

MODOC COUNTY GRAND JURY PROCEDURES MANUAL



July 2008

PREFACE

The Modoc County Grand Jury Procedures Manual is intended as a reference book to guide sitting jurors in their actions and conduct. During the course of a grand jury term, jurors, committees and the jury as a whole will have many occasions to clarify a point of law or administrative function. This manual has been published to provide answers to any questions the jury may have. Any questions or points not covered in this manual should be referred to the grand jury's legal advisors. The Procedures Manual is published as a permanent document. Because statutes are updated regularly and can change on an annual basis, this manual should be reviewed by each grand jury and updated as required.

The Procedures Manual is formatted to be easy to read and user-friendly. A table of contents and an index are included to help the reader quickly find a desired topic. The sections of the California Penal Code which pertain to grand jury organization and conduct are also included, as well as case law summaries pertinent to grand juries. The manual begins with the grand jury's history and purposes, and expands to the California Grand Jury system. Modoc County Grand Jury selection and basic organization procedures are covered, and detailed guidance in conducting investigations and interviews is included. The manual provides guidance in the content of reports and their publishing and distribution. Each seated grand jury is an independent body that performs according to current statutes. While this manual cannot dictate policy to future juries in organization, administration or meeting format and scheduling, the recommendations and suggestions offered are based on sound practices and extensive experience.

There are two types of grand juries allowed in California, civil grand juries and criminal grand juries. The California Constitution requires only that at least one grand jury shall be formed in each county each year, and historically, that has been a civil grand jury intended to perform local government watchdog functions. Current statutes allow counties to establish a second grand jury to investigate criminal complaints with a goal toward returning an indictment. The primary function of the Modoc County Grand Jury has been to investigate local government agencies and respond to citizens' complaints. Therefore, the main focus of this manual is directed toward civil grand jury procedures. The Modoc County Grand Jury Procedures Manual may, however, also be used as a guide by criminal grand juries.

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Modoc Grand Jury Frequently Asked Questions (FAQ)

Question: What is the purpose of the grand jury?

Answer: A civil grand jury's basic purpose is to serve the citizens of a county as a *watchdog* over designated local government agencies and officials. Another civil grand jury responsibility is to review individual citizen's complaints against local government agencies or officials. A criminal grand jury differs in function slightly. It is impaneled to conduct investigations and hear testimony from prosecuting attorneys to determine whether or not sufficient evidence exists to conduct criminal prosecution. It is important to point out that although the grand jury may hear evidence presented by the district attorney, the jury is completely independent of that office.

Q: What is the jurisdiction of the Modoc County Grand Jury?

A: The Modoc County Grand Jury has jurisdiction over designated local government organizations within Modoc County, California. It also has jurisdiction over designated non-government organizations that are acting on behalf of and are funded by local government organizations within Modoc County. The grand jury does not have jurisdiction over federal or state agencies within the county, including the Modoc County Superior Court and its employees.

Q: What are the grand jury's powers?

A: A criminal grand jury has the authority to *indict*, an action that leads to a criminal trial. A civil grand jury has the authority to investigate, subpoena evidence such as records and witness testimony, form conclusions and make recommendations for correction of deficiencies in local government. The real power of a civil grand jury comes in the form of a final report containing facts, findings, conclusions and recommendations that named public officials must respond to. The final report is also issued to the citizens of the county, and can lead to press interest, public scrutiny and grass roots actions to correct the identified government deficiencies.

Q: When and where are the grand jury meetings held?

A: Grand jurors decide early in their term how often they shall meet and where. The jury usually decides these as they begin their term. The Modoc County Grand Jury has historically met once a month as a whole body. Naturally, more or fewer meetings could be scheduled depending on the current caseload. The Modoc County Grand Jury has historically met in places such as the Alturas City Council chambers and the Modoc County Sheriff's Office conference room.

Q: What grand jury committees are formed?

A: Each jury determines the type, titles and functions of grand jury committees that are formed. Rather than mandatory, committees are formed to better manage and organize the workload. Some typical committees normally formed by the Modoc County Grand Jury are:

- *Audit and Finance*
- *City and County Government*
- *Criminal Justice and Public Safety*
- *Education*
- *Healthcare*

- *Planning and Environment*
- *Social Services*
- *Special Districts*

Q: Does the grand jury conduct criminal investigations?

A: A grand jury can conduct criminal investigations. If formed, a criminal grand jury conducts investigations and interviews witnesses to determine if a criminal action has occurred. Criminal grand juries are rarely impaneled in California, but the state's constitution mandates that at least one civil grand jury be formed in each county each year. The Modoc County Grand Jury normally does not conduct criminal investigations, as it is almost always a civil grand jury. If a civil grand jury uncovers suspected criminal activities during an investigation, they must stop investigating and immediately notify the district attorney.

Q: What is compensation for grand jury duty?

A: Compensation for grand jury duty is in accordance with current California Penal Code § 890, § 890.1. Compensation for the 2007-2008 Modoc County Grand Jury service is \$15.00 per diem (regardless of the number of meetings attended in any one day). Such per diem payments shall be paid for regular meetings, committee meetings or any special assignments authorized by the Grand Jury Foreperson or committee chair. Grand jurors also receive compensation for round-trip mileage from their place of residence to the meeting place at the same rate as Modoc County employees. For the 2007-2008 jury mileage is \$.31 per mile. Compensation is also in the form of the individual pride and sense of civic responsibility achieved while serving the citizens of Modoc County.

Q: Does the Modoc Grand Jury have a permanent office?

A: The Modoc County Grand Jury does not have a permanent office, per se. Mail and phone contact with the grand jury is made through the Modoc Superior Court Executive Officer. The Modoc County Grand Jury is also assigned a library room on the second floor of the Modoc County Courthouse for reference and file storage.

Q: Whom does the grand jury answer to and take direction from?

A: Although the presiding superior court judge is responsible for forming a grand jury, the jury answers only to the residents of its jurisdiction. A seated grand jury may take direction from the presiding judge, the district attorney or the county counsel.

Q: What legal resources does the grand jury have?

A: The presiding Superior Court judge, District Attorney and County Counsel are available to provide legal advice to the Modoc County Grand Jury, and to answer any questions of law. In addition, the grand jury has free access to the grand jury reference library and access to the County Law Library.

Q: What grand jury officers are required and how are they selected?

A: The Modoc County Grand Jury requires a *Foreperson*, *Foreperson Pro Tem* (vice), *Secretary*, *Librarian*, and *Sergeant-At-Arms*. The *Foreperson* is selected by the presiding judge after swearing-in. All other officers are elected by a majority of the seated grand jury.

Q: Can an individual juror or committee of jurors issue a public report?

A: Not on behalf of the Modoc County Grand Jury. All jury reports must be voted on and approved by the grand jury body prior to publishing.

Q: How confidential are the grand jury proceedings?

A: By statute, all grand jury proceedings are conducted in the strictest confidence. Although unauthorized *leaks* are always possible, the most stringent measures are taken to ensure the confidentiality of all grand jury investigations and deliberations. Unauthorized *leaks* are considered a breach of the grand jury's oath, and can be considered a misdemeanor and punishable as such.

Q: How are jurors selected?

A: The presiding superior court judge selects Modoc County Grand Jury members from the current county jury pool, much as they would be for a jury trial. The judge interviews prospective individual jurors, normally by a mailed questionnaire. After reviewing the selection interview questionnaires, the judge determines if a prospective juror is legally qualified to serve and that they are willing to devote the time required for duty. The judge then selects thirty nominees to be summoned to appear. The Court Executive Officer or Clerk of the Court then draws nineteen names by lot to determine who serves. An appropriate number of alternates, normally four, are then selected from the remaining nominees.

Q: How much time is required of individual jurors?

A: The number of hours committed to serving as a grand juror will vary depending on the caseload. During a year with an average caseload, each juror can expect to spend 4-5 hours per month throughout the year attending to grand jury matters. At a minimum all jurors should expect to devote a minimum of two hours each month for a regular meeting. Most jurors will also serve on one or more committees that will require additional time for committee meetings. Telephone and email contact are used to the maximum extent possible to exchange information, but time should be allotted for research, investigations, writing and reporting. All jurors selected should also expect to spend two consecutive days during the first month or two of the term devoted to training. The time required of officers and active committee chairs and members for the 2007-2008 Modoc County Grand Jury averaged over 100 hours. Most of these hours were logged during the last 2-3 months of the term; time committed will vary between members.

INTRODUCTION

To the MODOC COUNTY GRAND JURY

As citizens of the United States of America we enjoy many rights and privileges not common in most countries of the world. We, as a people, tend to forget that with each of these rights and privileges we also have responsibilities. One of our rights is that we may be involved with and become a part of our governmental process. One of the most profound means of participation in our country's government can be as a juror on the grand jury.

The grand jury is an adjunct of the court, and in California it is endowed with broad powers as a branch of the judicial system.

The grand jury serves all citizens of the county by receiving and investigating citizen complaints pertaining to the actions and performance of public officials. It is an avenue of appeal independent of the usual public channels.

In order to function efficiently and productively, grand jurors should be willing and able to attend the meetings of the grand jury as a whole, as well as those of the committees of which they are members. The number of hours committed to this work may vary depending on the workload at any one time.

The grand jury is charged with an important responsibility, which calls for diligence, impartiality, dedication, and strict confidentiality. It is not intended to be a means to carry out a personal agenda, nor may it be so abused.

Grand jury selection procedures in California currently range from personal selection by individual superior court judges to random selection. A superior court judge selects the Modoc County Grand Jury. All prospective jurors are interviewed to the extent deemed necessary by the judge to determine that they are legally qualified to serve on the grand jury and that they are willing to give the time required for that duty. Thirty of those nominated are selected by the judge and summoned to appear in superior court. The Clerk of the Court then draws nineteen of the thirty names by lot.

One who has been chosen to serve on the grand jury but whose service would entail undue hardship on that person or the public shall be excused by the court. If any grand jurors are excused, additional names are drawn until nineteen persons have been selected who can serve. Those not chosen by lot become alternates who can be selected to fill any vacancy that occurs on the grand jury during its term.

To be selected to serve on the grand jury is one of the greatest honors a citizen can receive. It is an honor that provides an opportunity to make a contribution of unequalled value to the community.

1. THE GRAND JURY

History

According to some historians, the origins of the grand jury concept pre-date medieval England. In medieval England, during the twelfth to fifteenth centuries, bodies of notable citizens were gathered by the ruling monarchy to protect the community. They identified wrongdoers and kept a watchful eye on certain aspects of local government. All of the decisions reached by these early grand juries were based on common law, that is spoken laws rather than written statutes. The notable citizens were from the upper social classes chosen by the ruling monarchy and generally acted as puppets of that monarchy. From the sixteenth through the eighteenth century the grand jury institution went through significant changes. They became more involved in administration of justice, and as they were still comprised of people from a higher social order, they were able to exercise more independence. During this early period, grand juries began to shift their allegiances from the monarchy to the judiciary and broadened the civil functions. The grand jury concept followed the first settlers to the new world and America's early colonies.

The grand jury concept was abolished in England in 1933, but has been established firmly in the American judicial system. Over the years the grand jury system has often been criticized as unjust and unconstitutional. Some argue that grand juries have too much power and are simply more tools for a prosecutor.

As it exists today, the grand jury is a reporting institution, not an acting institution. It is, moreover, a reporting institution with many deliberately planned limitations and controls. Given these limitations and controls, and with proper leadership and direction, a grand jury can be an extremely effective watchdog on local government agencies. It can also provide a grass-roots method for individual citizens to air grievances with public agencies.

The first recorded formal grand jury in the United States was formed in Massachusetts in 1635, but was not afforded official status until Fifth Amendment to Constitution of the United States was written. The Fifth Amendment states in part that *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury*. During the nineteenth century the grand jury continued as an arm of the court, but also slowly became more dependent on the prosecuting attorney. It also became based more on written statute than strictly on common law. In the late 1800s, the U.S. Supreme Court held that the Fifth Amendment requirement did not apply to states. Based on that decision, some states do not employ the grand jury system. Today, many American states, including California, provide for some form of grand jury either criminal, civil or both. As one of California's 58 counties, Modoc County is mandated to seat a grand jury in accordance with state Penal Code § 192 and § 888. Each county in California has a grand jury seated at all times, and is charged to conduct civil investigations and audits of all local government. A grand jury may also be seated to hear criminal complaints.

The American system of representative government depends so critically on the constructive involvement of citizens in public affairs. The Modoc County Grand Jury provides an organized body for that constructive involvement.

Duties and Powers

The grand jury is part of the judicial branch of government, which does not have the functions of either the legislative or administrative branches, and it is not a police agency.

A primary function of the grand jury is the examination of statutorily designated aspects of city governments, county government, special districts, redevelopment agencies, Local Agency Formation Commission (LAFCO), housing authorities, joint powers agencies, and non-profit agencies established by or operated on behalf of a public entity (Penal Code § 933.6); seeing that monies of local governmental agencies are handled properly; and that all accounts are properly audited and in general, assuring honest, efficient government in the best interests of the people (Penal Code § 925 et seq.).

