

# S U M M A R Y   A C T I O N   M I N U T E S



SPECIAL MEETING  
OFFICE OF INDEPENDENT REVIEW AD HOC COMMITTEE  
ORANGE COUNTY, CALIFORNIA

**Monday, November 9, 2015**  
**4:00 P.M.**

CONFERENCE ROOM A, FIFTH FLOOR  
333 W. Santa Ana Blvd., 10 Civic Center Plaza  
Santa Ana, California

**TODD SPITZER**  
CHAIRMAN  
Third District

**ANDREW DO**  
SUPERVISOR  
First District

ATTENDANCE: Supervisors Do & Spitzer

EXCUSED: None

PRESENT: COUNTY EXECUTIVE OFFICE

Cymantha Atkinson, Director Government & Community Relations

COUNTY COUNSEL  
CLERK OF THE BOARD

Nicole Sims, Deputy  
Jamie Ross & Susan Morales, Deputies

ADMINISTRATIVE MATTERS: (Item 1)

1. Relating to the independent oversight and review of County operations, receive and file updated progress report of Special Counsel Michael Gennaco; provide direction to County Counsel and Mr. Gennaco to prepare amendments to Article 18 of Division 2 of Title 1 of the Codified ordinances of the County of Orange pertaining to the Office of Independent Review (OIR) that (1) amend the jurisdiction of the OIR to additionally include oversight and review of the Probation Department, Office of the District Attorney, Office of the Public Defender, and the Social Services Agency, and (2) enhance the reporting obligations of the OIR to the Board of Supervisors

C.O. RECEIVED

## PUBLIC & COMMITTEE COMMENTS

PUBLIC COMMENTS:

Michael Klubnikin – Oral Re.: Tseglin, Oversight of the County, Ethics Commission.

Ilya Tseglin – Oral Re.: Public Defender, government corruption.

Robert Tseglin – Oral Re.: Public Defender, Adult Protective Services, Nate Tseglin.

COMMITTEE COMMENTS: None

ADJOURNED: 5:01 P.M.

\*\*\* KEY \*\*\*

*Left Margin Notes*

- 1 Andrew Do
- 2 Todd Spitzer

A = Abstained  
X = Excused  
N = No  
C.O. = Committee Order

/s/ \_\_\_\_\_  
*TODD SPITZER*  
*Chairman*

/s/ \_\_\_\_\_  
*Jamie Ross, Deputy*  
*Clerk of the Board*

## *Olins Riviere Coates and Bagula*

2214 SECOND AVENUE • SAN DIEGO, CA 92101 • PHONE (619) 272-4235 • FACSIMILE (619) 272-4309

October 23, 2015

VIA E-MAIL

Todd Spitzer, Board Chairman  
C/O Clerk of the Board  
333 W. Santa Ana Blvd, Room 465  
P.O. Box 687  
Santa Ana, CA 92702-0687  
response@ocgov.com

### **Re: AOCDS and The Office of Independent Review**

Dear Chairman Spitzer:

The law firm of Olins Riviere Coates and Bagula, LLP has been retained by the Association of Orange County Deputy Sheriffs ("AOCDS") in regards to the above-referenced matter.

The instant correspondence is sent in response to the recent comments and progress report made by County consultant Mike Gennaco concerning the Office of Independent Review ("OIR").

By way of background, in early 2008, the OIR was created after the County met and conferred with AOCDS, ACLEM, OCMA and OCEA. (A copy of the County's Agenda Staff Report dated January 29, 2008, is enclosed herewith.) According to the OIR's website, the OIR "was established by the Board of Supervisors in 2008 to 'monitor, assist, oversee and advise' the Orange County Sheriff-Coroner Department (OCSO) in its handling of critical incidents and allegations of employee misconduct. The fundamental responsibility of the OIR is to ensure that the OCSO response to these matters is thorough, fair, and effective."

