

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

835



FROM: Executive Office

SUBMITTAL DATE:
August 5, 2015

SUBJECT: Response to the following 2014-15 Grand Jury Reports: Riverside County Code Enforcement Department, Cal Fire/Riverside County Fire Department, Edward-Dean Museum of Decorative Arts, Riverside County Regional Medical Center Emergency Treatment Services/Inpatient Treatment Facility, Riverside County Board of Supervisors, Riverside County Office of County Counsel.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve with or without modification, the attached responses to the respective Grand Jury reports listed above. Direct the Clerk of the Board to immediately forward the Board's finalized responses to the Grand Jury, to the Presiding Judge and to the County Clerk-Recorder (for mandatory filing with the State.)

BACKGROUND:

Summary

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

Departmental Concurrence

90day5depts8.15

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
SOURCE OF FUNDS: N/A				Budget Adjustment: N/A	
				For Fiscal Year: N/A	

C.E.O. RECOMMENDATION:

APPROVE

BY: 
George A. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.:

District:

Agenda Number:

3-6

**RESPONSE TO
2014-2015 GRAND JURY REPORT
Riverside County Code Enforcement Department**

Following is the response of the Riverside County Code Enforcement Department to the above referenced Grand Jury Report. As the Grand Jury has chosen to also reference the acts of the Office of Riverside County Counsel in its findings, this response has also been prepared on behalf of the County Counsel and his department.

BACKGROUND:

In Fiscal Year 2013-2014, County Code Enforcement responded to 2,785 complaints, conducted 1,807 waste tire inspections, issued 2,374 Notices of Violations, levied \$263,000 in fines, and initiated nine abatements or demolitions of substandard structures.

BACKGROUND RESPONSE:

During fiscal year 2013-2014, the Department overall responded to 3653 complaints, issued 3079 Notice of Violations and conducted 1807 waste tire inspections using the \$581,711 in funding provided by the Tire Grant. The Department levied \$264,200 in administrative citation fines, \$22,675 in parking enforcement fines, and collected \$986,428 from costs recovered through assessments on properties in violation. The Department processed 145 abatement cases of substandard structures, of which 136 resulted in property owner removal of the structures and nine were removed by the Department using contractors.

FINDING No. 1:

Supervision

County Code Enforcement suffers from a systemic lack of supervision of its field Code Enforcement personnel. Field Code Enforcement personnel self-schedule their daily activities, and are not required to maintain an accounting of the time and location of their daily activities. This lack of supervision is conducive to abuse of County time and resources.

RESPONSE: Respondent disagrees with the finding.

Supervising Code Enforcement Officers (Field Supervisors) generally assign caseloads based on geographic areas to each Code Enforcement Officer and utilize many tools for the oversight of assignments. The Department utilizes the County of Riverside Code Enforcement case management system (CORE) to provide daily scheduling of cases that are due for inspections to each Officer, either new cases or re-inspections of on-going cases. CORE also tracks specific case information, status, and time spent on case activities. Field supervisors use daily, monthly

and quarterly reports of case activity from CORE, supplemented with field oversight of personnel, and review of payroll time sheets to track productivity and case progress.

RECOMMENDATION No. 1:

Supervision

Reevaluate the supervisory responsibilities and structure of the entire Code Enforcement Department to ensure that consistent oversight is obtained. Supervisors with direct responsibility over field personnel shall require the completion of a daily field activity log which chronicles the officers' activities. The log shall consist of, but not limited to, time, location, type of activity, and disposition of each log entry. The logs shall be reviewed daily by the respective supervisor for accuracy. Supervisors shall make unannounced visits to field CEOs and obtain real time knowledge of their activities.

Supervisors shall, in accordance with their job description, which states in part:

...assign, review and evaluate the work performed by Code Enforcement personnel; direct day-to-day operations of the Code Enforcement function; create and assign work schedules as outlined in their job description.

RESPONSE: Respondent partially disagrees with the recommendation.

Field Supervisors review daily activities of their staff and evaluate work performed. CORE provides various reporting and management tools to track time spent and detailed case activity, rather than using antiquated paper logs. Field Supervisors use the CORE management tools, monitor field activities, work with code officers and other enforcement agency partners on complex cases, interact with the public to resolve issues of concerns, and direct the day-to-day operations of their assigned office. The Department does operate with a lean management structure, with only two management-level personnel (a Code Official and one Division Manager). The Department intends in the future to hire a second Division Manager to specifically focus on field oversight, which has been left unfilled for two years due to budgetary limitations.

FINDING No. 2:

Cal Recycle Waste Tire Grant Program Supervision

There is a full-time supervisor assigned to the Tire Grant Program; however, only 40 hours of supervision time is charged or billed to the Program per year. The Supervisor of the Tire Grant Program stated his supervisory philosophy is to allow the people he supervises to “self-

manage" themselves; and therefore, they require and receive very little oversight. This lack of supervision leads to abuse of County time and resources.

RESPONSE: Respondent disagrees with the finding.

The Tire Grant Supervisor directly charged 40 hours of time to the grant, which was the amount allowed for direct billing by Cal Recycle, for general supervisory activities. However, the Supervisor does spend the majority of his time overseeing the Tire Grant program, billed through the Department's administrative overhead. The cost is partially recovered indirectly through the Tire Grant, since the program is billed based on the Code fully burdened hourly rate (which includes administrative overhead in addition to salaries and benefits), and captures supervisory time. The supervisor does conduct other Department related work and projects as defined below. The Cal Recycle program provides a daily schedule of facilities to inspect, which the Tire Grant code officers use for their daily assignment of activities. The Supervisor monitors that the inspections are carried out, and performs quality control to ensure consistency and accuracy of the daily inspections of the scheduled facilities. The Department will work with Cal Recycle in future cycles of the Tire Grant to seek to expand the allowed number of direct-billed supervision hours.

RECOMMENDATION No. 2:

Cal Recycle Waste Tire Grant Program Supervision

To further enhance the efficiency of the operation of their organization, the supervisor assigned to the Tire Grant Program shall not be limited to waste tire activities only, but assigned additional code enforcement duties and responsibilities. The supervisor shall monitor employees on a regular basis to stop abuse of County time.

RESPONSE: Respondent disagrees with the recommendation.

The supervisor assigned to the Tire Grant Program does conduct other assigned department related duties including enforcement of illegal vending and dumping, and provides administrative assistance to management in several department-wide initiatives such as the development of policies and procedures and training programs. Please also see response to Recommendation No. 1.

FINDING No. 3:

Cal Recycle Waste Tire Grant Program Agreement

The Tire Grant Program operates as an agreement with the State of California (State). The State, in its agreement, allows up to four hours per waste tire inspection. Most on-site tire inspections require much less time, some as little as 15 minutes. It is noted in the Tire Enforcement Grant Program Agreement (TEA 18-10-14) that inspection research, report writing, and actual time spent inspecting are included as part of the 3 ½ hours billed, but most on-site inspections are completed in one hour or less.

Since the State is billed at 3 ½ hours per inspection, Tire Grant Program personnel are only tasked to perform three inspections per day. Testimony from some field CEOs has revealed they are "bored" with little to do at times. As a result, Tire Grant Program personnel are underutilized.

RESPONSE: Respondent disagrees with the finding.

Riverside County's Tire Grant Program has been acknowledged by Cal Recycle staff as one of the model tire grant programs for the State. In FY 2013/14, the Department committed to performing 1324 inspections in the grant application and actually delivered 1807 inspections, more than any other public agency. Cal Recycle staff has asked that the Riverside County team to present at its upcoming annual conference and share our experiences and process of conducting thorough inspections.

The State grant allows up to 4 reimbursable hours to be billed for an inspection of a waste tire facility. Inspections require more than just time spent on site. They also vary depending on the size of the site and level of compliance found. Prior to going out on site, the officers review the case history on the Cal Recycle database, any complaints filed, and records kept by the operator. The Tire Grant team covers all of Riverside County and travel time to inspections can vary greatly depending on the location of the facility, which can range from approximately 30 minutes to over two hours in remote areas. Once at the facility, most inspections average approximately one hour to inspect, including counting actual tires on-site, checking the operator records, explaining the inspection process and answering any questions that the operator may have. After the inspection is conducted, a report is prepared and logged into the Cal Recycle database. The time spent per case generally averages 3 to 3 ½ hours. Department staff has worked with Cal Recycle staff to increase the detail and quality of our time reporting over the years of implementing the Tire Grant Program.

RECOMMENDATION No. 3:

Cal Recycle Waste Tire Grant Program Agreement

Code Enforcement Officers assigned to the Tire Grant Program shall not be limited to waste tire activities only, but assigned additional Code Enforcement responsibilities.

RESPONSE: Respondent partially disagrees with the recommendation.

During the period of FY13/14, the Tire Grant team conducted 1807 waste tire facility inspections, exceeding the commitment of the number of facility inspections made in the grant. The Tire Grant team also conducts illegal tire dumping surveillance, attends program training, and performs other duties as requested by Cal Recycle. In addition to their primary duties of implementing the Tire Grant Program, the team on occasion also works on other department assignments including investigations of illegal vending, dumping and other case related duties.

FINDING No. 4:

Training

Code Enforcement Policies and Procedures do not reflect any mandated training/certification requirements or subsequent in-service training, which leads to inconsistencies in code enforcement practices. All training is optional except for California Penal Code §832, which is titled, *Course of training prescribed by commission on peace officer standards and training; examination; necessity to exercise powers; exemptions; examination fees.*

RESPONSE: Respondent disagrees with the finding.

The Department provides California Penal Code §832 training to all Code Enforcement Officers and Technicians. Additionally, the Department provides other required and optional job related training. This training includes required annual safety training; required annual storm water discharge inspection (NPDES) training; hazardous materials training; annual CALBO certification training for our staff who are certified building inspectors; Dog Bite Awareness; Human Trafficking; required Human Resources training (such as Employee Workplace Violence; Employee Harassment Prevention; Information Security, Electronic Media and Use), and various other training classes. The department has had to reduce some optional training opportunities over the last few years due to budgetary constraints, but will continue to look for opportunities to expand training based on budgetary ability.

RECOMMENDATION No. 4:

Training

In lieu of the California Penal Code §832 Training, County Code Enforcement shall mandate a 40-hour Officer Training Program as offered by the California Association of Code Enforcement Officers. This training includes: Ethics, Basic Inspection Protocols, Vehicle Abatement, Drug Recognition and Gang Awareness, Abatement of Substandard Housing and Dangerous Buildings, Case Preparation for Administration, and Civil & Criminal Cases.

County Code Enforcement shall establish training for all supervisors focused on the oversight of CEO's duties and responsibilities to increase accountability.

RESPONSE: Respondent disagrees with the recommendation.

As mentioned above, the department provides extensive training opportunities, including supervisory training. Code staff are provided basic training which includes Ethics, Safety Conduction Inspections, Vehicle Inspections, Drug Recognition and Gang Awareness, Abatement of Substandard Housing and Dangerous Buildings, Case Preparation for Administration, Officer Safety, Civil & Criminal Cases, and other topics. The Department requires an annual review of certain policies and procedures at the time of each employee evaluation. In addition, the Department has policies and procedures on Professional Conduct/Code of Ethics and Workplace Communication.

All Supervising Code Enforcement Officers have attended the County's Supervisory Academy program. The department supports staff participation in the California Association of Code Enforcement Officers (CACEO) and provides membership in that organization to enhance professional development, along with allowing attendance at some courses offered by CACEO. Although CACEO does offer several 40-hour academies, the Department has found that the California Penal Code §832 training in conjunction with the various training programs described above are most directly applicable and beneficial for our staff. The California Penal Code §832 training is a requirement in the job description for Code Officers.

FINDING No. 5:

Communications

There is no practice of regularly scheduled staff meetings among the CEOs to facilitate the dissemination of County Code Enforcement related information, as outlined in the Policies and Procedures Manual.

RESPONSE: Respondent disagrees with the finding.

