

# 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, October 19, 2015**  
**10:00 A.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  
  
COUNTY COUNSEL  
CLERK OF THE BOARD

Cymantha Atkinson, Dir. Gov. & Community Relations  
Jean Pasco, Manager of Public Information  
Leon Page & Nicole Sims, Deputy  
Jamie Ross & Susan Morales, Deputies

## **ADMINISTRATIVE MATTERS:** (Item 1)

1. Receive and file progress report of Special Counsel Michael Gennaco and provide direction regarding the development of ordinances, polices and model for independent oversight of Orange County law enforcement agencies

C.O. **RECEIVED**

## **PUBLIC & COMMITTEE COMMENTS**

### **PUBLIC COMMENTS:**

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

Robert Tseglin – Oral Re.: Nate Tseglin, courts.

Michael Klubnikin – Oral Re.: Tseglin, Public Defender.

**COMMITTEE COMMENTS:** None

## **ADJOURNMENT**

**ADJOURNED:** 11:59 A.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*



**TODD SPITZER**

CHAIRMAN, BOARD OF SUPERVISORS  
SUPERVISOR, THIRD DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION  
333 W. SANTA ANA BLVD., SANTA ANA, CALIFORNIA 92701  
PHONE (714) 834-3330 FAX (714) 834-2786  
Todd.Spitzer@ocgov.com

RECEIVED  
2015 OCT -9 AM 9:41  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**MEMORANDUM**

October 7, 2015

TO: Clerk of the Board

FROM: Supervisor Todd Spitzer, Chairman  
Supervisor Andrew Do 

SUBJECT: Special Meeting of the Board of Supervisors' Office of Independent Review Ad Hoc Committee

Please prepare and post an agenda for a special meeting of the Office of Independent Review Ad Hoc Committee. The meeting will be held on Monday, October 19, 2015, at 10:00 a.m. in the Hall of Administration, 5<sup>th</sup> Floor, Conference Room A. The agenda for the special meeting should include one (1) item of business, and should also include an opportunity for public comment. The title of one item of business should read:

**Chairman Spitzer and Supervisor Do** – Receive and file progress report of Special Counsel Michael Gennaco and provide direction regarding the development of ordinances, policies and model for independent oversight of Orange County law enforcement agencies.

A report provided by Special Counsel Michael Gennaco will be distributed prior to the meeting.

Thank you.

Cc: Members of the Board of Supervisors  
Frank Kim, CEO  
Mark Denny, COO  
Leon J. Page, County Counsel

10/19/15, Item 1  
OIR Ad Hoc

2015 OCT 16 PM 2:39  
CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

**OIR**  
**GROUP**  
7142 Trask Avenue  
Playa del Rey, CA 90293  
323 821 0586  
michael.gennaco@oirgroup.com

**To: Orange County Board of Supervisors**  
**From: Michael Gennaco, Special Counsel**  
**Date: October 18, 2015**  
**cc: Chief Executive Officer**  
**County Counsel**

**Re: Progress Report of Orange County Independent Oversight Review**

Commencing August 25, 2015, I was requested by this Board to conduct a review of current oversight mechanisms in Orange County and to provide viable options designed to strengthen the model. This memorandum is intended to provide a progress report of that review including preliminary thoughts and a menu of options for this Board and its public to begin to consider. I look forward to continued dialogue with the Ad Hoc Committee, this Board, County officials, other interested stakeholders, and the public as this review proceeds.

### **Introduction**

In 2008, largely as a result of a concerning jail murder implicating conduct issues of Sheriff's Department personnel, this Board and other stakeholders considered the viability of developing independent oversight. The idea was that independent oversight would help to ensure that when an allegation of misconduct and/or a critical incident occurred involving the Sheriff's Department, an independent entity would have the ability to review internal investigations of the incident for completeness and objectivity and to weigh in on the Sheriff Department determinations on accountability and discipline. As a result, a County working group was convened to study oversight mechanisms for other Sheriff Departments in California, focusing on the only two existing sheriff oversight bodies then in existence --Los Angeles and San Diego Counties. Following that study, this Board eventually enacted a County ordinance, creating the Orange County Office of Independent Review ("OIR") and engaging an Executive Director to open the Office. Since then, the OIR has functioned as the oversight entity for the County, providing its oversight almost exclusively over the Sheriff's Department but also undertaking two discrete oversight projects regarding the County's Office of Probation.

Recently, members of this Board have expressed interest in considering ways to improve the structure and functioning of the current OIR and its oversight

responsibilities over the Sheriff's Department. Moreover, some members have also inquired regarding whether independent oversight might be developed for other County Departments. As part of that interest, this Board requested me to explore these issues and provide a menu of options for consideration in both of these areas.

### **Gathering Facts: In Person Meetings and Document Review**

In initial response to this assignment, I met with Board members or their staff to solicit input on their experiences with the current OIR and how the current structure might be improved. The next focus was on County Department heads and their representatives including the Sheriff's Department, the Probation Department, the Office of the District Attorney, the Office of the Public Defender, the Department of Social Services, the Department of Child Custody Services, and the Department of Human Relations. In addition, I met with County Counsel and the County Executive Officer. The visits allowed insight to be gained on the current experience and suggestions on ways in which current oversight mechanisms could be strengthened.

In addition, I conducted a review of the current oversight ordinance, the current contract with the OIR Executive Director and originating support documents. During the visits, Department heads volunteered relevant documents such as organization charts and descriptions of services. I appreciated and was grateful for the candor and insight supplied from each of the individuals with whom I met.

### **Civilian Law Enforcement Oversight Models**

As a result of recent national events and concern about policing, there has been an increased national dialogue regarding the role civilian oversight can play in ensuring appropriate, professional and Constitutional law enforcement. This trend was most evidenced by the President's Task Force on 21<sup>st</sup> Century Policing in which the Task Force recommended that all communities consider adopting civilian oversight as a cornerstone of modern day policing.<sup>1</sup> It is expected that the Task Force's recommendation and the dialogue that continues regarding law enforcement in America will result in increased implementation of oversight models.