On or about October 19, 2015, Mr. Gennaco informed AOCDS that the County was contemplating several changes to the OIR, including but not limited to: 1. Modifying the OIR's oversight process of the OCSO; and 2. Expanding OIR oversight to include the Office of the District Attorney. In response, AOCDS personnel informed Mr. Gennaco that such changes would be within the scope of representation. Mr. Gennaco replied that AOCDS's concern was "not his area."

Please be advised that OIR oversight of the OCSO and the DA's Office is a mandatory subject of bargaining. Once a local regulation concerning discipline is adopted by a local agency, by way of the MOU or otherwise, the Meyers-Milius-Brown Act, at Government Code sections 3500 et. seq. ("MMBA"), prohibits a change in the procedure without satisfaction of the meet and confer obligation. (*Cerini v. City of Cloverdale* (1987) 191 Cal. App. 3d 1471, 1481; *Valencia v. County of Sonoma* (2007) 158 Cal.App.4th 644.)

In the instant matter, the procedure for employee discipline is set forth at Articles IX and X of the parties' Memorandum of Understanding ("MOU"). OIR oversight of the DA's Office, as well as any changes to the current oversight process of the OCSO, would impact that procedure.

Todd Spitzer, Board Chairman C/O Clerk of the Board  
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Page 2 of 2

According to the OIR's website, "OIR reviews the Department's initial routing of the complaint, and then follows the investigation process for those allegations that are substantive enough to warrant a formal administrative case. It meets with and advises investigators as cases are being handled, it reviews cases for completeness, and it makes recommendations to OCSD decision-makers as to final outcomes. OIR works to achieve consensus with OCSD regarding the resolution of each case. While OIR does not seek to substitute its judgment for that of OCSD, it does try to ensure that its perspective is understood, and that the Department's decision is reasonable and appropriate for the circumstances."

OIR's participation in the disciplinary process of DA employees is a change in that process. As such, the decision to have the OIR oversee the DA's Office, as well as the effects arising from the implementation of that decision, are mandatory subjects of bargaining. Likewise, any changes to the current oversight process of the OCSD is a change in that process. As such, the decision to change the oversight process of the OCSD, as well as the effects arising from the implementation of that decision, are mandatory subjects of bargaining. Further, a unilateral change to a mandatory subject of bargaining is a per se violation of the MMBA.

Although the changes to the OIR described above are subject to the meet and confer process, Article XXIII of the MOU, entitled "Modification and Waiver," prohibits the parties from making any unilateral changes to the status quo. The "Modification and Waiver" clause has the effect of incorporating all possible topics of bargaining (both those actually discussed and those neither discussed nor contemplated during bargaining) into the MOU. As a result, with the inclusion of Article XXIII, neither party can require the other to bargain over any mandatory subject, nor unilaterally implement a change in the status quo concerning a mandatory subject. Put another way, matters cannot be bargained, and they cannot be changed, absent consent. As such, AOCDS is within its rights to refuse to meet and confer.

However, AOCDS is willing to meet and discuss (as distinguished from a meet and confer) with the County as a platform in order to determine whether we will agree to meet and confer. Our offer to meet and discuss is conditioned upon your agreement that: the meet and discuss is not a meet and confer; AOCDS has not waived any of its contractual or statutory rights by engaging in a meet and discuss; and AOCDS is not giving its assent to a change in the status quo.

Please provide us with dates for the meet and discuss. AOCDS and I appreciate your collaborative effort to resolve this issue. Please contact the undersigned with any questions.

Sincerely,  
OLINS RIVIERE COATES AND BAGULA, LLP



Adam E. Chaikin, Esq.  
Partner

Enclosure.

