



Office of the County Counsel
"Providing Quality Legal Services to the County of Tuolumne"

Walter W. Wall
County Counsel

Deputies

Christopher Schmidt
Cody M. Nesper
Todd James

Executive Legal Assistant
Cheryl Deaver

DATE: August 25, 2026
TO: Tuolumne County Board of Supervisors
FROM: Walter W. Wall, County Counsel 
Chris Schmidt, Deputy County Counsel
Cody Nesper, Deputy County Counsel 
Todd James, Deputy County Counsel 
SUBJECT: County Counsel's Response to two (2) of the 2025-2026 Tuolumne County
Grand Jury Reports Regarding: (1) The Community Development
Department and (2) Governance Practices

Please accept this response to the two (2) 2025-2026 Grand Jury reports regarding the Community Development Department, and Governance Practices, which directly mention the County Counsel. No response is called for from County Counsel regarding the 2025-2026 Grand Jury Report related to "Response Compliance."

Role of County Counsel

The Office of the County Counsel is a statutory office that serves as the County's chief civil legal advisor and legal representative. Under Government Code sections 26529 et seq. and 27642 et seq., County Counsel is charged with providing legal services to the County and, among other responsibilities, is required to "defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in the officer's official capacity." (Gov. Code, sections 26529, 27645; see also Gov. Code, section 27642.)

County Counsel's responsibilities are also governed by the California Rules of Professional Conduct and the statutory duties applicable to attorneys. Business and Professions Code section 6068, subdivision (e)(1), requires an attorney "[t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." This duty of confidentiality is fundamental to the attorney-client relationship and is reinforced by the attorney-client privilege. (Evid. Code, sections 950-962.)

The fundamental role of County Counsel is therefore to provide independent, candid, and legally sound advice to the County and its authorized decision-makers. County Counsel advises the client regarding what the law permits, requires, or prohibits; identifies legal risks and consequences; and assists the client in making informed decisions. County Counsel does not,

however, ordinarily serve as the policymaker. The authority to establish County policy rests with the Board of Supervisors or with another duly authorized County officer or body acting within the authority granted by law. (See Gov. Code, section 25303; Cal. Const., article XI, section 7.)

The distinction between legal advice and policy-making authority is particularly important. County Counsel may advise that a proposed action is legally permissible, legally required, legally prohibited, or presents particular legal risks. The ultimate policy judgment—where discretion remains—is generally for the authorized policymaker to make. County Counsel should not substitute its own policy preferences for those of the governing body, just as the governing body should not direct County Counsel to provide legal advice that is contrary to applicable law or the attorney’s professional obligations.

For that reason, legal advice is frequently provided in confidential settings. Confidential attorney-client communications permit the attorney and client to engage in the candid and frank discussion necessary to identify legal risks, evaluate alternatives, and make informed decisions. The attorney-client privilege protects qualifying confidential communications between the County, acting through its authorized representatives, and County Counsel concerning legal advice. (Evid. Code, sections 950–954.)

Once the authorized County decision-maker has made a lawful policy or operational decision within its jurisdiction, County Counsel’s role is to provide the legal support necessary to implement and defend that decision, subject to applicable law and the County Counsel’s independent professional obligations. Those obligations necessarily include advising the client when a proposed action is unlawful and declining to advocate a position that would require counsel to violate applicable law or professional rules.

In short, County Counsel advises; the authorized policymaker decides; and County Counsel thereafter assists the County in carrying out and defending the lawful decisions of its governing authorities. This separation of legal advice from policy-making authority preserves both the independence of the legal function and the democratic authority vested in the County’s elected and appointed decision-makers.

County Counsel’s Complete and Disqualifying Conflict of Interest

On August 20, 2026, the County Counsel’s office sent correspondence to the foreperson of the 2026-2027 Grand Jury stating the County Counsel’s decision to declare a conflict for the entire office from representing the Grand Jury.

The California Penal Code does not establish the County Counsel as the exclusive legal advisor to a civil grand jury. To the contrary, California law recognizes that a grand jury may receive legal assistance from multiple authorized sources, including the superior court, the District Attorney, the County Counsel, the Attorney General, and, where the statutory requirements are satisfied, specially appointed counsel. Penal Code section 935 expressly authorizes the District Attorney to appear before the grand jury and provide information or advice concerning matters within the grand jury’s jurisdiction. Penal Code section 936.5 further recognizes that circumstances may arise in which the local District Attorney, County Counsel, and Attorney General are all unable to perform the investigation because of a conflict, in which case the

presiding judge may appoint special counsel following an evidentiary hearing and a finding that such a conflict exists.

