlawful activity against one of their employees.

Response: Respondent wholly disagrees with this finding. This statement is vague and ambiguous and therefore it is impossible to provide a meaningful response. Respondent is not aware of any unlawful activity being committed against an employee that went unaddressed. If the Grand Jury is referring to allegations of harassment or retaliation, such complaints were investigated in accordance with the County's Policy Prohibiting Discrimination, Harassment and Retaliation.

9. Employees fear that a complaint submitted to the HR Department will not be kept confidential and they may be subject to retaliation. The HR Director acknowledged that this is a reasonable fear, based upon past behavior.

Response: Respondent partially disagrees with this finding. When a complaint of discrimination, harassment or retaliation is made by an employee, an investigation is conducted to determine whether a violation of County policy has occurred. Investigations are innately not confidential due to the need to interview witnesses and the subject in order to determine if the allegation is substantiated or not. However, witnesses who are interviewed are advised to keep the matter confidential and as set forth in the County's Policy Prohibiting Discrimination, Harassment and Retaliation the "preservation of the confidentiality of the records [of an investigation] pursuant to applicable statutes shall apply."

10. Inexperience causes the HR department to willingly defer handling of HR issues to County Counsel. This results in HR issues being handled from a defense oriented posture rather than in a proactive solution-seeking management effort. The Grand Jury observed that complaints filed with HR were investigated solely from the point of view of whether unlawful discrimination occurred while ignoring poor management practices.

Response: Respondent partially disagrees with this finding. All of the staff in Human Resources are highly skilled, experienced and qualified for their positions. Given the complexity of employment law, it is the practice in local government for the Human Resource and County Counsel staff to work in

tandem on personnel related matters. An example of the proactive approach taken under the present Human Resources Director is the creation of the Personnel Review Committee described above to address personnel matters as early in the process as possible.

Since the date of hire, the newly appointed Director of Human Resources has been assessing investigative complaints and reports for both EEO violations and violations of County personnel rules and recommending action accordingly. Additionally, when poor management practices are discovered in the course of an investigation, follow up is conducted with the Department Head on such issues.

11. Investigations of discrimination or harassment complaints frequently reveal poor management practices or other employee misbehavior, but investigative reports are not shared with department directors. Managers are not informed of these issues when they are brought to light in the course of an investigation and, therefore, are unable to take remedial action.

Response: Respondent wholly disagrees with this finding. Investigative reports are shared as necessary with Department Heads where a violation of County policy is found to have occurred. Respondent takes issue with the Grand Jury's characterization of investigations "frequently" reveal poor management practices or other employee behavior. Occasionally management feedback is received as the result of a Human Resources investigation. That information is provided to the CAO. The CAO has the responsibility to discuss the information with appointed Department Heads to address such issues.

Where employee misconduct which would constitute a violation of the County's Personnel Rules, Part 12, Disciplinary Actions, is uncovered during an investigation, the Human Resources Department will provide the Department Head with the information necessary to address the issue.

12. Because County Counsel is acting as de facto HR Director, legal work that could be handled in house is contracted out. Complaints of discrimination or harassment are often submitted to private law firms for investigation at significant cost to the county. There is no policy setting forth criteria or procedures for when an investigation will be handled by county staff or contracted out. While it is reasonable that the investigation of certain sensitive complaints, such as those against the CAO or the HR Department itself, be contracted out, it is unreasonably expensive to contract out the investigation of most complaints. These should be handled by HR staff.

Response: Respondent wholly disagrees with this finding. County Counsel is *not* acting as the de facto Human Resources Director. Given the complexities of employment law, Human Resources and County Counsel work closely on a variety of employment related matters including the determination of whether an outside investigator should be employed to conduct an investigation. Considerations of workload issues and the appearance of a bias or prejudice on the part of the investigator help to inform the decision.

In the case of a complaint of discrimination, harassment or retaliation, the law requires a prompt, thorough, and fair investigation. The Human Resources Department will conduct an initial review of the matter to determine if the complaint states facts which if are proven to be true would be sufficient to constitute a violation of the County policy. If the complaint does state sufficient facts, then a determination as to whether an outside investigator will be employed is made. The industry standard is to employ the services of an impartial outside investigator to conduct the workplace investigation. The Human Resources Director is also the County's Equal Employment Officer responsible for making a determination as to whether there was a violation of County policy. Since the County does not have a separate EEO officer, the County will routinely hire an outside investigator to conduct the EEO investigation to avoid the appearance that the investigator is biased or is under some undue influence to come to a certain result. Given the costs of litigation and the potential adverse outcomes if an investigation was found to be biased, the County has adopted a more conservative approach which is most commonly used by smaller counties.

Investigations into employee misconduct to determine whether discipline should be imposed are routinely conducted by the department considering the disciplinary action in conjunction with the Human Resources Department. County Counsel may be consulted if a particular legal issue arises during the course of the investigation or to avoid potential legal pitfalls. The Personnel Review Committee described above is also available to the departments to assist in the process. In circumstances where there may be a conflict of interest in the department conducting the investigation or if the matter involves a Department Head, outside investigators have been employed, but this is the exception rather than the rule.