The grand jury is an investigative and evaluative body and part of the machinery of government. Its objective is the detection and correction of flaws in local government (civil grand jury) and exposing crime among its citizens (criminal grand jury).

The grand jury has three ways to exercise its powers:

- (1) Reports: Written reports evaluating conditions of governmental agencies with recommendations for improvement, when no crime is charged (Penal Code 925 et seq.).
- (2) Indictments: Formal written complaints charging a person with a crime.
- (3) Accusations: Formal written complaints accusing a government employee or officer of misconduct. Similar to indictments except that conviction would result in removal from office rather than criminal penalties.

It is recommended that every new grand jury review responses to the previous grand jury's Final Report recommendations as soon after forming as possible.

As a matter of courtesy, the sitting grand jury should notify the past grand jury through its former Foreperson or Foreperson pro tem when responses to the previous jury's Final Report are received. An offer should be made to make them available for review by any of the previous jurors. If a former Grand Jury member finds deficiencies in the responses, he may make a formal complaint through the complaint process. The current Grand Jury can then, if it chooses, pursue the matter.

Qualifications for Grand Jury Service

Competency

A person is competent to act as a grand juror only if the person possesses the following qualifications:

- (1) Be a citizen of the United States 18 years or older and have been a resident of California and the county for one year immediately before being selected and seated.
- (2) Be in possession of their natural faculties, be of ordinary intelligence, possess sound judgment, and be of fair character.
- (3) Be possessed of a working knowledge of the English language.

Incompetence

A person is not considered to be competent to serve as a grand juror if any of the following apply:

- (1) The person is serving as a trial juror in any court of this state.
- (2) The person has been discharged as a grand juror in any court of this state within one year.
- (3) The person has been convicted of malfeasance in office or any felony or other high crime.
- (4) The person is serving as an elected public officer.

Compensation for Grand Jury Service

Compensation for Modoc County Grand Jury service shall be \$15.00 per diem (regardless of the number of meetings attended in any one day). Such per diem payments shall be paid for regular meetings, including indictment or accusation hearings, or for committee meetings or any special assignments authorized by the Grand Jury Foreperson or committee chairmen (Penal Code § 890, § 890.1).

In addition, grand jurors shall receive compensation for round-trip mileage from their place of residence to the meeting place at the same rate as Modoc County employees (\$0.31 per mile), pursuant to Penal Code § 890, § 890.1.

2. ORGANIZATION

Orientation

Each new Grand Jury should acquire a basic knowledge of its responsibilities quickly. An intensive orientation should immediately follow the new jury's impanelment to enable jurors to embark upon their duties more easily and capably. A one or two day training course provided by a recognized expert in California grand jury procedures is strongly recommended. Attendance at all meetings by all members should be stressed. Even though they cannot participate in final deliberations and voting, all alternates should attend each meeting to keep abreast of the jury's actions.

The incoming grand jury should meet as early in its term as practical. An organizational meeting in the first week in office allows members to become acquainted with one another and adopt procedures and rules. This early meeting facilitates selection of officers and committee appointments.

The grand jury should devote time during this early period to review and discuss the *Grand Jury Procedures Manual* and the outgoing jury's Final Report. There is case law that impacts the way grand juries conduct themselves. Close attention should be paid to the *Lake County* case, the *McClatchy* case and the *Unnamed Minority Members Etc. Grand Jury v. Superior Court* case summaries, as well as to the conditions of the *Ralph M. Brown Act*. It is of particular importance to new members of a grand jury to be familiar with and understand *Clinton v. Superior Court*. See Appendix B of this manual for case and statute summaries. Copies of the complete appeals and the full text of the *Brown Act* are available from the Court Executive Officer.

Jurors should also be familiar with the *California Public Records Act* (Government Code § 6250 - 6276.48). Public officials rarely refuse grand juries access to public records. However, it's beneficial for jurors to know what kinds of records are exempt from public access. This knowledge is useful both during grand jury investigations and review by the grand jury of citizen's complaints. The Public Records Act provides statute and details on how to obtain access and what specific records are open and which ones are exempt.

It would be beneficial to the new grand jury at this early time to request information or assistance pertaining to organization and methods from retiring jurors who are available. Care must be taken to ensure strict confidentiality of the sitting grand jury proceedings is maintained, as ex-jurors not sworn-in with the sitting jury should not be involved in active investigations. A good understanding of their newly assumed duties and responsibilities will result in more effective service rendered by its members.

First Meetings

Following are recommendations for activities to be included in the first few meetings:

- (1) Get acquainted.

- (2) Although officers are decided upon by the jury as a body, the Foreperson may select a temporary Vice-Foreperson, Secretary, Sergeant-at-arms, and Librarian, with permanent selections made within a month. This may be done in the interest of expediency.
- (3) Recommend establish a regular meeting schedule that is acceptable to the majority of jurors. The schedule should include a set time and place if possible. The number of meetings required and scheduled should match the caseload and be flexible enough to accommodate increases or decreases in cases.
- (4) During early meetings, recommend requesting individuals who can assist the grand jury in defining and evaluating its role to speak. Individuals to consider are:
 - (a) Outgoing Grand Jurors
 - (b) District Attorney and/or County Counsel
 - (c) Members of the Modoc County Board of Supervisors
 - (d) Members of the Alturas City Council
 - (e) Other Elected County Officers or Department Heads as Appropriate

If possible, a representative of the District Attorney or County Counsel's office may be asked to provide information to new jurors on the requirements of the Modoc County Conflict of Interest Code as it relates to grand jury members, such as the filing of Form 700 (Statement of Economic Interest).

During these early meetings, the Court Executive Officer may be invited to instruct on the proper method of completing the Modoc County Expense Voucher. If required, claim forms shall be submitted at least monthly to the jury Secretary for review and forwarding to the Court Executive Officer.

The office of Director of Administrative Services has been established in Modoc County. The Director is an agent of the Board of Supervisors and has general authority and control over all the county departments and functions. He and his staff are a good source of information and data the grand jury may be interested in and can make use of. In addition, the Director of Administrative Services is intimately familiar with existing policies of the Modoc County Board of Supervisors and other county officers and can often provide jurors with information that they may need concerning the general operation of local government. The jury can often utilize his training and skill in general administration to great advantage in the course of its investigations. It should be noted however, that if the Director is appearing before the jury in specific investigative procedures, he is considered a witness rather than an advisor.

Everything in the paragraph above also pertains to the City of Alturas. It may be helpful to invite an appropriate city agent to speak regarding city departments and city functions.

Grand jurors must always be aware of the possibility of conflicts of interest during investigations, and should establish a procedure to excuse jurors from involvement in any investigation or voting in which they may have such a conflict.

Conflicts of interest could also occur during any juror's participation in political campaigns during the jury's term of service. If involved in a political movement, members

should always be careful not to use the name of the grand jury in candidate or issue endorsements.

During these first meetings, all jurors should be made aware of the benefits of additional training. Many opportunities exist for additional training, but the most cost-effective method may be on the Internet.

Committee structure and which standing committees may be appropriate should be discussed and determined during early meetings. Citizens' complaints and which local government agencies are to be investigated, as well as members' preferences should dictate committee selection and composition. Some typical committees formed by the Modoc County Grand Jury are:

- *Audit and Finance*
- *City and County Government*
- *Criminal Justice and Public Safety*
- *Education*
- *Healthcare*
- *Planning and Environment*
- *Social Services*
- *Special Districts*

Meeting Format

Regarding procedure for those meetings at which the grand jury is not considering a special investigation, an accusation or criminal indictment, the following format is recommended:

- (1) Convene promptly at the appointed time and place
- (2) Roll call by the Secretary
- (3) Read and correct or approve the minutes of the previous meeting.
- (4) The Foreperson will determine what communications should be read, and when indicated, make assignments to committees for necessary action.
- (5) Hear reports of special committees
- (6) Hear reports of standing committees
- (7) Attend to unfinished business
- (8) Attend to new business.
- (9) Announce, if possible, the agenda for the next meeting
- (10) Presentation of items for the good of the order
- (11) Adjournment.

As a courtesy to guest speakers, it is suggested that matters to be presented by them should be considered and concluded before proceeding to regular business whenever possible. No witnesses or guests should be present during any of the discussion or handling of grand jury business (Penal Code 8 939).

Rules of Procedure

- (1) A quorum consists of at least 12 grand jurors (Penal Code § 940), and is required to conduct jury business.

- (2) Twelve (12) affirmative votes are required (Penal Code § 916):
 - (a) to adopt all procedural rules.
 - (b) to adopt all final reports.
 - (c) for all public actions of the grand jury, whether concerning criminal or civil matters unless otherwise prescribed in law.
- (1) Grand jury response to correspondence is determined by a majority vote.
- (2) The Foreperson shall preserve harmony in meetings, and may speak on points of order. The Foreperson shall also exercise leadership in guiding the jury's course, and may choose to vote only when a tie occurs.
- (3) If at any meeting a member doubts the decision of a vote, the member may call for a roll call.
- (4) When any member is about to speak, the member shall address the Foreperson, and confine remarks strictly to the question under discussion.
- (5) No grand juror shall be allowed to speak on the same subject more than once, except by consent of the Foreperson, and then only when all of the members who wish to speak have done so. The Foreperson may then allow a juror to speak a second time, and this privilege is then extended to all members.
- (6) When a question is under debate, no motion or proposal shall be received except to adjourn, to amend, lay on the table, to postpone indefinitely, to postpone to a given time, or to commit to committee. These motions shall take precedence in the order as here arranged. A motion to adjourn shall always be in order, except when a member is speaking, and shall be put to a vote without debate.
- (7) In accordance with Penal Code § 916 and § 939.9, rules of procedure must be adopted by every grand jury and they must contain, at a minimum, guidelines to ensure that all findings included in a final report are supported by evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors. Rules of procedure must also contain guidelines to ensure that all problems identified in a final report are accompanied by a suggested means for their resolution, including financial when applicable.
- (8) If at any meeting, questions should arise that are not covered by this manual, they shall be decided in accordance with the current edition of Robert's Rules of Order.
- (9) It is recommended that during regular meetings, including sessions at which guest speakers may be present, jurors be allowed to wear casual clothing

and have beverages and food at their desks. These privileges may be restricted or modified by the Foreperson if the status of the guest requires.

No rule is intended which will keep the proceedings of the grand jury in such a rigid form that matters cannot be discussed informally. There is no reason why meetings cannot be without ceremony, as long as business is transacted with efficiency and reasonable decorum.

Attendance Requirements

It is of great importance that attendance be regular and prompt, both for full membership meetings and committee meetings. The importance of the work requires that each one be present at all sessions, except for illness or serious personal demands. If a juror is unable to attend a session or desires to be excused, he may ask permission. Three consecutive unexcused absences may be considered cause for removal from the grand jury. The unexpected lack of a quorum causes great loss of time and money to jurors as well as to authorities and witnesses or other invitees.

The Foreperson will discuss absences with any juror whose attendance does not appear adequate for a fair contribution to the work of the jury. It is well to remember also that the public is depending on the grand jury to live up to its responsibilities, and this requires maximum attendance. Individual grand jurors should schedule for maximum attendance and the possibility of more meetings during the months of May and June.

3. OFFICERS

The following are the grand jury officers and a description of their specific duties. The officers can also serve on standing grand jury committees as their workload permits.

FOREPERSON (appointed by the presiding judge in accordance with penal code 916):

- (1) Schedules and calls meetings of the grand jury and preside at such meetings.
- (2) Prepares and distributes in advance an agenda for each meeting.
- (3) Appoints standing and special committees and their chairs. Makes changes in committee assignments when required or appropriate.
- (4) Acts as ex-officio member of all committees.
- (5) May appoint officers. If the grand jury so desires, temporary officers may be appointed and reaffirmed by the jury later in the term. The Foreperson fills officer vacancies when necessary.
- (6) Brings all correspondence to the grand jury's attention at regular meetings; signs all communications approved by the grand jury, with the exception of committee correspondence requesting information.
- (7) Consults with the presiding judge, District Attorney or County Counsel when required or when directed by the grand jury membership.
- (8) Invites the presiding judge to appear before the grand jury when required.
- (9) Signs all official grand jury reports, including the final report.
- (10) Ensures committee coordination through consultations with committee chairs and committee progress reports.
- (11) If appropriate and agreed upon by the jury body, acts as the official spokesman for the grand jury.
- (12) Administers oaths and admonitions.
- (13) Requests subpoenas from the judge or District Attorney when needed.
- (14) Signs all indictments and accusations and presents them to the court.
- (15) Submits all final reports to the court for review and approval prior to release.

The Foreperson must recognize that the most important responsibility is to make sure that the grand jury as a whole and each of the committees function effectively and efficiently. To this end, the Foreperson should be in frequent consultation with the

various committee chairs and should require regular progress reports as to the work being handled by each committee.

To a large extent, the success of a jury will be dependent upon the Foreperson's skill in organizing and conducting meetings. The jury must function as a body or team rather than as individuals. Since jurors have diversified experience, interests, and philosophies, this is often not an easy task. If disagreements or disruptive behavior should occur, the Foreperson must devote every effort to resolve them and maintain a friendly unity of spirit. The Foreperson should strive to preside with tact, restraint, consideration, common sense, firmness, and a sense of humor. A major responsibility is always keeping open communication between the Foreperson and the other jurors.

