

**Inyo County Grand Jury
Final Report
2008-2009**

**2008-2009 Inyo County Grand Jury Final Report
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Inyo County Grand Jury

PO Box 401 Independence, CA 93526

May 13, 2009

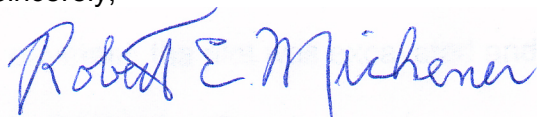
The Honorable Dean Stout
The Honorable Brian Lamb
Inyo County Superior Court
Independence, CA 93526

Your Honors:

In submitting the 2008-2009 Grand Jury Final Report, I wish to thank my fellow jurors for their outstanding efforts investigating, analyzing, and recommending reforms in Inyo County Government. I consider this to be a critical service provided by the citizens selected to serve on the Civil Grand Jury for the year 2008 – 2009. I also wish to commend them for their outstanding service, cooperation, and determination.

The Grand Jury respectfully requests that responses, comments and other pertinent information in response to the Jury's comments also be submitted to the media as part of the Grand Jury Final Report. Each Department Head in Inyo County Government, the County Administrator, and the Board of Supervisors should take the opportunity to respond, to acknowledge the Grand Jury recommendations, and inform the citizens of Inyo County of possible solutions or special circumstances.

Sincerely,



Robert E. Michener,
Foreperson
2008-2009 Inyo County Grand Jury

INYO COUNTY 2008-2009 GRAND JURY MEMBERS

Robert Michener – Foreman
Edward Shelander – Foreman pro-tem
Barbara Morgan – Secretary/Treasurer
Scott Brumbaugh – Corresponding Secretary
Ethel Bellas
Linda Castro
Shirley Ellsworth
Michael Haynie
Nancy Partridge
Robert Schroeder
Louis Syre

2008 – 2009 GRAND JURY FINAL REPORT Agency and Officials’ Response Requirements

Section 925 of the California Penal Code provides that grand juries shall investigate and report on the operations, departments, or functions of the county and Section 925(a) that they may do the same on the operations, departments or functions of any city within the county.

Penal Code Sections 933, et. seq. require public agencies and elective county officers affected by the findings and recommendations contained in the Final Report to respond to the Final Report. The affected public agencies have 90 days and elective public officers have 60 days in which to file their responses.

As to grand jury findings, Penal Code Section 933.05 requires responding parties to indicate whether they agree in whole or disagree in whole or in part with each grand jury finding.

As to grand jury recommendations, Penal Code Section 933.05 requires responding parties to indicate whether the recommendation has been implemented or will be implemented and, if so, when. If a responding party will not implement a recommendation, the party must explain why it will not implement the recommendation. If a party believes that a recommendation requires further study, Penal Code Section 933.05 requires that it state when the results of the study will be publicly discussed.

MISSION STATEMENT

The Inyo County Grand Jury is an arm of the Superior Court system and serves as an investigatory body.

THE GRAND JURY

- **Will act as the public’s “watchdog” by investigating the affairs of government.**
- **Will judiciously investigate all allegations against and misconduct by public officials.**

Our purpose is to assure honest, efficient government that functions in the best interest of the citizens of Inyo County.

INTRODUCTION

The Grand Jury is an instrument of the judicial system of our government and carries on the best traditions of English Common Law and democratic government. Our form of government has vested the ultimate power of decision in its citizens. The Grand Jury is a reflection of this intent, and has been in place for over 50 years.

The Inyo County Grand Jury is composed of eleven citizens nominated by judges, members of the Board of Supervisors and City Council members. Citizens may volunteer by contacting one of the aforementioned offices. Members of the Grand Jury are selected in a random drawing conducted by the Presiding Judge of the Superior Court. The Grand Jury’s term of office is for one year.

WHAT IS THE GRAND JURY?

The Grand Jury is an investigatory body and is part of the government. Both the Constitutions of the United States and the State of California call for grand juries. Unlike a trial jury, which exists only to try individual cases, the Inyo County Grand Jury is a permanent body with members serving one-year terms.