13. The County spends significant sums of money on outside consultants and attorneys for HR related issues.

Response: Respondent partially agrees with this finding. Consultants and attorneys are utilized at the direction of the Board of Supervisors, the CAO and/or the recommendation of County Counsel and/or Human Resources for labor negotiations, training, legal research and/or investigations to comply with Federal and State law and unbiased feedback and findings. Various factors are considered in making the decision to employ outside consultants or attorneys including workload issues, specialized services, and cost.

14. The County has spent significant sums of money on private consultants identifying personnel issues but has taken only the initial steps towards resolving the issues identified.

Response: Respondent partially disagrees with this finding. The Board of Supervisors is committed to improving the County culture. As such, the County has expended funds in an attempt to identify and address systemic or cultural issues affecting County employees. The Cultural Assessment Survey was the first step in identifying those issues. Such a broad based study is an extensive

undertaking but it was necessary to obtain an impartial analysis of the cultural issues affecting the County. Any identified personnel issues have been or are currently being addressed in compliance with Federal and State law. Once the results of the Cultural Assessment Survey were known, the County employed a “special master” to address specific employee complaints related to any alleged violation of the County’s Respectful Workplace Policy (Personnel Rule 111). Additionally, the County employed outside investigators to address employee complaints alleging violations of the County’s Policy Prohibiting Discrimination, Harassment and Retaliation. As with any attempt to change the culture of an organization, the change comes with sustained effort over time. This Board has been unwavering in its support of creating a healthier workplace for its employees and moving the County forward in a positive fashion, building on the findings of the Cultural Assessment Survey and the development of a County Strategic Plan.

15. Human Resources and Risk Management were separated to allow the HR Director to develop her skills in human resources management. The two functions are closely integrated and their separation is inefficient.

Response: Respondent wholly disagrees with this finding. At the direction of the then CAO, Terri Daly, Risk Management was overseen by the former Assistant CAO, Kim Kerr, prior to the newly appointed Director of Human Resources being hired. CAO Terri Daly directed that Risk Management would remain under the control of the CAO’s office.

The structure of having Risk Management under the CAO’s office was not effective and not in compliance with County Ordinance, therefore the Board of Supervisors directed the former CAO, Terri Daly, to assign the responsibility of Risk Management to the newly appointed Director of Human Resources in order to enhance efficiency and comply with County Ordinance.

It should be further noted that no inquiry was made of the newly appointed Director of Human Resources during the Grand Jury interview regarding this allegation/representation.

16. The County does not have an organization chart accurately reflecting County organization.

Response: Respondent wholly disagrees with this finding. The Chief Administrative Office oversees updates to the County organizational chart which can be found on the CAO department page within the annual recommended budget.

Recommendations

1. The Board of Supervisors should renew its commitment to comply with the recommendations made by the 2006-07 Grand Jury.

Response: This recommendation has been implemented as have many of the recommendations of the 2006-2007 Grand Jury. By way of example, the Board and Chief Administrative Officer have expressed a consistent message that Departments are to work in coordination with the Human Resources Department. The current Human Resources Director has reached out to Departments through the development of the Personnel Review Committee. Additionally, the County has improved its recruitment process to more timely address Departmental needs. The County has also developed and successfully conducted several Supervisor Academies in addition to the State mandated trainings. Rather than review and update the then existing El Dorado County Personnel Management Book, the County has adopted comprehensive Personnel Rules which can be found on the County website. The County is also in the process of adopting a Strategic Plan which will include various elements to help guide the County both in its internal relationships and external relationships as recommended by the 2006-2007 Grand Jury.

2. The Board of Supervisors should commit to full compliance with all state and federal employment statutes.

Response: The recommendation has been implemented as it has always been the practice of the County to comply with all applicable state and federal employment statutes.

3. The Board of Supervisors should aggressively seek a new and qualified Chief Administrative Officer.

Response: This recommendation is in the process of being implemented. The County has retained the services of a well-respected and very experienced Chief Administrative Officer to assist the County as the County begins its recruitment for a Chief Administrative Officer.

4. The Board of Supervisors should appoint a qualified manager of Human Resources.

Response: This recommendation has been implemented. Pamela Knorr recognizing the need for a full time Human Resources Director returned to her position as HR Director on a full time basis in July 2015.

5. The Human Resources function should be centralized under a manager reporting to the Chief Administrative Officer.

Response: This recommendation will not be implemented because it is not warranted or is not reasonable. The need for autonomy of the Human Resources function cannot be overstated. The Human Resources Director is an appointed Department Head as designated in County Ordinance Code section 2.14.010 and as such answers directly to the Board of Supervisors. (Charter section 404). This model is repeated in many counties throughout the state. The County Administrator directs and supervises day-to-day operations of all County departments and agencies which are under the direct control of the Board. Charter section 401 requires that "All department heads...shall cooperate with the Chief Administrative Officer..." That would include the Human Resources Director.

6. The Human Resources manager should be responsible for the combined Human Resources and Risk Management functions.

Response: This recommendation has already been implemented. The Risk Management Division is a division of the Human Resources Department under the direction of the Human Resources Director.