FOREPERSON PRO TEMPORE (VICE-FOREPERSON)

The Foreperson pro tempore, in the temporary absence or disqualification of the Foreperson, assumes all of the duties of the Foreperson, including the authority to administer oaths and admonitions, and to sign indictments. In case of prolonged or permanent disability or ineligibility of the Foreperson, the Foreperson pro tem will act as Foreperson until a new one has been named by the court. The Foreperson pro tempore also assists the Foreperson in any other way, or as directed.

SECRETARY

General responsibilities

A grand jury may not have a member with secretarial skills. Secretarial responsibility should then be assumed by any capable member who is willing to devote the required time and effort to this office. The Secretary should not become simply a clerk-typist for the grand jury. If needed, assistance with typing work may be performed by the Court Executive Office personnel, provided staff resources are available.

Together, the Secretary and Librarian should ensure that complete and updated files are in order for the succeeding grand jury. The Secretary, with the assistance of the Foreperson and Librarian, should review all records to carefully distinguish between those that are relevant and useful to the succeeding grand jury, and those that should be destroyed to protect confidentiality or are irrelevant and of only passing interest. Minutes of grand jury meetings should be destroyed.

It is also the Secretary's responsibility to inform members absent from a grand jury meeting of the date of the next meeting.

The Secretary should also inform the Foreperson:

- (1) Of the presence of anyone other than grand jurors during deliberations or voting.
- (2) If, at any time, the number of jurors present is less than the required quorum of twelve.
- (3) In the event administering witness oaths and admonishments and advising them of their rights is overlooked.

The Secretary should ensure that the Court Reporter is present during all phases of indictment proceedings except during deliberations and voting. The Secretary should also see that each count on an indictment bill is considered separately and that each juror is polled individually for discussion during an indictment deliberation.

Minutes

It is the duty of the Secretary to keep an accurate record of every grand jury meeting in the form of meeting minutes. These minutes should show:

- (1) The hour and minute of convening.
- (2) Call and recording of the roll.
- (3) Jurors absent from the meeting.
- (4) Names of persons other than jurors who may be in the room at any time during meetings such as speakers, witnesses, the District Attorney, or the Court Reporter.
- (5) The name of any person other than jurors entering the meeting including the exact time of entrance and exit.
- (6) The exact hour and minute when tardy jurors appear. Also, the hour and minute any juror leaves the meeting prior to adjournment and time of return.
- (7) A record of all motions made, seconded and action thereon, omitting names of jurors making and seconding such motions.
- (8) That only members of the jury remained in the room during deliberations or voting involving indictments.
- (9) That a quorum is present during all meetings.
- (10) Whether the appropriate oath was administered to witnesses called, and that they were advised of their rights as witnesses. Also included should be whether the appropriate admonishment was administered.
- (11) A record of reports submitted by the various committees and the action taken on them.
- (12) A record of attendance at all meetings, separate from the regular minutes.
- (13) Every resolution reduced to writing, and adopted or rejected by the jury.
- (14) Properly recorded minutes of a meeting are the best record that the jury followed the proper procedure.
- (15) The Secretary should not maintain a record of individual members' votes. Votes should not be recorded in meeting minutes as "unanimous". This practice allows absolute secrecy as to individual juror's votes.

Correspondence

- (1) The Secretary should maintain a correspondence flow chart to record handling and disposition of all correspondence. (See Appendix A)
- (2) On behalf of and as directed by the grand jury body, the Secretary shall acknowledge receipt of all letters received.
- (3) The Secretary shall respond to any requests from citizens regarding a complaint by mailing a Grand Jury Citizen Complaint Form (Appendix A) to that citizen.
- (4) If appropriate and approved by the grand jury membership, the Secretary shall draft a letter advising complainants of action taken on a Citizen Complaint Form.
- (5) The Secretary shall ensure that all original correspondence is retained in the correspondence file.
- (6) All correspondence with complainants should be mailed in Modoc Superior Court envelopes that do not identify it as grand jury correspondence.

SERGEANT-AT-ARMS

The Sergeant-at-Arms' duties include assisting the Foreperson in maintaining general order during meetings and other duties as directed. The Sergeant-at-Arms also ensures that only authorized persons are present in the grand jury room during meetings, deliberations and voting. He ensures that during presentation of a request for indictment by the District Attorney, no persons other than jurors, District Attorney, Court Reporter, witness, and if required, interpreter or guard for the witness, are present. An assistant to the District Attorney should only be present with the approval of the entire grand jury.

LIBRARIAN

The Librarian is responsible for maintaining grand jury files located in the grand jury room in good order. Duties also include:

- (1) Maintain archived records of work of past grand juries.
- (2) Ascertain whether responses have been received to the former grand jury's recommendations from their Final Report.
- (3) Recommend to the presiding grand jury on actions to be taken, including resubmission, on prior recommendations for which a reply has not been received.
- (4) Assist the Foreperson and Secretary in reviewing files for possible destruction or retention as directed by the grand jury body. It may be helpful in deciding which records are authorized for destruction or retention to request the advice of the Court Executive Officer or the presiding judge.
- (5) Update files and other items in the grand jury room and library on a regular basis.

4. GRAND JURY COMMITTEES

General

The grand jury cannot operate at optimum efficiency if the jury as a whole handles everything. Therefore, the overall accomplishments and success of the grand jury will depend to a great extent upon the work of its individual committees. Committees can investigate a great variety of subjects as authorized by the statutes. They can investigate the operations, accounts, and records of the officers, departments, or functions of local government agencies (Penal Code § 925). Care should be taken not to attempt too broad of an area of investigation, as findings may be of less value.

Because the chair of a committee is responsible for that committee, no one person should chair more than one standing committee. Chairs should be willing and able to serve and have sufficient time to devote to this leadership position.

Based on an average caseload, grand Jury members will probably be required to serve on more than one committee during the jury's term. Individual members should not be assigned to too many committees with heavy caseloads in order to best distribute the jury's workload. Each member serving on two standing committees seems to be an even distribution.

Committee members should always feel free to suggest matters of investigation or interest.

Selection and Membership

The Foreperson, on behalf of the jury, will appoint committee chairs and assign members based on the best use of talents and expertise. Committee assignments should conform to the wishes of individual members as much as possible. A juror desiring a change in assignment should discuss the matter with the Foreperson. The Foreperson should seek concurrence of the member involved and the committee chair before making any changes.

A juror desiring to be assigned to another committee in an advisory or part-time capacity may be given status as an associate member. The assignment may be permanent or for a single action or complaint. Permanent status can be given when a juror has a substantial interest or expertise to contribute to the committee's work.

Civil Duties

Once formed, grand jury committees become solely responsible for all matters they investigate. Committee chairs provide a report of their committee's activities at each scheduled grand jury meeting, and discussions involving the whole jury may ensue. However, sole responsibility for investigations, interviews and reports concerning their agencies remains with each individual committee until completion and acceptance of the final report by the whole jury.

When committees have overlapping concerns, each chair should serve as a member of the other committee(s) or should designate a committee member for liaison. The reason for this effort is to eliminate as much as possible the awkwardness of several committees calling on the same official for the same information.

All committees should:

- (1) Give priority to, and promptly act upon citizens' complaints referred to them.
- (2) Ensure strict confidentiality of citizens who lodge complaints, and of witnesses who are called.
- (3) Interview personnel and witnesses of the agency under their cognizance.
- (4) Attend meetings, obtain and review meeting minutes, review state and local laws and ordinances and resolutions of agencies under investigation. Committees should be alert to adherence to the Ralph M. Brown Act during agency meetings.

Organization, Operation and Policy

Each committee should be structured with at least a chair and if possible, a secretary. If a committee secretary is not possible, one member should be designated to keep written notes or minutes of each committee meeting. Such designee should also be responsible for informing absent committee members of the next meeting.

Committees should establish regular meeting times if possible and will probably meet with greater frequency than the grand jury as a whole. When matters concern more than one committee, members of the other committees should be invited to attend meetings. Any grand juror should be free to attend any committee meeting in which the member is interested.

Each committee should keep a file on every complaint or investigation assigned to it.

As long as strict confidentiality is maintained about current proceedings (previous grand jurors are no longer bound by the oath of office), a committee may request to meet with members of the previous grand jury in respect to continuing concerns.

Each committee should study the final reports of previous grand juries. These can be of great aid in determining what aspects of each agency bear investigation. Responses to previous grand jury final reports should also be studied in detail.

For large or complex investigations, committees may create sub-committees from standing members to facilitate completing assigned tasks. The grand jury may change the title or functions of existing committees or form new ones to permit more efficient operations.

Inspections, Interviews and Investigations

All investigations, inspections and reviews must be based on valid and truthful observations, reflecting no personal bias of committee members. In accordance with Penal Code § 916, all findings must be based on detailed and documented inspections,

interviews and investigations. Also, no fewer than two grand jurors shall conduct any interviews or inspections. Detailed and specific written accounts of all visits made at the time of the visit enable accurate reporting and provide a solid basis for the committee's final report.

For self-education and enlightenment, committees should arrange tours of various county, city, or district facilities to see first-hand their nature of operation and problems. This should be scheduled early in the jury's term; as such visits often reveal areas that require more in-depth study or investigation. Recommendations for improvement of the agency or department being investigated should be solicited from both supervisors and staff. It is recommended that all committee members take notes.

Whenever possible, committee chairs should coordinate visits so that the same agency department is not be visited by several committees at different times.

A committee member should be excused from participation in any investigation in which the member has a conflict of interest.

All committees should maintain an attitude of open-mindedness toward statements made during interviews. All fact-based statements should be independently verified or substantiated.

In order to ask meaningful questions committees should obtain as much knowledge as possible prior to any interviews.

New grand jurors may be reluctant to ask questions for fear that they may be interpreted as inconsequential or irrelevant. Such hesitation should not be felt if the question is based on a sincere desire to obtain an answer. *There is no such thing as a stupid question.*

Committee Final Reports

Committee reports will be submitted to the full grand jury in draft form. The jury will discuss and either approve them or refer the drafts back to committee for additional work. If approved, the draft report will be submitted to the appropriate editing committee. The edited report will be referred back to the full grand jury for discussion, amendment, or adoption as a final report. Approval of a report requires an affirmative vote by at least twelve (12) members.

Recommended Committees

These recommended committees are examples. Each grand jury should modify as desired or necessary depending on caseload.

1. Audit and Finance Committee

The Audit and Finance Committee should provide for the completion of all audits of the county required by statute (Penal Code § 925). The performance of this duty may require the employment of an independent accountant or auditor. The Audit and Finance Committee should work closely with the contract auditor and concern itself with the accurate and most efficient conduct of county government. The committee should review

the contract auditor's report and make recommendations with these concerns in mind. The audit reports are considered to be part of the grand jury's final report.

2. Local Government Committee

The City and County Government Committee should concern itself with any investigations of offices of local government, such as:

- Redevelopment Agencies
- Joint Powers Agencies
- Housing Authorities
- Local Agency Formation Commission (LAFCO)
- Non-profit Organizations or Corporations established by or operated on behalf of a public entity over which the grand jury has jurisdiction.

3. Criminal Justice and Public Safety Committee

The Criminal Justice and Public Safety Committee should concern itself with any investigations of offices of city and county government. Such investigations may include:

- Detention Facilities
- District Attorney
- Criminal Complaints
- Police Conduct
- Probation Department
- Public Defender
- Sheriff/Coroner
- Animal Control
- City Police Department
- Fire Departments
- Emergency Services

4. Editorial Committee

The Editorial Committee acts as editor for all draft reports, including draft final reports, making changes for ease of reading, uniformity of style and organization, and coordination of the report as a whole, without changing the content. Court staff and resources are available to assist. The draft report is submitted to the grand jury for approval as edited.

5. Education Committee

The Education Committee should concern itself with public school districts, the Modoc County Office of Education and public libraries within the county.

Subject to the provisions of Penal Code § 933.5 the education committee may investigate the books and records of any county, school district or county office of education.

The scope of any public school investigation may not include personnel evaluations conducted by officials of the school district nor may it include policy and curriculum decisions lawfully made by district officials.

6. Grand Jury Review and Procedures Committee

The Grand Jury Review and Procedures Committee should keep itself informed of legislative proposals, which would affect the grand jury. The committee should arrange with legislative representatives to receive copies of all bills introduced in the state assembly and senate that pertain to the grand jury. It should keep the Modoc County Grand Jury Procedures Manual current by incorporating legislative changes, code changes, committee recommendations and suggestions for grand jury reform or improvements. This information is generally available from the local legislator's office. Current legislative and code change information may also be found on the web at: <http://www.leginfo.ca.gov/index.html>. This Committee may also consider and suggest to the court, as appropriate, any needed revision in grand jury selection and orientation procedures.

This committee should maintain a current file of materials pertinent to grand jury activities. This file should include complaints, investigative reports and law review articles. The file should be available to all jurors and be passed on to future grand juries as part of the Grand Jury Library. It should also be brought current at least annually. The Librarian is an ex-officio member of this committee. The Grand Jury Review and Procedures Committee should critique and distribute all important materials of this kind.

