



County of Orange

California

Michael B. Giancola
County Executive Officer

July 30, 2013

Honorable Thomas J. Borris
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: *“The Culture of Harassment: Change on the Horizon”*

Dear Judge Borris:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Human Resource Services Department, County Counsel, County Executive Office and the Board of Supervisors. If you have any questions, please contact Margaret Cady (714) 834-3646.

Sincerely,

Michael B. Giancola
County Executive Officer

Enclosure

cc: **FY 2012-13 Orange County Grand Jury Foreman**
Frank Kim, Chief Financial Officer
Mark Denny, Chief Operating Officer
Steve Danley, Director, Human Resources
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Introductory Comments

On May 8, 2013, the Grand Jury released a report entitled, "The Culture of Harassment: Change on the Horizon" that discussed a recent incident of sexual harassment at the County of Orange ("the County"). This report included various Findings and Recommendations and sought responses from the County Human Resource Services Department, the County Executive Office, the County Counsel, and the County Board of Supervisors. This document represents the County's combined response.

Typically, the County has responded to prior Grand Jury reports by narrowly addressing only the report's specific findings and recommendations in accordance with Grand Jury guidelines. For the benefit of both the Grand Jury and the public, and because this incident has become a matter of public concern, the Board of Supervisors would like to use the opportunity presented by the May 8, 2013, report to respond in a more comprehensive fashion. By doing so, the County hopes to recognize the Grand Jury for those observations that have been astute and helpful, but also to point out those particular areas where the Grand Jury's Report may not provide an accurate picture of County government.

Report Strengths

The County appreciates accurate critical feedback on its operations as such feedback affords an opportunity for growth and improvement. The Grand Jury successfully provided useful and constructive criticism in the following areas:

- Sexual Harassment Investigation at OC Public Works

Given the egregious nature of the misconduct, *i.e.*, misconduct that resulted in the filing of criminal charges against a County manager, we believe that the Grand Jury should be commended for setting forth what we believe is an accurate factual timeline of the critical events. We note that, in this aspect of the report, the Grand Jury relied upon the sworn testimony of witnesses. As a result, we believe that the Grand Jury's observations were helpful in that they helped the County to ascertain what occurred. In many areas, and as the Grand Jury correctly acknowledged, the County has already taken appropriate action to address the deficiencies in County personnel practices.



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- Proper Functioning of County Oversight Operations

We also credit the Grand Jury for accurately describing the effective oversight conducted by the County's Internal Audit Department and County Counsel in addressing the deficient handling of the sexual harassment investigation at OC Public Works. We believe that courage and professionalism were demonstrated by the leadership of these two departments by (1) persistently monitoring the progress of the investigation and the subsequent implementation of remedial measures, and then (2) alerting the Board of Supervisors to the observed procedural deficiencies.

- Recentralization of Countywide HR Services

We also believe that the report accurately recognizes that the County's return to a centralized provision of human resource services has brought about significant positive change. Indeed, many of the necessary reforms to the County's equal employment opportunity (EEO) policies would not be possible without a recentralization of this critical County function.

- EEO and anti-Harassment Compliance Training

We also credit the Grand Jury for appropriately recognizing the County's efforts to expand its EEO and anti-Harassment training for its non-management/supervisory staff (some 13,500 employees), which will occur later this calendar year.

Report Weaknesses

In general, to the extent that the Grand Jury diverged from its discussion of the OC Public Works sexual harassment investigation, which was supported by evidence from sworn testimony, the report is not as strong. Some of the weaknesses include:

- Omissions

With respect to the OC Public Works sexual harassment investigation, we believe that the report has several omissions which deny the reader important context:

1. The report fails to state that the events in question happened over a time period that ended more than 18 months ago. This omission may lead the reader to incorrectly assume that deficiencies noted by the Grand Jury still exist.
2. The report fails to recognize that those responsible for the investigative deficiencies are no longer employed by the County.



