

Supplemental Guardian of Last Resort Report

This report does not supersede the 2008-2009 Grand Jury report titled Guardian of Last Resort and the findings and recommendations contained therein.

Summary

The Orange County Public Administrator/Public Guardian (PA/PG) was the subject of a report by this Grand Jury, titled, The Guardian of Last Resort. After that report was published, on May 4, 2009, the Grand Jury received additional pertinent and compelling information regarding increasing management costs and additional inappropriate personnel practices. There are two significant events that are directly linked to findings contained in the original report. All of these actions are continuing to occur while Orange County is under severe financial stress, necessitating staff and service reductions. Consequently, this supplemental report adds further findings and recommendations based on the follow-up investigation conducted since the release of the original report.

Reason for Investigation

The Grand Jury held a fact-finding interview with the PA/PG management on April 9, 2009. Subsequently, the PA/PG chose to continue to engage in practices identical to those described in the original report. In addition, since that date, additional complaints, telephone calls, and updated information regarding this organization were received from several sources.

Method of Investigation

The Grand Jury reviewed new documents and information. Interviews were conducted with several senior County officials who provided essential insight concerning

the PA/PG. Various agencies were contacted to confirm financial data and other substantive information.

Background and Facts

Financial Accountability and Management Growth

At the time the PA/PG separated from the Health Care Agency in 2005, annualized hourly wages for individuals classified as managers amounted to \$529,796. As of the end of May, 2009, the annualized hourly wages amounts to \$1,156,002. This salary growth in the management category classification has now increased 118.2% over the last four years.

The PA/PG has responded to the Grand Jury's original report. However, these responses have not yet been finalized or approved by the Board of Supervisors. One response stated, "The negligible increase in management costs has all been self-funded." Most financial analysts would not view these figures as "negligible." However, these "self-funding" dollars are not justification for a cost structure that has dramatically increased since 2005. Furthermore, in 2005-2006 the PA/PG "gave back" \$685,000 to the general fund. In 2006-2007 the figure was \$43,000.

The personnel issues highlighted in the first 2008-2009 Grand Jury report on this matter have increased unabated. Management has continued to add to its ranks. In 2005 there were seven individuals in the management classification. The Grand Jury's previous report stated the number had increased to ten. Now, that number is 11, even while

the total PA/PG staff remains at 67.

Inappropriate Personnel Practices

The redundancy caused with the addition of a second Chief Deputy position appears inappropriate. In January, 2008, a significant organizational change was made. PA/PG management stated, "We will no longer be using the working title of Chief Deputy Public Administrator-Public Guardian." However, technically the chief deputy position was not eliminated from the department. After several questionable personnel changes, the PA/PG reinstated the Chief Deputy position in August, 2008. Since the prior Grand Jury report, the PA/PG has created a second Chief Deputy position, even though there does not appear to be a suitable organizational reason for taking that action. Prior Chief Deputies or Executive Managers had significant academic and/or legal experience in the operation of the PA/PG. Consequently, there was not a need for two Chief Deputies.

Furthermore, the pattern of temporary promotions, previously documented in the prior report, has been implemented again in the past few months. One employee stated that temporary promotions are a "... way to manage complaints and conflicts in the staff, used to gain support and loyalty, they give them and take them away." Information obtained from Orange County Human Resources (OCHR) revealed many instances of individuals promoted and then reclassified downward. It is important to note that a person can be reduced in grade

from a supervisory position and yet later receive rapid promotions, all in a matter of months. It is difficult to understand how the organizational needs have been served with those types of personnel practices.

The personnel maneuverings described in the prior Grand Jury report are continuing to occur. The PA/PG now has two permanent Administrative Manager III positions. In the preliminary response to questions regarding its personnel practices, the PA/PG indicated it follows the Orange County "... Merit & Selection Rules, Personnel & Salary Resolution, Memorandum of Understanding." However, in several conversations, OCHR notified the PA/PG that these positions were unnecessary and unwarranted due to the duties, responsibilities, and complexities of the PA/PG. Other Orange County departments with Administrative Manager III classifications have budgets of hundreds of millions of dollars, not a budget of approximately six and one-half million dollars, as is the case with the PA/PG.

The PA/PG also stated, "All actions are processed through the appropriate software applications and can be viewed by OC/HRD at any time." This response further demonstrates the organization's ability to circumvent OCHR's decentralized operation. In point

of fact, OCHR can only recommend what is appropriate; it cannot override the PA/PG's actions. The Board of Supervisors (BOS) does have the authority to override the PA/PG actions. In these times of dire economic conditions, the BOS needs to allocate the time to address this situation.

Information Technology

The PA/PG agreed with the 2005 County internal audit assessment that a new software system was essential. The organization continues to profess that replacement of its e-Pages management information system "... is a top priority." Many of the delays can be traced back to the numerous personnel changes that were made. Furthermore, as forecasted by the Grand Jury in its original report, the PA/PG will once again fail to meet its latest program implementation date of July, 2009. This critical project is now set for completion in February, 2010, which is five years after it was declared a crucial assignment.