Management of the Department holds a monthly team meeting with Supervising Code Enforcement Officers where information is disseminated, including updates to policy and procedures. Training items are provided, safety topics are discussed and various monthly reports regarding productivity of the department are reviewed. Supervising Code Enforcement Officers hold at least one monthly meeting with their respective staff to disseminate information received from the monthly management team meeting. Additionally, Supervisors also hold frequent 'tail gate' meetings with their staff when information needs to be disseminated as soon as possible.

RECOMMENDATION No. 5:

Communications

County Code Enforcement shall mandate regularly scheduled staff meetings conducted by supervisors or department heads to facilitate the dissemination of information to CEOs.

RESPONSE: Respondent agrees with the recommendation.

The Department will continue with the practice already in place by holding regularly scheduled monthly Management team meetings and Supervisory staff meetings at their respective offices. In addition, information is made available to staff via 'tail gate' meetings, Department-wide emails, Training Bulletins and other internal communication tools.

FINDING No. 6:

Operating Procedures

The County Code Enforcement Policies and Procedures Manual is incomplete and outdated. The manual does not adequately reflect the current procedures nor communication equipment available to field personnel (e.g., handie- talkie). Various sections of the manual are seven to eight years old.

RESPONSE: Respondent disagrees with the finding.

The Department has an extensive Policies and Procedures Manual and revises this Manual when changes occur. If a policy and procedure is still applicable and in effect then it may have an older origination/approval date listed. Policies are revised as necessary to reflect new procedures, changes in County policies, implementation of new ordinances, and other changing requirements. The Department issues cell phones to all field staff and has a pool of Public Safety Enterprise Communications (PSEC) Handy Talkie radios available for staff to use at each office,

and staff has been trained on their use. The Department is currently in the process of purchasing additional PSEC Handy Talkie radios to provide to each field staff member.

RECOMMENDATION No. 6:

Operating Procedures

The County Code Enforcement Policies and Procedures Manual shall be reviewed and revised to reflect current practices.

RESPONSE: Respondent agrees with the recommendation.

As changes occur and updates become necessary, the Department will continue with the practice of reviewing and revising the Policies and Procedures Manual.

FINDING No. 7:

County Counsel Interference

During the course of this investigation regarding abuses and deficiencies in the Code Enforcement Department, the Grand Jury encountered interference from the Riverside County Office of County Counsel (County Counsel). County Counsel has directed all County department heads to advise their subordinates to obtain legal representation from his office for sworn interviews, as well as screening of any documentation prior to complying with Grand Jury requests. County Counsel has taken the position that his office has the legal responsibility to represent all County employees in any matters involving the Riverside County Civil Grand Jury.

The Grand Jury is tasked with examining County departments for possible improprieties or inefficiencies pursuant to California Penal Code §925. Efforts by County Counsel to hinder the examination process and impede transparency are not beneficial to the citizens of the County of Riverside.

RESPONSE: Respondent disagrees with the finding.

Respondent disagrees with the Grand Jury's statement that the Office of County Counsel's (County Counsel) offer of advice and representation to its client is somehow interference. The Grand Jury clearly does not fully understand the role of County Counsel, nor does it understand the limits of grand jury action.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See CA Government Code §§ 26526, 26529 & 27642)

Also the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury maintains that they are "entitled to free access....to all public records within the county." (CA Penal Code §921) We do not disagree. However, the Grand Jury is not entitled to access to "all" records; only access to public records. One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client by requesting that a particular request be made in writing and that the request be reviewed by counsel so as to advise its client on compliance with the law or be represented pursuant to Penal Code section 939.22 is misguided and contrary to the County Counsel's ethical and statutory duties to its client.. Expecting its client to fend for itself and not avail itself of counsel, would have been a dereliction of County Counsel's responsibilities.

Furthermore, this "Finding" is indicative of the Grand Jury's misunderstanding of the role of County Counsel to represent its client, the County of Riverside and its constituent entities. Based upon the foregoing facts and circumstances, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-310, and 3-600 of the California Rules of Professional Conduct in representing his client.

RECOMMENDATION No. 7:

County Counsel Interference

The Riverside County Board of Supervisors shall instruct County Counsel to comply with California Penal Code §925 titled, County officers, departments or functions; operations, accounts and records; investigations and reports.

RESPONSE: The recommendation will not be implemented because it is not warranted and is not reasonable.

The recommendation is wholly without factual or legal basis. The grand jury simply objects to the County Counsel performing his ethical and statutory duties and responsibilities.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See CA Government Code §§ 26526, 26529 & 27642) Also, the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

Based upon the foregoing facts and circumstances, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-310, and 3-600 of the California Rules of Professional Conduct in representing his client.

**RESPONSE TO
2014-2015 GRAND JURY REPORT
CAL FIRE/RIVERSIDE COUNTY FIRE DEPARTMENT**

Following is the response to the above referenced Grand Jury Report.

FINDING NO. 1:

Battalion #8 - Station #43, City of Blythe

Station #43, located in downtown Blythe, was built in 1951. The building is too small to accommodate current equipment. The engine and water tender are parked outside the building and are partially covered by canopies. According to the Riverside County Fire Department, Fire Station Useful Life and Replacement Plan, December 2010, Station #43 would need to be replaced after a 50 year life expectancy. Today the station is over 60 years old.

Since July 2011 this station is no longer under contract with the City of Blythe, with the exception of providing mutual aid to the City of Blythe Volunteer Fire Company, when requested. Station #43 primarily services the unincorporated part of eastern Riverside County.

Response: Riverside County Fire Department agrees with the findings

RECOMMENDATION NO. 1:

Battalion #8 - Station #43, City of Blythe

CAL FIRE/RVC shall request the Board of Supervisors (BOS) to replace Fire Station #43 and relocate it closer to the Colorado River. Riverside County Mayflower Park is one possibility, which would be more strategically located to respond more efficiently. The new fire station shall be large enough to accommodate all vehicles and equipment.

CAL FIRE/RVC shall be proactive in seeking funds from available grant sources, and request Community Improvement Designation funds from the Riverside County Fourth District Supervisor.

Response: Riverside County Fire Department is currently reviewing our deployment model in Battalion 8 – specifically in regards to Fire Station 43 (FS43). Our considerations include the relocation of the facility, as well as the closure of the facility and the redistribution of personnel serving that area to the other local stations to be more efficient and cost effective. Additionally, the County of Riverside has just entered into a “Standards of Cover” (SOC) study with a private consultant to review our operations, deployment and

cost allocation County-wide. It is anticipated that this study will take 6 months. Following our review of both reports, we will bring forward recommendations to the Executive office and Board of Supervisors including those specifically regarding FS43.

FINDING NO. 2:

Battalion #8 - Station #45, Blythe Air Base

Station #45 is located on Economic Development Agency property, approximately seven miles west of Station #43 in Blythe. The Urban Search & Rescue #45 (US&R) vehicle has been at Station #45 since late 2012. Personnel have received US&R training for the past three years. The US&R vehicle is not fully equipped; therefore, it is not in service. When fully equipped, it will provide improved services to the fire department. Since Station #45 is centrally located, the US&R vehicle would be an essential and valuable asset in all types of emergency situations.

According to the Riverside County Fire Department, Fire Station Useful Life and Replacement Plan, December 2010, Station #45, this is now 40 years old and recommended for replacement in 2025.

Response: Riverside County Fire Department disagrees partially with the findings. Urban Search and Rescue #45 (US&R 45) was moved into inventory at Fire station 45 in September of 2013, and not 2012 as reported.

RECOMMENDATION NO. 2:

Battalion #8 - Station #45, Blythe Air Base

The US&R vehicle shall be equipped with confined space entry equipment, rope rescue equipment, trench shoring, jacks and airbags, cutting torches, saws, and other tools normally carried in US&R vehicles. Additional shoring materials and equipment shall be carried in the existing small utility support trailer, as needed.

CAL FIRE/RVC shall request the BOS to replace Station #45 and be proactive in seeking funds from all potential and viable resources, including grants and solar mitigation funding.

Response: As discussed with the Grand Jury, Riverside County Fire Department is completing a review of its Technical Rescue program and equipment. We are in the process of redistributing excess equipment, and purchasing replacement or needed equipment to ensure that apparatus complements are up to our specification. We anticipate that US&R45 will be in service first quarter of FY 15/16, and fully outfitted in second quarter FY 15/16.

FINDING NO. 3:

Battalion #8 - Station #46, Riverbend

Station #46 is located in Riverbend, an unincorporated community, on the Colorado River Indian Reservation. The station, which is not manned, was built approximately 20 years ago by volunteer firefighters. It houses a CAL FIRE/RVC utility truck, one engine and a rescue boat. The boat is only used for annual training purposes. There is neither kitchen nor living quarters at this station. To date, there are only two volunteer firefighters, when available, to work on weekends.

In the event the Colorado River Indian Tribe (CRIT) boundary dispute is settled in the legal system, in GRIT's favor, Station #46 would no longer be viable.

Response: Riverside County Fire Department disagrees partially with the findings. Specifically, the following statement: In the event the Colorado River Indian Tribe (CRIT) boundary dispute is settled in the legal system, in CRIT's favor, Station #46 would no longer be viable. It is Riverside County Fire Department's position that we cannot speculate on any future relationship or provision of services to the Colorado Indian Tribe (CRIT). Additionally, the following statement is incorrect: The boat is only used for annual training purposes. The boat has never been designated for training only. However, it is true that the boat has been seldom used due to a lack of requests as well as some reliability issues in the past. The vessel is military surplus and at least 25 years old. Our shop recently rebuilt the engine, and along with other repairs believes that its operational readiness has been improved and it will be available for missions in the future.

RECOMMENDATION NO. 3:

Battalion #8 - Station #46, Riverbend

The Grand Jury recommends Station #46 be closed, moving the utility truck and engine to another CAL FIRE/RVC station. To better utilize the rescue boat, CAL FIRE/RVC shall relocate the boat from Station #46 to the new Station #43, which would give better access to rescues and fire suppression on the Colorado River.

Response: As in our response to Recommendation #1, Riverside County Fire Department will be considering service needs and facility locations in our current, in-process studies. The disposition of FS46 and its equipment will be determined at that time.

FINDING NO. 4:

Battalion #8- Station #49, Lake Tamarisk

Station #49 is located in the community of Lake Tamarisk along the Interstate-10 corridor. This station provides services to the communities of Lake Tamarisk, Desert Center, Eagle Mountain and surrounding areas. According to the Riverside County Fire Department, Fire Station Useful Life and Replacement Plan, December 2010, Station #49 which is now 45 years

old, and recommended to be replaced by the year 2020. The engine has to be parked outside under a partial cover, since the station is not large enough to hold the newer engines. When staffing levels were increased from three to four, this station was deemed insufficient, with limited living quarters, to accommodate the required personnel, with only one restroom and a shower.

A 1998-1999 Riverside County Grand Jury Report: Riverside County Fire Department, identified improvement needs, which included relocating facilities to other sites for improved service response based on current and future growth.

Response: Riverside County Fire Department agrees with the finding.

RECOMMENDATION NO. 4:

Battalion #8- Station #49, Lake Tamarisk

CAL FIRE/RVC shall relocate Station #49 to the property purchased north of the current station, by using solar mitigation funding and available grants.

CAL FIRE/RVC shall look into all possibilities for construction of the new station, such as modular structures.

Response: Riverside County Fire Department is actively studying various alternative methods to facilitate the replacement of Fire Station 49, utilizing the recently purchased parcel in Lake Tamarisk. We will be seeking approvals to utilize any available funding, including solar mitigation, DIF and other grants or avenues. Our goal is to bring forward a recommendation to the Executive Office in the second quarter of FY 15/16. In the interim, a 2nd bathroom is being added to the old facility to better ensure needs are met until replacement is built.

FINDING NO. 5:

County Counsel Interference

In November 2014 the Grand Jury contacted the CAL FIRE/RVC office to request a copy of a document. The Grand Jury was advised it would be forthcoming. In December, the Grand Jury was informed that the document would be available in a couple of weeks.