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<sup>1</sup> The Task Force was co-chaired by Charles Ramsey, Commissioner, Philadelphia Police Department and Laurie Robinson, Professor, George Mason University and included Cedric L. Alexander, Deputy Chief Operating Officer for Public Safety, Dekalb County, Georgia; Jose Lopez, Lead Organizer, Make the Road New York; Tracey L. Meares, Walton Hale Hamilton Professor of Law, Yale Law School; Brittany N. Packnett, Executive Director, Teach For America, St. Louis, Missouri; Susan Lee Rahr, Executive Director, Washington State Criminal Justice Training Commission; Constance Rice, Co-Director, Advancement Project; Sean Michael Smoot, Director and Chief Counsel, Police Benevolent & Protective Association of Illinois; Bryan Stevenson, Founder and Executive Director, Equal Justice Initiative; and Roberto Villasenor, Chief of Police, Tucson Police Department.

To its credit, Orange County had already created civilian oversight for its Sheriff's Department over seven years ago with the cooperation and encouragement of newly appointed Sheriff Sandra Hutchens. In addition to serving as an impetus for oversight, the jail murder incident drew the attention and caused the initiation of a United States Department of Justice ("USDOJ") investigation. The importance of the creation of oversight was demonstrated recently when recent communications with USDOJ expressed concern about the potential elimination of oversight over the Sheriff's Department as one reason to keep open its seven year investigation into OCSD.

With regard to existing civilian oversight entities, no model is exactly the same in structure, design, and operation. However, oversight models generally break down into three basic types.

**The Citizen's Review Board Model.** Perhaps the oldest model, the citizen's review board model consists of a group of volunteer community residents selected by elected officials or managers. The citizen's review board model has the appeal of consisting of representatives of the community of which the law enforcement agency serves. While attractive in theory, the review board model has faced repeated challenges of access, credibility, and influence. Many citizen review boards do not have sufficient access to law enforcement records to be able to engage in substantive discourse about law enforcement issues. Most citizen review boards' influence is resigned to providing advice on policies and practices or assuming a limited role in recommending outcomes on high profile critical incidents such as officer-involved shootings. Because members are often selected by elected officials, some law enforcement managers have expressed concern about political bias among the selectees. Other law enforcement leaders have not considered review boards credible because of their members' lack of expertise in policing matters. The limited time available to review law enforcement issues from a volunteer review board also necessarily limits their exposure to and ability to influence a busy law enforcement agency. Many law enforcement review boards have expressed frustration about the breadth of their influence and the advisory nature of their recommendations and findings.

**The Investigative Model.** A few jurisdictions have established civilian oversight models that actually perform internal investigations of citizen complaints. These oversight models include civilians that investigate citizen complaints parallel and apart from any internal investigations conducted by the agency itself. Depending on the jurisdiction, the results and findings of the civilian investigative model are reviewed by the head of the law enforcement entity and the models vary widely to the degree that the head must accept or may reject the findings. Proponents of the investigative model advocate that because law enforcement cannot be entrusted to investigate law enforcement misconduct, using civilians to conduct such investigations ensures unbiased investigations. Detractors of the investigative model cite to the inefficiencies and increased expense of parallel investigative models, the challenges that investigative models have had in completing timely investigations (albeit often as a result of insufficient resources), and the failure of many investigative oversight models to win the trust of either the Department (because of perceived or real poor quality investigations) or its community (because of perceived "pro-police" investigations). Other detractors

opine that removing or diluting the accountability functions from the agency head results in the absconding of this critical managerial responsibility and executive ownership of accountability and discipline.

**The Auditor Model.** The auditor model generally consists of a body of oversight practitioners that are appointed by leaders of the government entity and are paid to perform law enforcement oversight functions. The auditor oversight practitioners usually have significantly more access to agency materials and internal investigations and interact more regularly with police officials. While many auditor models are limited to systemic reviews of the law enforcement agency, some are able to review individual cases. Some of the auditor oversight entities are provided the ability to review internal investigations in real time and to make recommendations on case outcomes and discipline. Proponents of the auditor model note the value provided as a result of the acumen and skill of the oversight practitioner versed in law enforcement practices, the significantly greater access usually given to the practitioner, and the ability to influence law enforcement agency decisions at both the individual case and systemic levels. Detractors from the auditor model raise concerns about the oversight practitioners becoming too close and potentially coopted by the law enforcement agency they oversee and whether auditors so closely connected to the agency are truly independent. Another potential drawback to the model is that because so much of the critical work is undertaken behind the scenes and because of the restriction California law places on disclosure of personnel matters, it is more difficult to gauge, assess, or even be aware of the impact the oversight entity is having on accountability and reform.

The County's current oversight most aligns with the auditing model. The consensus of comments from both the public and Board of Supervisors appears to seek more updated information being provided to the Board, as well as reducing the perception that the oversight entity has been co-opted by the law-enforcement entity.

### **Strengthening the County's Current Oversight Model Vis a Vis the Sheriff's Department**

Perhaps because each of the oversight models has their advantages and drawbacks, there was no call from within the County stakeholders to transition away from the auditing model of the OIR toward either a civilian review board or investigative model. That being said, there was much discussion designed to strengthen and broaden the function of oversight over the Sheriff's Department and make the County's oversight more responsive to the Board of Supervisors as well as further insulate the oversight body from the perception of cooption by the law enforcement entity. Such proposals for consideration include:

- Relocating the oversight entity to the Hall of Administration, the headquarters of County government;
- Expanding the role of the oversight entity to conduct substantive systemic public audits of Sheriff's functions ( e.g., the hiring process, background investigations, the issuance of concealed weapons permits, use of force training, firearms training, academy training, special unit selection processes, safeguarding

- evidence and inmate property, over detentions and early releases, reserve deputy program);
- Expanding the role of the oversight entity and enlist the assistance of law students or other volunteers to increase the presence of independent jail monitors;
  - Adopting protocols to ensure more ready availability, debriefing, access, and reporting to the Board of Supervisors such as;
    - Closed session meetings to discuss status of personnel investigations
    - Regular debriefing of systemic issues and reform projects
    - Solicitation of areas of Board interest for systemic audits and review
    - Regular meets with Board Office designates regarding significant cases and investigations
  - Providing more transparency and outreach through public reporting and use of social media based on protocols to be developed.

### **Potential Expansion of Independent Oversight to Other County Departments with a Criminal Justice Component**

The same principles that support the continued existence of oversight of the Sheriff's Department could be used to make a case for oversight of other County Departments that interrelate regularly with the criminal justice system. The premise that outside review can provide the Department head a perspective and insight that is not tethered to the hierarchical structure within his or her Department is not unique to the Sheriff's Department. In fact, in Orange County the idea of independent review has already been used to apparent good effect with regard to several misconduct allegations involving employees of the County Probation Department.<sup>2</sup>

As with the current state of the Sheriff's Department, any suggestion for independent oversight should not be seen as a presumption that sufficient internal controls do not exist or are broken within the current structure of the Departments. Rather, the way of thinking should be that an oversight entity is not intended to hijack and replace or replicate those already existing internal mechanisms but can serve as an additional resource to complement those systems by providing a perspective from outside the Department for that Department head to consider.