El Dorado County Grand Jury 2014-15

The Public Defender Is Doing Well Under The Circumstances Case GJ 14-10

Background

This report focused on the question of whether the Public Defender's Office should be retained or if some other model of providing legal services to indigent criminal defendants should be utilized. The report then moved on to other issues including a recommendation as to how the County should conduct future recruitments for a Chief Public Defender. In order to address the concerns expressed by the Grand Jury, the following constitutes the response of the County of El Dorado as required by Penal Code § 933 et seq.

Findings

1. The public defender's office is doing a good job of representing indigent criminal defendants.

Response: Respondent agrees with the finding.

2. Approximately one-half of the attorneys have applications out for other employment.

Response: Respondent can neither agree nor disagree with this finding as it is not privy to the private matters of these employees.

3. Public Defender Teri Monterosso has maintained the office's excellent representation for criminal defendants in the county.

Response: Respondent agrees with the finding.

Recommendations

1. The current public defender system should be retained.

Response: The recommendation has been implemented. The County has at various times analyzed the economic feasibility and the advisability of other models of service delivery. The County agrees with the Grand Jury that the evidence to date does not demonstrate any consistent savings under the "contract" defense providers model, but there is potential risk for downgrading the legal services provided to indigent criminal defendants. The current system of a County public defender's office is considered to be the most efficient and the most effective method to provide legal representation to the indigent criminal defendant population.

2. The current Public Defender, Terri Monterosso, should be retained by the Board of Supervisors, but her continued appointment should be reviewed in two years to see if she continues to hold the office together while maintaining its effectiveness delivering the county's indigent criminal defense.

Response: This recommendation has been implemented. The County Board of Supervisors is the appointing authority for the Public Defender. The Board of Supervisors conducts regular personnel performance evaluations for all appointed department heads including the Public Defender. These performance evaluations are conducted in a closed session of the Board pursuant to Government Code section 54957 at least annually. The performance evaluations cover all aspects of the department head's job performance including the effective delivery of services. The current Public Defender has done a good job in maintaining legal services, improving the reputation of the office in the community and with other County departments, all while bringing much-needed change and structure to the department. The County has provided support and has increased its financial investment in the Public Defender's Office, in response to Ms. Monterosso's thoughtful analysis of the department's needs.

3. Whenever a new public defender is needed, the Board of Supervisors should employ a formal system incorporating the views of the very well regarded judges and lawyers involved in the criminal justice system of El Dorado County. The Board should then task this blue ribbon committee or committees with picking only finalists for the position who are highly qualified to effectively lead the office to at least adequate, if not excellent, defense of indigent criminal defendants. Thus the Board will not be forced to make decisions in an area where it cannot possibly have any actual knowledge let alone expertise. At the very least, the Board should get the approval of the county's criminal law attorneys and judges that the proposed candidate is qualified, if not highly qualified to be the Chief Public Defender.

Response: This recommendation will not be implemented because it is not warranted or is not reasonable. The County Charter, section 210 provides that "The Board shall: ... (3)... Appoint, suspend or remove all department heads except those for whose election or appointment this charter makes other provision. Appointments shall be made on the basis of executive and administrative qualifications as determined by screening and selection procedures comparable to those used for classified management personnel." In accordance with the County Charter, the County has a recruitment and hiring process which it employs when a department head position becomes available. In the case of the Public Defender appointment, the usual selection process for an appointed department head was utilized. The County conducted an open recruitment, a review of the minimum qualifications of the applicants, a 3-person interview panel which included subject matter experts (in some cases the subject matter expert may be a department head or assistant department head from outside the County), a referral of the top 3 candidates to the Board of

Supervisors, and then final selection by the Board of Supervisors. In addition, a background check of the qualified candidates is conducted by Human Resources.

A process by which the County seeks “approval” from the local criminal law attorneys and judges for the appointment of the Chief Public Defender unnecessarily limits the available pool of candidates for the position of Chief Public Defender to only those practicing law within El Dorado County. The County by not limiting the recruitment pool in seeking department heads has been able to avail itself of top quality candidates from a wide geographic area. Whenever the County is making a decision that will impact the court system, the County makes every effort to consult with the courts.

El Dorado County Grand Jury Report 2014-15

Putting Political Gain Above What's Right for the County – County's Response Case GJ 14-12

Background

The Grand Jury having heard “the same allegations repeated from credible witnesses in a number of different complaints” regarding the Auditor/Controller conducted an investigation into those allegations. Pursuant to Penal Code section 933.05, the County is providing a response to this Grand Jury report to the extent that a finding or recommendation addresses budgetary or personnel matters over which it has some decision making authority. Pursuant to Penal Code section 933 the elected officer, the Auditor/Controller, will comment within 60 days to the Presiding Judge on the findings and recommendations of the Grand Jury.

Findings

1. The Auditor/Controller is ultimately responsible for the Cost Allocation Plan. The Auditor/Controller had full knowledge that the state would disallow reimbursement if the Cost Allocation Plan were not corrected, and he had full knowledge of the impact that this loss of reimbursement would have on the county's fiscal situation. As soon as the State Controller raised the specter of this loss of reimbursement, the Auditor/Controller should have convened a work group of appropriate staff to resolve this issue.