Two months later, in February, the Grand Jury made another effort to obtain this document. The CAL FIRE/RVC Chief (Chief) indicated to the Grand Jury he would have to consult with the Riverside County Office of County Counsel (County Counsel) before releasing any information to the Grand Jury. After consulting with County Counsel, the Chief stated he would need the request in writing so that County Counsel could review the request. The Grand Jury asked the Chief to put County Counsel's request in writing and fax it to the Grand Jury office. The Chief's

response, after consulting with County Counsel again, was that he could not put the request in writing because it would violate attorney/client privilege.

Response: Respondent wholly disagrees with the finding.

Respondent disagrees with the Grand Jury's statement that the Office of County Counsel (County Counsel) instruction to its client that requests from the Grand Jury shall be in writing is somehow interference. The Grand Jury clearly does not fully understand the role of County Counsel, nor does it understand the limits of grand jury action.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (*See CA Government Code §§ 26526, 26529 & 27642*) Also the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury maintains that they are "entitled to free access...to all public records within the county." (CA Penal Code §921) We do not disagree. However, the Grand Jury is not entitled to access to "all" records; only access to public records. One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client by requesting that a particular request be made in writing and that the request be reviewed by counsel so as to advise its client on compliance with the law is misguided and contrary to the County Counsel's ethical and statutory duties to its client.. Expecting its client to fend for itself and not avail itself of counsel, would have been a dereliction of County Counsel's responsibilities.

Each year, the County receives dozens of inquiries from the grand jury pertaining to its operations, programs and services. The grand jury often submits its requests in writing for information to the various county departments. There are dozens of site visits and release of information on County programs and services that never involve the County Counsel's Office.

In this particular instance, County Counsel was contacted by the Fire Chief who expressed concern regarding a request from the grand jury. We advised our client to request that the grand jury put its request in writing so that we may properly advise the Fire Department on compliance with the request. It is important to note that the grand jury was never denied access to information. The grand jury voluntarily declined to put its request in writing and abandoned its pursuit of the information.

Furthermore, this "Finding" is indicative of the Grand Jury's misunderstanding of the role of County Counsel to represent its client, the County of Riverside and its constituent entities. Based upon the foregoing facts and circumstances, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-210, 3-310, and 3-600 of the California Rules of Professional Conduct.

RECOMMENDATION NO. 5:

County Counsel Interference

County Counsel shall not interfere with Grand Jury investigations pursuant to California Penal Code §921.

County Counsel shall follow State Bar of California's Rules of Professional Conduct Rule 3-110 Failing to Act Competently and Rule 3-210 Advising the Violation of Law.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable.

The Recommendation is wholly without factual or legal basis. The grand jury simply objects to the County Counsel performing his ethical and statutory duties and responsibilities.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See CA Government Code §§ 26526, 26529 & 27642) Also the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury maintains that they are "entitled to free access....to all public records within the county." (CA Penal Code §921) We do not disagree. However, the Grand Jury is not entitled to access to "all" records; only access to public records. One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client by requesting that a particular request be made in writing and that the request be reviewed by counsel so as to advise its client on compliance with the law is misguided and contrary to the County Counsel's ethical and statutory duties to its client.. Expecting its client to fend for itself and not avail itself of counsel, would have been a dereliction of County Counsel's responsibilities.

Based upon the foregoing facts and circumstances, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-210, 3-310, and 3-600 of the California Rules of Professional Conduct.

**RESPONSE TO
2014-2015 GRAND JURY REPORT
EDWARD-DEAN MUSEUM OF DECORATIVE ARTS**

Following is the response to the above referenced Grand Jury Report.

FINDING NO. 1:

Museum Board

The current staffing does not constitute a Museum Board as per the conditions in the 1964 Agreement. When EDA acquired operations in 1999, the Board of Supervisors (BOS) assigned the Museum Board responsibilities to the Community Services Division of EDA. This includes a Senior Development Specialist who manages the day-to-day functions of the museum and facilities, a three-quarter time curator, and three assistant positions, one of which is vacant. The Principal Development Specialist oversees the museum and all of the County libraries. Condition #2 of the 1964 Agreement states, in part:

A Museum Board shall be created by said Board of Supervisors to advise the Board of Supervisors on policies relating to the operation of the Center, to consist of qualified people, and to meet at least quarterly. A competent and qualified curator shall be employed and shall, under the County's usual governmental administrative procedures, be in charge of the Center at all times...

Note: The term, Center, refers to the name defined in Condition #1 of the 1964 Agreement which states, in part:

Said property shall be known as the Riverside County Art and Cultural Center, including as a part thereof improved grounds, buildings and museum personal property which shall continue to be known as the Edward-Dean Museum of Decorative Arts, hereinafter respectively called "Center" and "Museum"...

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding

The Board of Supervisors currently acts as the Board of the Edward Dean Museum (EDM). In addition, the EDM has a collection committee that meets monthly to determine when artifacts need to be accessioned, de-accessioned and acquisitioned. This EDM committee is made up of the following:

- a. Assistant Director over the Museum
- b. Principal Development Specialist over the museum
- c. On-site manager (Senior Development Specialist)
- d. Museum Curator
- e. Museum's Program Coordinator
- f. Museum Assistant (Acting treasurer for the 'Friends of the Museum')

The Economic Development Agency reports directly to the Board of Supervisors and advises them on the museum's collection, exhibits, events, and day-to-day operations.

In response to the issue regarding the property name, the deed of gift is a matter of interpretation. The name of the museum has been branded as "The Edward-Dean Museum & Gardens" for marketing and publication opportunities.

RECOMMENDATION NO. 1:

Museum Board

The BOS shall appoint a Museum Board by November 1, 2015, consisting of qualified members who shall meet at least quarterly to advise the BOS consistent with the 1964 Agreement

Response: Edward-Dean Museum of Decorative Arts partially disagrees with this recommendation.

The Board of Supervisors will review whether it needs to appoint a "Museum Board" or whether the committee that is currently in place may serve as the Museum Board. The final determination of the formation, make up and bylaws, including meeting schedule are within the discretion of the Board of Supervisors.

FINDING NO. 2:

Pavilion Kitchen/Restrooms

The kitchen, adjacent to the Pavilion, has been condemned for over 10 years due to the presence of asbestos and mold. The kitchen is locked and unusable. However, restrooms attached to the building are still in use. The Riverside County 2008-006 Audit report recognized the need to renovate the Pavilion kitchen, and EDA's reply stated that corrective action was estimated to begin in July of 2011 and end June of 2012. As of the date of this report, no renovation has been initiated.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding.

While the County was aware of the need for repairs, those repairs have been delayed due to lack of funding. As was highly publicized, in 2008, the Great Recession adversely impacted the County, causing budget reductions, furloughs and other severe cuts. Thus, the County's ability to identify funding resources to embark on such a large project was greatly impacted. To add insult to injury, in 2011, Redevelopment was abolished which was another possible funding resource which ceased to exist.

RECOMMENDATION NO. 2:

Pavilion Kitchen/Restrooms

The EDA shall engage the services of a qualified contractor by November 1, 2015, to eradicate the asbestos and mold health hazards in the Pavilion kitchen and restrooms and to close the restrooms until repairs are completed.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this recommendation.

Currently EDA is in the beginning stages of renovation of the EDM site and has selected an architect to draft plans for a new kitchen, restroom and pavilion improvements.

FINDING NO. 3:

Pavilion

The Pavilion area needs cleaning and repair. The roof is dirty and the entire area needs paint and stucco work. There are cracks in the sidewalk which present serious trip hazards (see attached photos).

The 1964 Agreement Condition #9 states:

The County of Riverside shall at its own expense provide for the maintenance and operation of the property, all repairs and all refurbishing.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding.

While the County was aware of the need for repairs, those repairs have been delayed due to lack of funding. As was highly publicized, in 2008, the Great Recession adversely impacted the County, causing budget reductions, furloughs and other severe cuts. Thus, the County's ability to identify funding resources to embark on such a large project was greatly impacted. To add insult to injury, in 2011, Redevelopment was abolished which was another possible funding resource which ceased to exist.

RECOMMENDATION NO. 3:

Pavilion

EDA shall, by November 1, 2015, clean or replace the pavilion roof, repair the stucco and cracked sidewalks, eliminate safety hazards, and paint to improve the appearance.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Recommendation.

Currently EDA is in the beginning stages of renovation of the EDM site and has selected an architect to draft plans for a new kitchen, restroom and pavilion improvements.

FINDING NO. 4:

Real Property

The property includes approximately 10 acres of unused land which currently has a few trees, some of which are dead (see Attachment #1).

There is an area utilized for the accumulation of trash, miscellaneous debris, dead vegetation, and a dumpster.

The 1964 Agreement Condition #12 states, in part:

The County of Riverside shall have the right to use the portions of the real property not now improved with the Museum or its grounds for park and recreational purposes and related uses, or for agricultural purposes, either by its own activities or through appropriate leases to third persons or agencies...

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

The County is not mandated but has the right to use the portion of real property. The undeveloped land is currently being used for over flow parking during large events and weddings. In the past years, the County has utilized portions of the undeveloped land to fulfill the mission of providing related uses for the Edward Dean Museum and Decorative Arts. These include the construction of the Kay Cenicerros Building, additional landscape of the Rose and Legacy Gardens, and more recently, the completion of the outdoor Wedding arena.

RECOMMENDATION NO. 4:

Real Property

EDA shall remove debris, dead trees, and vegetation. The trash shall be moved to a location not visible from the activity areas by November 1, 2015. The vacant land could then be developed for a park, recreation, garden, or agricultural use.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The County provides ongoing maintenance at the EDM. With available funding the agency could move forward with a Master Plan of the entire 16 acre site.

FINDING NO. 5:

Rental Price Structure

The Riverside County Auditor's report 2008-006 states that the rental rate of \$2,500 for a Saturday event was found to be competitive. Since then, the fee has increased to \$4,200 which is no longer competitive. The rental rate for day use of the facility includes the dining/reception hall or pavilion, as well as the gazebo, the pond or Legacy Garden. In addition, other services must be added, such as catering. Other venues include the use of the facility with the catering fee. There is no price structure for use of the reception hall only, nor is there flexibility in the system to allow for partial days or multiple events on the same day.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

The grand jury reflected in this section that the 2008 report stated the rental rate was found to be competitive at the \$2,500 rate. In 2011, however, a Revenue to Expense Analysis was created where it was found that the \$2,500 per event revenue was not sufficient to cover the expenses related to performing the wedding events. In addition, a market study was prepared in which the EDM was found to be much lower than all wedding event venues in the local area. The Edward Dean's rates were adjusted to better compete with local venues and to increase revenues to offset expenses. At this time reducing rates would not be competitive and would be non-profitable for the Museum. The rates and fees the Museum currently has for weddings are still UNDER industry standards. Recently, staff visited three local venues within a 5 mile radius of the Museum and at \$4,250 peak season prices, is still almost \$8,000 under their rates. (Please see Attachment A to this response).

RECOMMENDATION NO. 5:

Rental Price Structure

EDA shall return the rental rate to the \$2,500 base price to be competitive with similar facilities. EDA shall provide options for rental of limited parts of the facility and offer other time options. EDA shall offer alternate packages.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The grand jury has not provided any support to align with their recommendations or other area venues to suggest \$2,500 would be profitable. Moreover, the Museum is actively looking for new ways to generate more revenue such as new wedding packages to include catering. As a government entity the EDM must follow County procurement procedures.

FINDING NO. 6:

Lack of Adequate Marketing

The EDMDA has been inadequately marketed. In the past two years, the 18-20 rental events per year have proven inadequate to make the Center financially self-sufficient.

There are very few EDMDA events that would attract residents from the Coachella Valley who live less than an hour away. Other western Riverside County communities are 30 to 45 minutes away, within easy driving time, but are not adequately targeted in its present marketing.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding.

With its limited funding, the EDM capitalizes on 'grassroot' marketing, social media and community involvement to market the Museum. The staff currently attends various mixers, community events and local businesses pertinent to weddings to distribute flyers about the museum. Advertising through radio, TV and magazines exceed the current marketing budget for the Museum.