This committee may, at the direction of the grand jury, communicate with other California grand juries in order to discuss common problems, issues and procedures, to expand research capabilities and reference sources, and to coordinate efforts in matters of common interest. Today, most grand juries in the state have pages on superior court web sites. These information resources can be used as training tools, and also provide contact information for other California grand juries.

7. Healthcare Committee

The Healthcare Committee should concern itself with all aspects of healthcare operations in the county, including:

- County Health Programs
- Mental Health
- Public Health

Liaison should be established with the Social Services Committee.

8. Planning and Environment Committee

The Planning and Environment Committee should consider all matters, departments and agencies having an impact on local government planning and the environment. Areas of concern are:

- Agricultural Commissioner

- Airport
- County Service Areas
- Pollution Control
- Local Agency Formation Commission (LAFCO)
- Parks and Recreation Department
- Planning Commission
- Planning Department

9. Special Districts Committee

The Special Districts Committee should concentrate on investigating all special districts in the county that are supported by public funds. Some possible districts under this committee's cognizance could be:

- Water Districts
- Lighting or Power Districts
- Sanitation Districts
- Cemetery Districts
- Flood Control Districts
- Healthcare or Hospital Districts

10. Public Buildings and Properties Committee (Public Works)

The Public Buildings and Properties Committee should conduct inspections to determine the maintenance and physical condition of city and county-owned properties. Investigations should include any matter concerning city or county-maintained roads, including audits and finances.

11. Social Services Committee

The Social Services Committee should concern itself with any operations of public social services in the county and cities including:

- Adult and Child Protective Services
- Occupational Programs
- Senior Citizens' Programs
- Veterans' Services Office
- Welfare Programs
- Public Administrator/Public Guardian
- Public Assistance

12. Ad Hoc Committees

Ad Hoc Committees should be formed as needed with members appointed by the Foreperson in consultation with other officers, and with the concurrence whenever practical, of the grand jury as a whole. It may be advantageous to combine certain committees, for example Education and Healthcare, depending on caseload.

5. CIVIL FUNCTIONS

Investigations

One of the primary duties of the grand jury is to inquire into any charges of willful or corrupt misconduct in office by public officials within Modoc County. The first avenue of initiating an investigation into wrongdoing is through receipt by the grand jury of a citizen's formal written complaint. A second avenue is through routine investigation of local government operations. Because a jury should not engage in indiscriminate meddling in government affairs, the scope of any inquiry should be limited to those based on knowledge, not by rumors and hearsay or juror curiosity. In conducting investigations, the grand jury should act swiftly, fairly and fearlessly in an orderly manner. It is important to understand that it is the statutory responsibility of the grand jury to examine the conduct of city and county government and other local agencies, and that such civil investigations do not necessarily imply malfeasance by government officials. The appearance of public officials before a grand jury does not in itself suggest malfeasance. Because of this statutory responsibility, it is important to conduct civil investigations confidentially. An investigation can include review of pertinent records and interviews with principal officials, and should result in grand jury deliberations, clear findings and concise reports.

When a juror takes the oath of office, that juror becomes not only a responsible officer of the court, but also a local government watchdog accountable to the people. Consequently, grand jurors should examine governmental operations as seriously, efficiently and scrupulously using the same standards that they would expect of officers and employees of local government to use. The result of such investigations is a report to the public with recommendations for solutions and requests for response from designated responsible officials.

Accusations

According to penal code section 919(c) *the grand jury shall inquire into the willful or corrupt misconduct of public officers of every description within the county.*

The ultimate penalty for willful or corrupt misconduct in public office is removal from office. A charge of willful or corrupt misconduct justifying removal from office is a serious charge, and may present technical questions. For this reason, the grand jury should seek legal advice when pursuing such charges and investigations.

If the jury finds such misconduct, it may make the charge in the form of an accusation. An accusation is a written statement presented by the grand jury, charging a public official with willful or corrupt misconduct in office. (See Penal Code § 922 and Government Code § 3060.) An accusation is distinguished from an indictment, which is a written accusatory statement charging either a private citizen or government official with a public offense or crime. The penalties differ. Conviction under an indictment may result in either incarceration or fine, or both. But a conviction under an accusation can result only in the defendant's removal from office. Refer to criminal functions of the grand jury in chapter 6 for a more detailed explanation of the indictment process.

In addition, grand jurors are entitled access without charge to any and all public records within the county during investigations. For a definition of what public records are, refer to the Public Records Act, California Government Code § 6250, et seq.

In accordance with Penal Code § 939.1, the grand jury has authority to hold public sessions. The grand jury, jointly with the district attorney, may make a written request to the superior court for an order directing that a public hearing be held. This may occur whenever the subject matter of an investigation has a wide-ranging publicity and affect on the general public welfare. This situation may involve alleged misconduct in office of government officials or employees. Such an event is unusual, but if so ordered, the grand jury shall conduct the examination of witnesses in open sessions. However, all jury deliberations, discussions and voting shall be held in private with strict confidentiality.

Grand Jury's Civil Liability Risk

Penal Code § 930 states *if any grand jury shall, in the report above-mentioned, comment upon any person or official who has not been indicted by such grand jury such comments shall not be deemed to be privileged.*

In *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple (1978) 83 Cal.App.3d 214*, the court held that grand jury members were not immune from a suit in which the plaintiff claimed that he was defamed by statements in the grand jury report that he had been negligent, incompetent and wrong in performance of his duties for county and special districts. A more recent case, *McClatchy newspapers v. Superior Court (1988) 44 Cal.3d 1162*, held that a grand jury's comments regarding any person or official who had not been indicted was not deemed to be privileged and, therefore, an action for defamation was possible against individual grand jurors for statements made in the grand jury report.

It must be kept in mind that any privilege of immunity exists only as to matters occurring within the scope of grand jury authority. However, particular comments in reports about particular people can be actionable by such persons against individual grand jury members. However, as long as all findings in published reports are fully supported by fact, worded properly and do not identify subjects by name, the threat of civil suit is minimal. To date, after a century and a half of its existence, there has been only one successful libel lawsuit filed against a California grand jury.

The Grand Jury as One Body

Each individual grand juror has the right and the duty to act and vote according to the dictates of individual judgment and conscience. However, the juror should do so only after consultation and deliberation with fellow jurors. It is important, therefore, that each juror fully and fairly state to fellow grand jurors any information received which touches upon actual or possible subjects of inquiry, so that subjects may be discussed, appraised, and either further investigated or discarded.

There are distinct limitations as to what a jury may do in the course of its investigations and reporting. The grand jury functions lawfully only as a body. An individual grand juror acting alone has no power or authority. The grand jury is not intended to be a *super-*

government for this county, nor is it intended that it should interfere with the discretionary policy-making or operational powers of government officials.

The grand jury represents the public. Therefore, it is each juror's duty to think at all times in terms of the public interest, rather than in terms of their own interests or personalities or the interests of any particular special group. Violation of the letter or spirit of the oath by any individual juror will endanger the integrity and the effectiveness of the whole grand jury.

Grand jurors should strive not to be influenced by sentiment, conjecture, sympathy, public feeling, passion or prejudice. They should seek to apply the same objective standard of conduct and responsibility to all persons, regardless of race, color, creed, or economic status.

Investigation Assistance

The grand jury is empowered to examine books and records of any incorporated city, special district or school district in the county pertaining to fiscal matters. In this capacity, and in accordance with Penal Code § 914.5 and § 931, the grand jury is authorized to employ contract auditors to aid in its examination of financial records. The grand jury shall not spend money nor incur indebtedness in excess of the amount budgeted for its activities. If a budget increase is required to cover contract auditor cost, the proposed increase must be presented to and approved by the presiding judge of the superior court. After it is approved, it shall be presented to the Modoc County Board of Supervisors for authorization of funding.

The Modoc County District Attorney and the county counsel and their staffs are available to aid and advise the grand jury in its investigations. By statute, the grand jury may not use either private or public funds to employ special counsel or special investigators. In the event that the services of special counsel or special investigators appears necessary, the grand jury should make a request to the California State Attorney General via the presiding judge.

Preliminary Investigative Procedures

Most grand jury investigations are conducted with no outside assistance, and involve only records review or interviews of principals. If the grand jury decides that an investigation requires outside assistance, the first logical choice is the district attorney or the county counsel. Before asking for district attorney or county counsel assistance in investigating complaints about public officials, the grand jury should determine the following:

- (1) Whether the complaint is a civil or a criminal matter. If it is a civil matter, the county counsel may be the best choice for assistance. If the complaint appears to involve criminal matters, the district attorney would probably be the logical choice.

- (2) Whether a complainant will allow use of their name in an investigation requiring the aid of the district attorney or county counsel. If the complainant declines, the grand jury may still proceed with the investigation through either office, but without releasing the complainant's name.

(3) Whether an identical complaint has already been made to the district attorney's office.

(4) Whether public knowledge of an investigation assisted by the district attorney or county counsel would influence any pending political decisions. If this is the case, it may be advisable to meet the complainant in closed grand jury session to avoid undue publicity that might have unintentional political influence.

The grand jury should meet with the district attorney and county counsel as early in the jury's term as possible to ensure effective cooperation if the need for outside assistance with an investigation is required.

6. CRIMINAL FUNCTIONS

Jurisdiction

Jurisdiction in matters is limited to persons and organizations within the boundaries of Modoc County and to crimes committed or prosecutable within the county, with certain exceptions. The grand jury does not have jurisdiction over federal or state agencies within the county, including the Modoc County Superior Court and its employees. The California Supreme Court has held that the jury does not have inherent power to establish its own investigatory apparatus for the detection of crime. Both practice and statute have left this function to law enforcement officials.

Secrecy of Proceedings

The proceedings of the grand jury must be conducted in the utmost secrecy unless, in the exceptional circumstances provided for by law, the court should order a public hearing.

In criminal proceedings, the rule of secrecy requires that only the following persons should be allowed in the grand jury hearing room: grand jury members, the court reporter (who must be present during all testimony), the witness testifying, an interpreter, if necessary, the officer having custody of a prisoner witness, and the district attorney or deputy. The district attorney is entitled to be present to question witnesses and to give information and advice to the grand jury. More than one member of the district attorney's office may be present as long as the member is assisting in the presentation. The judge of the superior court is entitled to be present to give advice to the grand jury during an indictment proceeding, but only upon request of the grand jury.

All individuals except grand jurors must retire while the jury deliberates, discusses the matter, and votes upon the question before it. Permitting a person not legally entitled to be present or to remain during the testimony given by a witness can result in the indictment being quashed.

Rights and Privileges of Witnesses and Suspects

A witness called upon to testify before a grand jury has certain rights and privileges, which the jury must understand and respect. A grand jury, like a court, may ask only those questions pertinent to the matter immediately under consideration.

The privilege against self-incrimination is manifested by various principles. For example, in a criminal trial the defendant may not be called as a witness without their consent. Likewise, in the grand jury's examination of an offense, a person who has already been accused or charged with the commission of the crime may not be called as a witness, except at their own request. If there is no case pending at the time the matter is presented to the grand jury, the witness is not a defendant, but only a suspect. As such, the suspect can be required to appear before the grand jury and be sworn. The person should then be admonished that he or she has a privilege and is a competent witness only at their request.

Thereafter, the suspect, as any other witness, may refuse to answer questions on the grounds that the answer may tend to incriminate them.

Broadly speaking, it should be pointed out that if a suspect does assert the privilege of refusing to answer, that statement cannot be held against that person when an indictment is being considered, nor can it be considered evidence in support of an indictment.

If the question is of such a nature that an answer to it may or may not tend to incriminate the person, the answer must rest with the witness who alone knows what the answer would be. The motive for claiming the privilege of self-incrimination is immaterial. The privilege must be protected without consideration of motive or interpretation of guilt. However, if a witness asserts the privilege against self-incrimination, the district attorney may cite the witness before the superior court to determine if the privilege has been properly invoked.

An accused is not entitled, as a matter of law, to be heard by a grand jury and is not entitled to have witnesses examined by the grand jury, unless it calls for them. An accused, which offers himself as a witness voluntarily, may be examined after proper admonition as to his' rights, regarding all matters brought out in his testimony. The accused may not claim the privilege against self-incrimination during cross-examination. If a witness voluntarily gives testimony of an incriminating nature, an indictment may be founded on it.

Under no circumstances is an accused person to be accompanied by his attorney into the grand jury room.

Granting of Immunity

No statement should be made to a witness that might be construed as granting immunity for any action they may have taken. Under the law, the grand jury does not have this authority. The power to grant immunity to any witness, who might later appear as a witness for the people against an individual, is vested in the judge of the superior court.

It is, however, within the grand jury's province to recommend that immunity be granted to a witness whose testimony is vitally needed, but fears such testimony would be self-incriminating. However, the court is not duty-bound to follow such recommendation.

Credibility of Witnesses

The grand jury, in its deliberations, should take witness credibility into consideration. The credibility of testimony given by any witness is a question solely for the grand jury to determine.

