



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TONY RACKAUCKAS, DISTRICT ATTORNEY

JIM TANIZAKI
SENIOR ASSISTANT D.A.
VERTICAL PROSECUTIONS/
VIOLENT CRIMES

WILLIAM FECCIA
SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

MARY ANNE MCCAULEY
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

JOSEPH D'AGOSTINO
SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

DONALD BLANKENSHIP
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

July 30, 2007

Honorable Nancy Wieben Stock
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Orange County Disciplinary Procedures for Elected Officials?"

Dear Judge Stock:

Per your request, and in accordance with Penal Code 933, enclosed please find the response to the subject report submitted for my Office.

If you have any questions, please contact Senior Assistant District Attorney Bill Feccia at (714) 347-8640.

Thank you,

Tony Rackauckas
District Attorney

Attachment

- c: Chris Norby, Chairman, Orange County Board of Supervisors
John Moorlach, Vice Chair, Orange County Board of Supervisors
Patricia Bates, Supervisor, Orange County Board of Supervisors
Bill Campbell, Supervisor, Orange County Board of Supervisors
Janet Nguyen, Supervisor, Orange County Board of Supervisors
Thomas G. Mauk, County Executive Officer
Ben DeMayo, County Counsel

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.OrangeCountyDA.com

MAIN OFFICE
401 CIVIC CENTER DR W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7261

SOUTH OFFICE
30143 CROWN VALLEY PKWY.
LAGUNA NIGUEL, CA 92677
(949) 249-5026

HARBOR OFFICE
4601 JAMBOREE RD.
NEWPORT BEACH, CA 92668
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7624

CENTRAL OFFICE
700 CIVIC CENTER DR. W
P.O. BOX 808
SANTA ANA, CA 92701
(714) 834-3600

FINDING

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

District Attorney's Response to Finding No. 1

The District Attorney agrees with this finding insofar as his office is concerned. Local Agencies do not have supervisory authority over the District Attorney. The California Constitution specifically grants that authority to the Attorney General. Article V, § 13 of the California Constitution provides in pertinent part that:

Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. **The Attorney General shall have direct supervision over every district attorney** and sheriff and over such other law enforcement officers as may be designated by law, **in all matters pertaining to the duties of their respective offices....**
(Emphasis Added)

Govt. Code § 12550, entitled, "Authority of Attorney General" confirms this power. It states in pertinent part, "The Attorney General has direct supervision over the district attorneys of the several counties of the State...." The Supreme Court of California has also confirmed the extent of the powers of the District Attorney and the entities that serve as a supervising check on the exercise any district attorney in the discharge of the duties of that office of those powers;

The district attorney is the public prosecutor, vested with the power to conduct on behalf of the people all prosecutions for public offenses. (Citation) **Except for the power of the electorate to remove him, his performance of these functions is subject only to the supervision of the Attorney General.** (Citation) *Hicks v. Board of Supervisors* (1977) 69 Cal. App. 3d 228, 240.
(Emphasis Added)

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 willful or corrupt claim against its own elected official in Orange County.

District Attorney's Response to Recommendation 1

The District Attorney declines to implement the recommendation as it is not warranted and not reasonable. As noted in the response to Finding No. 1, the California Constitution grants exclusive authority to supervise district attorneys to the Attorney General. Although Govt. Code § 25303 states in pertinent part that, "The board of supervisors shall supervise the official conduct of all county officers...", the same statute acknowledges this Constitutional limitation by also stating, "This section shall **not** be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county." (Emphasis Added)

An attempt to create procedures to facilitate an investigation of an elected official outside of that explicitly provided for by the Constitution would itself be unconstitutional. Accordingly, the District Attorney must respectfully decline to implement the recommendation.