Agenda Item

~~AGENDA STAFF REPORT~~



ASR Control 08-000139

**MEETING DATE:** 01/29/08  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** All Districts  
**SUBMITTING AGENCY/DEPARTMENT:** County Executive Office (Approved)  
**DEPARTMENT CONTACT PERSON(S):** Rob Richardson (714) 834-3481

**SUBJECT:** An Ordinance Establishing the Office of Independent Review

<b>CEO CONCUR</b> Concur	<b>COUNTY COUNSEL REVIEW</b> Approved Ordinance to Form	<b>CLERK OF THE BOARD</b> Discussion 3 Votes Board Majority
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**Budgeted:** N/A                      **Current Year Cost:** N/A                      **Annual Cost:** N/A  
**Staffing Impact:** No                      **# of Positions:**                      **Sole Source:** N/A  
**Current Fiscal Year Revenue:** N/A  
**Funding Source:** N/A

**Prior Board Action:** N/A

**RECOMMENDED ACTION(S)**

1. Read Title of Ordinance.
2. Order further reading of the ordinance be waived
3. Consider the matter.
4. Direct ordinance be placed on agenda for the next regularly scheduled Board meeting for adoption.
5. At the next regularly scheduled meeting, consider the matter, and adopt the ordinance.
6. Identify \$750,000 to Fund Operations of the Office of Independent Review.
7. Upon Board of Supervisors final approval of the Ordinance:
  - a. Direct the County Executive Officer to conduct a request for proposals solicitation seeking a contractor to provide the Office of Independent Review Services and return to the Board with a recommendation and contract within 60 days,

- b. Direct the County Executive Officer, in concert with the Sheriff-Coroner, to identify office space for the Office of Independent Review.
8. Direct the County Executive Officer to formulate a mechanism to mediate complaints and concerns from citizens that, in the discretion of the Executive Director of the OIR and the Sheriff-Coroner, do not rise to the level of incidents that would be reviewed by the OIR and return to the Board within 120 days

**SUMMARY:**

An Ordinance of the County of Orange, California, adding Article 18 to Division 2 of Title 1 of the Codified Ordinances to establish an Office of Independent Review

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**BACKGROUND INFORMATION:**

Staff is recommending the adoption of an Ordinance of the County of Orange, California Establishing an Office Independent Review, (Exhibit 1).

The process to refine and develop the proposed Office of Independent Review (OIR) began on May 22, 2007. On that date, Supervisor Moorlach suggested that the County consider implementing a citizen law enforcement review board (CLERB) or some other mechanism to provide the Board of Supervisors with a public safety oversight mechanism. This concept, discussed during the Board of Supervisors meetings on July 24, 2007 and December 18, 2007. On the latter date, the Board directed that staff return to the Board of Supervisors with a model patterned after the Los Angeles County Office of Independent Review.

Since the initial Board direction, the County Executive Office has conducted a series of stakeholder meetings to gain input and to help refine the model chosen for third party independent oversight. Stakeholders have included staff from the District Attorney's Office, the Probation Department, the Sheriff-Coroner, County Counsel, Human Resources, and representatives from each Board office. Additionally, staff from various offices had the opportunity to visit the Los Angeles OIR and gain insights concerning the working relationship needed to provide increased oversight within the various legal parameters. Through this deliberative process, efforts were focused to develop a workable mechanism.

As an additional part of the concept development, the Board directed staff to meet and confer or meet and consult with the affected bargaining units. The initial meet and consult sessions took place with the Association of Orange County Deputy Sheriffs (AOCDS), the Orange County Employees Association (OCEA), the Orange County Managers Association (OCMA), the Association of County Law Enforcement Management (ACLEM), and the Orange County Attorney's Association (OCAA). Now that the language for the proposed Office of Independent Review (OIR) is in final form, meet and confer sessions will now take place with representatives from AOCDS, ACLEM, OCMA and OCEA, these four unions representing peace officer personnel in the Sheriff's Department.

