



GRAND JURY
COUNTY OF NEVADA
Eric Rood Administration Center
950 Maidu Avenue
Nevada City, California 95959
Phone Number: 530-265-1730
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April 22, 2016

CONFIDENTIAL

Dan Miller, Chair
Nevada County Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959

Dear Chairman Miller,

Herewith is a copy of the report prepared by the Grand Jury of Nevada County on the subject of "The Value of Transparency in the Nevada County Board of Supervisors"

This report will be published April 26, 2016, when it will be posted on the Grand Jury's Website: www.civilgrandjury.com. Click on "Reports" link.

As you know, the California Penal Code (§933.05) prohibits disclosure of any portion of this report prior to its publication by the Grand Jury.

California Penal Code requires that responses to Grand Jury reports must be addressed to

The Honorable Tom Anderson
Presiding Judge of the Grand Jury
201 Church Street
Nevada City, California 95959.

To assist you in writing your response, we are enclosing a copy of Section 933.05 (a) of the Penal Code and an example of correct format for responding. To assist you with responding, an electronic formattable copy of this report can be obtained by request from the jury at: grandjury@nevadacountycourts.com Please be advised that your response(s) are due on or before June 30, 2016.

The Grand Jury appreciates your cooperation.

Douglas Wight
Foreman, 2015 – 2016 Grand Jury

RECEIVED
APR 22 2016
NEVADA COUNTY
BOARD OF SUPERVISORS
All Supervisors Received
cc: CEO
cc: County Counsel

**CALIFORNIA PENAL CODE
(EXCERPT FOR RESPONDENTS)**

Section 933.05 (a) **For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:**

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future; with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department

EXAMPLE: CORRECT FORMAT FOR RESPONDING TO A GRAND JURY REPORT

As required by Penal Code Section 933.05

FINDINGS:

1. Even when notification proceeds properly, the foster child's school records may not arrive at the new school for as long as eight or ten weeks. During this time the child may not be permitted to attend school

Disagree

Children are not denied education and a child's school record has to be requested by the school of enrollment.

2. Our CPS is on record as demanding that foster parents not home school the foster children in their care. CPS finds it difficult to enforce its own policy.

Partially agree

Nevada County CPS requires that its foster children be mainstreamed in education unless there are exceptional circumstances.

3. There can be a number of possible reasons for the foster child's relocation to another county, i.e., the availability of foster homes, need for special care, relationships between foster parent and foster child, the location of a desirable member of the child's extended family.

Agree

RECOMMENDATIONS:

6. The Board of Supervisors should consider taking back from the State the responsibility for the approval and training of foster parents within the County.

The recommendation will not be implemented at the present time

The Board believes the current process for the approval and training of foster parents in Nevada County is sufficient at the present time.

7. The Board of Supervisors should maintain funds and services to continue the County's model of the transition of 18-year-olds in the foster care system into independent living.

The recommendation has been partially implemented

Additional initiatives to redesign the California Child Welfare System will be implemented in Nevada County in conjunction with changes in State regulations.

THE VALUE OF TRANSPARENCY IN THE NEVADA COUNTY BOARD OF SUPERVISORS

SUMMARY

The Nevada County Board of Supervisors is the legislative and executive body of Nevada County government. Legislative and executive activities of the Nevada County Board of Supervisors are performed at public meetings with certain personnel and legal matters discussed in closed session. Meetings are conducted in accordance with the Ralph M. Brown Act (California Government Code sections 54950 et seq.) and the *Order and Decorum* adopted by the Nevada County Board of Supervisors each year.

The Nevada County Civil Grand Jury interviewed four current members of the Nevada County Board of Supervisors and one past member. Additionally, the Nevada County Civil Grand Jury interviewed Nevada County staff and reviewed documentation from the California Government Code, the Nevada County Board of Supervisors and the California Fair Political Practices Commission.

The Nevada County Civil Grand Jury noted variances in personal decisions by Supervisors as to their recusal from discussion or voting on various issues before the Nevada County Board of Supervisors.

Annually, the Supervisors adopt the *Order and Decorum* which defines their roles and how business should be conducted by the Nevada County Board of Supervisors and its appointed committees.

The *Order and Decorum* allows for any Supervisor to abstain or recuse from discussing and voting on any matter if the Supervisor has a *legal* conflict on any matter. Any Supervisor disqualifying him/herself must state the reason, shall completely abstain from participating in discussion on the matter and shall leave the room until the Nevada County Board of Supervisors has completed its discussion and acted on that matter.

However, the *Order and Decorum* does not specify conditions for which abstention and/or disqualification should occur.