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3. The report fails to mention important changes in top County leadership that have occurred over the past 18 months. These changes have addressed many of the deficiencies noted by the Grand Jury, and serve as the foundation for a reformed culture.
 4. The report does not offer any statistics related to harassment complaints which would provide a more fact-based assessment of EEO-related problems and their prevalence. Useful statistics that would provide proper perspective include the number of persons currently employed by the County, the number of sexual harassment lawsuits filed against the County in recent years, and the amount of damages awarded in sexual harassment cases involving County personnel over, for example, the last ten years.
- Inaccuracies

The following are some examples of inaccurate statements made in the report:

1. On page 2, the report alleges that there is a lack of written guidelines in place for the proper investigating of a complaint of harassment or discrimination. In fact, there are multiple, easily available informational resources and County staff responsible for investigations are provided legal advice, training, and reference materials.
2. On page 3, the report states that County management/supervisors have not been consistently trained in recognizing and responding to violations of EEO laws. This is not accurate. County managers/supervisors receive mandated training every two years to both recognize and address violations of policy. If appropriate action is not taken to address EEO policy violations, such failures are not due to a lack of training.
3. The report states that a complainant cannot file an anonymous harassment complaint with the EEO Office. This is not accurate. Anonymous complaints have, in fact, been received and investigated by the County EEO Office.

County Combined Response to Grand Jury Findings

Finding 1: There is a lack of written policies, procedures, and guidelines relating to EEO laws and employee complaints in the Human Resource Services Department. The County Human Resource Services Department is currently personnel constrained due to its efforts in its recentralization and should look to other ways to produce their policies.



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Response: *Disagree partially with the finding.*

The County disagrees wholly with the first sentence of this finding. The HR Portal (an internal website for HRS staff) provides an EEO tab which contains the following easily accessible documents:

- EEO and anti-Harassment Policy
- Link to State Department of Fair Employment and Housing website which discusses filing EEO complaints
- EEO investigation flow chart
- Discrimination Compliant form
- EEO Tips
- Sample letter to employees who file a compliant

Since 1999, the County has had a comprehensive policy designed to ensure that all employees enjoy a workplace environment free of harassment, discrimination, and retaliation. The policy prohibits discrimination, harassment, and retaliation, and provides detailed, step-by-step guidance as to the manner by which employees can report alleged violations. The EEO Office coordinates with agencies/departments to ensure that all employees are advised of the policy and to ensure its uniform application.

With respect to the EEO staffing constraints, the County agrees with the Grand Jury's assessment that, in recent years, there has been limited staffing for its central EEO Access Office. After the County bankruptcy filing in December 1994, the County made a number of cuts in several areas, including the central EEO Access office, and many EEO functions were subsequently decentralized. The former decentralized Human Resources Department had only one manager assigned to this function. However, with reform and recentralization, an additional non-management staff person will be assigned to this function. This action will enhance the efficient and effective processing of EEO complaints.

Finding 2: The training of County employees on matters of discrimination and harassment is inadequate.

Response: *Disagree partially with the finding.*

State law requires that the County provide EEO and anti-Harassment training to all managers and supervisors (approximately 3,500 employees) every two years, and within six months for all newly hired management/supervisory personnel. The County has met this



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mandate for several years by providing on-line training. The County's training for its non-management/supervisory staff (approximately 13,500 employees) has primarily consisted of the written information provided to employees during new employee orientation. Additional, in-person training has been provided to non-management personnel on an "as needed" basis, typically when EEO concerns have been raised. Additionally, the County has provided information to employees with an annual letter from the Board Chairman with the County's EEO and anti-harassment policy, County newsletters, and EEO posters distributed to each agency/department.

However, given the severity of the OC Public Works sexual harassment case, and in an effort to educate all employees concerning their right to work in an environment free of harassment, discrimination, and retaliation, the Board of Supervisors has approved two changes in EEO and anti-Harassment training: (1) all managers/supervisors will now receive live, in-person training every two years, and (2) all non-management/supervisors will soon be provided with either in person or on-line training every two years.

That said, we do not believe that deficiencies in the OC Public Works sexual harassment investigation were the result of a lack of training. All involved managers and supervisors had been properly trained on what they were supposed to do. The Grand Jury acknowledges this fact in its report. The deficiencies in the investigation appear to have been caused by a failure, on the part of a few County managers, to comply with known policies. This distinction is particularly important to the vast numbers of County management and line staff who, day-in-and-day-out, are vigilant in ensuring a workplace free of discrimination, harassment, and retaliation.

Finding 3: The training of Human Resource Services personnel is not consistent.

Response: *Partially Disagree with the finding.*

This finding is vague, precluding the County from providing a detailed response. If the Grand Jury is referring here to EEO training for Human Resources personnel, then the County wholly disagrees with the finding. EEO training has always been available and provided to HR staff, many of whom use this training on a routine basis as part of their work assignment.