In the course of its investigations, the Grand Jury may hire independent auditors and subpoena witnesses and documents. The Jury may ask advice of Legal Counsel on civil matters, confer with the District Attorney on criminal matters and discuss problems with the Judges of the Superior Court.

The Grand Jury is charged by the Court to order audits and to conduct hearings, interviews and investigations. The charge provides definition and delineation, so that the effort of the Jury is focused on solutions. Committees within the Jury are established to better manage the responsibilities and utilize individual talents and abilities. There is latitude in selection of areas of investigation.

The Jury has oversight responsibility for all publicly funded local entities operating in Inyo County and acts in the role of ombudsman for any citizen complaining against any government entity or official within Inyo County. Local entities under the jurisdiction of the Grand Jury include The County of Inyo, the City of Bishop, joint powers agencies, and public prisons. They also have limited jurisdiction over special districts and school districts located in Inyo County. The Grand Jury does not have jurisdiction over State or Federal government operations including the court system.

The Jury's Annual Report is submitted to the Presiding Judge of the Superior Court of Inyo County. The Grand Jury distributes its Annual Report to all affected agencies and to the citizens of the county.

The Findings and Recommendations in its Final Report are required to be answered by all affected agencies in the time specified by the Penal Code. While the Penal Code does not require any follow-up by subsequent Grand Juries, it is implied.

Interested parties are encouraged to read the full responses from affected agencies on file with the Superior Court. Citizens are encouraged to respond to any part of the report.

CIVIL RESPONSIBILITIES

The Grand Jury may examine all aspects of county and city governments and special districts, to ensure that the best interests of the citizens are being served. The Grand Jury reviews and evaluates procedures, methods and systems used by the county government for efficiency and economy.

THE GRAND JURY IS AUTHORIZED TO:

- **Inspect and audit books and records to ensure legal expenditures and accounting of public funds.**
- **Inquire into the conditions of prisons, jails and detention centers in Inyo County.**
- **Inquire into charges of willful misconduct in office by public officials or employees.**
- **Subpoena witnesses and documents in the course of an investigation.**

The Grand Jury reports on investigations in the annual Final Report. The Report contains all findings and recommendations made as a result of the investigations and is distributed to public officials, libraries, the news media, and to the general public.

CITIZEN COMPLAINTS

As a part of its civil function, the Grand Jury receives written complaints from citizens alleging inefficiencies and misconduct in government, or mistreatment by public officials.

Complaints received from citizens are investigated for their validity. Such complaints are kept confidential and members of the Grand Jury frequently rely on information from concerned citizens who are aware of problems and who are willing to pursue corrective action.

If the situation warrants, and the matter is under the jurisdiction of the Grand Jury, appropriate action is taken. That action may be a report, a recommendation for civil action or a formal indictment or accusation if criminal matters are involved.

Inyo County Grand Jury Report 2008-2009

Inyo County Policies and Practices Related to Hiring and Termination of Probationary Employees

Reason for the Investigation

The Jury received complaints of improper treatment and termination of probationary employees. These new-hires were all employed in probationary positions within a specific area of County Service during a relatively narrow time period. They all had advanced degrees in their fields and claimed they had been terminated from their probationary positions without cause and without any notice that their performance was unsatisfactory. The Jury considered that the abrupt turnover of so many seemingly qualified new-hires from a specific section of County Service was unusual and worthy of attention.

In separate interviews with County Department Heads, the Jury heard that recruitment and retention of qualified professionals is an ongoing problem due to the County's rural nature and tight budgets. Given the difficulty faced by the County in recruiting qualified professionals, the Jury became concerned about the inefficiency of incurring rapid turnover of newly hired employees. The Jury was also concerned about what the County was doing to insure that probationary employees were being well trained, supervised, and supported as they matriculated into County Service.

As a result of these concerns, the Jury decided to initiate this investigation; the scope being to review the policies and practices used by the County in the treatment of probationary new-hires. The Jury did not intend to form a judgment regarding the merits of any of the probationary employees' terminations; rather we were interested in reviewing the manner in which terminations were handled.