The recommended mechanism, detailed in the proposed ordinance attached to this ASR, calls for the

establishment of an Office of Independent Review. The model includes the following features:

- \* The OIR will include an Executive Director and staff as necessary
- \* The Executive Director shall be a licensed attorney with at least three years experience in conducting of law enforcement personnel
- \* The Executive Director will be selected by the Board of Supervisors with the counsel of an ad hoc committee that will include two members of the Board of Supervisors, the County Executive Officer or designee, the District Attorney or designee, the Sheriff-Coroner or designee, the County Counsel or designee, and the Executive Director of the Human Relations Commission

The OIR will:

- \* Provide periodic status reports to the Board of Supervisors and public
- \* In cooperation with the Sheriff-Coroner provide ongoing counsel concerning the initiation, structuring, and development of investigations conducted by the Internal Affairs unit of the Sheriff-Coroner
- \* In cooperation with the Sheriff-Coroner, monitor investigations arising from complaints or custodial deaths and injuries; respond to investigation scenes; and provide advice and counsel to ensure thorough, unbiased, and impartial fact finding.
- \* In cooperation with the Sheriff-Coroner review and analyze selected investigations by the I.A. unit to determine if departmental policies need to be re-examined to prevent reoccurrence of misconduct, and propose and make independent recommendations regarding the outcomes of investigations and reviews, and also revisions of policies, practices and procedures.
- \* Devise and recommend mechanisms to provide positive recognition for employees performing duties in an exemplary fashion.
- \* Set OIR philosophy to achieve goals of the Board of Superivosrs and the Sheriff-Coroner.

The OIR will conduct investigations pertaining to:

- \* The uses of deadly force
- \* Uses of force resulting in reasonably likely to result in death or serious bodily injury
- \* Deaths and series bodily injuries occuring in custody.
- \* Any misconduct not otherwise identified within this ordinance that the Executive Director and the Sheriff agree, by written protocol, should be reviewed.

- \* Allegations set forth in citizen, peace officer or peace complaints involving various forms of misconduct detailed in the proposed ordinance.

The OIR will not:

- \* Have subpoena power
- \* Incur any County expense or obligate the County in any way without authorization of the board of Supervisors
- \* Disclose any information unauthorized by law.
- \* Interfere with the statutory duties of the Coroner.
- \* Make any written or oral report concerning any complaint to any person or body other than the Board of Supervisors, Sheriff-Coroner, or the public except as outlined in the proposed ordinance

Finally, a complaint form and log shall be established and shall be confidential.

The OIR Executive Director has the discretion to refer complaints to another entity selected by the Board for those matters that fall outside the scope of the OIR.

Next Steps:

The CEO recommends that a request for proposals process be initiated to seek proposals from organizations or groups as described in the ordinance as adopted. The CEO would propose returning to the Board with a recommendation and contract for Board consideration within 60 days.

Additionally, efforts to locate the Office of Independent Review in close proximity to the Sheriff-Coroner should commence as soon as is practical. CEO staff, working in concert with the Sheriff-Coroner, should identify appropriate space adjacent to or co-located with the Sheriff-Coroner to identify workable space for the OIR.

The CEO should be directed to formulate a mechanism to mediate complaints and concerns from citizens that, in the discretion of the Executive Director of the OIR and the Sheriff-Coroner, do not rise to the level of incidents that would be reviewed by the OIR. The Orange County Sheriff's Department Internal Affairs receives about 250 complaints annually about deputy behavior internally from OCSD supervisors as well as externally from individuals and groups. Many of these complaints are not based on major misconduct warranting review from the Office of Independent Review, but fall into the category of poor communication, insensitivity, rudeness, misunderstanding or perceived unfair treatment.

Some of these cases involve representatives of diverse communities that may have preconceived notions of mistrust towards law enforcement, and various actions taken by deputies may be perceived as discriminatory. Likewise, some deputies may not understand how their actions are being perceived and may do things that would exacerbate the tension, mistrust and belief that unfair treatment is being meted out. In some cases these misunderstandings can unnecessarily agitate broader community relations as distrust and lack of a mechanism for reconciliation allow issues to smolder and relationships to deteriorate. A neutral

mediation tool that facilitates reconciliation from outside the agency will provide a fair and objective venue for both parties to reach closure and rectify/clarify misunderstandings, intentions, facts and other matters pertaining to each individual case.