That statutory framework is significant because it demonstrates that the availability of County Counsel as a potential legal advisor does not create an obligation—or even an ethical authority—for County Counsel to represent the Grand Jury in circumstances in which the Office is itself conflicted. Indeed, the statutory scheme necessarily contemplates that the Grand Jury may require independent legal assistance when the interests of the Grand Jury and the governmental entities represented by County Counsel diverge.

The conflict here is not merely theoretical, technical, or limited to a particular attorney within the Office. County Counsel is the legal representative and advisor to the County and its governmental officers, departments, and agencies. The Grand Jury, by contrast, is an independent body charged by law with investigating and reporting upon matters of county and governmental concern. When the Grand Jury investigates the conduct, policies, decisions, practices, or legal compliance of the County, its officers, departments, or personnel, the Grand Jury's interests necessarily may become adverse to the interests of the very governmental entities to which County Counsel owes professional duties.

Under those circumstances, County Counsel cannot simultaneously serve as the legal advisor to the Grand Jury while owing professional duties to the governmental entities that are the subjects of the Grand Jury's inquiry. The problem is not cured by characterizing County Counsel as merely a "legal advisor." Legal advice concerning the scope of the Grand Jury's authority, the legality of investigative methods, the issuance of subpoenas, access to County records, witness examinations, findings, recommendations, or the preparation of a report necessarily affects the manner and substance of an investigation that may implicate County interests. An attorney cannot provide independent advice to an investigative body concerning an investigation of the attorney's own client without creating an unacceptable conflict of interest.

The conflict is particularly acute where the Grand Jury's inquiry concerns the conduct of the Board of Supervisors, County departments, County officers, or County employees; or policies and practices for which County Counsel has previously provided advice. In those circumstances, County Counsel may possess confidential information obtained through the attorney-client relationship with the County or its officials. County Counsel may also have an institutional interest in defending prior legal advice, protecting the County's legal position, or opposing factual or legal conclusions reached by the Grand Jury. Those interests are fundamentally inconsistent with the Grand Jury's need for independent legal advice concerning the very matters it is investigating.

The California Judicial Council's *A Practical Guide for Grand Jurors* expressly recognizes this problem. The Guide explains that when a Grand Jury investigation concerns a County Counsel client, a conflict may arise and that, although an ethical wall may sometimes be appropriate, when an ethical wall cannot adequately address the conflict, the entire County Counsel office must recuse itself. The Guide further recognizes that the Grand Jury may then be directed to the District Attorney for legal assistance or, where necessary, the court may appoint special counsel.

This is therefore not a matter of the Grand Jury improperly "rejecting" County Counsel or County Counsel refusing to assist the Grand Jury. It is a matter of professional independence and legal necessity. The Grand Jury is entitled to obtain advice from an attorney who is able to advise it without simultaneously owing duties to the governmental entities whose conduct is under examination. Where County Counsel's institutional client is the subject of the investigation, County Counsel cannot provide the Grand Jury with the independent legal advice that the circumstances require.

Penal Code section 936.5 reinforces this conclusion. The Legislature expressly contemplated situations in which a conflict would prevent the District Attorney, County Counsel, and Attorney General from performing an investigation for the Grand Jury and established a mechanism for the appointment of independent special counsel. The existence of that statutory mechanism would make little sense if County Counsel were required to continue representing the Grand Jury notwithstanding a fundamental conflict with the County and its officers.

Accordingly, the County Counsel's decision to declare a conflict for the entire office will allow the Grand Jury to obtain legal assistance from the Tuolumne County District Attorney's Office. This is neither unauthorized nor improper. Penal Code section 935 expressly recognizes the District Attorney's authority to provide information and advice to the Grand Jury concerning matters within its jurisdiction.

Nor should the Grand Jury's use of the District Attorney's Office be characterized as a refusal by County Counsel to provide assistance. The more accurate characterization is that County Counsel was ethically and institutionally disqualified from serving as counsel to the Grand Jury on matters in which the Grand Jury's investigative interests were adverse to County Counsel's governmental clients. The Grand Jury's resort to another statutorily authorized legal advisor was a prudent and legally appropriate means of preserving the independence and integrity of its investigations.

The 2025-2026 Grand Jury Report regarding the Community Development Department

There are two Recommendations in this report that call for a response by County Counsel.