Method of Investigation

In conducting this investigation, the Jury drew upon many sources for information. The Jury interviewed the management chain of all of the rejected new-hires that had delivered written complaints. County Personnel Management was also interviewed regarding the handling of probationary employees. The Jury interviewed both previous and current County employees along with past Inyo County Employee Association Officers regarding the support and the services

available to County new-hires. The Jury requested and received personnel file release waivers from employees terminated during probation and with these obtained copies of their files from the County Personnel Office. The Jury also reviewed the ‘Inyo County Personnel Rules’ Articles 7 and 8, and Barclays Official Code of Regulations, specifically ‘The Local Agency Personnel Standards’ (Sections 17010 and 17490-17493).¹

Findings and Conclusions

- 1. The County Personnel Rules related to performance evaluations for probationary employees are not being followed. Also, the practices followed by the County in evaluation and termination of probationary employees fail to meet the guidelines reflecting generally accepted personnel practices as adopted by the State Personnel Board and described in the ‘Local Agency Personnel Standards’ sections 17490 – 17493. In addition, the Jury did not find any organizational structure that enforced the County's personnel policy relating to performance evaluations and the termination of probationary employees.**

Article 8 section 2 of the ‘Inyo County Personnel Rule’s states:

Regular performance reports shall be made at times and on forms prescribed by the County Administrator as to the efficiency, competence, conduct and merit of all employees in the classified service. In addition to the formal performance evaluation before the conclusion of the probationary period, one or more formal or informal performance evaluations shall be made during an employee's probationary period.

‘The Local Agency Personnel Standards’ section 17490(b) states:

Reports of probationers overall performance shall be made to them at sufficiently frequent intervals to keep them adequately informed of their progress on the job. A written appraisal of performance shall be made to the employee at least twice during the probationary period.

In written depositions received by the Jury, terminated new-hires testified of their belief that they had been doing a good job and were not receiving any negative criticism regarding their job related performance. In personal interviews with the Jury they restated these claims. In some cases they said they actually received positive comments from their managers. They stated their terminations came completely by surprise and they were given no reason for their dismissal.

The Jury obtained personnel records for multiple County employees who had been rejected during their probationary period and who complained that they had not been told why they were terminated. There were no performance evaluation forms found in their files as prescribed in the articles above. After considering the written rules and guidelines cited above, the Jury expected to find at least one written performance evaluation in every rejected employee's file.

‘The Local Agency Personnel Standards’ Section 17491(c) states:

There shall be a written report of probationary performance at the end of the probationary period and such report will document whether the probationer is to be given permanent status.

In the audit of the personnel files, the Jury did find ‘Inyo County Personnel Action Forms’² indicating with a check box that the employees had been terminated but there was no reason attached. In interviews, County Management stated that evaluation forms should be found in the personnel files for any terminated employee. The Jury does not accept that the termination check box on the ‘Inyo County Personnel Action Form’ meets the definition of a performance report or evaluation.

Also, in interviews with County Management, it was stated that there is an unwritten policy that is currently in effect and has been traditionally followed that allows management to terminate probationary employees without providing any reason to the employee.

Article 7 section 2 of the Personnel Rules includes the statement:

An employee serving an initial probation period may be separated from County employment at any time and at the discretion of the appointing authority without cause and without right of appeal.

After consideration, the Jury does not believe both these written and unwritten policies should provide an avenue for management to fire a new employee arbitrarily. In the Jury's opinion there should be some specific reason for the termination and that reason should be recorded in writing and available for review by appropriately designated third parties.

Regardless, these policies are inconsistent with the guidance found in the 'Local Agency Personnel Standards' section 17493, which calls for a reason for termination to be provided to the employee:

At any time an employee may be rejected from a probationary appointment without right of appeal or hearing, except that such rejection shall not be based on political affiliation or discrimination. A statement of cause for rejection shall be delivered to the employee in writing before the rejection shall be finally effective.

Note that the above guideline does not define *statement of cause* and the Jury uses the definition of *cause* from Black's Law Dictionary (pg. 279),³ which states:

As used with reference to the removal of an officer or employee 'cause' means a just, non-arbitrary cause: one relating to a material matter, or affecting the public interest.

