



Superior Court of the State of California  
County of Mariposa

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December 26, 2019

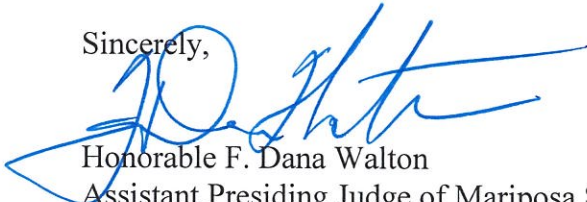
Re: Mariposa County 2019-2020 Grand Jury Interim Report

The current Mariposa County Grand Jury has completed their report and reference to your department has been made. Pursuant to Penal Code §933.05(b)(4)(f), this report is being released to your department two (2) working days prior to its public release. Please be advised you are not to disclose any of the contents prior to the public release of the report.

Please submit your response to the report within ninety (90) days to the Honorable F Dana Walton, Assistant Presiding Judge of the Superior Court. Copies of responses will be placed in the final report and said report will be filed with the Mariposa County Clerk.

To assist you with your response, I have enclosed a photocopy of Penal Code §933.05 setting forth the suggested form.

Sincerely,



Honorable F. Dana Walton  
Assistant Presiding Judge of Mariposa Superior Court

**PENAL CODE - PEN****PART 2. OF CRIMINAL PROCEDURE [681 - 1620] ( Part 2 enacted 1872. )****TITLE 4. GRAND JURY PROCEEDINGS [888 - 939.91] ( Title 4 repealed and added by Stats. 1959, Ch. 501. )****CHAPTER 3. Powers and Duties of Grand Jury [914 - 939.91] ( Chapter 3 added by Stats. 1959, Ch. 501. )****ARTICLE 2. Investigation of County, City, and District Affairs [925 - 933.6] ( Heading of Article 2 amended by Stats. 1973, Ch. 1036. )**

(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:

**933.05.** (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 decisionmaking 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.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

*(Amended by Stats. 1997, Ch. 443, Sec. 5. Effective January 1, 1998.)*

# Deferred Complaint regarding a Mariposa County Supervisor

## SUMMARY

The 2018/2019 Mariposa County Civil Grand Jury (MCCGJ) requested that the 2019/2020 MCCGJ consider investigating a citizen complaint that the 2018/2019 MCCGJ received but did not have enough time to investigate.

The 2019/2020 Mariposa County Civil Grand Jury elected to investigate this complaint (#2019-01(a)).

The complaint alleged six improper conduct concerns by a Mariposa County Supervisor.

The Mariposa County Civil Grand Jury did not find evidence of improper conduct for any of the six improper conduct allegations. The investigation; however, revealed room for improvement in educating the public on Board of Supervisor policy and procedure.

The Grand Jury recommends that the County Administrative Department provide additional and easily accessible information and resources regarding rules and procedures of the Board of Supervisors for greater transparency.

The Grand Jury further recommends ethics training for Supervisors beyond that which is required to ensure that clear lines are drawn between public duties and personal behavior, to enhance public trust.

## GLOSSARY

BOS – Board of Supervisors

MCCGJ – Mariposa County Civil Grand Jury

## BACKGROUND

In the May/June timeframe of 2018 the 2018/2019 Mariposa County Grand Jury received a complaint from a Mariposa County citizen alleging six distinct and specific concerns regarding improper conduct by a Mariposa County Supervisor. The complaint alleged six distinct and specific concerns:

1. Improper use of power by the Supervisor through self-representation as a legal authority
2. Inappropriate manipulation by the Supervisor of the Board of Supervisor's Consent Agenda
3. Improper use of power by the Supervisor through appointments to advisory boards
4. Improper use of insider information by the Supervisor for personal gain
5. Use of intimidation by the Supervisor
6. The complaint also asked the Grand Jury to investigate specific details regarding private citizens other than the Supervisor.

The 2018/2019 Mariposa County Grand Jury concluded they did not have the time to sufficiently investigate the issues and asked that the 2019/2020 Mariposa County Grand Jury consent to take on the necessary investigation.

As the Mariposa County Counsel has recused their office from advising the Grand Jury based upon potential conflicts of interest, the 2019/2020 Mariposa County Grand Jury consulted with the Mariposa County District Attorney as a legal advisor. After that consultation, the 2019/2020 Mariposa County Grand Jury elected to take on this complaint (#2019-01(a)) investigation.

## **METHODOLOGY**

The 2019/2020 Mariposa County Grand Jury investigated the matter, calling associated witnesses and researching County policy and procedure. The Grand Jury talked with a number of involved persons, and spent considerable time in research.

## **DISCUSSION**

The facts in this report are the result of multiple interviews conducted by the 2019/2020 Mariposa County Grand Jury during the investigation process or in documentation footnoted separately.

### **Allegation 1: Improper use of power by the Supervisor through self-representation as a legal authority**

There is no evidence to show that the Supervisor in question ever improperly represented themselves as an attorney or legal authority. While the Grand Jury did find that the Supervisor may have rendered advice to acquaintances concerning contract clauses and language, this was done in the manner of personal advice, and not under color of authority as an attorney or as a County Supervisor.

