

2012-2013 GRAND JURY REPORT

City of Riverside, Office of the City Attorney

Background

The role of the City of Riverside (City), Office of the City Attorney, is to provide excellent and ethical advice, effective legal representation, and other quality legal services for the City Council, City Officers, and City employees in order that they may lawfully attain the City Council's goals and other department program outcomes without undue risk to the City. Additionally, the City Attorney's office provides advice to City Departments, boards and commissions. The Riverside Community Police Review Commission (Commission) is one of the commissions that the City Attorney's office legally advises. The City Attorney is appointed to serve at the pleasure of the City Council and has an annual salary of \$212,844. The City Attorney's office has 26.5 authorized positions, which include an allotted staff of 13 attorneys. The FY 2012-2013 Operations Budget is \$3,389,766.

On April 9, 2013, in a telephone conversation, the Grand Jury requested the names and telephone numbers of the commission members from the Commission's secretary. The purpose of this request was to contact the commissioners and set up interview times and dates convenient for them and the Grand Jury. That same day, a letter signed by a Supervising Deputy City Attorney was received, advising the Grand Jury that commissioners will only appear before the Grand Jury pursuant to a validly issued subpoena.

On April 16, 2013, the Grand Jury delivered subpoenas for the commissioners to a Deputy Supervising City Attorney. On the same day, the Grand Jury received correspondence from the City Attorney, requesting that his subpoenaed interview date, as well as the subpoenaed commissioners' interview dates be rescheduled due to his unavailability on April 24 and 25, 2013. The City Attorney also stated that should the Grand Jury refuse his request to change his interview date and the remaining commissioners' dates, he intended to raise the issue with the Riverside Superior Court Presiding Judge.

During a telephone conversation on April 17, 2013, the Grand Jury accommodated the City Attorney's request to change his interview date to April 22, 2013. At that time, he was made aware that the commissioners' interview dates would remain as scheduled. He was also advised that the Grand Jury would not be compelling any testimony from the commissioners under oath.

On April 22, 2013, the Grand Jury took recorded sworn testimony from the City Attorney with a Supervising Deputy City Attorney present as his counsel. The City Attorney and Supervising Deputy City Attorney refused to sign the Riverside County Grand Jury Statement Acknowledging Secrecy Order. At the conclusion

of the City Attorney's testimony, an admonishment was verbally issued to him and his counsel. The admonishment reads as follows, in part:

You are ordered not to discuss or disclose the questions asked of you and your answers, or any information learned from the grand jury. A violation of these instructions on your part may be the basis for a charge against you of contempt of court.

After the City Attorney and his counsel were admonished on April 22, 2013, on April 24, 2013, the Grand Jury received from the Superior Court of California, County of Riverside Court Case No. RIC1304847, Motion and Motion to Modify the Subpoenas for the remaining subpoenaed commissioners with explicit references made to a specific Grand Jury investigation.

Methodology

The Grand Jury findings are based on testimony and documents from the City of Riverside and the City Attorney's office.

Findings

1. The Grand Jury finds that the City Attorney does not consider a Supervising Deputy City Attorney and the remaining Deputy Attorneys, professionally capable of performing legal advisory duties.

A review of the job descriptions found that a primary function of the Supervising Deputy City Attorney/Deputy City Attorney is to advise and represent the City. Specifically, it indicates "may represent the City Attorney at various city council, board and commission meetings and in court."

Correspondence, received from the City Attorney's office, dated April 16 and 18, 2013 stated that the commissioners are represented by the City Attorney's office. These statements indicate that any attorney in the City Attorney's office can represent the commissioners. Also, in an April 18, 2013, correspondence, the City Attorney stated he was the "primary legal advisor" for the commissioners and that it was "critical he be present and available outside the jury interview room should a witness need to confer with him."

On April 22, 2013, the Grand Jury took sworn and recorded testimony from the City Attorney. During this testimony with his counsel present, the question was posed, "How many attorneys are employed with the City Attorney's office?" The City Attorney responded that "there are 14 positions, 13 lawyers." The organizational chart provided by the City Attorney's office indicates there are 11 allotted Deputy City Attorneys and

two Supervising Deputy City Attorneys. At the conclusion of the City Attorney's testimony, a verbal secrecy admonishment was issued to him and his counsel.

In sworn and recorded testimony, it was stated by the City Attorney that he is the primary legal advisor for the commissioners, and he would only delegate that responsibility to a specific Supervising Deputy City Attorney who also was not available April 24 and 25, 2013. He further stated that only a specific Supervising Deputy City Attorney was suited to represent clients, and the remaining lawyers, including another Supervising Deputy City Attorney in the office were not qualified to fill in his place. When addressed directly, "So in your words, they would not be qualified," his response was, "That's correct." However, City of Riverside Salary Schedule Report, dated March 28, 2013, reflects the annual range of salaries for attorney positions as \$75,120 to \$165,180.

In testimony obtained on May 23, 2013, the manager of the Commission stated that if the City Attorney and a Supervising Deputy City Attorney were unavailable for legal advice, they would seek advice from any available Deputy City Attorney within the office.

2. The Grand Jury found that the City of Riverside, Office of the City Attorney, did not recognize the responsibilities of the Grand Jury and did not honor the secrecy of the Grand Jury.

On April 12, 16, and 18, 2013, the Grand Jury received correspondence signed by the City Attorney with the subject line "Civil Grand Jury Investigation of Officer Involved Death of Brandon Dunbar on March 1, 2012, File No. CA 13-0765."

According to sworn and recorded testimony, the City Attorney stated that after speaking with the Riverside Police Department, he "surmised" the Investigation of Officer Involved Death of Brandon Dunbar on March 1, 2012, was the subject matter being investigated by the Grand Jury. Had the Grand Jury been investigating this subject matter, all confidentiality on the part of the Grand Jury would have been compromised, as this document was copied to the following:

The Hon. Mark Cope, Presiding Judge
Greg G. Datig, Assistant District Attorney
Pamela Walls, County Counsel
Scott C. Barber, City Manager
Belinda J. Graham, Assistant City Manager
James E. Brown, Supervising Deputy City Attorney
Frank Hauptmann, Community Police Review Manager

When asked why he copied these individuals, his response was, “to make them aware of what the Grand Jury was doing”.

After being admonished regarding secrecy, on April 22, 2013, the City Attorney filed a Motion and Motion to Modify with the Superior Court of California, County of Riverside that contained Exhibits B and C with the subject, “Civil Grand Jury Investigation of Officer Involved Death of Brandon Dunbar on March 1, 2012, File No. CA 13-0765,” which is in violation of Penal Code §939.22.

On May 20, 2013, the Office of the Riverside County Counsel sent a letter of admonishment to the City Attorney on behalf of the Grand Jury (See Attachment #1).

Recommendations

City of Riverside – City Attorney

City of Riverside – City Council

1. The City Attorney shall review the qualifications of all attorneys and ensure they are professionally capable of performing legal advisor duties as defined in their job descriptions.
2. The City of Riverside, Office of the City Attorney, shall refresh their memory on the responsibilities of the Grand Jury and shall honor the secrecy of the Grand Jury.