First, Recommendation 5-4:

“County Counsel should provide annual Brown Act and governance training to all Board members regarding proper agenda requirements, the distinction between public policy discussions and personnel evaluations, appropriate use of Board Reports, and due process and fairness considerations involving department heads and county staff.”

As you are aware, the County Counsel provides biennial training on the Brown Act and governance to you as members of the Board of Supervisors.

It is clear from this Recommendation that the Grand Jury would like the Board to be trained on how to properly notice items on the Board's agenda, how to distinguish between public policy discussions and personnel evaluations, the appropriate use of the Board Reports section of the agenda, and fairness to staff. These are all topics that are regularly taken up in our County Counsel biennial training courses such that these recommendations will be further emphasized during that regular training.

Second, Recommendation 10-4:

*"By September 1, 2026, the Board of Supervisors should require full disclosure of any actual, potential, or perceived conflicts of interest that may reasonably benefit from a proposed governance policy before Board consideration and voting. Following such disclosure, the Board should reconsider and retake any vote involving the Conflict-of-Interest provisions if advised by **County Counsel** that such action is appropriate. Any officials with a direct conflict-of-interest should recuse themselves from participation consistent with applicable laws and policies."*

This recommendation is consistent with existing County practice. The Board of Supervisors already requires disclosure and identification of actual, potential, and perceived conflicts of interest prior to consideration and voting on matters before it. County Counsel likewise currently advises the Board when, in its legal judgment, recusal, reconsideration, or a re-vote may be warranted under applicable law or policy. In addition, any official with a direct conflict of interest is already required to recuse themselves from participation in accordance with applicable legal requirements and County policy. For these reasons, the recommendation is duplicative of practices already in place.

The 2025-2026 Grand Jury Report regarding Governance Practices

There are three Recommendations in this report that call for a response by County Counsel.

First, Recommendation 2-1:

*"**County Counsel** should submit the issue of Supervisor Holland's incompatible offices to the Attorney General's Office for evaluation within 90 days of the publication of this report for official guidance."*

Under California law, a county counsel (and government attorneys generally) must always exercise independent professional judgment and cannot be compelled by a grand jury, individual board member, or any other body to advance an unsupported legal position or issue advisory opinions on demand. This principle flows from multiple, mutually reinforcing sources: the California Rules of Professional Conduct, the California Supreme Court's holding in *People ex rel. Deukmejian v. Brown* (1981) 29 Cal. 3d 150, California Attorney General opinions, and the statutory framework governing grand jury authority. A government attorney may withdraw from representation when a client insists on legally unsupported positions but may not be conscripted

into advancing them. Separately, before any body may compel legal action by county counsel, the action must constitute a ministerial duty — not a discretionary one — and must be supported by competent evidence and, where required, judicial determination. Discretionary legal judgments, including the decision whether to bring or defend an action, are not subject to compulsion by grand jury directive.

This Recommendation impermissibly seeks to compel the Office of the County Counsel to advance a legal position. The County Counsel's professional obligations mandate the exercise of independent legal judgment on behalf of the County, not the issuance of advisory opinions simply because the grand jury elects to dispute or cast doubt upon the conduct of an elected official.

More to the point, the Grand Jury seems to believe it can compel action by a date certain. Such an approach attempts to convert a mere recommendation into an order and is not authorized by any law governing grand jury processes or drafting of recommendations.

Second, Recommendation 3:

“County Counsel should provide formal training to the Board of Supervisors on Government Code section 54963 and its exceptions, with specific emphasis on cooperation with Civil Grand Jury investigations and the distinction between confidential and non-confidential information no later than December 31, 2026.”

Third, Recommendation 4:

“County Counsel should coordinate with CSAC or other qualified governmental ethics and governance training providers to provide training to the Board of Supervisors regarding the authority and oversight role of the Civil Grand Jury, including witness obligations and cooperation with Grand Jury investigations and interviews, no later than December 31, 2026.”

As to these recommendations, 3 and 4, County Counsel routinely advises the Board of Supervisors regarding its legal duties under California law, including compliance with investigations conducted by the Civil Grand Jury. Supervisors, as elected constitutional officers, are already subject to extensive legal and ethics training through organizations such as CSAC, the California Lawyers Association, and other governmental educational programs. These are all topics that are regularly taken up in our County Counsel biennial training courses such that these recommendations will be further emphasized during that regular training.