## Adopted: March 20, 2018; Resolution 2018-35

# GRAND JURY INVESTIGATIONS

Every year, a new Grand Jury is impaneled and is required to investigate and report on the operations, accounts, and records of at least one county department. The Grand Jury is authorized to investigate any county or city department. The purpose of this policy is to outline expectations of County employees when the Grand Jury conducts its investigations.

* First and foremost, all employees shall cooperate with the Grand Jury by making themselves available for interviews and answering questions truthfully and to the best of their knowledge. The goal for the County is to be open and transparent.
* Prior to beginning an investigation, the Grand Jury informs the department head that an investigation is under way. The department head or supervisor will work with the employee to make sure that attendance for a Grand Jury interview is possible. Time spent in an interview relating to a Grand Jury investigation of a county department is considered work time.
* Grand Jury proceedings are confidential. Employees should not discuss what is learned during the interview with anyone outside the interview. This includes the employee’s supervisors and coworkers. Violation of confidentiality is considered contempt of court and can result in penalties.
* If the Grand Jury asks for production of documents, employees shall provide the documents to the extent that they are not confidential. If a requested document may be considered confidential, employees should contact County Counsel office for a determination.

Following are Frequently Asked Questions, which address common questions about Grand Jury investigations.

**1. What does the Grand Jury do?**

By state law, the Grand Jury has criminal and civil functions. With respect to local government agencies, the Grand Jury serves a civil watchdog function. The Grand Jury investigates and reports on local government affairs, with the objective of improving government efficiency and promoting government accountability.

**2. What does the Grand Jury investigate**?

By law, the Grand Jury is required to investigate and report on the operations, accounts, and records of at least one county officer, department, or function each year. Additionally, the Grand Jury may investigate and report on cities, joint power agencies, housing authorities, and special districts, among other agencies. Except for state prisons, the Grand Jury may not investigate the courts, or federal or state governments.

**3. Will the testimony of County employees be kept confidential?**

As part of their civil investigations, the Grand Jury may make available to the public part or all of the evidentiary material, findings, and other information provided to them through their final report; however, the name of any person, or facts that lead to the identity of any person who provided information to the Grand Jury are prohibited from release by statute. (Penal Code Sections 929 and 930.) Final reports prepared by the Grand Jury as part of their civil investigations become public records and the Grand Jury frequently requires the Board of Supervisors, other elected officials, and department heads to respond to the findings and recommendations in their final reports.

**4. Does the Grand Jury notify the department that it is under investigation?**

The Grand Jury typically sends a letter to the affected department informing the department of the pending investigation. The exact program, function, or matter being investigated is not disclosed due to confidentiality requirements.

**5. What can be expected when an employee is being interviewed?**

The Grand Jury usually forms committees assigned to particular investigations. At least two grand jurors conduct each interview; however, the full Grand Jury may participate in some interviews/investigations. Interview proceedings are usually informal. The person interviewed will usually be given an admonition at the beginning of the interview not to disclose any information about the interview/investigation, including but not limited to what questions were asked or what answers were provided. County employees should anticipate being asked to review and sign the admonition.

**6. What is the purpose of the confidentiality requirement?**

The confidentiality requirement helps guard the public interest, protects confidentiality of sources, and encourages open and honest discussion/communication between the Grand Jury and the interviewees, by enabling interviewees to answer questions without fear of any retaliation by the interviewee’s employer.

**7. What is the scope of the admonition?**

The interviewee may not reveal to anyone the questions that were asked, what responses were given, or any other matters concerning the nature or subject of the Grand Jury’s investigation.

**8. Are employees required to tell their supervisor that they are going to be interviewed by the Grand Jury?**

Employees who are interviewed are expected to clear the time away from work with their supervisor. This is not a violation of confidentiality; however, nothing other than scheduling should be discussed. The subject or substance of the interview should not be discussed. If employees have questions about the Grand Jury process, they can contact County Counsel’s Office.

**9. What happens if the admonition is not followed or is violated?**

A violation of the admonition is punishable as contempt of court.

**10. What is the difference between an admonition and an oath?**

An admonition is an instruction that the interviewee maintain confidentiality of the Grand Jury proceedings, including questions asked, responses provided or anything else the interviewee learned during the investigation/interview. An oath is a commitment to tell the truth during the interview.

**11. Can the Grand Jury place an employee under oath?**

It is within the discretion of the Grand Jury to determine if an oath will be administered.

**12. Are County employees required to answer all questions asked by a Grand Jury?**

Generally, yes. County employees are expected to provide truthful information during an interview. If a County employee has a legitimate question as to whether the information sought is protected from disclosure (such as in the case of the names of alcohol and drug clients or communications protected by attorney-client privilege), it is permissible to express the basis of your objection to the question, not answer, and seek permission to confirm whether confidentiality or privilege prevent you from answering.

**13. Can an employee reach out to County Counsel’s Office or their own attorney during an interview?**

There are many potential questions, including those that may delve into confidential information of individuals receiving County services or attorney-client privilege, where an employee may desire to seek legal advice before answering. In these situations, the Grand Jury has historically allowed employees breaks during an interview to seek advice in order to efficiently determine what information can legally be provided. If, because of their duties, employees have any concerns such questions may arise, please contact County Counsel’s Office before your interview to ensure the appropriate attorney is available and on-call.

**13. Is an agency required to produce records requested by a Grand Jury?**

Usually, yes. With very few exceptions, such as in the case of juvenile court records, most records are disclosable to the Grand Jury, even though they are not public records. If there is a question as to whether records should be produced, it is permissible to tell the Grand Jury that the record may be legally protected against disclosure and to ask permission to discuss the request with County Counsel.

**14. What are the timelines for filing responses to the reports filed by the Grand Jury?**

The timelines and process for responding to findings and recommendations in a Grand Jury final report are contained in Penal Code Sections 933 and 933.05. Every elected county officer and non-elected department head must respond within sixty (60) days to any findings and recommendations directed to them for response. The Board of Supervisors, which has the final say on any budgetary related recommendations, must respond within ninety (90) days.

**15. What other ways does the County assist in Grand Jury investigations?**

In addition to its primary role in advising the County, County Counsel’s Office is authorized by statute to provide legal advice to the Grand Jury upon request pursuant to Penal Code Section 934 et seq.. Typically, one deputy county counsel is always designated to advise the Grand Jury and County Counsel’s Office maintains an ethical wall between that designated attorney and the rest of the office in connection with any investigations.