Evidence

In the investigation of a charge, the grand jury can receive no other evidence than that given by witnesses produced and sworn, or furnished by writings, material objects, or other things presented to the senses. The evidence should be legally competent and should not consist of inadmissible hearsay or secondary evidence. The grand jury may

receive none but that evidence which would be admissible over objection at a jury trial of a criminal action.

As stated above, the grand jury is not required to hear evidence for the accused person. However, if it wishes, it may permit the accused person to appear before it and testify under oath, if the person so desires. The grand jury is not expected to hear all of the witnesses as fully as would a trial jury. But the grand jury should make a full and fair inquiry. An incomplete deliberation may result in a false criminal accusation of an innocent person and may involve a needless jury trial at considerable expense.

The rules of evidence are voluminous. It is suggested that if the jury becomes confused with regard to evidentiary rules as applied to a specific case, it should require clarification from the district attorney.

After considering all of the evidence presented, the grand jury has the right to amend the charges against the accused by making the charges either more or less serious. The jury should seek the district attorney's advice when amended charges are considered.

Subpoenaed Evidence

The grand jury does not have the power to issue a subpoena on its own. This is the function of the court and the district attorney. However, the grand jury may request the district attorney or any judge of the superior court to issue a subpoena. Thus, the grand jury is empowered to compel the attendance of witnesses and to require the production of books, records, documents and other physical evidence.

The power of subpoena can be used to show innocence. Thus, when there is reason to believe that other evidence will explain away a charge, the grand jury may require the district attorney to issue a subpoena for that other evidence.

Examination of Witnesses

Initially, only the district attorney should examine a witness. After the witness has testified, the district attorney should ask if any members of the grand jury have any further questions of that particular witness. It is advisable for jury members to funnel questions in writing through the Foreperson to the district attorney to ensure that the questions are legally admissible.

Off-the-record questions or discussions between jurors in the presence of the witness, or between jurors and the witness, should be entirely eliminated. When such discussions are held, they appear on the transcript as a notation that an *off-the-record* discussion took place. This notation provides material for argument for the lawyers at the jury trial. Furthermore, such *off-the-record* discussions are not proper evidence and may not be used upon trial of the case. They may disclose to the witness the frame of mind of the grand jury and the purpose of its inquiry.

When a juror feels that an *off-the-record* discussion is desirable, the juror should state this fact in writing to the Foreperson. At the conclusion of the witness' testimony, the Foreperson can then ask the witness to leave the grand jury room, but remain on call in the immediate vicinity while the *off-the-record* discussion is held.

Off-the-record remarks or discussions are not permitted in any death penalty case.

When the witness finishes with testimony, the Foreperson will admonish the witness not to discuss that testimony with any other persons. (See Appendix C, Oaths And Admonitions)

Witnesses testifying before a grand jury are often doing so for the first time. Therefore, to put each witness at ease, particularly when there is no possibility of criminal action against that witness, the district attorney or the Foreperson should make a statement to that effect.

Every witness called by the grand jury to testify in connection with any matter involving the question of criminal indictment, or an investigation of a nature serious enough to require that the testimony be recorded, should be required to take an oath to tell the truth, to be administered by the foreperson. (See Appendix C, Oaths And Admonitions)

Duty and Responsibility of Grand Jurors When Voting an Indictment

The grand jury must remember that it has the duty to protect the innocent as well as to return an indictment against those whom evidence indicates is sufficient to convene a criminal jury trial.

The grand jury should take a separate vote on each count alleged in a proposed indictment. There may be a case where the grand jury feels there is sufficient evidence to warrant an indictment with respect to one count and not sufficient evidence to warrant an indictment on another count under consideration. The law provides that an indictment should be found on a particular count when all of the evidence before the grand jury, taken together, if unexplained or not contradicted, would, in the judgment of the jury, warrant a conviction by a trial jury. Only when the evidence before the grand jury measures up to the standard fixed by law should it return an indictment. To do otherwise would be a violation of the grand jurors oath.

During deliberations and voting on each indictment, only members of the grand jury may be present in the grand jury room. Each juror has an equal duty and responsibility and is entitled to be satisfied with the evidence before being called upon to vote. The voting should be open and oral, and it should be conducted by a roll call, and not by secret or written ballot.

The grand jury will vote on each case as it is presented prior to the consideration of any evidence in the next succeeding case. The Foreperson should sign each indictment at that time and retain it with any evidence relating to the case.

Finding a *TRUE BILL* Or a *NO BILL*

To find an indictment requires the concurrence of a quorum of at least twelve grand jurors, who have heard all of the evidence. A juror, who has not heard all the evidence, is disqualified from participating in the jury deliberations or voting.

When an indictment has been voted, it must be endorsed a *True Bill*, and the endorsement must be signed by the Foreperson.

The Foreperson shall notify the district attorney and the court when a *No Bill* finding has been voted.

Presentation of an Indictment

After the grand jury has voted on the last indictment, it shall notify the district attorney who will secure the presence of the superior court judge and the clerk of the court. All members of the grand jury who have participated in the indictment hearing shall be present in the courtroom at the time the indictments are presented. For each indictment, the Foreperson will present the original and appropriate number of copies, together with exhibits pertaining to each indictment to the judge upon his request.

The court will then ascertain from the Foreperson whether twelve of the same persons have voted in favor of each of the indictments presented. The judge will then cause the indictments to be filed and direct the clerk to retain the evidence or to return it to the appropriate law enforcement agency.

The district attorney will usually, at this time, request the amount of bail to be set on each of the bench warrants issued by the court. The district attorney will present the form of bench warrant to the court.

Grand Juror Responsibility in Secrecy of Indictments

A grand juror cannot be compelled to testify how he or any other member of the grand jury voted or spoke upon any indictment. A refusal to so testify is not contempt of court.

It is a misdemeanor for any grand juror to willfully disclose the fact of an indictment having been made until the defendant has been arrested. It is also a misdemeanor for any grand juror, except when required by a court, to willfully disclose any evidence presented before the grand jury. It is a misdemeanor for a juror to willfully disclose anything that the juror or any other member of the grand jury has said, or in what manner anyone has voted. A juror cannot be questioned by anyone for anything the juror said or how the juror voted in the grand jury except in the event that a charge of perjury is brought against such juror.

The importance of this rule of secrecy cannot be over-emphasized. It is designed to guard the public interest as well as for the protection of each individual grand juror. Any juror who violates this rule of secrecy is guilty of a misdemeanor and must be dealt with appropriately by the court. In following this rule, no halfway measures are advisable. Half statements or innuendos by a grand juror lead to speculation, rumor, and violations of the rule. The only safe procedure is not to make comments to anyone.

Avoiding Libelous Comments

A grand juror is not liable for damage to a person indicted or accused by the grand jury. However, this immunity extends only to matters occurring within the scope of grand jury proceedings. Any comments in grand jury reports about a person or public official not indicted or accused are not privileged and can, if libelous, be the basis for a charge of civil or criminal libel.

General Decorum and Conduct

Although routine meetings may be conducted with a certain degree of informality, those at which witnesses appear should be conducted with as much dignity as would be expected in a court of law. Trial jurors are requested to maintain a proper appearance and demeanor, and a grand jury should be equally careful in this regard.

An audible expression on the part of any grand juror denoting either approval or disapproval of any witness or testimony presented before the grand jury, or in the presence of any guest violates appropriate decorum. Approving or disapproving gestures of head, hands or body, also violates proper conduct.

When witnesses are called before the grand jury to testify, jurors should not have coffee cups or similar articles in the room.

7. GRAND JURY LEGAL ADVISORS

The grand jury may occasionally require authorized professional legal advice on matters of jurisdiction or finer points of law. As provided for by penal code 934, when such an occasion occurs, the jury may ask the court, the district attorney or the county counsel for advice. These advisors may assist with investigations and participate in grand jury discussions, but shall not be present nor participate in deliberations or voting.

The Presiding Judge of the Modoc Superior Court

A judge of the Modoc Superior Court will seat and charge each oncoming Modoc County Grand Jury at the start of the county's fiscal year each July. The presiding judge becomes the primary advisor in most grand jury matters, including providing direction and guidance, or questions of jurisdiction and law. The grand jury Foreperson is the appropriate person to channel requests for assistance to the presiding judge.

The presiding judge may refer jurors to the district attorney, county counsel or other sources for more specific guidance. However, the judge normally remains the primary source for grand jury legal advice.

The District Attorney or Attorney General

The Modoc County District Attorney may appear before the grand jury at any time for the purpose of providing information or advice relative to any matter before the grand jury. The district attorney may also question witnesses before the grand jury whenever appropriate or required.

At any time the grand jury concludes that money due the county has not been collected, it may request that the district attorney institute legal action for its collection.

The California State Attorney General is also available for advice and assistance. A request for attorney general assistance may be made by the grand jury directly to the attorney general's office in writing.

The District Attorney

Any investigation undertaken by the grand jury should be commenced carefully and with order. The investigation should be planned according to the rules of order developed by the grand jury at the start of its term. During this planning phase, it should be decided if district attorney counsel is required regarding jurisdiction or points of law. The jury should treat any advice or written opinions from the district attorney as confidential unless the district attorney authorizes release.

The jury should state in any correspondence or report containing district attorney advice that the *grand jury has been advised by legal counsel that*. . . By using the phrase *legal counsel*, the jury does not indicate to the correspondent who rendered the opinion. Although the grand jury may hear evidence presented by the district attorney, the jury is completely independent of that office.

County Counsel

The Modoc County Counsel is the legal advisor to the county and all of its departments, officers, and commissions, to all school districts, and other special districts. The penal code authorizes the grand jury to request the advice of the county counsel in civil law matters.

The county counsel is familiar with many of the transactions that may be the subject of inquiry by the grand jury. Consequently, in addition to giving general legal advice on county civil matters, the county counsel may be able to assist members of the grand jury in reviewing certain technical legal matters. County counsel is also available to the grand jury and its committees, to provide assistance in drafting resolutions, preparing reports and other correspondence.

As the county counsel is retained to represent various segments of local government, a *conflict of interest* situation may arise between the counsel's client and a grand jury request for assistance. Should this situation occur, the county counsel will be unable to advise the grand jury in that matter.

Because the county counsel acts as legal advisor to the grand jury, counsel is bound by the secrecy restrictions on grand jury matters and the sanctity of any attorney-client relationship.

8. REPORTS AND PUBLICITY

Reports

It is recommended that as each grand jury develops their rules and procedures early in the term, a standard format be adopted for all reports.

The Foreperson must sign all official reports released by the grand jury as a body.

All committee correspondence, including reports and press releases, must be presented in typed draft form to the grand jury as a whole for approval. Such material shall be typed in the approved report format.

The reader's attention is also referred to the Section entitled *Committee Final Reports* in chapter 4.

The grand jury is responsible for issuing a final report on the operations of local government agencies and departments as stated by law; also, to report and make recommendations on its own audit of local government records and accounts; and to report on local government officials' records and accounts as ex-officio officers of any district.

Reports on any appropriate subject may be submitted to the presiding judge at any time during the term of service of a grand jury. Appropriate subjects are discussed in the 1988 *McClatchy v. Superior Court* decision, with which all sitting juries should become thoroughly knowledgeable before attempting investigations or writing reports.

If the grand jury finds it practical to release a report prior to completion of its term, it may do so. These early reports may be termed *interim reports*. Interim reports are not supported by statute, and public officials are not obligated to respond to them in any way. However, as allowed by Penal Code § 933(a), a final report on any appropriate subject may be released at any time during the term of grand jury service. The advantage of this practice is that public officials may be required to respond to findings and recommendations while the panel is still sitting. All reports must be submitted to the presiding judge for release, with the final report submitted no later than the end of the jury's term.

Rules of procedure must be adopted by every grand jury. They must contain, at a minimum, guidelines to ensure (a) that all findings included in a report are supported by evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors; and (b) that all problems identified in a final report are accompanied by recommended resolutions, including financial when applicable. All reports should be written in clear, concise and easily understood language, and in a format that is easy for readers to navigate. It may be helpful to include a table of contents and index to reports. Jurors are cautioned that the only thing public officials are required by statute to respond to are *findings and recommendations*.

Every grand jury should be aware of the *McClatchy* decision, which includes the judicial right to refuse nonconforming final reports. The court has also held that a minority report,

which has not been submitted and approved by the full grand jury, shall not be issued. (Refer to *Unnamed Minority Members of the 1987-1988 Kern County Grand Jury v. Superior Court* (1989) 208 Cal. App. 3d 1344).

Some grand juries have a tendency to comment upon local government officials, functions, and services in highly laudable terms in their reports. Whether positive or negative, all comments must be clearly justified with substantiating evidence.

A timetable and procedure for release of the final report should be established. It should go to the printer at least by June 1st in order to be ready by June 30th.

Although not a statutory requirement, the county counsel should review all reports and advise the grand jury of any legal concerns. A typed draft of the final report should be submitted to the presiding judge of the superior court for review. The judge cannot alter a report or it other than regarding areas of jurisdiction. If the judge thinks the report should be changed, he or she should return it to the grand jury with comments to that effect. After the judge's release authorization, the report should then be typed in final form, carefully proofread and then delivered to the printer for production. Interim reports should be in final draft form when submitted to the judge and have a title page or cover page, dated, and signed by the Foreperson.

