

## **ORANGE COUNTY DISCIPLINARY PROCEDURES FOR ELECTED OFFICIALS**

### **SUMMARY**

The 2006-2007 Orange County Grand Jury conducted a study of agencies' procedures for investigating the management of misconduct allegations concerning Orange County elected officials including the Assessor, Auditor-Controller, Board of Supervisors, County Clerk-Recorder, District Attorney, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector.

On December 21, 1999, the Orange County Board of Supervisors adopted Board Resolution 99-514, which is applicable to all Orange County employees, including agency heads, directors, managers and supervisors, concerning allegations of Equal Employment Opportunity (EEO) misconduct. After contacting the elected county officials, the Grand Jury was able to locate these EEO misconduct procedures; however, there are no non-EEO procedures (covering, but not limited to, malfeasance, bribery, theft, fraud, etc.) available other than those contained in Penal Code 919c which states, "The Grand Jury shall inquire into the willful or corrupt misconduct of public officers of every description within the county."

### **REASONS FOR STUDY**

The Grand Jury is charged with investigating citizen complaints, which may include those against elected officials. During the course of these investigations, the Grand Jury determined that while Orange County has established procedures for EEO misconduct by all County employees including elected officials, a preliminary review revealed none for investigating non-EEO misconduct by Orange County Elected Officials.

### **METHOD OF STUDY**

The Grand Jury:

- contacted the County Human Resources Office to ascertain whether any non-EEO misconduct county procedures for elected officials exist; and
- interviewed Orange County Officials with regard to regulations and procedures.

### **BACKGROUND AND FACTS**

When non-EEO misconduct is alleged against an Orange County employee, most people assume that the investigation follows the lines of EEO procedures. What procedures for investigating this misconduct should be employed if the misconduct does not fall within the EEO guidelines? In an attempt to answer this question, the Grand Jury made inquiries to the offices of all elected officials in Orange County, including the Board of Supervisors, as well as San Bernardino and Riverside County Human Resources Offices. Invariably, the responses were a reference to, or excerpts from, the EEO manual.

Currently, each department headed by an elected official approaches this subject on its own, creating policy and procedures as it deals with complaints and/or allegations of misconduct. Further, there is no assurance that newly created procedures would be followed if and when future complaints should occur.

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The lack of adequate procedures and suggested solutions was explored in a discussion with one of the agency heads. The outcome of this meeting was a reference to a letter sent by that agency head to the Orange County Board of Supervisors in the summer of 2006, wherein the agency outlined an approach for “developing a cohesive policy.” This outline recommended policies establishing investigatory protocols as well as those required for proper coordination and reporting between agencies; most important would be the attempt to identify, what person or group of persons should hear, investigate, report and/or dispose of such complaints.

The only referenced procedural policy that the Grand Jury found addressing non-EEO misconduct, other than the Grand Jury’s mandated authority to make inquiries as set forth in Penal Code section 919c, was contained in California Government Code Sections 8547-8547.12, which is known as the “California Whistleblower Protection Act.” Under this act any “improper governmental activity...undertaken in the performance of the employee’s official duties” may be investigated by the State Auditor.

### **FINDINGS**

In accordance with California Penal Code Sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2006-2007 Orange County Grand Jury has arrived at the following finding:

F-1. Other than Penal Code section 919c which grants the Grand Jury the authority to inquire into willful or corrupt misconduct by public officers, there are no authorized published procedures by the county or agencies to investigate non-EEO misconduct by an elected official that does not rise to the level of willful or corrupt.

**Responses to Finding F-1 are required from the Assessor, Auditor-Controller, County Clerk-Recorder, Board of Supervisors, District Attorney, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector.**

### **RECOMMENDATIONS**

In accordance with California Penal Code Sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2006-2007 Orange County Grand Jury has arrived at the following Recommendation:

R-1. Each agency should generate and implement a set of procedures to facilitate an investigation of any non-EEO misconduct that does not rise to the level of a willful or corrupt claim against its own elected official in Orange County.

**Responses to Recommendation R-1 are required from the Assessor, Auditor-Controller, County Clerk-Recorder, Board of Supervisors, District Attorney, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector.**

### **REQUIRED RESPONSES**

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The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

### § 933.05. Responses to findings

(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...This timeframe shall not exceed six months from the date of the 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.