The grand jury stated, "There are very few EDMDA events that would attract residents from the Coachella Valley who live less than an hour away. Other western Riverside County communities are 30 to 45 minutes away. Within easy driving time, but are not adequately targeted in its present marketing."

The Edward-Dean has had several positive write-ups in the Press-Enterprise that highlight the museum's exhibitions and various events. The Museum has created several new events to include: Murder Mystery dinner theater, Dickens at the Dean, and a Car Show. These various events draw in attendees from all over. The car show in particular had a car club from Coachella Valley that asked the Museum to make the event an annual occurrence. The Murder Mystery series sold out both times in March and the Museum is doing two more in July and possibly one in August. The grand jury's statements have no facts to support their "findings".

RECOMMENDATION NO. 6:

Lack of Adequate Marketing

EDA shall increase marketing efforts to caterers, wedding planners, bridal shops, meeting coordinators, party planners, and appropriate organizations. This would attract customers for weddings and other events such as business seminars and retreats, to utilize the facility on other days. Advertise through radio, television, regional magazines, sororities, and social media.

To better advertise the value of the museum, EDA shall promote it to colleges, universities, and cultural clubs. Other opportunities for promotion include an on-line video mini-tour of the museum to attract visitors. Another on-line video would provide a visual tour of the grounds and facilities for potential renters.

Response: Edward-Dean Museum of Decorative Arts partially disagrees with this recommendation.

The grand jury has no basis for this recommendation and pre-supposes that there are currently sufficient funds available its vision of how the EDM should be operated. EDA staff does a good job of marketing the EDM within its financial and staffing limits.

FINDING NO. 7:

Appraisals

Obtaining appraisals is the financial obligation of EDA. Appraisals are not conducted on a regular basis. They were completed in 1980, 2008, and 2015. Friends of the Museum paid Skinner Brothers Inc. to conduct the last two appraisals. The County cannot adequately insure the museum contents if it does not have current value. It was recommended in the Riverside County Auditor-Controller's 2013-012 Audit that appraisals of the museum contents be completed every five years.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

The County of Riverside has always insured the Museum's collection through the County's Risk Management Division. The value of artifacts does not change in a matter of 5-7 years. The last appraisal for the Museum was completed in September of 2014. Industry standards for museums are for appraisals to be performed every 10 years and sometimes one time only with a curator doing inventory thereafter. The Museum Manager contacted two local museums and the Riverside Metropolitan Museum stated, "Artifact values do not change that drastically within 5 years. The cost for an appraisal is so high it is not necessary to conduct one that often." The Museum Manager also contacted the San Bernardino County Museum and they have never done an "official appraisal", as they have on-site curators and specialists that specialize in each department of artifacts that know the value of their collection.

RECOMMENDATION NO. 7:

Appraisals

EDA shall be responsible for obtaining appraisals, which shall be completed every five years.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

Based on the foregoing response, the grand jury is incorrect to suggest the Museum should pay for an appraisal every 5 years. Furthermore, they should not dictate that the county pays for the appraisal if the 'Friends of the Museum' have historically assisted the Museum financially, as the appraisal cost poses a hardship on the Museum and the County. The cost for a full appraisal is approximately \$35,000.

FINDING NO. 8:

Security

There are cameras inside the museum with a DVR, but no outside cameras on the grounds to provide early detection of intruders or monitor activity that would be used as evidence. This will assist the County in refuting liability claims and protecting against loss of property.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

There is adequate security at all times at the Museum. Additional security is always provided during events. The current system in place alerts an employee and local police if an intruder is in the Museum.

RECOMMENDATION NO. 8:

Security

EDA shall immediately upgrade the surveillance system to include multiple cameras on the grounds to be recorded on the DVR system. EDA shall establish an internet connection to enable the cameras to be monitored in the office and at remote locations. Early warning alarms shall alert management and police.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

There is adequate security at all times at the Museum. Additional security is always provided during events. The current system in place alerts an employee and local police if an intruder is in the Museum.

FINDING NO. 9:

Museum Inventory

Inventory of the museum is being tracked by Past Perfect Museum Software which depends on accurate entry and upkeep of information, pictures, and other data. There is no cross-check system in place to verify the Past Perfect data.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

Inventory is done continuously by the on-site Curator. The back up to the Past Perfect program are the hard files that are in the Curator's office. Also, the Finance Division of the Economic Development Agency has a copy of the Museum's inventory secured in a safe in Riverside.

RECOMMENDATION NO. 9:

Museum Inventory

Physical inventory of museum contents including basement and storage areas shall be taken quarterly and shall be verified against the Past Perfect software information.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The County has sufficient procedures and safeguards for the EDM inventory.

FINDING NO. 10:

Backup Records

No backup records are stored off-premises. As of January 2015 the only current inventory record is maintained on the museum property.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding

The Finance Division of the Economic Development Agency maintains a copy of the Museum's appraisal in Riverside.

RECOMMENDATION NO. 10:

Backup Records

Since the inventory is managed by Past Perfect, a copy of the data shall be sent to EDA and Risk Management monthly as a backup to the computer in the museum office.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The County has sufficient procedures in place to insure that copies of the inventory are stored off-site.

FINDING NO. 11:

Venue Management

Crestmore Manor is another wedding venue located in Riverside County and owned by the County. This venue, which has a full schedule with more competitive rates, is operated by the Parks Department.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this Finding.

Crestmore Manner is not a comparison to the Edward-Dean Museum, as there is no museum located on the Parks property. The venue is also located in another region of Riverside County.

RECOMMENDATION NO. 11:

Venue Management

Transfer management of the non-museum activity and rentals to the Parks Department. Keep the museum under EDA management in conjunction with the BOS appointed Museum Board.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The current staff at the Edward-Dean Museum has built strong relationships within the community and has worked hard at building a positive rapport for the Museum. To bring in an outside agency that competes, not compliments, the mission of the Edward Dean Museum and Decorative Arts, will adversely impact the Museum's financial stability. The current staff is well rounded about the Museum, weddings and other events. In addition, the Museum currently has educational programs and school tours that depend on the cultural center.

FINDING NO. 12:

Accreditation

Museum Accreditation was withdrawn in 1997 by American Association of Museums. In their letter to EDMDA dated August 4, 1997, the following deficiencies and areas of concern are noted:

1. Governing body's (County of Riverside Board of Supervisors) lack of understanding of its public trust responsibilities to the museum.
2. Lack of institutional planning related to the museum's mission.

3. Unresolved organizational structure.
4. Casual adherence to professional practices regarding collections care, storage, and conservation.
5. Lack of financial resources to sustain the museum.
6. Lack of authority for the day-to-day operations given to the director.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding.

The accreditation was lost in 1997 which was prior to the Economic Development Agency taking over in 1999. Most of the issues in that report have been resolved.

RECOMMENDATION NO. 12:

Accreditation

EDMDA shall contact American Association of Museums, Director of Accreditation and Museum Standards, in Washington D.C. to determine what action is necessary to regain accreditation.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding.

While the cost to establish accreditation is beyond the EDM financial budget, it remains the goal to become accredited again. EDM staff will contact the American Association of Museums, Director of Accreditation and Museum Standards in Washington D.C. to determine what actions need to be taken to regain accreditation.

FINDING NO. 13:

Finances

EDMDA has a projected expense budget for fiscal year 2014-2015 of \$338,000 and a projected income of only \$262,000 (with \$104,651 of that coming from EDA to subsidize the operation). EDMDA revenue is derived from museum admissions, facility rentals, special grants, a few special events that provide income from parking and admission fees, commissions from gift shop consignment sales, and support from Friends of the Museum. The result is a \$76,000 deficit.

Response: Edward-Dean Museum of Decorative Arts partially agrees with Finding.

With the continued decrease in the general fund contribution over the years, the museum has continuously pursued additional grant opportunities and revenue generating activities to further the mission of the museum and decorative arts. The Friends of the Edward Dean Museum

continue to provide some financial support to the EDM as appropriate by sponsoring special programming and events

RECOMMENDATION NO. 13:

Finances

To ensure viability and resolve potential deficits, the County Auditor-Controller shall do a comprehensive cost analysis of the operation of the EDMDA.

Response: Edward-Dean Museum of Decorative Arts wholly disagrees with this recommendation.

The EDM operates on a very lean budget. A comprehensive cost analysis by the County Auditor-Controller is unnecessary and will not solve the issue of lack of funding for the EDM. The EDM continues to seek funding opportunities.

FINDING NO. 14:

Strategic Plan

EDMDA does not have a current strategic plan in place. The Grand Jury has been advised by EDMDA that "they are working on a plan."

A Strategic Plan consists of a mission statement, an assessment of current state of business, a competitive landscape analysis, a plan of allocating time and financial resources, a plan on how the business will go about achieving goals, and a strategy for attracting customers. A strategic plan has a five-year timeline with yearly updates and goals.

Response: Edward-Dean Museum of Decorative Arts partially agrees with this Finding

EDA is currently working on a Strategic Plan.

RECOMMENDATION NO. 14:

Strategic Plan

EDA, in conjunction with EDMDA, shall develop a strategic plan by December 15, 2015, to review and revise annually.

Response: Edward-Dean Museum of Decorative Arts partially agrees with the recommendation.

EDA is currently working on a strategic business plan, and will work with appropriate stakeholders in accomplishing this goal in a timely manner.

**RESPONSE TO
2014-2015 GRAND JURY REPORT
Riverside County Regional Medical Center Emergency Treatment
Services/Inpatient Treatment Facility
Arlington Campus**

Following is the response of the Riverside County Regional Medical Center Emergency Treatment Services/Inpatient Treatment Facility Arlington Campus (RCRMC Arlington) to the above referenced Grand Jury Report.

FINDING NO. 1:

Pharmaceutical Incidents

1. The review of the incident report log disclosed several instances of pharmaceutical mishaps. Some examples are:
 - Wrong medications were sent home with the patient
 - Inventory disclosed missing or expired medications
 - Unauthorized person was granted access to the pharmacy room
 - Medication administered at the wrong time
 - Medication transcribed with the wrong dispensing frequency
 - Medication ordered but not transcribed or dispensed
 - Doctor transcribed medication to the wrong patient chart

Response: RCRMC Arlington partially agrees with this finding.

RCRMC has been and continuously remains committed to patient safety. The incident log reviewed by the Grand Jury covered a six month time period (July 1, 2014 through December 31, 2014). Our records indicate that there were a total of 18 incidents related to medication administration during that time period. Several of these incidents were "near misses" which meant that patients were not affected because the error was identified prior to the medication being administered. The ETS/ITF strives to have a zero medication error rate and it should be noted that during the six-month time frame in question, 25,931 doses of medication were dispensed to ETS/ITF patients amounting to a less than one percent error rate.

RECOMMENDATION NO. 1:

Pharmaceutical Incidents

1. Hospital Administration shall require ETS/ITF nursing and pharmacy staff to participate in ongoing training for the proper distribution of pharmaceuticals and the importance of pharmaceutical safety.

Response: RCRMC Arlington agrees with this recommendation.

RCRMC has numerous policies and procedures in place which address patient safety as well as other important topics with regard to legal and regulatory compliance. Patient safety is foremost at RCRMC. All reported medication incidents are reviewed in detail by a multi-disciplinary team, MERIT (Medication Error Review Improvement Team). The medication management system, which is composed of the following 11 elements – Prescribing, order communications, product labeling, packaging, compounding, dispensing, distribution, administration, education, monitoring and use – is first reviewed to see what system changes can be implemented to make it more difficult for this incident to be repeated. If it is determined that this was incident was the result of an unsafe act by an employee then appropriate disciplinary action will occur. Staff education regarding medication administration is ongoing and occurs frequently to ensure a high degree of compliance with policies and industry standard of practice. Reported incidents are reviewed on a daily basis by Administration, Managers, Pharmacy and the Chair of Psychiatry.