Response: Respondent County of El Dorado agrees in part and disagrees in part with this finding. The Auditor/Controller is ultimately responsible for certifying the Cost Allocation Plan. (OMB Circular A-87 revised 5/10/04). He must certify to the best of his knowledge and belief that the costs included in the Cost Allocation Plan are allowable and are properly allocable to the award charged with those costs. Departments are responsible for providing the Auditor/Controller with accurate information in order for the Auditor/Controller to timely complete the Cost Allocation Plan. The County Charter section 401 requires that “[a]ll department heads and officers of the county, both elected and appointed, shall cooperate with the Chief Administrative Officer so that the Chief Administrative Officer may achieve complete coordination of all county activities.”

Respondent County agrees that the Auditor Controller would be aware of the consequences of not submitting a proper Cost Allocation Plan.

2. The Auditor/Controller willfully refused to prepare a complete Cost Allocation Plan. In doing so he failed to protect the fiscal integrity of the County.

Response: Respondent County of El Dorado partially disagrees with this finding. Although it is not clear the year(s) to which it is referring, the County is aware that for the Fiscal Year 2011/2012 actual costs for use in Fiscal Year 2013/2014 did not include all of the functional cost allocations related to the Information Technologies Department. The OMB A-87 Cost Allocation Plan included the following statement:

“Due to various deficiencies noted by the SCO Cost Plan auditor’s field review, including IT functional changes and reorganizations not reflected in the financial records or cost plan, insufficiencies in time keeping records, and poorly documented and supported direct billing methodologies, the functional cost allocations of (1) Systems and Programming and (2) Network and PC Support services have essentially been removed from the plan and allocated to the miscellaneous cost plan line. All direct billed amounts have been offset to essentially credit or return amounts billed to each user.

As part of a comprehensive corrective action plan going forward, County management will review and revise IT’s allocated functions to ensure all allowable services and costs may be direct billed and / or allocated reasonably and equitably in future plans.”

The State Controller’s Office Field Review Report related to the 2013/2014 Cost Allocation Plan was provided to the Grand Jury.

Ultimately, the 2013/2014 Cost Allocation Plan was approved by the State of California. It is true that not all Information Technology Department costs have been recovered for that year.

3. The Auditor/Controller delays or refuses to make payments for reasons of personal and political motivation.

Response: As this finding does not address budgetary or personnel matters, pursuant to Penal Code §933.05 it would be inappropriate for the County of El Dorado to respond.

4. The Board of Supervisors has not ensured the independence of the outside audit of the county’s financial statements.

Response: Respondent County of El Dorado wholly disagrees with this finding. The County has had an outside audit of its financial statements by an independent auditor on an annual basis.

5. The Auditor/Controller willfully fails to comply with Ordinance Code sections 3.16.130 and 3.16.140.

Response: As this finding does not address budgetary or personnel matters, pursuant to Penal Code §933.05 it would be inappropriate for the County of El Dorado to respond.

6. The Auditor/Controller allows personal relationships to interfere with his management of his staff.

Response: As this finding does not address budgetary or personnel matters, pursuant to Penal Code §933.05 it would be inappropriate for the County of El Dorado to respond.

7. The Auditor/Controller is guilty of harassment and disrespectful conduct toward employees of both the county and other entities.

Response: Respondent County of El Dorado partially disagrees with this finding. The County takes seriously any complaints of harassment, retaliation, discrimination or disrespectful conduct. Any such complaint is reviewed by the Human Resources Department and if it is determined there is a sufficient factual basis which if proven true would constitute a violation of the County's policy prohibiting discrimination, harassment or retaliation or County Personnel Rule 111, an investigation is conducted by an impartial fact finder. To date the County is not aware of any sustained complaints of a violation of the County's policy prohibiting discrimination, harassment or retaliation or substantiated complaints of disrespectful conduct which named the Auditor Controller as the subject.

Recommendations

1. The Board of Supervisors should establish an Audit Committee as recommended by the Government Financial Officers Association.

Response: This recommendation has not yet been implemented but will be implemented in the future. The Respondent County is in the process of developing an Audit Committee as recommended by the Government Financial Officers Association.

2. The duties of the Audit Committee should include proposing the outside auditor and coordinating the outside audit.

Response: This recommendation has not yet been implemented but will be implemented in the future. The Respondent County is in the process of developing an Audit Committee as recommended by the Government Financial Officers Association.

3. The Board of Supervisors should give the Grand Jury the opportunity to participate with the Audit Committee in the selection of the outside auditor, as required by existing policy B-9.

Response: This recommendation has not yet been implemented but will be implemented in the future. The Respondent County is in the process of developing an Audit Committee as recommended by the Government Financial Officers Association and in accordance with Board Policy B-9.

4. The Board of Supervisors should require the Auditor/Controller to comply with all of its duly adopted ordinances.

Response: This recommendation has been implemented. The County undertook a revision of the County Claim Ordinance to bring the ordinance in alignment with the Government Code and the County's practice.

5. The District Attorney should investigate the allegations and findings in this report to determine whether the Auditor/Controller should be removed from office and should consider impaneling a criminal grand jury for that purpose.

Response: The recommendation requires further analysis. The process for the removal of an elected official is set forth in Government Code section 3060 et seq.