All reports must be kept confidential and in safe storage until they are released by the court.

One copy of official comments on final reports shall be placed on file with the applicable grand jury report by, and in the control of, the currently impaneled grand jury. It shall be maintained for a minimum of five years.

Release of Interim and Final Reports

The grand jury delivers all reports to the superior court, and by custom, the Foreperson presents the bound final report to the presiding judge of the superior court on the day the next grand jury is impaneled. The grand jury shall indicate the number of reports to be reserved for each distribution agency.

Distribution agency contacts: Modoc County Board of Supervisors; Modoc County Director of Administrative Services; Alturas City Clerk; Modoc County Superintendent of Schools; and administrators of independent special districts. (Distribution agency list is found in chapter 9).

The Court Executive Officer makes notification of a report's release by sending a letter to each distribution agency that is the subject of the report. A copy of the letter will also be delivered to each department that is a subject of the report. The Court Executive Officer will also notify all recipients by telephone. Reports should be made available simultaneously to news media representatives.

The Court Executive Officer will hold copies of the reports for pick up by master agencies and named departments, as well as for purchase by the public. Master agencies and other recipients will sign for receipt of their reports.

Agencies or heads of departments that are named respondents in reports will send original responses to the presiding judge of the superior court.

The superior court will forward original responses to the court clerk immediately. The Court Executive Officer will provide copies of reports for the grand jury.

Publicity

Quite often, reports of a grand jury's completed investigations, including facts, findings and recommended solutions, are the only publicity it receives. Reports provide an avenue through which the public will know the grand jury is performing its civil *watchdog* duties. All jury proceedings must be conducted in strictest confidence, and juries must guard against disclosure of any deliberations and voting. While the confidentiality of proceedings must be maintained, juries may use reports, particularly the final report, as an opportunity to educate the public on the grand jury's role and its civic achievements. This education could include man-hours expended in carrying out tasking and possibly improvements in local government procedures based on past grand jury's accomplishments.

Grand jurors must guard against undue publicity to the utmost of their abilities. Most matters coming before the grand jury can only be successfully completed if absolute confidentiality is maintained throughout the proceedings. It is considered a breach of oath for jurors to discuss any case prior to or during the trial of any person they indict. Any such public utterances can prejudice the defense of the defendant when the case comes to trial. Also, any such statements made by a grand juror may be ruled as contempt of the trial court that is trying to guarantee a defendant a fair and impartial trial.

The only statute providing for public statements by the grand jury is Penal Code § 939.91. This statute allows that a person who is charged and investigated by a grand jury, and not indicted shall, at that person's request and approval of the court, issue a statement that an indictment was not returned. The section also allows that a grand jury shall issue a statement if a person is called only as a witness in an investigation, and not investigated nor charged.

Particularly troublesome forms of un-wanted publicity are so-called *leaks*. Information on grand jury deliberations, decisions and findings, which is leaked to the press or the public, constitutes a breach of a juror's oath. Presiding judges deal harshly with anyone guilty of unauthorized disclosure of grand jury information. In accordance with California Penal Code § 924, any juror *leaking* secret grand jury information is guilty of a misdemeanor.

9. FINAL REPORT DISTRIBUTION

Each grand jury decides who shall receive copies of both interim and final reports. The distribution guidelines should be developed when the jury formulates its rules of procedure in accordance with Penal Code § 916. At a minimum, copies of the approved final report should be made for the presiding judge, Court Executive Officer and County Director of Administrative Services.

The total number of final report copies to print will depend upon the number of investigations and respondents contained in the report. It is recommended that a copy be prepared for each distribution agency, investigated department and respondent. Recipient notification and report distribution procedures are found in Chapter 8, *Reports and Publicity*. A copy of the final report should also be retained in the Grand Jury Library files. Penal Code § 924.4 allows the grand jury or the presiding judge to provide the current jury's final report to the succeeding grand jury. Retention of indictment records differs slightly from civil proceedings, so applicable Penal Codes should be reviewed.

Copies of the final report should be prepared and made available to the news media when released. Also, to best inform the public of grand jury workload, actions and responsibilities, recommend the jury's final report be given the widest dissemination possible within budgetary constraints. This dissemination should include copies for the Modoc County Library System. Additionally, members attending grand jury seminars should take copies for exchange with other grand juries. It is recommended that copies also be mailed to adjacent counties or other selected grand juries in the state.

Because of its relatively small size, practice by past Modoc County Grand Juries has been to publish its final report as an insert in a local newspaper. This practice has pros and cons, but has sufficed for past juries. Final report copies should still be made for each distribution agency, departments and respondents, presiding judge, Court Executive Officer and County Director of Administrative Services.

Distribution Agency List:

Modoc County Board of Supervisors
204 South Court Street
Alturas, CA 96101
(233 -6201)

County of Modoc
Director of Administrative Services
114 East North Street
P.O. Box 1728
Alturas, CA 96101
(233 -6426)

City of Alturas
City Clerk
200 West North Street
Alturas, CA 96101
(233-2512)

Modoc County Office of Education
Superintendent of Schools
139 Henderson Street
Alturas, CA 96101
(233-7100)

Appendix A

This appendix contains a collection of pertinent forms, complainant letter suggestions and matrices to aid in conducting grand jury business. These documents include:

- Modoc County Travel Expense Claim Form
- Citizen Complaint Form
- Suggested Complainant Letter Wording
- Grand Jury Correspondence Flow Chart/Action Log
- Modoc County Grand Jury Committee Report Format Template
- Correctional Facility Inspection Checklist
- Modoc County Grand Jury Visit and Investigation Matrix

MODOC COUNTY TRAVEL EXPENSE CLAIM FORM

NAME: _____

ADDRESS: _____
Street or P.O. Box City State Zip

PURPOSE: _____

LOCATION:

Date	Departure Time	Arrival Time	Must Leave Before 7 a.m. Breakfast \$6.00	Lunch \$8.00	Must Arrive After 7 p.m. Dinner \$20.00
		TOTALS:			

Total of all expenses itemized above (receipts not required): _____

Personal Vehicle Mileage: _____ Miles @ 31¢ per mile: _____

Per Diem (day only; receipts not required) \$34.00 maximum: _____

Per Diem Overnight—Actual cost only—motel receipt required: _____

Miscellaneous: Please specify below. Actual Costs – receipts required: _____

TOTAL EXPENSES FOR THIS CLAIM: _____

Modoc County Grand Jury

205 S. East Street, Alturas, CA 96101

Citizen Complaint Form

Your Name:	_____	Date:	_____
	Print or Type		
Mailing Address:	_____	_____	_____
	Street or PO Box	City	State Zip
Telephone:	_____	_____	
	Home	Work	

1. Entity and Individuals – *Identify entity (agency, organization or department) and individuals about whom or which you are making this complaint.*

Agency, organization or department: _____

Business address: _____ Telephone: _____

Agency Director, Manager or Department Head: _____

Staff Persons Involved: _____

2. Summary of Issues – *Briefly state each separate issue for investigation, including specific dates, events, individuals involved (staff, officials, etc.). Attach additional sheets if necessary.*

Is this complaint already in litigation? (<i>Circle one</i>)	Yes	No
--	-----	----

3. Your Contacts to Date – *List the agencies and individuals contacted, showing related entity and date of conflict. Also, include address and telephone for each if possible.*

4. Potential Grand Jury Contacts – *Who do you think the grand jury should contact or interview about this complaint and why?*

5. Your Expectations – *What result(s) do you expect from a grand jury investigation?*

6. Attachments – *List and attach any correspondence and supporting documentation that you believe are pertinent to this complaint.*

Among the many responsibilities and authorities of the grand jury is the investigation of citizen complaints. The grand jury serves as a “watchdog for citizens” to ensure that all branches of local government (i.e., County of Modoc, City of Alturas, their departments, officials and staff, as well as agencies or organizations with jurisdiction within Modoc County) are being administered efficiently, honestly and in the best interests of the public. **All complaints submitted to the grand jury are handled in strictest of confidence as provided by state law.**

Signature and Date – *Please sign and date your complaint below.*

Signature

Print Name

Date

Sample Response Letters to Complainants

Suggested wordings for response letters to complainants:

The 20XX-20XX Modoc County Grand Jury has studied the allegations contained in your complaint dated _____. (or) The 20_____ Modoc County Grand Jury has considered the matter of your complaint dated _____.

- **Lack of Jurisdiction**

It is the opinion/judgment of the 20XX-20XX Modoc County Grand Jury that the topic of your complaint is not properly within the authority conferred upon it by the California Penal Code; hence, we are taking no further action in this matter.

- Or -

The 20XX-20XX Modoc County Grand Jury has no jurisdiction over matters before the courts. Where there have been irregularities in court proceedings or erroneous actions, the person who has been aggrieved is limited to remedial procedures within the court system.

- **Possible Unfounded Complaint**

The 20XX-20XX Modoc County Grand Jury has made preliminary inquiries into the circumstances relating to your complaint and considers that no action by the grand jury is warranted at this time.

- **Possible Unfounded Complaint or Insufficient Time**

The 20XX-20XX Modoc County Grand Jury will bear in mind your statements/complaint in its consideration of related matters. (or) It will bear in mind your statement in future contacts with the _____ Department. (or) Although the 20XX-20XX Modoc County Grand Jury cannot assist you in your personal complaint, be assured that the information you have provided will be given due consideration in connection with general inquiries in the related area of government.

- **Insufficient Time**

It is with regret that the limited time available to the 20XX-20XX Modoc County Grand Jury and the duty placed upon it under California law require the establishment of priorities. In view of other remedies available to you, (name), the grand jury is taking no further action on your complaint at this time. It will, however, bear in mind your statements in its consideration of related matters.

- **Insufficient Evidence**

Your complaint alleging certain charges contains insufficient evidence to warrant study by the 20XX-20XX Modoc County Grand Jury. Unless you can support these allegations by more specific information including dates, names and acts or occurrences, the grand jury will consider this matter closed.

SUGGESTED MODOC COUNTY GRAND JURY COMMITTEE
REPORT TEMPLATE

COMMITTEE: _____

DATE OF VISIT/MEETING: _____

COMMITTEE MEMBERS PRESENT: _____

REGARDING AGENCY/DEPARTMENT: _____

LOCATION: _____

PERSONS INTERVIEWED (name & title): _____

PURPOSE OF VISIT/MEETING:

BACKGROUND (attach pertinent materials):

TESTIMONY TAKEN:

FINDINGS:

RECOMMENDATIONS:

SUBMITTED BY: _____ DATE: _____

Modoc County Grand Jury Visit and Investigation Matrix

The Modoc County Grand Jury is responsible for reviewing the operations of or investigating each local government agency or department within its jurisdiction at least once every five years. Care should be exercised to both ensure this responsibility is met and that any agency or department is not *over-investigated*. However, depending on responses received to the previous grand jury's final report recommendations, follow-on visits may be required. The jury may use the following cyclic listing of agencies and departments as a guideline in scheduling visits and investigations. This matrix should be updated and adjusted as required by each new grand jury, and adjusted as necessary.