FINDING NO. 2:

ETS/ITF Arlington Campus is inadequate

2. ETS/ITF Arlington Campus is inadequate
 - The average patient load of 36-42 patients per day at ETS exceeds the 20 patients per day capacity the facility was designed to serve
 - Fire safety requires external doors to remain unlocked allowing patients held involuntarily the opportunity to leave the facility
 - There are not enough interview rooms for the current patient load
 - Nurses' stations are cramped
 - Medical equipment is antiquated
 - Computer systems are several generations behind current standards
 - The lack of wireless communication within the facility requires manual charting
 - No connectivity to RCRMC main campus servers prevents consolidation of patient records compounding the opportunity for charting errors

The quagmire of EDA and the Office of Statewide Hospital Planning and Development (OSHDPD) policies hinder any efforts to repair the facility.

Response: RCRMC partially agrees with the finding.

RCRMC agrees that the inadequacies of the ETS/ITF facility noted in the Grand Jury Report exist. Some inadequacies can be attributed to the age of the facility, the limited number of available mental health beds within and external to the County of Riverside, and the lack of available community placements for patients requiring after-care following treatment in a Mental Health Facility. These issues have resulted in the ETS/ITF average daily census that exceeds the facility's patient capacity on a routine basis. Nevertheless, availability of funding is an ongoing issue. There are plans underway to address some of these issues.

RECOMMENDATION NO. 2:

ETS/ITF Arlington Campus is Inadequate

2. The Riverside County Board of Supervisors (BOS) shall "Fast Track" through EDA the scheduled repairs to the Arlington Campus while simultaneously negotiating with an experienced hospital construction firm to design and begin construction of a new facility.

Response: RCRMC partially agrees with this recommendation.

The Board of Supervisors has provided direction to expedite repairs at the RCRMC Arlington campus to complete repairs as noted below. The Board has approved the initiation of negotiations with a developer to develop medical facilities at the Moreno Valley RCRMC campus that will include a new mental health facility. Other plans are as follows:

Short Term Plans include:

- The Riverside County Economic Development Agency (EDA) is working with a consultant to evaluate and create a plan to lock the external hallway doors which should result in a decrease in involuntary patients exiting the ETS/ITF facility prematurely.
- Modifications are being planned for the nursing stations in Units B and C and the Emergency Treatment area which will open up the space and alleviate the cramped nurses' stations.
- Since the time of the Grand Jury Survey, new computers and monitors have been installed throughout the facility. The Information Technology department is conducting an assessment to determine the feasibility of installing wireless communication on the ETS/ITF Campus. If wireless communication is possible, the facility will move towards migrating from paper medical records to the main hospital Electronic Health Record System.

Long Term Plans include:

- Plans are currently underway to build a new 100+ beds Behavioral Health facility. RCRMC, EDA and an external developer are working toward rapid planning. The goal is to have the new facility completed within approximately three years.

FINDING NO. 3:

ETS/ITF Policies and Procedure No. 15.1 – Patient Death

3. Policy No. 15.1 describes procedures to be followed upon the death of a patient. The policy written is not clear.

Section 1 of Policy 51.1 prioritizes internal staff notification without suggesting “911” be called to assess the patient.

Section 1-c indicates a call to the Coroner/Public Administrator be made “when appropriate,” while Section 1-d indicates the Coroner must **always** be notified.

Section 2 requires that staff call an ambulance to transport the patient to the emergency room for pronouncing death, but Section 1-d indicates the Coroner will pick up the body.

Section 3 requires a call to OneLegacy, an organ transplant facilitator, without regard to patient or family desires (See Attachment #1).

Response: Respondent agrees with the finding.

RECOMMENDATION NO. 3:

ETS/ITF Policies and Procedure No. 15.1 – Patient Death

3. Policy 15.1 shall be rewritten:

- Section 1 “Notify” shall state that “911” shall be called first
- In accordance with Section 1-d the Coroner shall always be notified, therefore Section 1-c is redundant and shall be removed
- The responsibility to call OneLegacy shall be transferred to the emergency room staff

Response: RCRMC partially disagrees with this recommendation.

Development of content and writing of hospital policies is the responsibility of the hospital and its trained health care practitioners. All policies noted in the Grand Jury report have been reviewed and revised as appropriate. Staff were re-educated on the policy updates, as appropriate.

Policy 15.1 Death of a Patient – has been retired and was incorporated into – Policy 5.1- Medical Emergency Response. This policy addresses the procedures to be followed upon the death of a patient. A copy of Policy 5.1 is attached as Exhibit 1.

FINDING NO. 4:

Policy No. 12.1 Levels of Observation

4. This policy is dated “3/12.” The policy is incomplete, consisting of pages “1 of 5,” and “3 of 5” and “5 of 5” (see Attachment #2).

Response: RCRMC partially disagrees with the finding.

The policy is complete. Even numbered pages of the policy, inadvertently were not included in the document provided to the Grand Jury.

RECOMMENDATION NO. 4:

Policy No. 12.1 Levels of Observation

4. Policy No. 12.1 shall be revised to include:

- Policy shall be rewritten to be complete with full dates and all policy information included

Response: RCRMC partially disagrees with the recommendation.

Policy No. 12.1 is a complete policy. The Grand Jury was missing certain pages, that, upon request, could (and would) have been provided to the Grand Jury. The Effective date has been corrected to include the complete date, e.g. (3-12-12). Additional revisions were made to this policy which is attached as Exhibit 2.

FINDING NO. 5:

Policy No. 20.1

5. There are two policies numbered 20.1

One is dated “3/12” and titled “Therapeutic Groups (Process)” superseding Policy No. N8.03. This policy contains page “1 of 2,” but page 2 is missing.

The second policy has a revision date of “6/7/2013” and titled “EMERGENCY TREATMENT SERVICES (ETS)/ INPATIENT TREATMENT FACILITY (ITF) DISCHARGE PROCEDURE” superseding Policy No. N12.05 (see Attachments #3 and #4).

Response: RCRMC partially agrees with this finding.

Policy 20.1 ETS/ITF Discharge Procedures and Therapeutic Groups Process policies – the Grand Jury report indicated that two policies were numbered “20.1.” Both policies were reviewed and changes were made to the numbering. Policy 20.1 was assigned to ETS/ITS “Discharge Procedures” and 13.2 was assigned to “Therapeutic Groups (Process)”

Former Policy No. 20.1 “Therapeutic Groups (Process)” was a complete policy. The Grand Jury was missing the second page, that, upon request, could (and would) have been provided to the Grand Jury.

RECOMMENDATION NO. 5:

Policy No. 20.1

5. RCRMC shall make the following changes:

- Policy numbers shall be corrected to be unique
- Policy titled “Therapeutic Groups (Process)” shall be rewritten to be complete with full dates and all policy information included.

Response: RCRMC partially agrees with this recommendation.

Development of content and writing of hospital policies is the responsibility of the hospital and its trained health care practitioners. All policies noted in the Grand Jury report have been reviewed and revised as appropriate.

Both policies were reviewed and changes were made to the numbering. Policy 20.1 was assigned to ETS/ITS “Discharge Procedures” and 13.2 was assigned to “Therapeutic Groups (Process).” These policies are attached as Exhibit Nos. 3 and 4.

**RESPONSE TO
2014-2015 GRAND JURY REPORT
RIVERSIDE COUNTY BOARD OF SUPERVISORS
TRANSPARENCY/GRAND JURY INTERFERENCE**

Following is the response of the Riverside County Board of Supervisors to the above referenced Grand Jury Report.

FINDING NO. 1:

Transparency

The Board of Supervisors, by appointing the current County Counsel, has effectively impeded the Grand Jury's ability to investigate complaints submitted by County employees, as well as, citizen complaints against the County. A simple Grand Jury request for public documents has become difficult, if not impossible to obtain. His appointment is having the effect of eliminating all transparency into the governmental operations of the County of Riverside.

Since the appointment of County Counsel and at the direction of the Riverside County Executive Office, County Counsel directed, via email, to the County department heads, the need to develop a plan to deal with the Grand Jury (see Attachment #1 [to the Grand Jury Report]).

The position of County Counsel does not report to the Riverside County Executive Office. The position of County Counsel has been designated At-Will by the Board of Supervisors, in accordance with the provisions of Article 6, Section 601E(1) of the Management Resolution and serves at the pleasure of the Board of Supervisors.

Response: The Board of Supervisors wholly disagrees with the finding.

This report shows that the Grand Jury simply does not fully understand the role of County Counsel, nor does it understand the limits of its duties, powers and obligations.

Respondent disagrees with the Grand Jury's statement that "[A] simple Grand Jury request for public documents has become difficult, if not impossible to obtain." The Grand Jury finding makes this bold assertion with no facts or examples where the Grand Jury was denied any document to which they were lawfully entitled.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (*See Government Code §§ 26526, 26529 & 27642*) Further, the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury is only entitled to any public record to which any member of the public is entitled. (*Penal Code §921*). The Grand Jury has no superior right to public records beyond that

of any other citizen. Despite the Grand Jury's protestations, they are simply not entitled to access to "all" records; *they are only able to access public records.*

One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client on document requests from the Grand Jury is misguided and contrary to the County Counsel's ethical and statutory duties to its client. Expecting its client to fend for itself and not avail itself of counsel with regard to requests made by the Grand Jury is a dereliction of County Counsel's responsibilities. The County Counsel, by discharging its lawful duties and responsibilities by advising its client, in no way inhibits the Grand Jury from completing its work. Rather, the County Counsel's advice to its client on these matters merely insures that the Grand Jury is receiving all public records to which it is entitled under the law. No more and no less.

Each year, the County receives dozens of inquiries from the grand jury pertaining to its operations, programs and services. The grand jury often submits its requests in writing for information to the various county departments. There are dozens of site visits and release of information on County programs and services that never involve the County Counsel's Office.

This "Finding" is indicative of the Grand Jury's misunderstanding of the role of County Counsel to represent its client, the County of Riverside and its constituent entities. Throughout the 2014-2015 term, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-310, and 3-600 of the California Rules of Professional Conduct relative to dealings with the Grand Jury.

With regard to the appointment and employment status of Gregory P. Priamos as County Counsel, the Grand Jury is simply incorrect. Mr. Priamos is not an "at-will" employee as stated by the Grand Jury. Rather, and as is more specifically set for the below, Mr. Priamos has been appointed to a four year term pursuant to Government Code Section 27640 et. seq. This fact is memorialized by a Board Report unanimously adopted by the Board of Supervisors on June 18, 2014 and attached hereto as Exhibit A.

RECOMMENDATION NO. 1:

Transparency

The Board of Supervisors shall allow full transparency in all operations of the County of Riverside.

Response: The Board of Supervisors disagrees with this recommendation to the extent that it implies that the Board of Supervisors has not operated with full transparency.

The Board of Supervisors has consistently operated and will continue to operate with “full transparency” within the bounds of the law. Further, the Grand Jury will continue to have access to the public records and information to which it is entitled pursuant to Penal Code Section 921 and interpreting case law.

FINDING NO. 2:

Recruitment

A supervisorial chief of staff, during testimony, was asked how extensive was the geographic area searched for the position of County Counsel, the reply was, “Three blocks.” Although not required, the Board of Supervisors chose not to use competitive procedures.

Response: The Board of Supervisors wholly disagrees with the finding.

Other candidates for the position of County Counsel were also interviewed by the Board of Supervisors prior to hiring Mr. Priamos. At the conclusion of that process, the Board of Supervisors determined that Mr. Priamos best suited the needs of the County of Riverside and that he was the best qualified candidate to lead the Riverside County Counsel’s Office.

RECOMMENDATION NO. 2:

Recruitment

The contract between the County of Riverside and County Counsel shall be nullified. The Board of Supervisors shall conduct an actual, advertised recruitment for the position of County Counsel so that the best qualified candidate can be appointed as County Counsel.

Response: The recommendation will not be implemented because it is not warranted, is adverse to the interests of the County of Riverside and is factually and legally erroneous.

No contract exists between the County of Riverside and Mr. Priamos. Rather, as indicated in the Form 11 Report adopted by the Board of Supervisors on June 18, 2014, Mr. Priamos was appointed to a four year term as County Counsel as authorized by Government Code Section 27460, et.seq.