El Dorado County Grand Jury 2014-15

Sign of Times – County’s Response Case GJ 14-13

Background

The 2014-15 El Dorado County Grand Jury undertook an investigation to the alleged failure of District One Supervisor “to follow basic and generally accepted principles of good governance.” Pursuant to Penal Code §933.05, the County is providing a response to this Grand Jury report to the extent that a finding or recommendation addresses budgetary or personnel matters over which it has some decision making authority.

Findings

1. The head of the Human Resources Department agreed with those filing Grand Jury complaints; a complaint would be made public and fear of reprisal was warranted.

Response: Respondent County of El Dorado partially disagrees with this finding. When a complaint of discrimination, harassment or retaliation is made by an employee, an investigation is conducted to determine whether a violation of County policy has occurred. To some extent, investigations are not confidential due to the need to interview witnesses and the subject in order to determine if the allegation is substantiated or not. However, witnesses who are interviewed are advised to keep the matter confidential and as set forth in the County’s Policy Prohibiting Discrimination, Harassment and Retaliation the “preservation of the confidentiality of the records [of an investigation] pursuant to applicable statutes shall apply.” Additionally, the County takes seriously any reports of alleged retaliation towards anyone making or participating in the investigation of a complaint.

2. The county is indeed paying thousands of dollars to an independent company for *executive coaching* in an attempt to modify Supervisor Mikulaco’s behavior.

Response: Respondent County of El Dorado partially disagrees with this finding. To the extent that the finding asserts that “executive coaching” is ongoing for Supervisor Mikulaco, the finding is incorrect. The County made available the services of a management consultant to Supervisors, elected officials and Department Heads to assist in improving their skill sets. Supervisor Mikulaco took advantage of this learning opportunity. The County provides many

training opportunities to both elected officials such as members of the board of supervisors, elected and appointed department heads and employees. The County encourages the continued education of its officials and employees to improve their effectiveness in performing services to the public.

3. The County did sign an agreement with Mansour Properties for the sum of \$19,200 a year plus utilities of roughly \$2400 a year. This does not include the cost of pro-rated landlord expenses, office furniture or supplies to operate this facility.

Response: The Respondent County partially agrees with the finding. County of El Dorado Board of Supervisors Policy D-5 addresses the Supervisors Departmental Budget. It provides: "A line item budget for each District shall be approved and adopted through the annual budget process. A Supervisor shall not exceed the total appropriations in his/her district budget." The policy provides that District budgets may include appropriations for "Discretionary funds, including projects, services, or other purchases that either directly or indirectly support the Vision and Mission of the Board of Supervisors." The County is aware that Supervisor Mikulaco has filed a response to this finding explaining his reasons for retaining the Constituent Service Center and incorporates by reference his response to this finding.

4. There is a street sign that cost the county \$1,700 to manufacture and install on a public thoroughfare with no record showing how the sign got there.

Response: The Respondent County of El Dorado disagrees with this finding. It is routine to have signs placed directing the public to Government Offices. In fact, the sign directing the public to the office of State Senator Ted Gaines shares the same sign post as that of the District One Supervisor. There is, in fact, documentation regarding the fabrication and installation of the two directional signs on Latrobe Road including a County of El Dorado Project Authorization. The estimate for the fabrication and installation of the two directional signs was \$1,100.00 not \$1,700.00 as alleged. The billing detail makes clear that the agency to be billed was "Supervisor Mikulaco's Office."

5. Because of Mikulaco's actions creating a hostile environment, he can no longer serve on various boards, adding to the workload of the other four supervisors.

Response: The Respondent County of El Dorado disagrees with this finding. The County takes seriously any claims of discrimination, harassment or retaliation including any claims that a hostile work environment. The county is not aware of any substantiated claims of discrimination, harassment or retaliation naming Supervisor Mikulaco as the subject. Supervisor Mikulaco continues to serve on a number of boards and committees. The County is aware that Supervisor Mikulaco has filed a response to this finding and incorporates by reference his response to this finding.

6. There is a general policy allowing a \$250,000 discretionary budget for each supervisor. It is ordinarily used to cover office supplies and one executive assistant. Other supervisors expressed their concern that Supervisor Mikulaco is ignoring this rule and is spending county funds unnecessarily during hard economic times.

Response: The Respondent County of El Dorado partially agrees with this finding. County of El Dorado Board of Supervisors Policy D-5 addresses the Supervisors Departmental Budget. It provides : “A line item budget for each District shall be approved and adopted through the annual budget process. A Supervisor shall not exceed the total appropriations in his/her district budget.” The policy provides that District budgets may include appropriations for “Discretionary funds, including projects, services, or other purchases that either directly or indirectly support the Vision and Mission of the Board of Supervisors.” Nothing in the policy limits the expenditure of funds to cover the cost of office supplies and one executive assistant. The County is aware that Supervisor Mikulaco has filed a response to this finding incorporates by reference his response to this finding.

7. Mikulaco himself has filed Human Resources complaints of harassment specifically against other Supervisor’s assistants and against agency heads in an effort to impede the county Human Resources staff’s efforts to address any complaint involving him.