The Cycle – Year relationship is:

- 1—2007/2008, 2012/2013
- 2—2008/2009, 2013/2014
- 3—2010/2011, 2014/2015
- 4—2011/2012, 2015/2016
- 5—2012/2013, 2016/2017

Year in 5 Year Cycle:	1	2	3	4	5
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Any Citizen Complaint Received	X	X	X	X	X
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City and County Government Committee/Audit and Finance Committee

Modoc County Board of Supervisors					
Modoc County Auditor					
Modoc County Recorder					
Modoc County Clerk					
Modoc County Administrative Services and Risk Management					
Modoc County Assessor					
County Counsel					
City of Alturas	X				

Planning and Environment Committee

Modoc County Agriculture Department					
Noxious Weed Program					
Air Pollution					
Predatory Animal Control					
Weights and Measures					
Hazardous Material Response					
Watermaster Program					
Modoc County Planning Department					
General Plan					
Subdivision Ordinance					
Williamson Act					
Newell Water System					
Geothermal Project					
Rail Line Right of Way Acquisition					
Fee Structure					
State Mines and Reclamation Act					

Zoning Ordinance					
Biomass Project					
Boundary Line Adjustments					

Modoc County Environmental Health Department					
Hazard Waste Emergency Services					
Underground Tanks					
Medical Waste					
Well Inspection					
Environmental Review					
On Site Waste Treatment System					
Food Inspection					
Swimming Pools					
Landfill					
Rabies/Vectors					
Modoc County Department of Public Works					
City of Alturas Public Works					
City of Alturas Planning Department					

Criminal Justice and Public Safety Committee

City of Alturas Fire Department					
Devil's Garden Conservation Camp	X	X	X	X	X
City of Alturas Police					
Jail Inspection	X	X	X	X	X
Modoc County Sheriff-Coroner					
Jail Inspection	X	X	X	X	X
Modoc County Emergency Services					
Modoc County Probation Department					

Education Committee

Modoc County Office of Education					
Modoc County Community					
Modoc County Special Education					
Modoc Joint Unified School District					
Alturas Community Day School					
Alturas Elementary School					
Arlington Elementary School					
High Desert Community Day School					
Modoc Charter School	X				
Modoc Community Adult School					
Modoc High School					
Modoc Middle School					
South Fork Elementary School					
Stateline Elementary School					
Warner High Continuation School					
Tulelake Basin Joint Unified School District					
Newell Elementary School					
Tulelake Adult School					
Tulelake Basin Elementary School					

Tulelake Continuation High School					
Tulelake High School					
Surprise Valley Joint Unified School District					
Great Basin Continuation High School					
Surprise Valley Community Day School					
Surprise Valley Elementary School					
Surprise Valley High School					
Modoc County Library					

Healthcare Committee

Modoc County Mental Health					
Modoc County Public Health Department					
Modoc Medical Center	X				

Social Services Committee

Modoc County Social Services					
Family Support					
Senior Citizens Center					
Public Guardian					
Veterans Services Office					

Special Districts Committee

Water Districts					
Cemetery Districts					
Fire Districts	X				
Hospital/Healthcare Districts					

Appendix B

SUMMARIES OF RELEVANT CASES and PERTINENT LAW REFERENCES

GILLETT-HARRIS-DURANCEAU & ASSOCIATES, vs. ROBERT C . KEMPLE et al., 83 Cal. App. 3d, 214 (1978)

SUMMARY

"An engineering, land surveying, and architectural services firm brought an action for defamation against individual members of a grand jury. In its report on its investigations of local government affairs (P.C.'s §925-§931), the jury had charged that the firm had been negligent, incompetent, and wrong in the performance of its duties. The firm alleged that the statement in the report was untrue. No indictment was returned against the firm, any of its employees, or against any elected or appointed officials mentioned in the report. The trial court ruled that though P.C. §930 attempted to remove civil immunity from grand jury functions, the statute was unconstitutional because the grand jury was a judicial body entitled to be protected in its functions in the same way as courts and the statute constituted an impermissible invasion of the jury's judicial prerogatives. "The Court of Appeal reversed, holding that, while the grand jury's criminal indictment function was clearly judicial in nature and provided for in the state Constitution, its function in investigating and reporting on local government was a task imposed solely by statute. The court noted that the procedural safeguards available to a defendant in a criminal proceeding were not available to individuals mentioned in the jury's reports on civil matters and held that, under those circumstances, the removal of civil immunity of jury members was justified and not in conflict with the state Constitution."

McCLATCHY NEWSPAPERS vs. SUPERIOR COURT 44 Cal. 3d, 1162 (1988)

SUMMARY

"After reviewing a grand jury's proposed report of alleged irregularities in a county's award of a computer service contract, the superior court found a portion of the report declaring the grand jury's intention to disclose raw evidentiary materials gathered during a secret watchdog investigation, including transcripts of testimony, summaries and analyses of testimony, and documentary exhibits, to be in violation of P.C.'s §939.1 (public sessions of grand jury) and §939.9 (grand jury's actions to be based on direct investigation). The superior court ordered that portion stricken from the report and those named items sealed and marked confidential until further order of the court. On three consolidated petitions, the Court of Appeal, Fifth District, ordered the issuance of a writ of mandate directing the superior court to release the materials it had sealed.

"On petitions for hearing filed by an unnamed county employee and an executive of the computer firm, the Supreme Court denied the petitions for writ of mandate or prohibition and discharged all alternative writs. It held that the proposed grand jury report exceeded established legal limits, since such disclosure would be fundamentally inconsistent with governing legislation setting up the parameters of proper grand jury reporting and providing for the secrecy of grand jury proceedings which is essential to the effective functioning of the grand jury system. Accordingly, the court held that the superior court

acted properly in striking that portion of the proposed report announcing the intended disclosure and in sealing the evidentiary materials involved."

As regards the secrecy of grand jury proceedings, headnote (6), page 1164 of the case states:

"The encouragement of candid testimony and the protection of witnesses and their reputations through the secrecy of grand jury proceedings are best achieved when secrecy is maintained even after the conclusion of a grand jury investigation." Further, on page 1175 is this statement: 'The grand jury as a public institution serving the community might suffer if those testifying today knew that the secrecy of their testimony would be lifted tomorrow.'"

UNNAMED MINORITY MEMBERS ETC. GRAND JURY, vs. SUPERIOR COURT 208 Cal. App. 3d, 1344 (1989)

SUMMARY

"The Court of Appeal denied a petition for writ of mandate sought by a minority of members of a county grand jury (Kern County), to compel the superior court to order the filing and publication of their separate minority report as part of the grand jury's final report. It held that, since the minority report was never submitted to the full membership of the grand jury for approval, it was not an authorized report of the grand jury. Accordingly, it held, the superior court properly refused to accept the report for filing and publication."

RALPH M. BROWN ACT

During their investigations and review of governmental agencies and bodies, grand jurors should be alert to possible violations of this act. Following are pertinent highlights of the Ralph M. Brown Act:

Purpose and Scope

The purpose of the act can be briefly stated. It has been enacted to ensure that all deliberations as well as the actions of local agencies are performed at meetings open to the public and to which the public has been given adequate notice. It is designed to prevent government from being conducted in secret.

Notice of Meetings

Depending upon the type of meeting, notices of a meeting must be posted anywhere from 72 hours in advance to immediately prior in the case of a continued meeting. There are some exceptions, such as emergencies involving disaster and work stoppages, for example.

Definition of Meetings

Almost any gathering where business affairs are conducted constitutes a meeting. This would also include a series of telephone calls. In any event, if a quorum does not exist,

there can be no violation. Closed meetings may be held to discuss lawsuits, personnel matters, labor relations, and real estate purchases.

Penalties and Legal Recourse

Violations of the act can result in a misdemeanor charge. Recent legislation also provides for any decisions which are made in violation of the act to be set aside. Attorney's fees-incurred by the complainant may be reimbursed by an order of the court.

A copy of the Attorney General's Handbook on Open Meeting Laws is available through the Court Executive Officer.

CLINTON V. SUPERIOR COURT (1937) 23 CAL.APP.2ND 342 (73 P.2D 252)

A member of a grand jury has statutory authority to request fellow jurors to investigate matters that he or she believes involves a public offense. However, jurors must always bear in mind that only the grand jury as a body has the authority to investigate and report on matters within their jurisdiction. When taken in context with Penal Code § 916, the Clinton case clearly illustrates that requirement.

A case decided by a California appellate court in late 1937 stemmed from efforts by one member of a Los Angeles County Grand Jury to persuade fellow jurors to investigate extensive vice and corruption within county government. The grand jury initially agreed to undertake the investigation based on the juror's allegations. When the juror, Clifford Clinton, refused to reveal names of potential witnesses until they appeared before the panel during investigation, the panel reversed itself and declined to investigate.

In an attempt to force fellow jurors to investigate the matter, Clinton and his lawyer tried to obtain a court order to compel the jury to investigate. The superior court refused to grant the order, and Clinton's lawyer appealed the matter to an appellate court. The appellate court denied the appeal. It also emphasized that Clinton misunderstood the nature and purpose of the grand jury and the relationship of individual grand jurors to the panel.

The main principal of this decision was that only the whole grand jury, and not individual members, may exercise grand jury powers.

Although his allegations were later proven to be correct, Clinton chose the wrong method to get them investigated by the jury of which he was a member. His method attempted to undermine an overriding basis for how a grand jury functions. Only the entire grand jury, not a committee or a single grand juror, may investigate matters, reach conclusions and issue reports.

CALIFORNIA PUBLIC RECORDS ACT SUMMARY (Government Code § 6250 - 6276.48)

The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the agency and every person has a right to inspect any public record, except as provided, and to receive an exact copy" of an identifiable record unless impracticable. (§ 6253). Specific exceptions to disclosure are listed in sections 6253.2,

6253.5, 6253.6, 6254, 6254.1-6254.22, 6255, 6267, 6268 and 6276.02-6276.48. To ensure maximum access, the exceptions are read narrowly. The agency always bears the burden of justifying nondisclosure, and "any reasonably segregable portion shall be available for inspection after deletion of the portions which are exempt." (§ 6253[a])

Who's Covered:

All state and local agencies, including: (1) any officer, bureau, or department.; (2) any "board, commission or agency" created by the agency (including advisory boards); and (3) nonprofit entities that are legislative bodies of a local agency. (§ 6252[a],[b]). Many state and regional agencies are required to have written public record policies. A list appears in § 6253.4.

Who's Not Covered:

Courts. (except itemized statements of total expenditures and disbursement). (§ 6252[a], 6261).

The Legislature. (§ 6252) See Legislative Open Records Act, Government Code § 9070-9080.

Private non-profit corporations and entities.

Federal agencies. See Federal Freedom Of Information Act, 5 U.S.C. § 552.

Employees' private papers, unless they *relate to the conduct of the public's business and are prepared, owned, used, or retained by the agency.* (§ 6252[e]).

Computer software *developed by a state or local agency includ[ing] computer mapping systems, computer programs, and computer graphic systems.* (§ 6254.9[a],[b]).

Records not yet in existence: The PRA covers only records that already exist, and an agency cannot be required to create a record, list, or compilation. *Rolling requests* for future-generated records are not permitted.

Records Exempt From Disclosure

The Act exempts certain records from disclosure in whole or in part. This does not mean they are not public records or that disclosure is prohibited. An agency may withhold the records, but can allow greater access if it wishes. (§ 6253[e]). However, "selective" or "favored" access is prohibited; once it is disclosed to one requester, the record is public for all. (§ 6254.5) Many categories of records are exempt, some by the Act itself, (§ 6254[a]-[z]) and some by other laws (§ 6275-6276.48). These include:

Attorney-Client discussions are confidential, even if the agency is the client, but the agency (not the lawyer) may waive secrecy. (§ 6254[k], 6254.25, 6276.04)

Appointment calendars and applications, phone records, and other records which impair the deliberative process by revealing the thought process of government decisionmakers may be withheld only if *the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the records.* (§ 6255; *Times Mirror v. Superior Ct.*, 53 Cal.3d 1325 [1991]; *CFAC v. Superior Ct.*, 67 Cal. App.4th 159

[1998]; *Rogers v. Superior Ct.*, 19 Cal. App. 4th 469 [1993]). If the interest in secrecy does not clearly outweigh the interest in disclosure, the records must be disclosed, *whatever the incidental impact on the deliberative process.* (*Times Mirror v. Superior Ct.*) The agency must explain, not merely state, why the public interest does not favor disclosure.

Preliminary drafts, notes and memos may be withheld only if: (1) they are "not retained...in the ordinary course of business" and (2) "the public interest in withholding clearly outweighs the public interest in disclosure." Drafts are not exempted if: (1) staff normally keep copies; or (2) the report or document is final even if a decision is not. (§ 6254(a)) Where a draft contains both facts and recommendations, only the latter may be withheld. The facts must be disclosed. (*CBE v. CDF.A.*, 171 Cal.App.3d 704 (1985))

Home Addresses in DMV, voter registration, gun license, public housing, local agency utility and public employee records are exempt, as are addresses of certain crime victims. (§ 6254(f),(u), 6254.1, 6254.3, 6254.4, 6254.16, 6254.21) Records concerning agency litigation are exempt, but only until the claim is resolved or settled. The complaint, claim, or records filed in court, records that pre-date the suit (e.g., reports about projects that eventually end in litigation), and settlement records are public. (§§ 6254(b), 6254.25; *Register Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893 (1984))

Personnel, medical and similar files are exempt only if disclosure would reveal intimate, private details. (§ 6254(c)) Employment contracts are not exempt. (§ 6254.8)

Police Incident reports, rap sheets and arrest records are exempt (Penal Code § 11075, 11105, 11105.1), but information in the *police blotter* (time and circumstances of calls to police; name and details of arrests, warrants, charges, hearing dates, etc.) must be disclosed unless disclosure would endanger an investigation or the life of an investigator. Investigative files may be withheld, even after an investigation is over. (Gov. Code § 6254(f); *Williams v. Superior Ct.*, 5 Cal. 4th 337 (1993); *County of L.A. v. Superior Ct.*, 18 Cal. App. 4th 588 (1994). Identifying data in police personnel files and misconduct complaints are exempt, but disclosure may be obtained using special procedures under Evidence Code section 1043.

Financial data submitted for licenses, certificates, or permits, or given in confidence to agencies that oversee insurance, securities, or banking firms; tax, welfare, and family/adoption/birth records are all exempt. (§ 6254[d],[k],[l], 6276)

Appendix C

CRIMINAL GRAND JURY INDICTMENTS

Indictment Proceedings

Historically, members of a grand jury have experienced doubts as to the nature of their exact responsibilities and duties in criminal proceedings. It is not the function of the grand jury to determine the issue of guilt or innocence. The grand jury's duty in indictment proceedings is to determine if there is sufficient evidence to bring the case to a jury trial. After an indictment is returned, a trial jury decides upon the acquittal or conviction of the indicted person.

The district attorney or a deputy will bring the majority of cases before the grand jury, but the state's attorney general or a special prosecutor may, on occasion, present a case.