The Jury rejects the trivial explanation that a statement of cause for their terminations was delivered to the employees in the form of a notification stating that they failed probation.

In reviewing the personnel files of rejected new-hires, the Jury found neither documentation describing the specific reason for the terminations, nor a report of the employee's performance of the position's duties and responsibilities. Even granting County Management the privilege of terminating new-hires without providing a reason to them, the Jury expected that there should have been some internal documentation provided for personnel management or another appropriate entity's review that would explain what happened so the same problems will not be encountered in the future.

2. There is a lack of transparency and accountability in the termination process for probationary employees and this can lead to perceptions of abuse in County Management's handling of new-hires.

In interviews with County Management, the Jury reported that rejected employees were complaining that they were fired without any warning and without any stated reason. In these same interviews, managers directly involved in the termination decisions refused requests by the Jury to reveal specific reasons why they decided to fire these probationary employees. They stated their refusal to answer these questions was justified because they believed there was a County policy that endorses confidentiality in these situations. This policy, the Jury was told, allowed them to withhold specific reasons for termination from the probationary employees being fired and at the same time protected these employees' privacy by refusing to state specific reasons for the dismissal to third parties. In addition, it was stated that probationary employees are not told why they are being terminated so that the decision cannot be challenged. The Jury was unable to find any established written policy to that effect.

At the same time, the Jury had received separate independent complaints, both written and verbal from other county employees that alleged an entrenched and vindictive management bureaucracy in the same area of County Service. Without written documentation regarding these termination incidents the Jury believes it is not possible for any impartial third party to determine the reasonableness of these terminations and dispel any questions of mistreatment of new-hires by County Management.

3. The Jury believes there are potential negative impacts to services and employee morale due to the lack of transparency apparent in the new-hire practices and the high turnover in certain areas of County Service.

County residents may experience a lower quality of service due to a high turnover of customer facing staff. Even though the workload of a new-hire would be relatively light, the shifting of those responsibilities to other staff may cause inefficiencies, disruptions, and lower morale.

The Jury received complaints from rejected employees who claimed to face financial hardship when they were unexpectedly terminated without reason or notice after only recently moving into the County. Incidents such as this will not only affect the employee but can affect future recruitment of professionals if Inyo County develops a poor reputation among the professional communities outside of

the County.

Recruitment and hiring of professional staff requires County resources. Areas where expenditures are made include advertising, application reviews, background checks, and staff time for interviews. By hiring and then rapidly terminating a new employee many of these resource expenditures are wasted.

Recommendations

The Grand Jury makes the following recommendations:

- 1. Establish an independent Human Resources Department reporting directly to the Board of Supervisors with an autonomous responsibility for development, implementation, enforcement, and training of personnel policy. The Department Head would be an advocate for the enforcement of County Personnel Policy and the fair treatment of County new-hires. This Department Head should report annually to the Board of Supervisors on personnel issues, personnel data, and training.**
- 2. Seek experienced legal counsel that specializes and possesses expertise in civil service personnel management.**
- 3. Using documented principles of the personnel management of civil service personnel and established state and county personnel policies, review and redefine the County's policy concerning management of probationary employees.**
- 4. The Board of Supervisors annual review of a Department Head's performance should include an evaluation of their knowledge of County personnel policies and their demonstrated practices in support of employee recruitment, training and retention. Statistical data on turnover rates of probationary employees should be collected and used as an indicator of a Department Head's knowledge and performance.**
- 5. Conduct regular formal training of managers and supervisors in County personnel policies and their application. Also, provide probationary and permanent employees with formal training of County personnel policies. Training should be recorded in the employee's personnel file and in Department training records.**

Citations

1. Barclays Official California Code of Regulations, Title 2. Administration, Division 5. Local Agency Personnel Standards, Sections 17010, 17490-17493, Thompson West, San Francisco, CA.
2. There is no version control number on these forms so the Jury refers to them by the name Personnel Action Form which is found in the heading.
3. Black, M. A., Henry Campbell, (1968), Black's Law Dictionary Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, Revised Fourth Edition, West Publishing Co.

Response Required

Inyo County Chief Executive Officer
Inyo County Department Heads
Inyo County Board of Supervisors