A broader reach for oversight in the County would also have the potential to increase credibility and provide additional transparency with regard to government functions. In addition, an oversight entity that would encompass other Departmental functions would assist the Chief Executive Office and this Board as a complement to their oversight responsibilities.

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<sup>2</sup> Los Angeles County also has an auditing form of oversight over its Probation Department staffed by three full-time oversight attorneys. In part because of the role of the oversight entity, Los Angeles County was able to successfully end years of federal court supervision over its Probation Department.

Recognizing the need for adaptations to the makeup and characterization of the various Departments, the advantages of outside oversight could be exported and expanded in the following ways:

**Allegations of Employee Misconduct.** When an allegation of misconduct becomes known to the Sheriff's Department, it is reviewed and a determination is made as to how the allegation is to be investigated. From its inception and through the internal investigative process, the oversight entity dialogues with Sheriff's Department investigators and decision-makers to ensure that such investigations and accountability decisions are consistent with best practices. To the same effect, when employees of other County Departments are similarly alleged to have committed misconduct, whether it be a complaint from a judge about the conduct of a deputy public defender, an allegation that a social worker falsified visits, an allegation of excessive force against a probation officer, or an allegation that a district attorney investigator was involved in inappropriate off-duty conduct or misuse of government resources, there would be similar involvement by a non-Department oversight entity to ensure that there is a robust review and/or investigation, evidence-based investigative outcomes, and appropriate accountability.<sup>3</sup>

**Review of High Risk Incidents Involving Potential or Actual Liability.** When a Sheriff's Department incident occurs that results in potential or actual liability, an internal review is conducted to examine the individual performance of its employees and a review of current systems or practices. The oversight entity is included in that discussion to ensure that any investigation or corrective action is robust and addresses the issues uncovered. To similar effect, when other Departments have incidents that result in liability, more formal corrective actions could be required to be developed with the assistance of the County's Risk Management entities and the involvement of the oversight entity and presented to the Board for approval.

**Review of Critical Incidents.** When a critical incident occurs within the Sheriff's Department, there is an internal review to determine whether employees performed within expectations and whether there are issues of policy, training, equipment, or supervision that would reduce the likelihood of reoccurrence. The oversight entity is involved in that review and provides an outside perspective on both

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<sup>3</sup> Several Department heads raised the issue of the confidentiality of records that might make it difficult to share such information with the oversight practitioner. The establishment of an oversight practitioner with an attorney/client relationship with such Departments may well overcome some of these access concerns. Working with the juvenile court to establish access could also resolve the issue with regard to juvenile records. With regard to attorney/client privileged information between the public defenders and their clients, issues that would require such access such as individual ineffective assistance claims would not be anticipated to be within the province of oversight. Those that would come under oversight scrutiny, such as allegations from the Court of public defender misconduct or audits reviewing systemic issues within the Office of the Public Defender would not require intrusion into the attorney/client relationship between the public defenders and their clients.

individual performance and the identification of systemic issues. To the same effect, when a critical incident occurs in another Department, whether it be an escape from a juvenile facility, a dismissal of a case as a result of a discovery violation, or a child abuse incident involving a case in which there had been earlier visits by the Department of Social Services, the involvement of an oversight entity in real time would serve as an independent voice in those reviews. Such real time involvement could, as is done in the Sheriff's Department, provide feedback to ensure that sufficient facts have been collected for the decision-makers and allow for independent recommendations on case outcomes and systemic improvement.

**Review of Systemic Issues (Particularly Interdepartmental Issues).**

Perhaps the greatest value that providing authority to an oversight entity to reach across County Departmental lines would occur when a systemic issue surfaces that involves multiple County Departments. For example, the recent jail informant controversy has impacted the Offices of the Public Defender, District Attorney, and the Sheriff's Department. Both the Sheriff's Department and District Attorney have determined to rely on outside assistance. The Sheriff has enlisted the assistance of her oversight entity to be part of issue identification, systemic review, and the shaping of future internal investigations. The District Attorney has hired an outside review body to examine the issues as they impact his Department. Both Department heads recognize that there is potential value in the involvement and perspective of outside entities. For the Sheriff, that outside entity already existed; for the District Attorney, the outside entity had to be identified, created, and retained, a process that has already engendered some controversy and skepticism before the review body has even completed its work.

An overarching oversight body could also assist in providing a coordinated response when inquiry or concern arises from outside entities. For example, the recent dialogue between the United States Department of Justice and County Counsel about the jail informant controversy impacts the Sheriff's Department and the Office of the District Attorney as well as this Board. To the degree that this Board has an obligation or interest in providing a County-wide response to such inquiries, a broader oversight program would be able to provide insight into shaping such a response.

**Review of Policies/Standardization of Procedure.** An oversight body with the ability to reach across Department lines might have been able to identify some of the issues that led to the current informant controversy. In addition, an oversight entity that had the ability to weigh in on systemic reforms would ensure that the County's systemic responses were consistent with evolving best practices, better coordinated and more impactful.

**Facilitation of Interdepartmental Referrals and County Awareness.**

An oversight entity that was empowered to reach across County Departments would be the receiver of information that could be more facilely reviewed or referred to other Departments as appropriate. For example, concerns registered by Public Defenders about the conduct of employees or systems deployed by the District Attorneys or Sheriff's Department would be routed through the independent oversight practitioner for appropriate review. Similarly, potential criminal misconduct of County

Departmental employees that the oversight practitioner became aware of would be timely referred to the District Attorney for review. The wrap-around service that would be provided by an interdepartmental oversight entity would ensure that interdepartmental referrals were timely occurring and that there was improved coordination, functioning, responsiveness, and accountability in the County's criminal justice system. Moreover, with additional responsibilities and awareness of County departments, the oversight practitioner would provide broader insight for this Board on strengths and weaknesses of County services.

### **Budgetary Impact of Enhanced Oversight**

If any or all of the menu options for increased oversight within the Sheriff's Department or incorporating other County Departments are accepted, it will necessarily mean increasing current staffing of the oversight entity. Moreover, depending on the Department functions to be included in a larger multi-department entity, the skill set and experience of the individuals comprising the oversight entity would likely need to re-calibrated and enhanced.