The Human Relations Commission has proposed an example of such a mechanism, including possible protocols and procedures that could be employed in the process.

The CEO requests and recommends Board direction to work with the Executive Director of the OIR, once one is chosen, Board offices, the Sheriff-Coroner, and the Human Relations Commission to develop a mediation/ombudsman/reconciliation program and protocols to address these cases: This shall be presented to the Board within 120 days.

**FINANCIAL IMPACT:**

\$375,000 FY 2007-08; \$750,000 FY 2008-09

**STAFFING IMPACT:**

N/A

**EXHIBIT(S):**

An Ordinance Establishing the Office of Independent Review.

# REICH, ADELL & CVITAN

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OF COUNSEL  
SHIRLEY A. LEE

JULIUS MEL REICH  
(1933-2000)

November 6, 2015

*Via E-mail and Regular U.S. Mail*  
[terri.bruner@ocgov.com](mailto:terri.bruner@ocgov.com)

Terri Bruner, Human Resources  
County of Orange  
Bldg. 10, Second Floor  
333 West Santa Ana Blvd., Suite 200  
Santa Ana, California 92701-4085

Re: Office of Independent Review/Orange County Attorneys Association

Dear Ms. Bruner:

This law firm is legal counsel to the Orange County Attorneys Association (OCAA) and in that capacity we have consulted with officers of OCAA regarding an issue involving the members of its bargaining unit who work in both the Office of the District Attorney and the Office of the Public Defender. It is my understanding that the Board of Supervisors is considering adopting changes to its 2008 ordinance establishing the Office of Independent Review (OIR) to broaden and enhance the oversight function of the OIR and to expand the oversight to include attorneys working in both these offices. Any changes to the ordinance which alters the currently existing OIR so that the currently existing independent review body or one that is newly created or modified is to be granted jurisdiction to perform independent oversight of these offices has an impact on the working conditions of the attorneys represented by OCAA. The potential for the OIR to participate in investigations of allegations of employee misconduct and/or provide input to the management of the two offices or to the Board of Supervisors on such issues as well as systemic issues and reforms--particularly on interdepartmental issues--all represent a potential significant change to the current management structures in these two offices and a change in the working conditions of the attorneys.

In addition, it is my understanding from reviewing the report dated November 10, 2015, prepared by Michael Gennaco, Special Counsel, that it is being contemplated that the OIR will, "Provid[e] more transparency and outreach through public reporting and use of social media based on protocols to be developed." Obviously when issues involving investigation of

Terri Bruner, Human Resources  
County of Orange  
November 6, 2015  
Page 2

allegations of employee misconduct are being considered the concepts of transparency and outreach to the public engenders alarm on the part of OCAA as the exclusive bargaining representative of the attorneys who may potentially be subjected to the independent review function of the OIR.

The issues outlined and identified above relate to the terms and conditions of employment and/or working conditions of the attorneys in these two offices represented by OCAA. As the exclusive representative OCAA should have received notice of the consideration of such modifications to the ordinance creating the OIR from the County of Orange and must be afforded an opportunity to meet and confer regarding the identified and any related changes in working conditions.

Please consider this letter a demand to bargain regarding the matters implicated by the contemplated changes and a demand that the County of Orange maintain the status quo until such time as the County and OCAA have had an opportunity to engage in the meet and confer process.

Thank you in advance for your cooperation in this matter and if you have any questions please do not hesitate to contact my office.

Very truly yours,



Marianne Reinhold  
Of REICH, ADELL & CVITAN

MR:rp

cc: Larry Yellin, President, OCAA  
Leon Page, Orange County Counsel  
Anthony Rackauckas, District Attorney, Orange County  
Frank Ospino, Public Defender, Orange County  
Michael Gennaco, Special Counsel  
Todd Spitzer, Chairman, Board of Supervisors