However, if the Grand Jury is referring to general training provided to HR staff, the County agrees with this finding. Prior to recentralization (*i.e.*, before December 2012), training for Countywide HR staff was not consistent across agencies/departments. With



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recentralization, the newly-constituted Human Resource Services department has provided, and is continuing to provide, continuing education and training for HRS personnel. Now that Countywide HR activities are predominately recentralized (with the exception of some County departments managed by independently elected officials), we can now assess each HR employee's skill sets and customize training as needed.

Finding 4: Mandated qualifications for the position of Supervisor or Manager in the Human Resource Services Department lack the job specific requirement for human resource schooling, certifications, or equivalent experience.

Response: Disagree partially with the finding.

The County of Orange utilizes a broadband classification system for its management classifications (*i.e.*, Administrative Manager I, II, III, and Executive Manager). In a broadband approach, generic class specifications are used which group together a variety of positions that have similar levels of knowledge, skills and abilities. The benefits of using such a system are ease of administration and less cost to support. This does, however, result in generic class specifications which are not tailored specifically to assignments such as HR Managers. However, when recruitments are opened for positions, the recruitment bulletin (*i.e.*, the job opening announcement) states the desired qualifications that are specifically related to the vacant position. A survey of HR Manager recruitment bulletins was conducted over the last seven years, the results of which confirm that these recruitment bulletins contained the appropriate and necessary language to identify suitable candidates for HR Manager positions.

However, prior to recentralization, not all HR Managers were hired through recruitments. Instead, some managers, without an HR background, were transferred from other assignments in the same classification (*e.g.*, Administrative Manager from another specialty area such as Budgeting or Purchasing). In these cases, the County expected the newly appointed manager, with the assistance of central Human Resources and County Counsel, to learn the HR profession once they were transferred into an HR position. The inadequacy of this approach was one motivation for the recentralization of HR Countywide.



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Finding 5: Written policies, procedures, and guidelines for the referral of possible criminal conduct to law enforcement agencies does not exist.

Response: *Agree with the finding.*

The County agrees that it has not developed written guidelines for the referral of possible criminal conduct by employees to law enforcement agencies. Whether such a legal duty exists on the part of a public employer is doubtful. Alleged crimes are typically reported to law enforcement by the victims themselves and not by the employer that has a general duty to protect the privacy of crime victims, especially in cases of sexual misconduct. That said, the County does have a clear legal and moral obligation to provide employees with a work environment free of harassment, discrimination, and retaliation, and is further obligated to take prompt remedial action when such misconduct occurs. While the County has never discouraged sexual harassment victims from reporting alleged crimes to law enforcement, in light of the significant events that have occurred, the County is now in the process of developing written guidelines for the referral of possible criminal conduct to law enforcement agencies.

Finding 6: Currently there is no way for an employee to contact the EEO Access Office with anonymity. If an employee wants to make a complaint and not reveal their name the only County mechanism to do so is the "fraud hotline" which may be confusing to employees who wish to report discrimination or harassment.

Response: *Disagree wholly with the finding.*

This finding is factually inaccurate. Anonymous complaints can be and, in the past, have been submitted to the EEO Access Office. The EEO Access Office has promptly investigated all complaints received.

Finding 7: The County did not initiate an outreach to the victims who had experienced sexual harassment over the last few years.

Response: *Disagree wholly with the finding.*

The County has routinely provided avenues for employees to discuss their concerns or the impacts of being a victim of discrimination or harassment. The first and most obvious avenue is for the employee to discuss the situation with his or her supervisor or a higher level manager. If this is not an avenue the employee wishes to pursue, the County also



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provides and funds a confidential Employee Assistance Program that is regularly offered to employees in need of counseling assistance. In addition, HRS requested and the District Attorney's Office did offer assistance to the victims of the OC Public Works case.

Finding 8: Other than re-issuing a yearly statement on the County policy regarding discrimination and harassment, County elected officials and executive management have undertaken no proactive measures to address and change the County culture that allowed the tolerance of inappropriate behavior that was present for years. This culture continues and needs leadership to change.

Response: Disagree wholly with the finding.

This finding is inaccurate and disregards significant evidence provided to the contrary. The finding is also inconsistent with the positive references within the Grand Jury's report regarding the County's progress in this area, most notably the report's title: *The Culture of Harassment: **Change on the Horizon*** (emphasis added).