Further, the Board of Supervisors interviewed other well-qualified candidates for the position. However, after concluding those interviews, the Board of Supervisors decided that Mr. Priamos was the best qualified candidate and in the best position to lead the Riverside County Counsel’s office. Therefore, he was hired for the position.

Prior to his appointment as County Counsel, Mr. Priamos served as the City Attorney of the City of Riverside. He was appointed City Attorney in 2001 and served until July of 2014 when he resigned to accept his appointment as County Counsel. Prior to his appointment as City Attorney, he held the position of Supervising Deputy City Attorney in charge of the Litigation

Services Section and began his career in the Riverside City Attorney's Office in 1993. Before joining the City Attorney's Office, he was a senior associate at the municipal law firm of Burke, Williams & Sorensen in its Los Angeles office.

He has also been an active member of the City Attorneys' Department of the League of California Cities. In 2013-14, he served as the President of the City Attorneys' Department after serving as First Vice President and Second Vice President beginning in 2011. As President, he was responsible for the 2014 publication of *Practicing Ethics: A Handbook for Municipal Lawyers, 2nd Edition*. He has also chaired the Department committee responsible for drafting the League's first treatise on public records, *The People's Business: A User's Guide to the California Public Records Act*. He has also chaired the Department's Legal Advocacy Committee, a group of twenty-one city attorneys who engage in advocacy on behalf of all California Cities before the state and federal courts.

Mr. Priamos received his Juris Doctor degree from Loyola Law School and his Bachelor of Arts in political science Cum Laude from the University of Southern California.

Finally, the authority of the Grand Jury to substitute its judgment for that of five duly elected supervisors is completely beyond the powers and duties of the Grand Jury. The authority of the Grand Jury is limited to procedural and operational matters, and is distinguishable from "substantive concerns involving the merit, wisdom, or expediency of ...policy determinations." 78 Ops.Cal.Atty.Gen 290 (1995).

**RESPONSE TO
2014-2015 GRAND JURY REPORT
RIVERSIDE COUNTY OFFICE OF COUNTY COUNSEL**

This report is long on conclusions but short on facts. It is incomplete, misleading and fails to address three critical components underlying the dispute: (1) the County Counsel's ethical and statutory duties to its client; (2) the County Counsel's objections to the grand jury's practice of manipulating the witness interview process to deny counsel to witnesses appearing before the grand jury; and (3) the grand jury's unsuccessful attempts to obtain a court order to disqualify the County Counsel from representing his client and the court's determination that the County Counsel may discharge its duties to its client by representing county witnesses before the grand jury.

In January of 2015, the County Counsel notified the grand jury's legal advisor, District Attorney Michael Hestrin, and issued an objection to the grand jury's practice of manipulating the witness interview process to deny counsel to witnesses as provided in Penal Code section 939.22. County Counsel expressed his concern about the civil grand jury's consistent practice of seeking to compel unsworn testimony from witnesses so that the witness's legal counsel may not be present in the grand jury room. He explained that the grand jury requests the presence of county employees and does not advise them whether or not their testimony will be taken under oath. They do so with the hope and expectation that they appear without counsel. If they appear without counsel, they then take the testimony under oath. If however, they appear with counsel, they then decide to take unsworn testimony. The County Counsel expressed his belief that the practice is inappropriate, unethical and constitutes an abuse of the civil grand jury process. The practice ceased after the County Counsel met with the District Attorney and the Presiding Judge. The County Counsel also advised the District Attorney and Presiding Judge that this practice was not limited to County witnesses but was a widespread practice used in investigations of other public agencies

Following is the response of the Riverside County Office of the County Counsel to the specific findings and recommendations in the above referenced Grand Jury Report.

FINDING NO. 1:

Conflict of Interest and Secrecy

AB 266 became law in January 2012. The law added Section 939.22(a) to the California Penal Code. County Counsel has interpreted this law, and applied the new law to him to represent the officials and employees of the County as to County civil matters brought before the Grand Jury, and to be present at all interviews of County employees that are to be interviewed under oath. County Counsel has attempted to attend one interview and directed, on three occasions, a Deputy County Counsel to represent County employees who have been called to give testimony in Grand Jury interviews. This presents a conflict of interest due to the incompatibility of the professional duties of the County Counsel to represent the County and the Grand Jury in the same manner.

This is a direct violation of California Penal Code §934(a). Conflict arises when County Counsel acts in a dual representative role.

The County Counsel's primary duty is to the BOS, not the employees. This conflict places an onerous and improper burden on the witness because such witness is not at liberty to speak openly and candidly while giving testimony. The witness faces retaliation or discipline by his/her department supervisor or manager due to the County counsel's presence (referenced in *McClatchy Newspapers v. Superior Court of Fresno County* 751 P 2d. 1329 (Cal. 1988)). It makes County Counsel cognizant of the nature of the Grand Jury's inquiry and the areas being reviewed, as well as, exactly what testimony was given by the witness. A witness could believe that such information may be relayed to the employee's department or managers. Even though County Counsel is admonished not to reveal the nature of the Grand Jury interview, the secrecy and integrity of the proceedings has already been compromised by County Counsel's mere presence, which taints the integrity of the interview.

The Office of the Attorney General, State of California, in an Opinion issued June 6, 2003, (02-1108) stated, in part:

... We believe that the Legislature's policy of preserving the secrecy of the grand jury proceedings is not only applicable when a grand jury is performing its criminal indictment function, but also when it is performing its civil watchdog function. In *McClatchy Newspapers v. Superior Court*, supra, 44 Cal.3d 1162, the Supreme Court observed:

The importance of secrecy is well established in the context of the grand jury's criminal indictment function. By the same token, when the grand jury conducts a watchdog investigation of local government operations as in the instant case, secrecy appears equally vital. Compared with the indictment proceedings, the efficacy and credibility of watchdog investigations no less required that witnesses testify without fear of reproach by their peers or their superiors. Through the watchdog investigation and report serve a difference social purpose than the criminal indictment, eliciting candid testimony is obviously critical to both functions of the grand jury.

Significantly, the separated and distinct functions of watchdog and indictment grand juries are sometimes intermingled, in the sense that watchdog inquiries into alleged corruption may involve the weighing of possible criminal indictments against county officials and other being investigated... Whether or not a watchdog grand jury actually undertakes the weighing of indictments, secrecy 'provides the proper atmosphere in which to generate uninhibited testimony from county employees who might otherwise be intimidated by political and employment considerations.'

Secrecy also serves to protect the reputations of those who may be unjustly accused during the course of a watchdog investigation. 'Grand jury secrecy... is "as important for the protection of the innocent as for the pursuit of the guilty."' [Citation Omitted.]' [Citation.]' (Id.at.pp. 1175-1176)

Response: County Counsel wholly disagrees with the finding.

The grand jury's attempt to define the County Counsel's clients is inaccurate. County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See CA Government Code §§ 26526, 26529 & 27642) Also the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice

The Government Code, Rules of Professional Conduct and interpreting case law define the obligations and scope of the representation of County Counsel's clients. The mere fact that the grand jury disfavors the County Counsel fully and faithfully discharging his duties, as required by the Government Code and the Business and Professions Code is insufficient to require a change in the practices and representation of County Counsel's clients.

RECOMMENDATION NO. 1:

Conflict of Interest and Secrecy

To maintain secrecy, County Counsel, or its Deputy County Counsel, shall not represent an employee of the County when testifying before the Grand Jury, pursuant to California Penal Code §934(a). Rather than protecting county agencies from the Grand Jury's scrutiny, County Counsel shall be receptive to such inquiries.

Response: This recommendation will not be implemented because it is not warranted and not reasonable and because the County Counsel has not made inaccurate, incomplete, and misleading statements.

Respondent disagrees with the Grand Jury's statement that the Office of County Counsel's (County Counsel) shall not represent County employees in matters before the Grand Jury. Respondent takes particular issue with the Grand Jury's legally unsupportable position that the County Counsel should ignore his statutory and ethical duties by not representing county employees as his clients and by not "protecting County agencies from Grand Jury scrutiny..." The Grand Jury clearly does not fully understand the role of County Counsel, nor does it understand the limits of grand jury action.

To suggest that the County Counsel abdicate this role is without reason or legal support. To follow this recommendation would subject the County Counsel and the subordinate lawyers to discipline from the State Bar for a failure to protect the client's interests and for failing to competently act as a lawyer.

Further, the Grand Jury's concern on the issue of secrecy was addressed by the Legislature in adopting Penal Code Section 939.22. That section states in pertinent part that:

(a) Any witness who is called to give testimony under oath before a civil grand jury may have counsel present on his or her behalf while he or she is testifying. Any counsel present before the grand jury pursuant to this subdivision shall comply with all of the following:

(1) Counsel shall not object to any questions asked of the witness or otherwise speak to the grand jury, but may advise the witness during the course of the examination.

(2) Counsel shall not disclose or use anything heard in the grand jury room other than in the representation of the witness he or she represents.

(b) A violation of this section by counsel shall be a violation of the Rules of Professional Conduct and may be reported to the State Bar of California.

There is no evidence of, nor has there been an allegation of a violation of Penal Code Section 939.22. This strong admonition is sufficient to protect the secrecy concerns of the grand jury, thereby rendering their findings and recommendations speculative.

FINDING NO. 2:

Transparency and Accountability

County Counsel has advised department heads, on or about January 21, 2015, to delay release of information to the Grand Jury, which is a violation of the California Public Records Act (Gov. Code §§6250-6276.48)(PRA). County Counsel's actions obscure the transparency and accountability throughout the County.

As the Court in *Monroe v. Garrett* (1971) 17 Cal.App.3d 280, 284 [94Cal.Rprt.531] observed:

In our system of government, a grand jury is the only agency free from possible political or official bias that has an opportunity to see the picture of crime and the operation of government relating thereto on any broad basis. It performs a valuable public purpose in presenting its conclusions drawn from that overview. The public may, of course, ultimately conclude that the jury's fears were exaggerated or that its proposed solutions are unwise. But the debate which reports, such as the one before us, would provoke could lead only to a better understanding of public governmental problems. They should be encouraged and not prohibited.

Response: County Counsel wholly disagrees with the finding.

Respondent disagrees with the Grand Jury's statement that "County Counsel's actions obscure the transparency and accountability throughout the County." The Grand Jury finding makes this bold assertion with no facts or examples where the Grand Jury was denied any document to which they were lawfully entitled.

County Counsel has a legal and ethical duty to serve as legal advisor to the County Board of Supervisors, its officers and employees. (See Government Code §§ 26526, 26529 & 27642) Further, the California Rules of Professional Conduct require County Counsel to act in the County's best interest by providing fair and competent legal advice.

The Grand Jury is only entitled to any public record to which any member of the public is entitled. (Penal Code §921). The Grand Jury has no superior right to public records beyond that of any other citizen. Despite the Grand Jury's protestations, they are simply not entitled to access to "all" records; they are only able to access public records.

One of the various duties and obligations of County Counsel in representing its client, the County of Riverside, is to protect against inadvertent disclosure of attorney-client and attorney work-product privileged documents, as well as documents protected by Constitutional, statutory or common law privileges. The law is clear - - the grand jury is not entitled to such information. The Grand Jury's assertion that County Counsel should not be allowed to provide legal advice to its client on document requests from the Grand Jury is misguided and contrary to the County Counsel's ethical and statutory duties to its client. Expecting its client to fend for itself and not avail itself of counsel with regard to requests made by the Grand Jury is a dereliction of County Counsel's responsibilities. The County Counsel, by discharging its lawful duties and responsibilities by advising its client, in no way inhibits the Grand Jury from completing its work. Rather, the County Counsel's advice to its client on these matters merely insures that the Grand Jury is receiving all public records to which it is entitled under the law. No more and no less.

Each year, the County receives dozens of inquiries from the grand jury pertaining to its operations, programs and services. The grand jury often submits its requests in writing for information to the various county departments. There are dozens of site visits and release of information on County programs and services that never involve the County Counsel's Office.