OIR 10-19-15  
#1

**OFFICES OF THE ORANGE COUNTY PUBLIC DEFENDER**

**FRANK OSPINO**  
PUBLIC DEFENDER



**FRANK DAVIS**  
DIRECTOR OF ALTERNATE DEFENDER

**SHARON PETROSINO**  
CHIEF DEPUTY PUBLIC DEFENDER

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September 23, 2015

Michael Gennaco  
Hall of Administration  
10 Civic Center Plaza  
Third Floor  
Santa Ana, CA 92701

Dear Mr. Gennaco,

My name is Frank Ospino and I am the Public Defender of Orange County.

On July 24, 2015, the Orange County Board of Supervisors held a special meeting to "receive testimony, discuss, and analyze the Office of Independent Review oversight model and other oversight models." (Agenda, July 24, 2015.) Currently, the Office of Independent Review provides civilian oversight of the Orange County Sheriff's Department. (Codified Ordinances, County of Orange, §§ 1-2-225 & 1-2-226.) At the conclusion of the special meeting, the Chairman suggested the possibility of an oversight model which would oversee other departments involved in the criminal justice system, including the Public Defender's Office.

On August 24, 2015, the Board of Supervisors selected you to assist the County with developing an oversight model. During these discussions, both the Chairman and Supervisor Do raised the possibility of a model which included the Public Defender's Office. Both acknowledged that the attorney-client privilege presented a hurdle to oversight but surmised that it could be overcome if the entity charged with oversight was in an attorney-client relationship with the Public Defender's Office.

On September 11, 2015, I received a copy of a memo addressed to you from the Chairman inviting me, and others, to attend various ad hoc committee meetings during which you will be presenting for "review various models of independent oversight."

You contacted my office on September 22, 2015 and arranged for an interview with me on September 25, 2015 to discuss issues related to developing an oversight model.

<p><b>PUBLIC DEFENDER MAIN UNIT</b> 14 Civic Center Plaza Santa Ana, CA 92701 (714) 834-2144</p>	<p><b>ALTERNATE DEFENDER</b> 600 W. Santa Ana Blvd., Suite 600 Santa Ana, CA 92701 (714) 568-4160</p>	<p><b>ASSOCIATE DEFENDER</b> 600 W. Santa Ana Blvd., Suite 705 Santa Ana, CA 92701 (714) 568-4100</p>
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Given the Chairman and Supervisor Do's comments relating to oversight of the Public Defender's Office, I have included a legal analysis of the issue which may be helpful as you construct a legal, working oversight model that would work best for Orange County and its citizens. In sum, under the law, neither a County Board of Supervisors nor a separate organization set up by the Board of Supervisors may independently access or have access to case materials in the hands of the Public Defender for the purpose of overseeing the operations of the Public Defender's Office.

While civilian oversight of law enforcement is somewhat common and often appropriate, the same oversight over the legal work conducted by a Public Defender's Office is unheard of and, frankly, legally insupportable. Even if legal impediments to such oversight could be legislated away, there are no justifiable reasons to supplement the various safeguards which protect all individuals—whether they be represented by government attorneys or private lawyers—from incompetent representation. Importantly, and unlike the Sheriff's Department, the Public Defender's Office is not in crisis and performs exemplary legal work for its clients. In point of fact, it was the Public Defender's Office who exposed the issues with the Sheriff's Department.

Although the Board of Supervisors has the power to control the Department's budget, staffing levels, employee compensation and other administrative facets, because the Public Defender is a statutory officer (Gov. Code, § 27700), the Board has no authority to inject itself into or exert any control over the Public Defender's exercise of his statutorily mandated duties.<sup>1</sup>

All of the legal work performed by the Public Defender is legally privileged under the California Evidence Code. These privileges extend to most of the documents contained in Public Defender case files. Third parties cannot be granted access to privileged information, including that contained in legal documents, without the consent of the clients who hold the privilege. All of these documents, and many more that are not privileged, are also confidential under the California Business and Professions Code. This class of documents includes all materials in client files. Likewise, third parties cannot be granted access to these documents without the consent of the client.

The fact that the Public Defender is a county agency does not provide the County with special access to privileged and confidential materials, even if the County deems a third party to be in an attorney-client relationship with the Public Defender. In its capacity of representing clients, the Public Defender's Office acts as a private law firm and is legally entitled to the same level of independence and autonomy. Consequently, the county has no right of control, may not obtain access to confidential and privileged information and may not interfere with how the Public Defender's Office represents its clients.

In anticipation of our meeting on September 25, 2015, I am sending you my legal analysis of the issue. I hope you find it helpful in your examination of what sort of oversight model would work best for the County.

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<sup>1</sup> Importantly, the Public Defender reports to and regularly meets with the County's Chief Operating Officer, who provides direct supervision over the administrative aspects of the Department, as well as the County's Chief Financial Officer, who provides oversight of the Department's budget and staffing.

## Analysis

### The statutory role of the Public Defender

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Although the right to counsel for the indigent was constitutionally-mandated by *Gideon v. Wainwright* (1963) 372 U.S. 335, the County Public Defender's office is created by statute. (Gov. Code, § 27700.) County governments are constitutionally mandated to provide legal representation to indigent criminal defendants and may establish a public defender's office. (*Ibid.*) Because the Public Defender is a statutory officer, the Board of Supervisors only has control over the office to the extent granted by statute "and those necessarily implied therefrom." (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 242.) Accordingly, the Board of Supervisors has control over the Department's budget, staffing, compensation and other administrative aspects; however, the Board has no authority to control the manner in which the Public Defender executes his statutorily mandated duties. (*Ibid.*)

### The Public Defender's legal work is subject to the same protections as a private law firm

"The public defender is a statutory officer whose primary function is to provide ... legal representation." (*Young v. County of Marin* (1987) 195 Cal.App.3d 863, 870; Gov. Code, §§ 27700, 27706.) The United States Supreme Court has recognized that although a public agency, the public defender serves a private function, adversarial to and independent of the state. (*Polk County v. Dodson* (1981) 454 U.S. 312, 321-322, 325.) "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness" and that the public is best served when defense counsel acts not "on behalf of the state or in concert with it but rather by advancing 'the undivided interest of the client.'" (*Id.* at p. 318, footnote omitted.)

