



## Office of the County Counsel

"Providing Quality Legal Services to the County of Tuolumne"

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### MEMORANDUM

DATE: June 18, 2025  
TO: Board of Supervisors  
FROM: Sarah Carrillo, County Counsel *SC*  
Chris Schmidt, Deputy County Counsel *CS*  
Cody Nesper, Deputy County Counsel *CN*  
SUBJECT: **AMENDED County Counsel's Response to the Grand Jury Report Regarding Treatment of Tuolumne County Civil Grand Jury by Tuolumne County Officials**

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Please accept this response to the Grand Jury report entitled Treatment of Tuolumne County Civil Grand Jury by Tuolumne County Officials, to correct misunderstandings and provide accurate information to your Board, the public and staff.

#### Role of County Counsel:

The Office of the County Counsel is a statutory office that serves as the chief civil legal advisor for the County. Under Government Code sections 26529 et seq. and 27642 et seq., the County Counsel 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." In addition, the Business and Professions Code obligates all attorneys—including public attorneys such as County Counsel—"to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

Our duty is to provide legal advice to our clients, but the authority to make policy decisions ultimately rests with the client, whether that is the Board of Supervisors or another authorized county official. Legal advice is typically provided in confidential settings to ensure frank and candid discussions. Once a course of action is chosen by the client, this Office is obligated to defend and support that action, consistent with our legal and ethical responsibilities.

### County Prevailed in Motion to Quash Grand Jury Subpoenas:

The Grand Jury asserts its investigation was hampered by several County officials, including this Office, but the report omits key facts necessary for the public to fully understand what occurred during the course of the investigation.

In January, the Grand Jury served this Office with 30 subpoenas. The subpoenas included requests for public records as well as confidential materials. Subpoenas are typically used as a formal enforcement tool when voluntary cooperation is not forthcoming. In this case, no request for records or interviews were made to our office prior to the subpoenas being issued. Historically, when the Grand Jury seeks confidential information either they contact this Office directly or their attorney contacts this Office prior to the issuance of subpoenas. That did not occur.

The Grand Jury subpoenaed thousands of pages of records, including confidential documents such as entire personnel files, employee performance evaluations, closed session materials, and attorney-client privileged communications. Under state law, the Grand Jury is not entitled to receive these sorts of confidential or privileged documents without a court order. The County and this Office fully cooperated by producing all non-confidential, responsive documents. Only confidential records were withheld, consistent with legal obligations.

Acting on behalf of the County and under the direction of the Board of Supervisors, this Office filed a motion to quash the subpoenas for confidential records. Impacted employees were not notified the Grand Jury was seeking access to their confidential personnel files. The motion to quash ensured the judiciary reviewed the legality of the Grand Jury's demands. This process protected both the employees from an unlawful invasion into their personnel records and the County from violating its employee's privacy rights, which would have exposed it to legal liability.

After several months of document review and multiple court hearings, including arguments presented by both sides, the Court agreed with the County. The Court concluded the Grand Jury's subpoenas were overly broad and upheld the County's objections. No confidential records were released.

The County's successful legal challenge was not an effort to thwart the Grand Jury's investigation. We followed the law, protected employee rights, and carried out our duties under the direction of the Board of Supervisors. Upholding legal standards is not obstruction—it is the responsible and lawful course of action.

### Clarifying Legal Representation of the Grand Jury:

Under the California Penal Code, the Grand Jury is authorized to request legal advice from multiple sources, including the court or a judge, the district attorney, the county counsel, or the Attorney General. This makes the County Counsel one of several

potential legal advisors—not the sole source of legal counsel. Historically, the Tuolumne County Grand Jury has sought advice from both this Office and the District Attorney's Office, depending on the matter at hand.

In circumstances where a conflict prevents the County Counsel or the District Attorney from advising the Grand Jury, the Penal Code outlines a process for the presiding judge to conduct an evidentiary hearing and, if necessary, appoint special legal counsel. In this instance, the Grand Jury was represented by the Tuolumne County Assistant District Attorney—an appropriate and statutorily authorized legal advisor. At no point did this Office refuse to provide support; rather, the Grand Jury exercised its right to seek representation from another authorized legal advisor.

#### Memorandum of Understanding with Calaveras County

This MOU, originally executed in 2019 and renewed in 2024, allows each County's Office of County Counsel to provide reciprocal support to the other's Grand Jury in situations involving actual or perceived conflicts. The MOU is entirely discretionary and subject to the availability and capacity of each office. It was designed to promote flexibility and support, not to create a binding obligation. The MOU does not require either office to provide legal services in litigation, which is inherently more time-consuming and resource-intensive than advisory support. If an office lacks the capacity to take on such work, the MOU does not mandate participation.

While this Office values professional and collegial relationships with its counterparts across the state, no personal relationship played any role in Calaveras County Counsel's Office decision to decline further representation of the Grand Jury. It is this Office's perception based on our conversation with the Calaveras Office they were unaware 30 subpoenas had been issued. We have no information they reviewed all 30 subpoenas prior to the issuance. They subsequently informed us they were unable to represent the Grand Jury in the litigation. The Grand Jury did not return to this Office to seek guidance on how to pursue alternative representation. Instead, this Office was later informed by the Assistant District Attorney that she would act as the Grand Jury's legal advisor. This outcome is entirely consistent with the provisions of the Penal Code.

After the Grand Jury report was issued and this Memorandum was made public, the Assistant District Attorney informed this Office that the Calaveras Office indeed provided legal support to the Grand Jury prior to January of 2025, which appears inconsistent with how the Grand Jury characterized the level of support from the Calaveras Office. In any event after the Calaveras Office became aware litigation was pending, they declined further legal representation and the Grand Jury sought assistance from the District Attorney's Office, as the law allows.

#### Criticisms Regarding the Grand Jury Budget:

The Grand Jury alleges this Office authorized them to purchase food from their budget during a meeting early in their tenure, and asserts this Office subsequently withheld that

information from the Board of Supervisors during the May 6, 2025, budget discussion. This is inaccurate as we did not, at any time, authorize or direct the Grand Jury to make purchases.

We recall the Grand Jury inquired about the ability to purchase food using their allocated funds. In response, this Office explained that such operational and fiscal decisions do not fall within our purview and referred them to consult with the County Administrators' Office or the Auditor for confirmation.

The Grand Jury also asserts all their expenditures were approved by the court and this Office failed to disclose that fact to the Board. This Office had no role in reviewing or approving Grand Jury purchases and had no knowledge of what was or was not approved, or by whom. The Grand Jury did not interview any staff from this Office regarding this issue before making these claims as is required by law.

#### Clarifying Referrals Regarding Potential Conflicts or Bias

The Grand Jury asserts continuing retribution tactics and rumors by "high levels of Tuolumne County" regarding criticizing the integrity of members of the Grand Jury. This section of the report describes an accusation of bias against two particular Grand Jurors. A Deputy County Counsel familiar with the past employment and contractual relationship by these two members brought to the attention of the Grand Jury's counsel as a courtesy and precaution to ensure the matter was considered and in furtherance of maintaining the integrity and credibility of its investigations and reports, not to impugn the credibility of any grand juror.