This "Finding" is indicative of the Grand Jury's misunderstanding of the role of County Counsel to represent its client, the County of Riverside and its constituent entities. Throughout the 2014-2015 term, the County Counsel properly discharged his ethical and statutory duties pursuant to Rules 3-110, 3-310, and 3-600 of the California Rules of Professional Conduct relative to dealings with the Grand Jury.

RECOMMENDATION NO. 2:

Transparency and Accountability

County Counsel shall advise department heads to allow access to all documents requested by the Grand Jury. The department shall provide assistance by helping identify records and information relevant to the request, which is part of the PRA, and suggesting ways to overcome any practical basis for denying access to PRA documents (see PRA §6253.1). Any denial of a request by the Grand Jury must be justified in writing, by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure.

Response: This recommendation will not be implemented because it is not warranted and not reasonable.

The Respondent disagrees with this recommendation to the extent that it implies that the Grand Jury is entitled to "all documents". It is clear that the Grand Jury is entitled to all public

documents that would be accessible by any other member of the public. The Grand Jury will continue to have access to the public records and information to which it is entitled pursuant to Penal Code Section 921 and interpreting case law.

FINDING NO. 3:

Inaccurate, Incomplete and Misleading Statements

The 2012-2013 Riverside County Grand Jury Report, which reflected the time period when the present County Counsel was then City Attorney for the City of Riverside, indicated the reason he revealed confidential information, was “to make them aware of what the Grand Jury was doing.” On May 20, 2013, he was admonished in writing by County Counsel. (See Attachment #1)

In a letter or reply dated May 21, 2013, from Riverside City Attorney, to the County of Riverside County Counsel (see Attachment #3), he excused his actions with the following statement, in part:

...The reference to the nature of the pending Grand Jury Investigation was made in order to assist the District Attorney, County Counsel, and the presiding judge in their evaluation as to the appropriateness and legality of the Grand Jury’s conduct.

In a letter to the Presiding Judge of the Riverside County Superior Court dated July 10, 2013, the then City Attorney responded to a 2012-2013 Grand Jury Report by inaccurately stating, in part:

...As the court is aware, the Grand Jury is not a wholly independent body. Rather, it is under the control of the Superior Court and its Presiding Judge...

The Grand Jury is an investigative arm of the superior court and has judicial, as well as, investigatory and inquisitional responsibilities and powers as defined in California Penal Code Sections 888 through 945. Once the Grand Jury is duly impaneled and sworn, its functions are conducted as a separate and independent body, acting apart from the jurisdiction of the court, beholding to no one body, entity or court.

A letter from the current County Counsel to the Grand Jury dated January 8, 2015, misstates the Penal Code by omitting words, “at all times,” intrinsic to the Penal Code §934(a).

Response: County Counsel wholly disagrees with this finding. The statements made by County Counsel are accurate reflections of the law.

RECOMMENDATION NO. 3:

Inaccurate, Incomplete, and Misleading Statements

County Counsel shall refrain from making inaccurate, incomplete, and misleading statements.

Response: This recommendation will not be implemented because it is not warranted and not reasonable and because the County Counsel has not made inaccurate, incomplete, and misleading statements.

Merely because the grand jury may disagree with statements made by the county counsel does not render those statements "inaccurate, incomplete, and misleading". Unfortunately, this erroneous perception by the grand jury is driven in large part by their lack of understanding of the County Counsel's role in County government and a lack of understanding of their own duties and powers enumerated in the Penal Code.

FINDING NO. 4:

Obstruction of the Grand Jury

The Grand Jury has a twelve-month period to complete its work. Delay can effectively foreclose Grand Jury scrutiny, and a strategy of delay is apparent in the conflict of interest with County Counsel who is a legal representative of both Grand Jury and the agencies it seeks to examine. County Counsel has made numerous attempts to thwart the Grand Jury's investigations of departments of the County. This obstruction included attempts to block access to information, delaying the Grand Jury's hearings, by requiring subpoenas, making access to witnesses and records difficult and invoking attorney-client privilege to protect the 18,000 plus County employees when such privilege may not exist rather than the legitimate interests of the 2.2 million County residents.

County Counsel has devised a plan, as evidenced by an email dated December 4, 2014, (see Attachment #2), to hamper the process of the Grand Jury's pursuance of its legal and authorized duties granted them under California Penal Code §925(a). County Counsel's scheme of orchestrating this plan is accomplished by advising department heads, in staff meetings, by email, and by PowerPoint presentations. This PowerPoint presentation contains significant references pertaining to Criminal Grand Juries, which does not apply to Civil Grand Juries.

His plan of action has the effect of disrupting the Grand Jury's mission by weakening and delaying the normal process of the Grand Jury's legal authority as outlined in California Penal Code §888 through §945. County Counsel's actions not only attempt to gain unauthorized information and insight into the areas being reviewed, but also in effect, to usurp the legal process for which the Grand Jury exists.

County Counsel's efforts to circumvent the Grand Jury's legal domain over its legal duties and jurisdiction constitute an obstruction of the operations of the Grand Jury.

County Counsel's response to Grand Jury inquiries are designed to obstruct transparency, protect the BOS, County agencies, and the Office of County Counsel from scrutiny, rather than to cooperate with the legitimate intergovernmental fact-finding and investigative functions of the Grand Jury. This finding discusses a few specific instances which are typical of the resistance the Grand Jury is encountering.

Evaluative techniques lead the Grand Jury to conclude the County Counsel and Executive Officer, using the email of December 4, 2014, that stated: "We will then coordinate with the affected County Department and Executive Office on the appropriate response in order to properly protect the interests of the County, its officials and employees," expressed plans to protect the BOS from another controversial Grand Jury Report, such as the 2013-2014 Grand Jury Report on Political Reform concerning CID funds. County Counsel has either been directed to, or on his own as evidenced by his current actions, chosen to ignore California Penal Code §934(a), which states, in part:

...Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

A voicemail received by the Grand Jury foreperson on March 19, 2015, at 1:15 p.m., from County Counsel's Administrative Assistant, stated, "we don't represent the Grand Jury anymore," is also a violation of California Penal Code §934(a), which states, in part:

The grand jury may, at all times, request the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney General...

Response: County Counsel wholly disagrees with the finding.

The County Counsel's duties and obligations have been set forth above and are incorporated herein. Again, the grand jury misunderstands effective representation of clients as obstruction. This is simply not the case. County Counsel, in requiring compliance with the applicable procedural guidelines set forth in the Penal Code do not constitute "interference or obstruction". Rather, it represents appropriate representation of the County and its employees.

With regard penal code section 934 (a) which states in pertinent part that the grand jury "may, at all times, request the advice of the court, or judge thereof, the district attorney, the county counsel or the Attorney General..." , the key phrase, ignored by the grand jury, is "may, at all times, request". The plain language of the section does not create a mandatory duty on behalf of the county counsel to represent the grand jury as the grand jury so indicates. Rather, the legislature provided a range of four options for the grand jury to request legal advice. Further, the legislature does not require any of those entities to provide the requested advice, only that such advice may be requested. The grand jury's reliance on this language to create a mandatory duty on the county counsel to provide representation is misguided.

RECOMMENDATION NO. 4:

Obstruction of the Grand Jury

County Counsel shall discontinue interference with the work of the Grand Jury. County Counsel shall be available to the Grand Jury to provide advice, at all times, as to civil matters as stipulated in California Penal Code §934(a).

Response: This recommendation will not be implemented because it is not warranted and not reasonable and because it is based on an erroneous understanding of the law.

As stated above, Penal Code Section 934(a) does not place a mandatory duty on the County Counsel to provide legal advice to the Grand Jury. Rather, the legislature adopted a mechanism by which the Grand Jury could request legal advice from multiple sources including the Court, the District Attorney, the County Counsel and the Attorney General. Of these entities, only the County Counsel has a competing interest in representing parties who could appear before the Grand Jury. The County Counsel, as stated above, provides advice and represents the County, its Boards and employees. This primary representation is in conflict with providing advice to the Grand Jury. Therefore, the Grand Jury is free to seek advice from other sources as provided by the Penal Code. The County Counsel has represented, and will continue to represent, the County in matters before the Grand Jury. Such representation is not “interference” as perceived by the Grand Jury. Rather, it is the ethical representation of the County in compliance with Rule 3-300 of the State Bar Rules of Professional Conduct.

FINDING NO. 5:

Choice of Having Counsel

California Penal Code §939.22(a) permits a witness giving testimony under oath to have counsel present during a Grand Jury interview. It allows the witness to make the determination whether or not to have counsel present. It is not the determination of County Counsel. It is inappropriate for County Counsel or a Deputy County Counsel to represent the witness who is a County employee, when the Grand Jury is investigating a County department because; it violates the secrecy and confidentiality of the Grand Jury sessions.

County Counsel has advised County departments and special districts, if they have been contacted by the Grand Jury for information or to give testimony under oath, to then contact County Counsel for representation. This has given the impression County Counsel must be used by County employees, when in fact, said employees, if they choose to have representation, may bring an independent attorney.

The Grand Jury does not object to the County employee witnesses having counsel represent them, pursuant to California Penal Code §939.22, so long as it is not County Counsel pursuant to California Penal Code §934(a).

California Penal Code §939.22(c) states:

Nothing in this section shall be construed to grant a witness a constitutional right to counsel under the United States or California Constitutions nor grant any right to discovery for the subpoenaed witness.

Response: County Counsel wholly disagrees with this finding.

The County Counsel offers representation for county employees when they are called to appear before the Grand Jury. Such representation is voluntary and the decision to request such representation is left to the employee. The County Counsel has no power to require that an employee have representation from the County Counsel's office. This finding, as with many of the findings herein, is unsupported by any facts.

RECOMMENDATION NO. 5:

Choice of Having Counsel

When a witness, who is a County employee, desires to be represented by counsel, in a matter regarding the performance of his/her duties, or the operations of his/her department, the County shall allow or provide an attorney not affiliated with the County Counsel, to represent the witness assuring his/her rights are not violated.

Response: This recommendation will not be implemented because it is not warranted and not reasonable and because it is unsupported by the facts and the law.

The Grand Jury is mistaken that a witness must select representation from the County Counsel's office when appearing before the Grand Jury. Any witness may elect, at their own expense, to retain their own separate counsel to represent them before the Grand Jury. The County Counsel offers representation, at no cost to County employees, as part of the County Counsel's representation of the County and its employees acting in the course and scope of their employment. Any employee is free to refuse such representation.

FINDING NO. 6:

Violation of Board Policy C-35

The BOS established Policy C-35 and implemented it on September 1, 2009. This policy addresses the Subject: Standards of Ethical Conduct to Address Fraud, Waste, and Abuse. This policy applies to all County employees and officers.

Section 7 of Policy C-35 addresses: Acknowledgement in writing of this policy by all current and future employees as evidence of receipt.

Whereas this policy in Section 4 l, states that county employees have a duty to identify, report, and work to eliminate fraud, waste and abuse.

Section 4 m, highlights the duty of every employee to cooperate in an investigation involving a violation or an alleged violation of this policy.

Section 4 n, addresses the prohibition from attempting to identify or intentionally exposing the identity of any party making an anonymous report or complaint pursuant to this policy.

Employees have expressed concerns to the Grand Jury that the investigative process, intrinsic to the Speak-Out Program, has not always maintained the anonymity required to protect the employee from retaliation by supervisors or managers. Secrecy is the paramount reason they come to the Grand Jury.

The result of this practice by the County Counsel curtails whistle blowing and transparency within the County. Employees have the right and protection of Policy C-35 to speak up. This precludes any retaliation for doing so.

This Grand Jury has discovered County Counsel is actively issuing directives to all departments of the County to notify his office in advance, if ever requested to appear as a witness to any Grand Jury investigation or interview. These directives have the effect of not only violating the secrecy of the Grand Jury; it also violates the provisions of anonymity as stated in multiple sections of County Policy C-35. County Counsel is actively disrupting the Grand Jury's investigations by screening documents the Grand Jury has sought. This is an unwarranted impediment of the Grand Jury's legal duties, as well as, a violation of the California Public Records Act. County Counsel should be aware of this because he was one of the authors of "The Peoples Business: A Guide to the California Public Records Act."