Conclusion

Fiscal decisions have continued to cause significant and unnecessary expenses. A top-heavy management team with overlapping functions has compromised the ef-

fectiveness of the PA/PG organization. As one employee stated, "All the resources are moving towards the top." Also, there continue to be numerous e-Pages program completion delays. It has become obvious that implementation of the critically needed management information system is another casualty stemming from the lack of reasonable management control¹.

The problems previously identified in the 2008-2009 Grand Jury's original report continue to grow. There are now 11 senior managers overseeing 56 operational employees. This does not include the support from four supervisors and two executive assistants. These problems have repeatedly been identified by both OCHR and the Grand Jury to the PA/PG without any resulting change. Consequently, management costs are dramatically rising, becoming more egregious each day. Other senior County managers have recently proposed employee promotions similar in scope to those documented in this supplemental report. They have been informed by OCHR that these promotions were not warranted and consequently, unlike the PA/PG, they agreed to withdraw them.

During a time of unparalleled financial stress, the office of the PA/PG continues to add to its management ranks thereby increasing

¹The following example demonstrates the continuing need for expeditious e-Pages program implementation. On June, 2009, the Grand Jury requested the total number of open cases at the PA/PG, divided into three major caseload work categories [PA, PG and Lanterman-Petris-Short (LPS)]. The request revealed that management still does not know the size of the current caseload. The only way of determining this information is by PA and PG deputies manually counting the number of cases. The Grand Jury was advised that this process requires approximately two weeks to complete. Estimates indicate there are approximately 2,100 active cases. However, it is not known how these cases are distributed between PA, PG and LPS.

its operating costs. The need for change is apparent and compelling. These concerns, combined with the issues set forth in the previous report, have led the Grand Jury to the conclusion that a complete restructuring of the PA/PG is needed.

Supplemental 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 2008-2009 Orange County Grand Jury has arrived at the following findings:

SF.1: The annualized hourly wages for individuals classified as managers in the office of the PA/PG amounted to \$529,796 in 2005. As of May 2009, the annualized hourly wages for those in the management category is \$1,156,002, an increase of 118.2% over the last four years. In the past six months, PA/PG management salaries have increased by \$133,174 on an annualized basis.

SF.2: In the Agenda Staff Report 05-000743 document, the Board of Supervisors separated the PA/PG from the Health Care Agency. In Ordinance No. 07-008, the Board of Supervisors designated the PA ex officio PG.

SF.3: Since the April 9, 2009, interview, the PA/PG has continued to create permanent Administrative Manager III positions over the objec-

tions of OCHR, which indicated these positions were not warranted by the small size and the degree of complexity of the department.

SF.4: Since the April 9, 2009, interview, the PA/PG has continued to limit recruitment for a non-technical permanent management position to only current department employees, who otherwise may not have been selected.

SF.5: Since the April 9, 2009, interview, the PA/PG has continued the pattern of using temporary promotions and rapid advancements to circumvent standard hiring procedures.

SF.6: Since the prior Grand Jury report was released, one additional person had been added to the management ranks and one Chief Deputy position has been created.

SF.7: In 2005, the County Internal Auditor recommended a new software system for the PA/PG. It missed several self-imposed implementation deadlines including June, 2008, and will miss the deadline of July, 2009. The current management staff has been unable to implement a new computer software system in a timely and reasonable period.

Responses to Findings F.2 through F.7 are required from the Board of Supervisors. Responses to Findings F.1 through F. 6 is requested from the County Executive office. Responses F.1, F.3 through

F.7 are required from the Public Administrator/Public Guardian. Response to Finding F.7 is requested from County Executive office – Information Technology.

Supplemental 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. Based on the findings, the 2008-2009 Orange County Grand Jury makes the following recommendations:

SR.1: The Board or Supervisors should report on the feasibility and legality of rescinding Ordinance No. 07-008, adopted on 5-22-07, whereby the Board of Supervisors designated the PA as ex officio PG, in order that the PA would no longer operate as ex-officio PG. (F.2)

SR.1(a): The Board of Supervisors should report on the feasibility and legality of converting the Public Administrator to an appointed rather than elected office. The PA salary should be adjusted to that which existed prior to the approval of Ordinance No. 07-008 combining the PA and PG. (F.2)

SR.2: Subsequent to R-1(a), the P/A and the P/G should be combined and placed under the jurisdiction of the County Executive office as opposed to having each operate as a stand-alone department. (F.2)

SR.3: The Board of Supervisors should determine whether two permanent Administrative Management III positions are warranted and if not, eliminate the positions. (F.3)

SR.4: OCHR should be given approval authority in instances wherein County departments deviate from standard personnel practices. (F.3, F.4, F.5, F.6)

SR.5: OCHR should be given oversight authority regarding management hiring and promotions in the PA/PG. (F.3, F.4, F.5, F.6)

SR.6: The County Executive office should determine whether two Chief Deputy positions are warranted and if not, eliminate one Chief Deputy position. (F.6)

SR.7: The County Executive Office – Information Technology should assume responsibility for implementation and oversight of the new software system and report to the County Administrator on a regular basis. (F.7)

Responses to Recommendations R.1, through R.7 are required from the Board of Supervisors. Responses to Recommendations R.2 through R. 6 are requested from the County Executive office. Response to recommendation R. 7 is requested from County Executive office – Information Technology.

Required Responses

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

§933.05

1. 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 therefore.

2. 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 therefore.