In this respect—the core function of representing clients—the Public Defender operates in the same manner as a privately retained attorney. The relationship between the Public Defender and his or her client is "identical to that existing between any other attorney and client. 'Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed or serving in a legal aid or defender program.' [Citation.]" (*Id.* at p. 318.) The Public Defender's duty "is not to the public at large, except in that general way [of assuring competent representation]." (*Id.* at p. 319.) Thus, the "public defender is not a state agent, but rather acts as a private attorney when representing clients. [Citation.]" (*Coronado Police Officer Association v. Carroll* (2003) 106 Cal.App.4th 1001, 1007.)

In carrying out this core function, "the public defender is entitled to maintain a level of independence equivalent to a private attorney." (*Id.* at p. 1008-1009.) Accordingly, "[r]egardless of the public defender's administrative duties as head of a department of county government, when functioning in the role of attorney his or her sole duty is to represent and defend the client, and so long as he or she functions competently, lawfully, ethically and within the bound of legitimate advocacy, the county has no right of control and may not interfere." (*Young v. County of Marin, supra*, 195 Cal.App.3d 863, 870.) When the Public Defender's obligations to his clients brings him into conflict with the County, "the public defender's primary

responsibility is to the client” and the County may not sanction the Public Defender for doing what he is legally obligated to do. (*Id.* at p. 871.)

In fact, the State Bar demands that a Public Defender resist any efforts by the County which would cause him to violate the ethical and legal responsibilities he has to his clients. (Cal. State Bar. Guidelines on Indigent Defense Services Deliver Systems (2006) p. 7 [“the institutional defender must resist any effort by others to cause such defender to compromise this core duty”].) The Public Defender’s failure to resist such efforts “could result in the suspension of the right to practice law or disbarment, for which no indemnification would be effective.” (*Ibid.*) When a Public Defender fails in his legal obligations to his clients, he is personally liable. (*Susan A. v. County of Sonoma* (1991) 2 Cal.App.4th 88, 96-97 [Public Defender may only claim immunity under Government Code section 820.2 for “activity which may be characterized as the ‘planning’ rather than the ‘operational’ level of decision making”].)

#### Local government may not interfere with how the Public Defender represents his clients

The office of the Public Defender is one created by California state law whose functions are also mandated by state law. (Gov. Code, §§ 27700, 27706.) The terms of the statutes confer mandatory duties on the public defender and do not grant the Public Defender discretion as to whether to carry out those duties. (*Ligda v. Superior Court* (1970) 5 Cal.App.3d 811, 827; see also 47 Ops.Cal.Atty.Gen. 50 [“the public defender must perform all of the duties prescribed for his office by Government Code section 27706”].) Similarly, a county’s board of supervisors cannot diminish these mandatory duties. (*Ligda v. Superior Court. supra.* 5 Cal.App.3d 827, 828.) Importantly, the Board of Supervisors has no power to direct the manner in which statutorily prescribed duties are performed. (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 242.)

In this sense, “a public defender is not amenable to administrative direction” from the County. (*Polk v. Dodson, supra.* 454 U.S. 312, 321.) The County may “determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior.” (*Ibid.*) Instead, “a public defender works under canons of profession responsibility that mandate his exercise of independent judgment on behalf of the client.” (*Ibid.*) Thus, “in providing counsel for an accused the governmental participation is very limited.” (*Polk v. Dodson, supra.* 454 U.S. 312, 327, conc. opn. of Burger, C.J.) “[T]he government undertakes only to provide a professionally qualified advocate wholly independent of the government. It is the independence from governmental control as to how the assigned task is to be performed that is crucial.” (*Ibid.*) This is because the obligations owed by the Public Defender “to the client are defined by the professional codes, not by the governmental entity from which the defense advocate’s compensation is derived.” (*Ibid.*)

Consequently, the Public Defender’s policies must be focused exclusively on how to best serve the client and free of interference from the Board of Supervisors on policy matters. “[W]hatever policymaking occurs in the public defender’s office must relate to the needs of individual clients and not to any partisan political interests. Similarly, although an assistant public defender is bound to obtain access to confidential information arising out of various attorney-client

relationships. that information has no bearing whatsoever on partisan political concerns.” (*Branti v. Finkel* (1980) 445 U.S. 507, 519.)

The Public Defender is legally and ethically prevented from sharing his legal work with third parties.

The Public Defender’s Office cannot allow another agency or the Board of Supervisors access to information related to its clients’ cases. Doing so violates the ethical and legal responsibilities the Public Defender has to the court and to his clients. Allowing individuals who do not have reporting obligations to the Public Defender access to confidential records is prohibited by the California Business and Professions Code, the California State Bar, and the American Bar Association. In addition, many of the documents contained in the files, besides being confidential are also subject to statutory privileges, such as the attorney-client privilege, the patient-psychotherapist privilege, the physician-patient privilege and the attorney work product privilege. Also, many of the records in the possession of the Public Defender are subject to court-issued protective orders which prohibit the Public Defender, even with the consent of the client, to allow third party access to records. Allowing access to records subject to a protective order is against the law and punishable as contempt of court. As indicated above, when the county’s administrative demands conflict with the Public Defender’s duties to his clients, “the public defender’s primary responsibility is to the client.” (*Young v. County of Marin, supra*, 195 Cal.App.3d 863, 871.)

As with all attorneys, the Public Defender is bound by the laws of the State of California and the ethical rules promulgated by the State Bar in the Rules of Professional Conduct. Business and Professions Code section 6068, subdivision (e), requires an attorney to “maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client.” Although the term “secrets” is not defined in the California Rule of Professional Conduct, the State Bar has authoritatively cited the broad definition contained in ABA Code of Professional Responsibility, which defines a secret as “information gained in the professional relationships...the disclosure [of] which [would] be embarrassing and would be likely to be detrimental to the client...” (Cal. State Bar Formal Opn. 1986-87, citing the ABA Code of Prof. Responsibility, DR 4-101.) The statute has been construed broadly and includes the entire client file, even that information which has been made public. (*In the Matter of Johnson* (Review Department 2000) 4 Cal. State Bar Ct. Rptr. 179; see also *In re Jordan* (1972) 7 Cal.3d 930, 940-94 [“the protection of confidences and secrets is not a rule of mere professional conduct, but instead involves public policies of paramount importance which are reflected in numerous statutes”].) Similarly, rule 3-100 of the Rules of Professional Conduct demands that an attorney “shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client.”