Response: The Respondent County of El Dorado disagrees with this finding. The County takes seriously any complaints of discrimination, harassment or discrimination as well as any complaints of disrespectful conduct in violation of the County’s policy or Personnel Rule 111. The County is aware of one complaint filed by Supervisor Mikulaco. The County conducted an appropriate investigation of that complaint. The County has no facts that cause the County to believe that the complaint was filed in bad faith or for an improper purpose.

8. The satellite office is only scheduled to be open for business two days a week and it has been reported that it is seldom visited.

Response: As this finding does not address budgetary or personnel matters, pursuant to Penal Code §933.05 it would be inappropriate for the County of El Dorado to respond.

9. Mikulaco informed the Grand Jury that because his campaign for re-election is so important he may forego his *pro forma* turn to chair the Board of Supervisors next year.

Response: As this finding does not address budgetary or personnel matters, pursuant to Penal Code §933.05 it would be inappropriate for the County of El Dorado to respond.

Recommendations

1. The Grand Jury believes that the county should avail itself of the early termination clause in the Mansour Property and terminate the District One satellite office.

Response: This recommendation will not be implemented as it is not warranted or reasonable. As indicated above each Supervisorial Districts is provided a line item budget. Board policy D-5 does not preclude the use of the discretionary funds in the District budget for a Constituent Service Center. The Board of Supervisors will be addressing the budget of the Board of Supervisors to determine if any changes to the budgeting process are necessary or advisable.

2. If the District One Supervisor deems it necessary to have a satellite office he should pay for it out of his own pocket. The Grand Jury is concerned that Mikulaco's office could set a precedent for other supervisors to want satellite offices, which would result in more unnecessary expenditures.

Response: This recommendation will not be implemented as it is not warranted or reasonable. As indicated above each Supervisorial Districts is provided a line item budget. Board policy D-5 does not preclude the use of the discretionary funds in the District budget for a Constituent Service Center. The Board of Supervisors will be addressing the budget of the Board of Supervisors to determine if any changes to the budgeting process are necessary or advisable.

3. Mikulaco should reimburse the county for his *executive coaching*.

Response: This recommendation will not be implemented as it is not warranted or reasonable. As discussed above, the County makes available training to all of its employees including Supervisors, elected officials and department heads. The county is not in the practice of requiring individuals who avail themselves of training opportunities to reimburse the County for that expense nor would such a practice better serve the public.

4. The county needs to have a strong Human Resources department.

Response: This recommendation has been implemented.

5. Mikulaco does not properly perform all the required duties of a Supervisor. We suggest that the Board of Supervisors consider censuring Supervisor Mikulaco because of his unacceptable behavior.

Response: This recommendation will not be implemented as it is not warranted or reasonable. The recommendation of the Grand Jury is non-specific and vague in its recommendation. The Grand jury fails to identify a specific “duty” not being performed by Supervisor Mikulaco. The County is aware of no facts at this time that would justify the censuring of Supervisor Mikulaco.

El Dorado County Grand Jury Report 2014-15

Last Year's Dysfunction at the South Lake Tahoe Probation Office Case GJ 14-14

Background

In following up to its 2013-14 Grand Jury report, the current Grand Jury conducted interviews with various staff located in the South Lake Tahoe field office of the Probation department to examine the work conditions and general morale. In accordance with Penal Code section 933.05 the following is the County of El Dorado's response to the findings and recommendations for the 2014-15 Grand Jury Report in this matter.

Findings

1. A workplace assessment, found much the same climate as described by last year's Grand Jury report and many actions were suggested by the contracted assessment group. A plan of action was formulated and implemented by the new administration.

Response: The respondent partially agrees with the finding. The consultant was able to better capture the specific areas of improvement needed and identify that the environment was not as "toxic" as had been described by the previous Grand Jury report. The department continued its efforts to improve the work environment in South Lake Tahoe and those efforts have been successful.

2. Additional training opportunities and more open communications between officers and supervisors have resulted in better morale among all employees.

Response: The respondent agrees with the finding. In addition to training and communication improvements, managers have made many efforts on an individual and group level to demonstrate an open and supportive environment for all staff.

3. All officers understand that field visits are preferred by management.

Response: The respondent agrees with the finding.

4. Chief Probation Officer Richart has dealt effectively with the workplace dysfunction previously felt by the South Lake Tahoe staff, but slower than hoped.

Response: The respondent partially agrees with the finding. The Chief Probation Officer, in concert with all of his staff, has dealt effectively with improving the workplace environment or perceptions of the environment. The length of time taken to make these changes is on par with or accelerated from what would be expected in an organizational change effort.

Recommendation

The Grand Jury recommends that all concerned with the South Lake Tahoe Division of the El Dorado County Probation Department continue working on the positive changes already instituted while working on additional improvements. We hope that this office will be considered by all employees to be a truly exemplary place to work, as will anyone looking at it.

Response: The respondent agrees with the recommendation of the Grand Jury and is dedicated to continuing our pursuit of an excellent work environment for our colleagues in the SLT Division, as well as throughout the Department. In fact, it is a stated value of management that all employees of the Probation Department feel they work in a positive, supportive, safe, professional and productive work place.