Section 84308(b) of the California Government Code states, in summary, that an officer of an agency shall not accept a contribution of more than two hundred fifty dollars (\$250) from any party, nor from any participant, while an issue is pending before the agency and for three months following the date a final decision is rendered in the proceeding. But California Government Code section 84308(b) *does not* apply to elected officials, including elected members of the Nevada County Board of Supervisors.

The Nevada County Civil Grand Jury then asked the question, "Is there a difference between a legal conflict and an ethical conflict?"

The California Fair Political Practices Commission requires Supervisors receive ethics training every two years. In their training materials, the following comments are made:

*California has a complex array of laws relating to ethics in public service. The law, however, only sets a **minimum** [emphasis added] standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical or that it reflects the elected official's values or the public's values.*

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. Public servants must maintain a high standard of ethical conduct that promotes public confidence that public officials' actions are motivated solely by the public's interests.

The Nevada County Civil Grand Jury finds the citizens of Nevada County expect and deserve that its elected officials serve the public's interests, not private or political interests. Values are very important to the public. The public is strongly supportive of public officials following their sense of what is the right thing to do in making government decisions.

The Nevada County Civil Grand Jury finds that while a lack of a recusal by a Supervisor on an issue pending before the Nevada County Board of Supervisors may be legal, in the strict sense of law, it may give the public the perception of unethical behavior.

The Nevada County Civil Grand Jury recommends that the Nevada County Board of Supervisors augment and improve the existing *Order and Decorum*, particularly in the area of public transparency of relationships between a Supervisor and parties with business before the Nevada County Board of Supervisors.

The Nevada County Civil Grand Jury also recommends that members of the Nevada County Board of Supervisors raise their awareness of the importance of public transparency in making the public aware of relationships between the Supervisor and parties with business before them.

GLOSSARY

Board – Nevada County Board of Supervisors

Brown Act – Ralph M. Brown Act, California Government Code 54950-54963

Jury – Nevada County Civil Grand Jury

County – Nevada County

GC – California Government Code

FPPC – California Fair Political Practices Commission

BACKGROUND

California Penal Code section 925 states, in part: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county ... “

The Nevada County Board of Supervisors (Board) is the legislative and executive body of Nevada County (County) government. In addition, members of the Board represent the County on numerous intergovernmental bodies.

In its legislative duties the Board adopts ordinances, resolutions and rules within the limits prescribed by State law and is responsible for seeing that all Federal- and State-mandated functions are properly discharged.

As an executive body, the Board:

- determines annual budget allocation;
- approves contracts for public improvement projects and other specialized services;
- conducts public hearings on matters such as zoning appeals and planning issues;
- provides for the compensation of all County officials and employees;
- creates offices, boards and commissions as needed, appointing members and fixing the terms of office;
- directs an annual audit of all County accounts, books and records;
- provides policy direction to the County Executive Officer for the operation and administration of County departments; and
- exercises executive authority for the provision of local government services to County residents including:
 - roads,
 - Health and Welfare programs,
 - Public Defender, and
 - jail facilities/law enforcement.

Legislative and executive activities of the Board are performed at public meetings. Meeting conduct is to be in accordance with the Ralph M. Brown Act (Brown Act), California Government Code (GC) sections 54950 et seq., and the Board’s *Order and Decorum*. Certain personnel and legal matters are discussed in closed sessions as provided by the Brown Act.

The five members of the Board are elected on a non-partisan basis to serve four-year terms. Each is elected from one of the five Supervisorial districts of the County. Supervisors from District 3 and 4 are elected in gubernatorial election years (2014, 2018, etc.) while Supervisors from Districts 1, 2 and 5 are elected in presidential years (2012, 2016, etc.). Supervisorial district boundaries are adjusted after each federal census to equalize district population as closely as possible.

APPROACH

The Nevada County Civil Grand Jury (Jury), in conducting this inquiry:

- interviewed current and past members of the Board,
- interviewed staff employed by the County, and
- reviewed documents from the following sources:
 - the California Government Code (GC),
 - the Board, and
 - the California Fair Political Practices Commission (FPPC).

DISCUSSION

The Board is the legislative and executive body of County government. In addition, members of the Board represent the County on numerous intergovernmental bodies. The five members of the Board are elected on a non-partisan basis to serve four-year terms.

Legislative and executive activities of the Board are performed at public meetings. Meeting conduct is to be in accordance with the Brown Act and the Board's *Order and Decorum*. Certain personnel and legal matters are discussed in closed sessions as provided by the Brown Act.