Every client file in the possession of the Public Defender’s Office contains a record of communications between the attorney and the client documented by the attorney. Many files will also contain a record of written correspondence between attorney and client. These documents are covered under the attorney client privilege, codified in Evidence Code section 954. The statute creates a privilege against disclosure of any communication between an attorney and his client during the course of legal representation. The privilege, however, is not

limited to communications between the client and the attorney. The privilege also applies to any documents which refer to consultations with expert witnesses on cases. (*People v. Gurule* (2002) 28 Cal.4th 557, 594; *Elijah W. v. Superior Court* (2013) 216 Cal.App.4th 140, 153.)

Importantly, it is the client—not the Public Defender—who is the holder of the privilege and the Public Defender is legally obligated to invoke the privilege on the client's behalf whenever a third party seeks access to the information. (Evid. Code, § 955.)

Many files also contain records or documents pertaining to clients also covered under other legal privileges such as medical records (Evid. Code, § 994 [physician-patient privilege]); psychiatric records (Evid. Code, § 1014 [psychotherapist-patient privilege]), public defender investigation reports (Code Civ. Proc., § 2018.030 [work product privilege]), lawyer-generated case analysis (*ibid*), memos between lawyers (*ibid*), and juvenile records (Welf. & Inst. Code, § 827 [preventing dissemination of juvenile records obtained by court order].)

Because the Public Defender is legally and ethically mandated to protect privileged and confidential client information, the Public Defender cannot allow another county agency with staff beyond the supervision and control of the Public Defender access to case-related information. The issue was addressed by the State Bar in a legal opinion dealing with the ethical propriety of allowing an outside data processing firm access to confidential and privileged documents. The State Bar ultimately concluded, "The disclosure of the client's secrets and confidences to a data processor, without the client's consent, would violate the clients right to have his confidences preserved and would violate Business and Professions Code section 6068, subdivision (e)." (Cal. State Bar Formal Opn. No. 1971-25.)

The American Bar Association comes to a similar conclusion. Rule 1.6(a) of the ABA's Model Rules of Professional Conduct prohibits a lawyer from revealing information "relating to the representation of a client...." The rule and accompanying Comment create an exception allowing for a lawyer to share information with employees of the firm. However, "[t]he implied authorization of Rule 1.6(a) and its Comment thereto to share confidential information within a firm does not extend to outside entities or to individuals over whom the firm lacks effective supervision and control." (ABA Com. on Ethics and Prof. Responsibility, opn. 08-451 (2008), p. 5.) Where supervision and control does not exist, "no information protected by Rule 1.6 may be revealed without the client's informed consent." (*Ibid*.)

Even in those circumstances where the client who holds the privilege has put the attorney's conduct at issue, the attorney still may not disclose privileged information outside of a judicial proceeding. (ABA Com. On Ethics and Prof. Responsibility, opn. 10-456 (2010) p. 1.) Under this rule, should a client of the Public Defender complain about the Public Defender's representation to an outside entity, such as the Board of Supervisors, the Public Defender would nevertheless be ethically prohibited from sharing any confidential or privileged information with the Board of Supervisors or another government agency outside of the court process. The reason for this is plain: "Permitting disclosure of client confidential information outside court-supervised proceedings undermines [the] important interest protected by the confidentiality rule." (*Id.* at pp. 4-5.)

The County cannot force the Public Defender into an attorney-client relationship with a third party oversight entity and even assuming it could, it would still be legally barred from access to case-related information possessed by the Public Defender

The Board of Supervisors may not involve itself in how the Public Defender represents his clients (*Polk County v. Dodson, supra*, 454 U.S. 312, 319-320; *Branti v. Finkel, supra*, 445 U.S. 507, 519) nor can the Public Defender allow the Board—or any third party—access to privileged and confidential information belonging to his clients (Bus. & Prof. Code, § 6068, subd. (e); Rules Prof. Conduct, rule 3-100).

As to the core function of representing its clients, the Public Defender acts as a private attorney, completely independent from interference from the Board of Supervisors. (*Polk v. Dodson, supra*, 454 U.S. 312, 321.) Just as the Board of Supervisors cannot impose a model of oversight that looks into how privately retained attorneys are representing their clients, the Board has no legal authority to do the same with the Public Defender.<sup>2</sup>

Even if the Board of Supervisors could force the Public Defender's Office into an oversight model that creates an attorney-client relationship with the Department, an attorney-client relationship between a government agency and a government attorney is treated under the law "just as if they were private entities." (*Arizona Rehabilitation Hospital, Inc. v. Shalala* (D. Ariz. 1998) 185 F.R.D. 263, 269; *In re Lindsey* (D.C. Cir. 1998) 148 F.3d 1100.)

In this context, when attorney A enters into an attorney-client relationship with an attorney B, attorney A does not gain access to privileged and confidential materials involving attorney's B's clients. In other words, even if the Public Defender could be forced into an attorney-client relationship with an oversight entity, the oversight entity would not be entitled to access any privileged or confidential information relating to the Public Defender's clients. (Evid. Code, § 952 [defining the scope of confidentiality of communications under the attorney-client privilege].) For this same reason, just because County Counsel shares an attorney-client relationship with both the Board of Supervisors and the Sheriff's Department, the Sheriff's Department may not demand access to confidential information pertaining to the Board from County Counsel.

The Public Defender has internal mechanisms for oversight of its work

The work done by all deputy public defenders is monitored within the Department by managing attorneys who constantly review files, personally observe litigation and evaluate the overall work of deputy public defenders. The Public Defender's Office also uses an internal measurement tool, known as a Proficiency Index Rating, to measure and evaluate the quality of representation it provides.

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<sup>2</sup> When the Public Defender's Office is legally unavailable, the court appoints private counsel from a panel of private attorneys put together by Alternate Defense Services, a county-funded, court-administered program which provides legal and ancillary services for indigent clients utilizing private vendors. As with the Public Defender, the fact that the legal work conducted by this panel of attorneys is paid for by the County does not give the County the ability to access case information or the ability to supervise how the individual attorneys are representing their clients.

The Superior Court, Appellate Courts and State Bar provide a check on the quality of representation provided by the Public Defender's Office

The legal work performed by all members of the State Bar, including the Public Defender, in the representation of clients in criminal cases, is scrutinized in a number of ways by multiple governmental entities.

While cases are pending trial in the Superior Court, clients unhappy with their representation by the Public Defender may request the court appoint different counsel under the procedures set forth in *People v. Mursden* (1970) 2 Cal.3d 118. Courts are obligated to grant these motions and remove the Public Defender if a client can show that he is not receiving effective legal representation.