El Dorado County Grand Jury Report 2014-15

The El Dorado County Charter: Time to Admit & Correct a Mistake Case GJ 14-15

Background

The 2014-15 El Dorado County Grand Jury undertook yet another review of the voter approved County Charter. They also reviewed the efforts of the Charter Review Committee of 2014. The 2014-15 Grand Jury was generally critical of the Charter and the 2014 Charter Review Committee. The following is the County of El Dorado's response to the findings and recommendations of the Grand Jury in accordance with Penal Code §933 and §933.05.

Findings

1. The Board of Supervisors is required to convene a Charter Review Committee within five years of the last charter review.

Response: Respondent agrees with the finding. (El Dorado County (EDC) Charter Article VII, section 701)

2. The 2014 Charter Review Committee was required to '...make recommendations for amendments to or revisions of the charter to the Board.' The Charter Review Committee was not limited to reviewing amendments suggested to it by the Board of Supervisors.

Response: Respondent agrees with the finding. (EDC Charter Article VII, section 701)

3. The 2014 Charter Review Committee had the responsibility to conduct a comprehensive review to the charter and should have given meaningful consideration to the two Grand Jury reports recommending changes to the county charter.

Response: Respondent agrees in part and disagrees in part with the finding.

Respondent agrees that the EDC Charter Review Committee (Committee) has responsibility to "conduct a review of the charter" and to "make recommendations" for changes to the EDC County Charter as set forth in EDC Charter Article VII, section 701. "The committee shall review the charter and, after at least two (2) public hearings, make recommendations for amendments to or revisions of the charter to the Board."

Respondent disagrees with any finding that implies that the Committee made a mistake, did not fulfill their responsibilities, or did not give meaningful consideration to the recommendations they made to the El Dorado County Board of Supervisors (Board) to amend the EDC Charter. The Committee held six public hearings and made meaningful recommendations to the Board to amend the Charter. The Board again thanks the Committee for the considerable time they volunteered and for the commendable public service they provided to the County. The agenda and minutes of the Committee are available for review on the EDC website.

4. The 2014 Charter Review Committee failed to consider recommendations made by either the 2013-14 Grand Jury or the 2008-09 Grand Jury and it made no findings regarding those recommendations.

Response: Respondent disagrees with the finding.

The Committee did consider recommendations made by “either the 2013-14 Grand Jury or the 2008-09 Grand Jury.” For example, the Committee did consider whether “The Charter should be amended to provide for the election of only those officials mandated by the California Constitution”, and this was a recommendation by the 2013-14 Grand Jury; after careful and meaningful consideration the Committee decided not to make this recommendation to the Board. The agenda and minutes of the Committee are available for review on the EDC website.

5. The Charter Review Committee met only six times. The first meeting was devoted to organization and introduction. This is insufficient time for a substantive review of the county charter, insufficient time to allow members of the public to propose amendments for the committee’s consideration and insufficient time for the public to have meaningful input.

Response: Respondent agrees in part and disagrees in part with the finding.

Respondent agrees that, “The Charter Review Committee met...six times.”

Respondent disagrees that, “This is insufficient time for a substantive review of the county charter, insufficient time to allow members of the public to propose amendments for the committee’s consideration and insufficient time for the public to have meaningful input.”

The Committee made meaningful and substantive recommendations to amend and revise the EDC Charter, after they carefully considered input provided by the public in six hearings; the Committee members also spent countless hours of their own time preparing for the public hearings. The Committee agenda and minutes are available for review on the County website.

6. The charter creates an imbalance between the power exercised by the Board of Supervisors and the elected department heads, rendering the Board of Supervisors unable to govern the county.

Response: Respondent disagrees with the finding.

Charter counties are created and authorized under California Constitution, Article 11 Section 3. The County has legislative authority to act on matters expressly provided by the Constitution and state laws under Article 11 sections 4 (d) and (h). The EDC Charter has been lawfully adopted and amended by voters; California Constitution, Article 11 section 4 (c) authorizes the County to elect department heads as set forth in EDC Charter, Article IV, section 402 that provides for the election of an:

- a. Assessor
- b. Auditor/Controller
- c. District Attorney
- d. Recorder/Clerk
- e. Sheriff/Coroner/Public Administrator
- f. Surveyor
- g. Treasurer/Tax Collector “

Respondent continues to believe that the elected department heads and the Board are responsive to the public and will continue to review its processes, procedures and policies to enhance the working relationships among elected department heads and the Board.

7. The Charter imposes responsibilities on the Chief Administrative Officer as the executive officer of the county but does not give this official the authority necessary to perform those responsibilities.

Response: Respondent disagrees with the finding.

The duties and the powers of the Chief Administrative Officer are clearly set forth in EDC Charter Article III section 304. The Board will continue to uphold the decisions of the voters when they adopt and amend the EDC Charter.

8. The above deficiencies in the Charter have promulgated dysfunction in county government so that the county cannot attract the best candidates for either elected or appointed positions.

Response: Respondent disagrees with the finding. See previous response.

9. Some members on the Board of Supervisors do not appreciate the importance of the expertise offered by professional staff and do not understand the role staff can and should play in implementing policies established the Board for effective functioning of county government.