### **Allegation 2: Inappropriate manipulation by the Supervisor of the Board of Supervisor's Consent Agenda**

Agendas for Board meetings are prepared by the Clerk of the Board, and items submitted to the Consent Agenda are "scheduled as such at the discretion of the County Administrative Officer."<sup>1</sup> Research has shown that as a result of the County Administrative Department's MinuteTraQ software, which is used to build Board of Supervisor agendas and a three tier approval system unconnected to the Board of Supervisors, a single Supervisor cannot improperly manipulate the Board's Consent agenda, and in fact has no authority or control over where a given item ultimately appears on the agenda.

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<sup>1</sup> Rules of Procedures for Meetings of the Board of Supervisors of Mariposa County, accessed 11/3/2019, <https://www.mariposacounty.org/DocumentCenter/View/79666/Board-Meeting-Procedures>

**Allegation 3: Improper use of power by the Supervisor through appointments to advisory boards**

Research has shown that Board of Supervisor members properly have a great deal of latitude in naming advisory board and commission members from a Supervisor’s own District. The process is largely subjective, and Supervisors choose their own advisory members.

**Allegation 4: Improper use of insider information by the Supervisor for personal gain**

There is no evidence that the Supervisor in question used the position of Supervisor for personal gain. None of the individuals spoken to by the 2019/2020 Grand Jury were able to show, even anecdotally, that there was any evidence at all of this having occurred.

**Allegation 5: Use of intimidation by the Supervisor**

While the 2019/2020 Mariposa County Grand Jury acknowledges that “intimidation” can be a subjective concept, it does not appear to this Grand Jury, after talks with those concerned, that this Supervisor’s demeanor ever rose to the level of intimidation.

**Allegation 6: The complaint also asked the Grand Jury to investigate specific details regarding private citizens other than the Supervisor.**

It is not within the purview of the Grand Jury to investigate any aspect of a private citizen’s life unless it is part and parcel of a complaint, or other legitimate Grand Jury investigation. The request that accompanied this complaint would have taken the Grand Jury outside of our jurisdiction. For that reason, the 2019/2020 Grand Jury did not pursue this element of the complaint.

**Mariposa County’s Expense and Ethics Policy for Elected Officials**

In Mariposa County, each elected county official and each member of the Board of Supervisors receives “at least two hours of training in general ethics principles and ethic laws relevant to his or her public service every two (2) years.”

“Ethics laws” include, but are not limited to, the following:<sup>2</sup>

- 1) Laws relating to personal financial gain by public servants, including but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- 2) laws relating to claiming prerequisites of office including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

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<sup>2</sup> Mariposa County Board of Supervisors Agenda Action Form (Agenda item no. 13, 2005), Adopt “Board of Supervisors and County Elected Officials Expense and Ethics Policy,” accessed 11/3/2019, <http://www.mariposacounty.org/DocumentCenter/View/51779/Policy-143>

3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

4) Laws relating to fair processes, including but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

## **FINDINGS**

After investigation, the 2019/2020 Mariposa County Grand Jury arrived at the following findings;

1. To prevent allegations of supervisor misconduct by citizens of Mariposa County, it is essential that Supervisors clearly delineate the line between acting and carrying out duties as a County Supervisor and their everyday lives, including personal communications and activity with respect to their constituency.
2. There is a lack of accessible information and resources for citizens to understand the process by which agenda items are placed on the BOS agenda.
3. There is a lack of accessible information and resources for citizens to understand the BOS process by which advisory board members and commission members are selected and appointed to serve by Supervisors.
4. The required two hours of training every two years in Expense and Ethics Policy by elected officials of Mariposa County is insufficient to ensure the public trust.

## **RECOMMENDATIONS**

The 2019/2020 Mariposa County Grand Jury closes this complaint investigation with the following recommendations:

1. The Grand Jury recommends Mariposa County Board of Supervisors and all persons in County elected positions receive additional ethics training beyond that which is required to ensure greater self-awareness of public perception of elected officials' communication style and behavior.
2. The Grand Jury recommends that the County Administrative Officer or relevant party provide additional information or education, perhaps in the style of a pamphlet or poster in the Board Room, that details how the Board agenda is created and works for greater transparency.
3. The Grand Jury recommends that the County Administrative Officer or relevant party provide additional information or education, perhaps in the style of a pamphlet or poster in the Board Room, that details how Advisory Board and Commission Members are appointed for greater transparency.
4. This Grand Jury has no further comment on this element.

## **REQUESTED RESPONSE**

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests a response from the following governing body within 90 days:

Mariposa County Board of Supervisors;

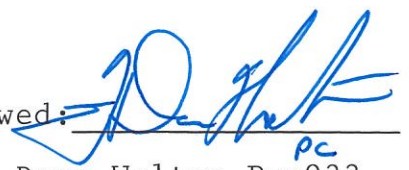
Findings 1, 2, 3, 4, and Recommendations 1

**INVITED RESPONSE**

From the following within 90 days:

Mariposa County Administration/Mariposa County Administrative Officer;

Findings 2, 3, and Recommendations 2, 3

Reviewed: 

Honorable F. Dana Walton, Per 933

12/20/19