Upon conviction, all defendants in criminal cases have the right to appeal the judgment in their cases. On appeal, the court can reverse a conviction if it believes counsel rendered constitutionally ineffective representation. (*Strickland v. Washington* (1984) 466 U.S. 668.) If the incompetence relates to work performed or not performed outside of the courtroom, such as the failure to investigate a defense, a client can bring the issue to the court's attention with a petition for a writ of habeas corpus. (*In re Branch* (1969) 70 Cal.2d 200, 211.)

The State Bar of California investigates client complaints of unethical conduct on behalf of the California Supreme Court and hands out discipline to attorneys ranging from private reproof to disbarment. (*O'Brien v. Jones* (2000) 23 Cal.4th 40, 48.)

Finally, the Public Defender, along with all his deputies, may be sued and found personally liable if found to have committed malpractice. Neither his position as a statutory office nor as an employee of the County confers any immunity from liability. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 684 ["Deputy public defenders and privately retained counsel owe the same duty of care to their clients"].)

There are absolutely no grounds to believe that oversight of the Public Defender's Office is warranted

Reviewing the oversight model of the Sheriff's Department makes sense under the circumstances. The public's faith in the Sheriff's Department has been shaken and County leaders are understandably concerned about the Office of Independent Review's mishandling of the crisis.

Civilian oversight of law enforcement agencies is still the exception though not uncommon. In a 2013 report on civilian oversight of law enforcement, the Center for Public Policy at California State University Fullerton, indicated that only 18% of local law enforcement agencies in California have citizen oversight committees. (Calderon & Hernandez-Figueroa (2013) Citizen Oversight Committees in Law Enforcement, Center for Public Policy, California State University, Fullerton, p. 3.) The rationale driving the trend towards civilian oversight of law enforcement is obvious: Peace officers are charged with protecting the citizenry and given a

large degree of autonomy to do so. High profile incidents concerning officer involved-shootings, excessive force or racial profiling violate this public trust and create a demand for effective, independent police oversight. (*Id.* at p. 2.) “Citizen oversight committees have historically emerged following riots, shootings, accusations of racism and discrimination, or incidents or significant use of force or police brutality.” (*Ibid.*) Such was the case in May of 2007 when the County of Orange began discussions on civilian oversight over the Sheriff’s Department in the wake of the beating death of inmate Jon Chamberlain at the Theo Lacy Jail Facility and the resulting investigations involving Sheriff’s deputies and their involvement in the incident. Those discussions culminated on February 26, 2008 with the establishment of the Office of Independent Review. Similarly, the more recent discussions regarding the effectiveness of the current model are driven, at least in part, by recent revelations regarding systemic violations of inmates’ constitutional rights by the Sheriff’s Department’s use of an illegal informant program and related judicial findings that sheriff’s deputies lied under oath to conceal it. As a starting point, it is important to recognize that the call for civilian oversight of law enforcement is nearly always driven by a systemic problem within an agency which has eroded public trust. The current Office of Independent Review was created in 2008 after a series of scandals in the Orange County Sheriff’s Department, including the Chamberlain case. Its mission was consequently centered on the problem with which it was created to deal: “to monitor, assist, oversee and advise ... the Orange County Sheriff-Coroner in the investigation of ... internal and citizen complaints ... and ... incidents of death and serious injury occurring to persons while in the custody of employees the Sheriff-Coroner Department.” (Codified Ordinances of the County of Orange, § 1-2-225.)

Similarly, the conversation occurring in the county about the creation of a new and potentially different oversight entity has been generated not just by the lingering concerns caused by the pre-2008 conduct of members of the Sheriff’s Department, but also by ongoing and recent misbehavior by the Sheriff’s Department and the Orange County District Attorney’s Office. This misconduct has led to the recusal of the District Attorney’s Office from a capital murder case, the reduction or dismissal of charges in other criminal cases, significant national media attention, and the potential of a State and/or Federal investigation. As was the case in 2007 when the County first began the conversation about civilian oversight to regain public trust in law enforcement, recently revealed systemic problems suggest further action by the Board of Supervisors is warranted.

However, no such problem exists in the Orange County Public Defender’s Office. Indeed, it is the Public Defender’s Office that brought the systemic problems in the District Attorney’s Office and Sheriff’s Department to the attention of the courts, the County, and the public at large. In the past 10 fiscal years, the Public Defender’s Office has handled in excess of 144,000 felony cases. Of those, only a handful have been reversed because of ineffective assistance of counsel on appeal or pursuant to a petition for writ of habeas corpus.<sup>3</sup> Clearly, there can be no question about the quality of work performed by the Public Defender’s Office.

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<sup>3</sup> A cursory search of LEXIS/NEXIS, an electronic legal research site containing a searchable database of all opinions issued by state courts, shows that on two occasions cases handled by attorneys in the Department were reversed for ineffective assistance of counsel on appeal or pursuant to a petition for habeas corpus by either the California Court of Appeal or the California Supreme Court (a third was referred back to the trial court for an evidentiary hearing on the petitioner’s claim; the trial court subsequently denied the petition).

Even in those jurisdictions where public defense delivery systems have failed to live up to constitutional standards, there is no precedence for the appointment of an outside entity to monitor the delivery of defense services. For example, in the 2013 case of *Wilbur v. City of Mount Vernon et al.*, case number C11-1100RSL, the Civil Rights Division of the United States Department of Justice filed a brief in support of a lawsuit which alleged that two municipalities in the state of Washington failed to provide competent indigent defense services in accord with the Sixth Amendment. The state of affairs in both municipalities was shocking. In the Memorandum of Decision the court summarized the representation provided by the two attorneys who handled indigent defense cases on behalf of the municipalities as follows:

“The period of time during which Richard Sybrandy and Morgan Witt ... provided public defense services for the Cities was marked by an almost complete absence of opportunities for the accused to confer with appointed counsel in a confidential setting. Most interactions occurred in the courtroom: discussion regarding possible defenses, the need for investigation, existing physical or mental health issues, immigration status, client goals and potential dispositions were, if they occurred at all, perfunctory and/or public. There is almost no evidence that Sybrandy and Witt conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their clients. Substantive hearings and trials during that era were rare. In general, counsel presumed that the police officers had done their jobs correctly and negotiated plea bargains based on that assumption. The appointment of counsel, was, for the most part, little more than a formality, a stepping stone on the way to a case closure or plea bargain having almost nothing to do with the individual indigent defendant. To the extent that ‘adequate representation’ presumes a certain basic representation relationship, there was a systemic failure in the Sybrandy and Witt era. Adversarial testing of the government’s case was so infrequent that it was virtually a non-factor in the functioning of the Cities’ criminal justice system.” (Memorandum of Decision, C11-100RSL, pp. 2-3, footnote omitted)