A listing of the more significant actions taken by the County following the OC Public Works sexual harassment investigation includes:

- Establishment of a Compliance Oversight Committee, comprised of the HR Director, Internal Audit Director and County Counsel to, among other things, ensure that all EEO investigations are properly received, investigated and addressed (August 2012);
- Approval of additional resources and positions for the District Attorney's Special Prosecutions/Special Assignments unit (September 2012);
- Revision of the County's EEO policy (October 2012);
- Development of an action plan specific to OC Public Works (November 2012);
- Recentralization of Countywide human resource activities (December 2012);
- Implementation of EEO training for all County employees (on-going);
- Hiring of new County EEO Manager (February 2013);
- Provision of training on "Preventing Workplace Harassment, Discrimination and Retaliation" to over 250 OC Public Works managers (April 2013);
- The employment agreement of the new County Executive Officer (CEO), ratified by the Board on May 7, 2013, which specifically provides that the CEO "shall also be responsible for ensuring that all COUNTY employees enjoy a work environment free of unlawful harassment, discrimination, and retaliation, and that allegations of unlawful harassment, discrimination, and retaliation are promptly and thoroughly investigated and addressed." (May 2013).



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County Combined Response to Grand Jury Recommendations

Recommendation 1: The County Human Resource Services Department shall prepare and publish policies, procedures, and guidelines related to all employee complaints and how they are investigated. Special attention, or separate policies, should be published for complaints related to discrimination and harassment to ensure they meet the Employer Responsibilities outlined in state and federal statute. If necessary, the County Human Resource Services Department should utilize the services of outside companies specializing in human resource matters. The Human Resource Services Department should develop, approve, and publish the policies and procedures within six months. The Board of Supervisors should support this effort with adequate funding.

Response: *The recommendation requires further analysis.*

The County currently has guidelines for conducting investigations of employee discrimination and harassment complaints. The newly hired EEO Manager at HRS is evaluating the guidelines currently in place and will be making recommendations for improving those processes and determining whether a new policy is needed. In addition, a limited-term, *ad hoc* subcommittee, comprised of Supervisors Nelson and Spitzer, is reviewing, and will be recommending to the full Board, a number of policy considerations for investigating EEO and harassment complaints against County executives.

Last year, the County began using outside legal investigators to investigate discrimination and harassment complaints involving Executive Management employees. Though costly, the utilization of private attorneys has proven to be a valuable tool for determining whether a claim is substantiated or unsubstantiated, what level of discipline is appropriate in cases where allegations of misconduct are substantiated, and for setting a legal foundation if litigation is pursued by an involved employee.

Recommendation 2: All County employees and elected County officials shall undergo training on discrimination and harassment. At a minimum, all employees classified as supervisors and above should receive in-person training every two years, as well as have access to on-line training. The Board of Supervisors, and any other elected County officials, should participate in the in-person training at a minimum of once every two years. The Board of Supervisors should support this effort with adequate funding.



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Response: The recommendation has not yet been implemented, but will be implemented in the future.

The Human Resource Services department released a Request for Proposal (RFP) for a contractor(s) to provide in-person EEO and anti-harassment training to its managers/supervisors and on-line training for all line staff. There was not a responsible bid for in-person training, so HRS plans to hire a sole source contractor for the 2013 training, and also to re-issue a RFP for future in-person training for managers/supervisors. In the near future, the Board will be evaluating the merits of using either in-person or on-line training for line staff.

Recommendation 3: The County Human Resource Services Department should develop specific training schedules for all of its personnel to ensure consistency in addressing County employee issues. The training should be ongoing and include both internal and external sources. Additional and specific training should be given to those in charge of investigating complaints.

Response: The recommendation requires further analysis.

This recommendation, like the corresponding finding, is vague. If the recommendation refers to EEO and discrimination training for HR staff, then HRS ensures that this training occurs every two years as mandated. If the recommendation is related to any and all training, then HRS is currently strengthening its training efforts. As a part of recentralization, HRS has formed a Training & Organizational Development division. When fully operational, this division will determine the desired level and scope for tracking the training provided to all County employees.

Recommendation 4: The County Human Resource Services Department shall re-write the job qualifications for any position of supervisor and above in the Human Resource Services Department to include mandatory certification, schooling, or equivalent experience in the human resource field.

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

The Human Resource Services department already has in place the mechanisms to accomplish this recommendation. As mentioned, when HRS recruits for HR vacancies, the recruitment bulletin details the qualifications necessary for a successful applicant. Also, as