County Counsel's claim that every employee of the County is entitled to his representation during investigative sessions of the Grand Jury would violate California Government Code §995.2(a)(c). As an example, any employee of the County alleged to be engaged in fraud, waste, or abuse could not rely on the County Counsel for his/her defense.

The Grand Jury has been asked by a County agency to provide questions in writing before an employee is interviewed pursuant to the advice of County Counsel. Providing questions in advance by the Grand Jury is prohibited by California Penal Code §924.1. It is improper for County Counsel to advise a County agency to make this request.

Response: County Counsel wholly disagrees with this finding.

The County Counsel has not violated Board Policy C-35. Any employee is free to speak to the Grand Jury without representation at any time. However, it is appropriate for the County Counsel to advise his clients of his ability to provide advice and representation should they be contacted by the Grand Jury.

County Counsel never advised clients to ask the Grand Jury to place questions in writing in lieu of live testimony. County Counsel has, in certain circumstances, advised clients to ask the Grand Jury to place requests for documents in writing. This is to confirm that the requests made by the Grand Jury seek documents to which they are legally entitled and not otherwise privileged or exempt from disclosure. This request is also to confirm that all responsive public documents are provided to the Grand Jury and so there is no confusion over what is sought by the Grand Jury. Moreover, it is important for the County's attorney to educate County officials and employees on the law and their duties and obligations in response to an inquiry or investigation by the grand jury to ensure compliance.

RECOMMENDATION NO. 6:

Violation of Board Policy C-35

In order to maintain the provisions of anonymity of Policy C-35, County Counsel shall not ask, or direct, County employees to notify him of their contact with the Grand Jury.

County Counsel shall complete appropriate training courses relevant to California Penal Codes and Government Codes governing the California Grand Juries. (This continuing education may assist County Counsel in understanding that the Civil Grand Jury is an independent and autonomous body beholden to no one.)

Response: This recommendation will not be implemented as it is not warranted and not reasonable.

As stated throughout this response, the Grand Jury attempts to invade and control the manner of representation by the County Counsel of its clients. The County Counsel will appropriately advise its clients as required by all applicable laws and rules. Such advice, when appropriate, will include advice on responding to Grand Jury requests.

With regard to training, the County Counsel, as mandated by Penal Code Section 914, has provided training to the 2015-16 Grand Jury on the County Counsel's role in County Government. Hopefully, this information was helpful to the 15-16 Grand Jury and will serve to avoid the misunderstanding of the County Counsel's role by the 2014-15 Grand Jury.

FINDING NO. 7:

Riverside County Executive Office

In an email dated December 4, 2014, County Counsel, at the direction of the Executive Office, issued a directive requesting departments of the County to advise the County Counsel regarding inquiries made by the Grand Jury. County Counsel has been directed "to establish a consistent and coordinated approach to handle these inquiries, and respond to requests for information." This is a concerted effort to breach the confidentiality of Grand Jury proceedings. (See Attachment #2)

Response: County Counsel wholly disagrees with this finding.

The Grand Jury again misunderstands the role of the County Counsel to represent its clients. To suggest, as the Grand Jury does, that clients are precluded to discuss any request from the Grand Jury with their attorney is inaccurate and without any support in the law. Rather, such coordination allows the County to confirm appropriate responses to all legitimate Grand Jury requests for information. The grand jury simply cannot direct how and in what manner the County Counsel represents its clients.

RECOMMENDATION NO. 7:

Riverside County Executive Office

The County Executive Office shall cease from issuing these directives pertaining to Grand Jury requests. County Executive Office shall direct County Counsel to cease making presentations, forcing or advising County departments and special districts, and agencies, on how to coordinate their responses to the Grand Jury.

Response: This recommendation will not be implemented because it is not warranted and not reasonable.

The Grand Jury cannot invade the relationship between the County Executive Officer and his subordinate employees, nor can they invade the attorney-client relationship between the County Counsel and his clients. The County Executive has the great responsibility of managing all County employees. To suggest that he is prohibited from overseeing requests from the Grand Jury is without legal basis. Further, the Grand Jury is incapable of invading the attorney-client privilege in any way. To suggest that they have the power to dictate the manner in which the County Counsel carries out his ethical obligations to his client is without merit. The County Counsel has and will continue to carry out his statutory and ethical duties to his clients as required of a government attorney.

FINDING NO. 8:

Violation of Code of Ethics

County Counsel has a history of bias and contempt against the Grand Jury, as evidenced in a 2012-2013 Grand Jury Report, City of Riverside, Office of the City Attorney. The report detailed issues with the Office of the City of Riverside City Attorney, the position he occupied at the time. Hence, County Counsel has continuously interfered with the legal duties of the Grand Jury, and has violated the provisions of the Business and Professions Code pertaining to lawyers, Section 6068. This report has precipitated County Counsel to disrespectfully neutralize the Grand Jury from performing its legal and authorized duties.

Business and Professions Code Section 6068 states lawyers shall observe rules of law, including the California Rules of Professional Conduct and the State Bar Act.

Business and Professions Code §6068 states, in part:

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state...
- (d) To employ, for the purpose of maintaining the causes confided to him or her means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client...
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest...

Response: County Counsel wholly disagrees with this finding.

The Grand Jury again, as stated earlier and repeatedly in this response, misunderstands the role of the County Counsel and its own powers and duties. These comments, stated more fully above, are incorporated herein. The County Counsel rejects the assertion that there has been any violation of Business and Professions Code Section 6068. Rather, the Grand Jury misinterprets effective representation of the County as “bias and contempt”. The allegation made by the Grand Jury that this section has been violated is without a factual basis as is evident by the conclusory allegations made above.

The County Counsel will continue to represent his clients with the highest standards of professionalism and ethics in accordance with Business and Professions Code 6068 and all other applicable rules and laws governing the representation of clients. That the Grand Jury misinterprets this obligation as “bias and contempt” is unfortunate and erroneous. Again, fully and faithfully discharging statutory and ethical responsibilities in effectively representing your clients cannot legitimately be considered bias, contempt or interference.

RECOMMENDATION NO. 8:

Violation of Code of Ethics

County Counsel shall adhere to the tenets of the Business and Professions Code §6068.

Response: The recommendation will not be implemented because it is not warranted and not reasonable and is erroneous and unsupported by facts to the extent that it implies that there has been any past violation of Business and Professions Code section 6068.

As indicated above, the County Counsel will continue to represent its clients with this highest standard of professionalism and ethics in accordance with Business and Professions Code 6068 and all other applicable rules and laws governing the representation of clients.

FINDING NO. 9:

Failure to Provide Upjohn Warning

The scope of attorney-client privilege in a corporate context was defined by the United States Supreme Court in *Upjohn Co. v. United States*, 101 S. Ct. 677, 449 U.S. 383 (1981). Since *Upjohn*, courts and commentators have discussed an *Upjohn* or Corporate Miranda warning. The need for such warnings stems from the fact that Corporate Counsel's client is the corporation and not the employees, officers, or directors of the corporation. If an *Upjohn* warning has not been given, an employee may believe that he or she is represented by Corporate Counsel.

Thus the attorney representing a governmental agency is best served to provide an *Upjohn* warning to the person consulting him/her to make the representation clear. This warning is generally given to an employee, officer or director before an interview begins.

An *Upjohn* warning generally consists of the following requirements:

- (1) that the attorney represents the County, City or other unit of government and does not represent the individual personally;
- (2) that the communications between the attorney and the individual are privileged;
- (3) that the privilege belongs solely to the County, City, or other unit of government which may in its discretion choose to waive the privilege and disclose the communication to third parties; and
- (4) that so long as the privilege attaches, the employee may not disclose the communication to third parties.

The *Upjohn* warning may be verbal, but the warning should be documented by a signed acknowledgement as a contemporaneous memorandum of the interview.

The Grand Jury has found no evidence County Counsel informed County employees with an *Upjohn* Warning that clearly states to the employee that County Counsel represents the government agency and not the employee, pursuant to (*Upjohn Co. v. United States*, 101 S. Ct. 677, 449U.S. 383 (1981)).

Conversely, County Counsel has expressed to County employees that County Counsel is the legal representative of all 18,000 plus Riverside County employees and that an attorney-client relationship exists between County Counsel and all employees in the County.

The result of County Counsel's/Executive Officer's directive, as outlined in the email of December 4, 2014, initiated a sequence that is designed to breach the secrecy provisions of the Grand Jury. All County employees are directed by County Counsel, to ask if the interview will be sworn or unsworn. He then informs the employee if the nature of the investigation is of a sensitive nature and the Grand Jury determines that sworn testimony will be necessary, then the County Counsel instructs the employee that County Counsel will be present at the interview. This act is a clear violation of California Penal Code §934(a), which states, in part:

...Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

Employees are also directed to ask the Grand Jury to put in writing, what questions will be asked and or documents to be presented prior to the interview which is a violation. This would be a breach of the Grand Jury's sworn oath of secrecy pursuant to California Penal Codes §924.1.

Response: County Counsel wholly disagrees with this finding.

The Grand Jury again, as stated earlier and repeatedly in this response, misunderstands the role of the County Counsel and its own powers and duties. These comments, stated more fully above, are incorporated herein. County Counsel will appropriately advise all clients of conflicts when and where they exist in compliance with the law.

With regard to requesting questions from the Grand Jury in writing, the County Counsel has not provided such advice to its clients. The Grand Jury may be confusing requests for documents to be placed in writing. This is to ensure that the Grand Jury is provided public records to which it is entitled. It is also to avoid confusion as to what documents are being sought and to confirm that all responsive public documents are provided to the Grand Jury.

RECOMMENDATION NO. 9:

Failure to Provide Upjohn Warning

County Counsel shall refrain from misleading County employees into believing they may have protections when they may not. County Counsel shall inform all employees of the Upjohn Warning and shall have employees sign an acknowledgement form as proof they are aware of the Upjohn Ruling and circumstances. This policy shall be incorporated into County Counsel's policy and procedures manual.

Response: The recommendation will not be implemented because it is not warranted and not reasonable.

If and when a conflict was to arise between clients, the County Counsel will handle the situation properly, according to all applicable laws and rules governing the practice of law.

-FINDING NO. 10:

Superior Court Case

In Riverside Superior Court Case #RICMISC20151 the 2014-2015, Riverside County Grand Jury raised the issue of a potential conflict between County Counsel and County employees they may be representing. The Riverside Superior Court Judge stated:

To the extent that that [sic] conflict exists, and there may be one, County Counsel, as with any other attorney, is obligated to properly advise its clients, employees about a potential conflict, and to obtain waivers appropriate or separate counsel if a waiver can't be obtained, but that's between the attorney and its client.

County employees may have an attorney of their choice including but not limited to a private attorney, union attorney, etc., there is no mandate that the attorney has to be County Counsel.

The Grand Jury found no evidence that County Counsel has or had properly advised any County employee of a potential conflict and obtained any waivers.

Response: County Counsel wholly disagrees with this finding.

Any discussion between an attorney and client are confidential and privileged. The law is well-settled that the grand jury has no right to such information based on the absolute privilege of that communication.

This matter was heard by the Honorable John Vineyard on May 22, 2015. After consideration of the issue, Judge Vineyard held that there was no basis to disqualify the County Counsel from representing County employees before the grand jury. Further, Judge Vineyard held that the County Counsel may represent County employees during testimony before the grand jury as provided in Penal Code section 939.22.

RECOMMENDATION NO. 10:

Superior Court Case

County Counsel shall properly advise County employees of potential conflict, and to obtain waivers appropriate or separate counsel if a waiver can't be obtained. A County employee shall be advised that representation by an attorney is at his/her request and is not mandated that it be County Counsel.

Response: The recommendation will not be implemented because it is not warranted and not reasonable.

If and when a conflict was to arise between clients, the County Counsel will handle the situation properly, according to all applicable laws and rules governing the practice of law.