The court found such representation to be constitutionally inadequate and asked the Department of Justice for an opinion regarding potential remedies, including the use of an independent monitor. The Justice Department noted there was no precedent for an independent monitor to oversee indigent defense delivery services: “To answer the Court’s first question, the United States is unaware of any federal court appointing a monitor to oversee reforms of a public defense agency...” while acknowledging one instance of a *court*, by virtue of a consent decree, overseeing reforms in a public defender office, although without an independent monitor. (Dept. of Justice, Statement of Interest, C11-100RSL, p. 1)

In Orange County, indigent criminal defense services are primarily handled by one of the premier public defender offices in the nation. The office attracts top legal talent and attorney recruitments are highly competitive. Many deputy public defenders serve as adjunct faculty at local law schools and universities while others regularly instruct at professional conferences.

Some deputy public defenders serve and have served as board members of professional organizations and on state-wide committees, including committees of the California State Bar. Since 1999, attorneys from the office have been recognized statewide as recipients of "Attorney of the Year" awards from either the California Public Defender's Association or California Attorneys for Criminal Justice on five occasions, more than any other public defender's office in the state. The office has been a national leader in many areas, most notably in the implementation of collaborative or problem solving courts. The office works collaboratively with its justice partners to improve the systems within which it operates yet also engages in vigorous litigation to guard its clients from prosecutorial overreach and abuse of police powers. The quality of the offices' litigation is constantly being reviewed in the appellate courts and the extremely low rate at which its lawyers are criticized in appellate opinions is a testament to the quality of the representation the office provides its clients.

This excellence was recognized by the Orange County Grand Jury in their most recent review of the Public Defender's Office where the Grand Jury found, "The overall result of this study indicates that the Orange County Public Defender's office is performing very well. This is especially true when all of the constraints such as budget, manpower, and diverse type of cases being handled are taken into consideration." (Report of the 2006-2007 Orange County Grand Jury on the Offices of the Public Defender, p.1) The Grand Jury went on to conclude, "The Orange County Grand Jury found no major problems with the operation of the Offices of the Public Defender. In fact the Grand Jury was very impressed with the proactive posture existing in the office resulting in the overall efficient management and operation of the Public Defender's Office." (*Id.* at p. 8.)

There are absolutely no grounds to believe oversight of the Orange County Public Defender's Office is necessary.

Please contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Ospino".

Frank Ospino  
Public Defender, Orange County

OIR mtg - 10/19/15 - CORRESPONDENCE

To: Chairman Spitzer and Orange County Supervisors

From: Randy Johnson, OC Resident and Taxpayer



Date: October 17, 2015

Subj: Public Comment, re: OIR Ad-Hoc Meeting, 10/19/2015

CLERK OF THE BOARD  
ORANGE COUNTY  
BOARD OF SUPERVISORS

2015 OCT 19 AM 7:20

RECEIVED

I request that the Clerk of the Board make this statement part of the public record and to make every effort to submit it to the OIR Ad-Hoc committee members and Staff in advance of the OIR Ad-Hoc meeting scheduled for the morning of 10/19/2015.

I am unable to physically attend the OIR Ad-Hoc meeting on 10/19/2015 and wish to submit this short statement in lieu of my attendance. I thank Mr. Spitzer's office for notifying me about the meeting via email. And I greatly appreciated the time provided you to me to voice my recommendations at the last OIR Ad-Hoc meeting in August.

I had the opportunity to read Mr. Gennaco's progress report on the OIR, dated 10/18/2015. Also, I read an article in the OC Register, published 10/17/2015, entitled Watchdog: County ponders jailhouse snitch investigation, which made detailed reference to the upcoming meeting.

It's apparent that the County is considering a significant expansion of the scope of the OIR duties. And this would entail a significant increase in taxpayer dollars to accomplish. I don't oppose it as long as the taxpayers

get authentic oversight as opposed to phantom oversight that was forced upon us for the past seven (7) years under the current OIR model and direction of Stephen Connolly. It would be unconscionable for you to make us pay more for the same lax performance. That's my primary concern.

To guard against such an occurrence, I believe it's necessary and advantageous to add a citizen review board, made up of citizen volunteers, to review the findings or omissions of those who investigate questionable public safety behavior. Hybrid oversight models like this do exist across the Country and have been quite successful. It would not only add another layer of scrutiny to the process, but also instill more public confidence in the oversight process at a time when public confidence in police agencies is at or close to an all time low.

Again, average citizens are required, by Law, to serve as jurors on complex criminal cases. Jurors make judgment calls, based upon the evidence, that send defendants away to prison for a lifetime or even to death row. So the notion that citizens don't have the wherewithal to oversee questionable behavior by public safety officials is just not consistent with the manner in which our justice system operates. And most will agree that our justice system, while not perfect, is the best around as long as it is applied equally and impartially.

Furthermore, the civil judgment awards that arise from police misconduct cases always fall upon the citizen taxpayers. We have seen many millions of tax dollars paid for solo lawsuits in Orange County as a result of wrongful

police actions. If the ordinary citizen taxpayers are forced to pay these large sums of money then we should also have active participation in the process that reviews the actions that led to these large settlements or judgments. It's only fair.

I have personally contacted representatives from various police citizen review boards that operate in California. These include review boards in Oakland, Long Beach, Berkeley and San Diego. I also spoke to a review board representative in Tucson, Az. Some are hybrid-models. Some are solo-models. And based on public information, all have established very successful and cooperative oversight resulting in fewer adverse incidents. And there are been few, if any, problems with these citizen review boards legally obtaining investigative materials. I'm very disappointed that our Board of Supervisors have not given these citizen review boards more due consideration, as it is your responsibility to enhance public confidence in our police oversight processes. "Lay people" have proven to be quite successful in the business of police oversight, based upon the factual data.

So those are my immediate thoughts and recommendations while you work to reform the police oversight operations in Orange County. And I look forward to providing you with additional input as you move forward in this endeavor.

**Nothing Follows.**