Response: Respondent notes this comment. “Respondent disagrees with this finding. By design, the County form of governance calls for the open and public exchange of ideas. There are times when a member of the Board of Supervisors will disagree with the recommendations of staff. Additionally, Board members come from various walks of life with their own expertise. The open debate and respectful disagreement which will occur in a healthy environment should not be confused with a lack of appreciation of the expertise of the County’s professional staff or a misunderstanding of the role staff plays in implementing policies.”

10. Members of the Board of Supervisors are in need of training to help them be effective.

Response: Respondent agrees in part and disagrees in part with the finding.

Respondent agrees that training helps the Board of Supervisors be effective.

Respondent disagrees that “Members of the Board of Supervisors are in need of training” and also recognizes that training and education can be helpful.

11. Members of the Board of Supervisors have not availed themselves for training offered by the California State Association of Counties.

Response: Respondent disagrees with the finding.

CSAC provides a wide variety of training to all county employees. These curricula are taken advantage of when warranted.

Recommendations

1. The El Dorado County Charter should be repealed and county government structured as a general law county pursuant to the California Government Code. *In the alternative* the El Dorado County charter should be amended to:
 - Repeal term limits for members of the Board of Supervisors.
 - Redefine the authority of the Chief Administrative Officer as set forth in the 2013-14 Grand Jury Report.”

Response: This recommendation will not be implemented because it is not within the sole control of the BOS.

The Board intends to continue to uphold the decisions of EDC voters who have lawfully adopted and amended the EDC Charter that includes term limits for members of the Board of Supervisors.

The Committee carefully considered the issue of term limits for members of the Board of Supervisors and voted not to recommend repeal of term limits for members of the Board. The Committee agenda and minutes are available for review on the EDC website.

The recommendation to “Redefine the authority of the Chief Administrative Officer as set forth in the 2013-14 Grand Jury Report” is not warranted; the Board currently defines the direction for the county as reflected in Board policies, resolutions and county ordinances that implement that direction. The authority, duties and powers of the Chief Administrative Officer are clearly set forth in EDC Charter Article III section 304.

2. The Board of Supervisors should immediately convene a special charter review committee to perform the work not done by the 2014 Charter Review Committee. This committee and any future charter review committees should be created with recognition of the importance of their work. The committee should be composed of citizens with experience in the complexities of large organization management, whether public, private or volunteer. They should be given sufficient time to perform a thorough review of the charter, to thoroughly consider whether it should be revised to better serve the citizens of El Dorado County, and to allow substantive involvement of the interested public.

Response: Respondent will continue to implement part of the recommendation. The Committee did not make mistakes and they fulfilled their responsibilities as set forth in the Charter. Recommendations made by the Committee have been adopted by the Board and the voters of EDC.

Respondent strongly disagrees and takes exception to any opinion or implication that the Committee was not “composed of citizens with experience in the complexities of large organization management, whether public, private or volunteer” or that the Committee failed to “perform the work” of the Committee, or failed to act with “recognition of the importance of their work” because any such opinion or implication is completely without merit.

There is no legal requirement for the Committee to make the same recommendations as former Grand Juries to change the EDC Charter. Criticizing others for differences of opinion may be part of general public discourse but suggesting that the Committee has been deficient is unfounded and it is counterproductive to encouraging citizens to volunteer their time to perform important public services.

Respondent agrees in part, that any Charter Review Committee should be given time to perform a review of the charter in order to make recommendations to the Board, and the Committee had sufficient time to consider and make their valuable recommendations that were adopted by the Board and the voters in the November 2014 election. The Board will continue to uphold the decisions of the voters whenever they adopt and revise the EDC Charter.

3. Members of the Board of Supervisors should define the direction for the county and should adopt appropriate policies to implement that directions and direct the Chief Administrative Officer to implement those policies.

Response: Respondent will continue to implement this recommendation as they continue to “define the direction of the county and...adopt appropriate policies to implement that direction and direct the Chief Administrative Officer to implement those policies” as authorized by law.

4. Members of the Board of Supervisors should work through the Chief Administrative Officer and should not be involved in the day to day administration of county governance.

Response: Respondent will implement part of the recommendation, and will not implement part of the recommendation that is not warranted. The Board will continue to work with the Chief Administrative Officer when they define the direction for EDC and adopt policies to implement that direction, and they may be required by law to be involved in day to day administration of EDC governance. For example, the Board may be required by law to approve or disapprove a request to settle a dispute or claim involving the County, and this activity of the Board is part of the “day to day administration of county governance.”

5. The Board of Supervisors should establish procedures for bringing issues before the board and for interdepartmental relationships. They should then follow those duly adopted procedures and require all county officers, elected and appointed, to follow them as well.

Response: Respondent will continue to implement this recommendation. The Board has adopted procedures for bringing issues before the Board as authorized by state law, and the Board will continue to request that “all county officers, elected and appointed, to follow these procedures.”

6. Each member of the Board of supervisors should enroll in and complete the New Supervisors Institute (Course No. 110) offered by the California State Association of Counties.

Response: Respondent will continue to implement this recommendation.

7. Members of the Board of Supervisors should enroll in additional courses offered by the California State Association of Counties.

Response: Respondent will continue to implement this recommendation. Respondent agrees that education and training, including courses offered by the California State Association of Counties, are valuable; members of the Board will continue to avail themselves of these opportunities as each member deems appropriate, and as time permits.

DRAFT