In interviews with current and former Supervisors and County staff, the Jury noted differences in personal decisions made by Supervisors as to recusal of themselves from discussion or from voting on various issues before them.

The *Order and Decorum* for the Board defines the roles of the Supervisors and how business should be conducted by the Board and its appointed committees.

Specifically, section 13 of the *Order and Decorum* allows for any Supervisor to abstain or recuse from discussing and voting on any matter if the Supervisor has a **legal** conflict on any matter. Any Supervisor disqualifying him/herself may state the reason, shall completely abstain from participating in discussion on the matter and shall leave the room until the Board has completed its discussion and acted on that matter.

However, the *Order and Decorum* does not specify other conditions for which abstention and/or disqualification should occur.

GC Section 84308(b) states, in summary, that an officer of an agency shall not accept a contribution of more than two hundred fifty dollars (\$250) from any party, or from any participant, while an issue is pending before the agency and for three months following the date a final decision is rendered in the proceeding.

However, GC section 84308(b) specifically **exempts** elected officials, which would include the Board.

In one instance cited by more than one witness, an issue was before the Board regarding land use for a parcel owned by a private party. A Supervisor had previously received a campaign contribution from an involved party.

The Supervisor made a public statement, in an open session of the Board, advising the public of the contribution. The Supervisor also stated he felt that the receiving of the contribution would not affect his vote on the merits of the issue at hand. The Supervisor then participated in discussion on the issue and did vote on the issue in open session.

In a second instance cited by numerous witnesses, an issue was pending before the Board regarding a legal action taken against the County. While this issue was pending, a Supervisor received a campaign contribution from an involved party.

The pending issue was discussed and voted on in closed sessions of the Board. Witnesses told the Jury that the Supervisor did not notify the other Supervisors of the contribution, participated in the discussion and voted on the issue. When the vote was reported out in open session, the Supervisor did not disclose the contribution publicly.

Statements of witnesses were supported by review of the agendas and minutes of the meetings of the Board. There is no record of recusal on the pending issue by any Supervisor.

In interviews with the current and former Supervisors, most believed ethics referred to the Statements of Economic Interests - *Form 700* filings required from elected officials each year by the FPPC.

The FPPC requires certain public officials and all elected officials, including members of the Board, to receive two hours of ethics training every two years. Public officials may take the training course online or in a classroom setting. Also, the Nevada County Local Agency Formation Commission provides ethics training in a classroom setting in January of each year.

The course training is promulgated by the FPPC. In those training materials, the following comments are made:

*California has a complex array of laws relating to ethics in public service. The law, however, only sets a **minimum** [emphasis added] standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical or that it reflects the elected official's values or the public's values.*

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. Public servants must maintain a high standard of ethical conduct that promotes confidence that public officials' actions are motivated solely by the public's interests.

The citizens of Nevada County expect and deserve that their elected officials serve the public's interests, not private or political interests. Values are very important to the public. The public is strongly supportive of public officials following their sense of *what is the right thing to do* in making government decisions.

FINDINGS

- F1.** The Supervisors receive two hours of ethics training on a bi-annual basis.
- F2.** The citizens of Nevada County expect and deserve that their elected officials serve the public's interests, not private or political interests.
- F3.** While legal requirements are specific, ethical decisions are personal and have significant influence on perceptions of the public when evaluating Supervisor actions and transparency.
- F4.** The Supervisors are ethical people who conduct their business with good intent.
- F5.** Most of the Supervisors believe ethics refers to the *Form 700* filings required from elected officials each year by the FPPC.
- F6.** While a lack of public recusal by a Supervisor on an issue pending before the Board may be legal in the strict sense of law, it may give the public the perception of unethical behavior.
- F7.** The *Order and Decorum* lacks sufficient guidance to Supervisors in assisting them in their personal decision making on questions of recusal.

RECOMMENDATIONS

- R1.** Seek additional training and information to understand the difference between legal requirements and ethical considerations.
- R2.** Develop and implement guidelines to assist the Nevada County Board of Supervisors in its decisions as to whether recusal is appropriate on a particular issue.
- R3.** Augment the *Order and Decorum* document, particularly in the area of public transparency of relationships between a Supervisor and parties with business before the Nevada County Board of Supervisors.
- R4.** Increase personal awareness of the need for public transparency between the Supervisors and parties with business before the Nevada County Board of Supervisors.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Nevada County Civil Grand Jury requests responses as follows:

From the following:

Nevada County Board of Supervisors, by June 30, 2016.

Reports issued by the Nevada County Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Nevada County Civil Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Nevada County Civil Grand Jury.