If the investigation involves the district attorney or staff, none may be present unless called as a witness. During such a proceeding, the attorney general is empowered to employ special counsel and special investigators to investigate and present the evidence.

Reasons cited by the district attorney for using the indictment proceeding rather than a preliminary hearing are:

(1) It allows the prosecution to toll the statute of limitations in the case of an absent defendant. The statute of limitations is automatically tolled when it can be proven that the defendant has fled the local jurisdiction for purposes of avoiding prosecution.

(2) It saves time in narcotics cases when a single agent has made many purchases; in complex fraud cases; in cases involving multiple defendants; in murder and kidnap cases, because the grand jury hearing is not open to the defense counsel for cross-examination.

(3) It permits the continuation of a complex indictment hearing over a long period of time.

(4) The district attorney can use grand jury subpoenas, although no formal court proceedings have been started.

(5) The secrecy and non-adversary nature of the grand jury hearing protects witnesses from damaging cross-examination, which would occur during a preliminary hearing, e.g., children rape victims (however, witnesses will be subject to cross-examination during any resulting jury trial); protects an informant or undercover agent's identity; protects witnesses from harm and intimidation (however, this protection is granted only until delivery of the indictment transcript to the defendant, which includes a list of witnesses and their testimony); and protects an innocent defendant when no indictment is returned or accusation presented.

The district attorney should notify the grand jury Foreperson if bringing an indictment hearing with as much advance notice as is possible, and should give a realistic estimate of the time it will require.

The district attorney has made it a practice to explain to the grand jury a reason for proceeding through the grand jury rather than issuing a complaint and conducting a preliminary hearing. This information has been valuable for the jurors.

The district attorney should also explain to the grand jury the elements of the crime charged, all principles of the law that they must know in order to discharge their duties, and whether or not there is material evidence that tends to prove innocence.

Indictment Proceedings vis-à-vis Preliminary Hearings

The grand jury indictment proceeding is an alternative to a preliminary hearing before a judge. In this state, a felony prosecution may be initiated by an accusatory pleading referred to as an *information* filed by the district attorney, or by an indictment found by the grand jury. The district attorney conducts the prosecution of the vast majority of felonies by the filing of an *information*. Both proceedings are designed to prevent the accused from incurring charges unsupported by the evidence, and to protect against groundless felony trials. Although a defendant in an indictment hearing enjoys substantial constitutional rights, he does not have the rights inherent in a preliminary hearing, such as an informed and detached magistrate who is knowledgeable of the rules of evidence, and the right to review testimony, and confront and cross-examine witnesses.

Grand Jury Procedure in Criminal Indictments

At a meeting of the grand jury to consider a criminal indictment, the secretary of the grand jury should initially take a roll of the jury members and keep it in permanent records to ensure that a quorum of at least twelve of the same grand jurors is present at all proceedings. Should additional meetings be required, the same twelve must be present.

In order to ensure that only authorized persons are present during the meeting, the sergeant-at-arms should be situated by the entrance of the meeting room. Should it be desirable or necessary, the grand jury is entitled to have a deputy sheriff stationed outside the jury room to ensure order.

The secretary should:

- (1) Call the Foreperson's attention to the presence of anyone other than grand jurors during deliberation and voting.
- (2) Tell the Foreperson if there are fewer than 12 grand jurors present at any time during any hearing or investigation.
- (3) Make sure that witnesses are sworn, advised of their rights and admonished not to repeat or discuss any grand jury proceedings after leaving the grand jury room.

(4) Make sure that the court reporter is present during all phases of indictment proceedings, except the grand jury's deliberation and voting.

(5) Make sure that each count of an indictment is considered separately and that each juror is polled individually for discussion during an indictment deliberation.

The Foreperson of the grand jury will first swear in the court reporter. (See Appendix C, Oaths And Admonitions)

The Foreperson then addresses the jury as to the provisions of P.C. § 939.5. (See Appendix C, Oaths And Admonitions)

The district attorney will then present witnesses and the Foreperson will ask each witness before testifying, to raise the right hand and be sworn. (See Appendix C, Oaths And Admonitions)

If an interpreter is necessary, the Foreperson will swear in the interpreter. (See Appendix C, Oaths And Admonitions)

If investigation of the matter before the grand jury may result in a criminal indictment against a witness, the district attorney should so advise the Foreperson, and the Foreperson should then admonish the witness as to the privilege against self-incrimination. (See Appendix C, Oaths And Admonitions)

If investigation of the matter before the grand jury involves testimony of a witness, appearing voluntarily, and who is accused or charged with a felony, the district attorney should so advise the Foreperson. The Foreperson should then admonish the witness that any statement made may be used for or against them at a jury trial. (See Appendix C, Oaths And Admonitions)

If any witness is called before the grand jury more than once in connection with the same matter, the Foreperson need not administer a new oath, but need only advise that the witness is still under oath. This rule will not apply in connection with any other matters for which the same witness may be called before the grand jury, even though both matters may be heard at the same session of the grand jury. Every witness should be sworn in connection with each separate matter for which the witness is called to testify. (See Appendix C, Oaths And Admonitions)

When presenting physical evidence in the grand jury room such as narcotics or other controlled substances, the district attorney should have the evidence marked by the Foreperson and when legally admitted into evidence, the District Attorney should request that the foreperson admit such evidence.

In cases involving drugs where a chemist opens the envelopes containing the drugs, the district attorney should recite the fact that the chemist is unsealing each of the containers and when testimony is concluded, the district attorney should reseal the envelopes and recite this fact for the record. The envelopes should then be delivered to the Foreperson and physically attached, if possible, to the proposed indictment.

A motion to reconsider a vote (other than a vote on whether an indictment should be returned) can be made only by a person who voted with the prevailing side. A motion to reconsider can only be made at the first subsequent meeting, notice having been given at the previous one.

In a vote on whether or not to return an indictment, only a member of the majority, either for or against returning an indictment, may make a motion to reconsider.

Appendix D

GOVERNMENT CODE SECTIONS 54950 (et seq.)

OATHS AND ADMONITIONS

OATHS

The Oath to Grand Jurors is administered by the Court to all grand jurors on the occasion of their impanelment. All others are administered by the Foreperson.

(At the request of the person being sworn, an oath may be modified to change the word "swear" to "affirm," and omitting the phrase, "so help me, God.")

Oath to Grand Jurors

"I do solemnly swear (affirm) that I will support the Constitutions of the United States and of the State of California, and all laws made pursuant to and in conformity therewith; will diligently inquire into, and true presentment make, of all public offenses against the People of this State, committed or triable within this County, of which the Grand Jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the Grand Jury, nor anything which I or any other Grand Juror may say, nor the manner in which I or any other Grand Juror may have voted on any matter before the Grand Jury. I will keep the charge that will be given to me by the Court."

Oath to the Court Reporter

When matters involve the question of criminal indictment, or an investigation is of a nature serious enough to require that the testimony be recorded, the Court Reporter should be required to take the following oath:

"Do you solemnly swear that you will faithfully perform the duties of stenographic reporter for this Grand Jury, and that you will well and truly report the proceedings had before this Grand Jury, and when called upon to do so, will furnish a full, true and correct transcript of your notes within the time prescribed by law, and that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, or the testimony given by them, until you have been ordered to do so by this Grand Jury?"

Oath to Report's Transcriber

"Do you solemnly swear that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, nor the testimony given by them?"

Oath to Bailiff

"Do you solemnly swear that you will support the Constitution of the United States and the Constitution of the State of California, and that you will faithfully perform the duties of Bailiff for this Grand Jury, and that you will not divulge any of the matters concerning which the Grand Jury is conducting an investigation, the names of any witnesses, or the testimony given by the same, until you have been ordered to do so by this Grand Jury?"

Oath to Officer Charged With Custody of Prisoner Witness While Prisoner is Testifying

"Do you solemnly swear that you will perform the duties required of you for this Grand Jury, and that you will not reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your attendance here unless and until such time as the transcript of this grand jury proceeding is made public?"

Oath of Witness

"Do you solemnly swear that the testimony that you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth?"

Before testifying, an Accused or Charged witness must be given Admonition "b".

Before testifying, a witness Whose Testimony May Result in Criminal Indictment must be given Admonition "c".

Oath of Interpreter

"Do you solemnly swear that you will well and truly interpret (foreign language) into English and English into (foreign language), in the cause now pending before this Grand Jury with your best skill and judgment?"

Oath of Child Witness

"Do you promise that you will tell the truth and nothing but the truth?"

Reminder of Oath (When Person Has Been Previously Sworn in the Same Case in an Extended Proceeding, After a Recess, Or the Witness Retakes the Stand)

"You are reminded that you are still under oath in this matter."

ADMONITIONS

(a) Admonition of Grand Jurors Before Consideration of a Charge

Before considering a charge against any person, the Foreperson shall state to those present:

"I am required by Section 939.5 of the Penal Code to make the following statement, and to inform you that any violation of this section is punishable by the Court as a contempt:

"The Grand Jury is about to consider the matter of a charge of _____ made by _____. I direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party, to retire."

The Foreperson then asks if there is anyone present with such a state of mind. A juror should disclose any prejudice that might prevent him from being fair and impartial to either the accused or the People of the State of California. If no juror has such a state of mind, the Foreperson should recite this fact into the record. If a juror states he does have such a state of mind, the Foreperson should ask such a juror to retire and should then recite into the record how many jurors have retired.

(b) Admonition to Witness (accused or charged) Before He Testifies

"You have a right, at your own request, but not otherwise, to be sworn and make any statement on your own behalf that you may desire. You are informed, however, that if you are sworn and make any statement, such statement, together with any questions that may be asked of you by the District Attorney, will be taken down in shorthand and become a matter of record, and in the event an indictment is filed against you on this charge, that record may be used either for or against you at the time of your trial. You are not obliged, however, to make any statement whatever, unless you desire to do so. Any statement that you make must be completely voluntary on your part, and with this admonition in mind."

(c) Admonition to Witness Before He Testifies (Whose Testimony May Result in a Criminal Indictment)

"You are advised that you have a privilege against self-incrimination; that is to say, you do not have to answer any questions which may tend to incriminate you or subject you to punishment for any crime, and you can refuse to answer any such questions, stating that the answer may tend to incriminate you.

"You also are advised that anything you say can and will be used against you in a court of law; that you have the right to talk to a lawyer; and that, if you cannot afford a lawyer, one will be appointed to represent you before any questioning, if you wish one.

"Do you understand each of these rights? Having these rights in mind, are you willing to testify at this time?"

(d) Admonition to All Witnesses Except (b) or (c) Before Being Excused

"You are admonished not to reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury unless and until such time as the transcript of this grand jury proceeding is made public. Violation of this admonition is punishable as contempt of court."

(e) Admonition Given Before Excusing Witnesses "b" and "c" Under These Admonitions

"You are admonished not to reveal to any person, except as directed by the court, what questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury's investigation which you learned during your appearance before the grand jury unless and until such time as the transcript of this grand jury proceeding is made public. Violation of this admonition is punishable as

contempt of court. This admonition, of course, does not preclude you from discussing your legal rights with any legally-employed attorney, should you feel that your own personal rights are in any way in jeopardy."

(f) Admonition to Child Witness

"You should not discuss anything about this matter with anyone unless your" (mother), (father), or (supply name of guardian), "tells you it is all right."

(g) Admonition to Other Persons Authorized to be in Grand Jury Room During Hearing

"You are directed not to discuss or disclose at any time, anything you may have seen or heard during this hearing. Do you understand?"

Appendix E

A QUICK-REFERENCE LISTING OF BASIC STATUTES GOVERNING THE INVESTIGATIVE FUNCTIONS AND RESPONSIBILITIES OF CALIFORNIA GRAND JURIES

Penal Code

892	May	proceed against	a corporation.
914.1	Shall	ascertain	by a careful and diligent investigation whether such provisions have been complied with, and to note the result of such investigation in its report. At such time the judge shall also inform and charge the grand jury especially as to its powers, duties, and responsibilities under Article 1 (commencing with Section 888) of Chapter 2, and Article 2 (commencing with Section 925), Article 3 (commencing with Section 934) of this chapter, Article 3 (commencing with Section 3060) of Chapter 7 of Division 4 of Title 1 of the Government Code, and Section 17006 of the Welfare and Institutions Code.
917	May	inquire into	all public offenses committed or triable within the county and present them to the court by indictment.
918	May	declare	to fellow jurors knowledge or reason to believe, that a public offense, triable within the county, has been committed.
919(a)	May	inquire into	the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.
919(b)	Shall	inquire into	the condition and management of the public prisons within the county.
919(c)	Shall	inquire into	the willful or corrupt misconduct in office of public officers of every description within the county. (See also P.C. §922 and Government Code §3060.)
920	May	investigate and inquire into	all sales and transfers of land, and into the ownership of land, which, under the state laws might or should escheat to the State of California.
	Shall	Direct	that proper escheat proceedings be commenced

			when, in the opinion of the grand jury, the evidence justifies such proceedings.
921	Is	entitled	to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.
925	Shall	investigate and report	on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926.
925(a)	May	examine	the books and records of any incorporated city or joint powers agency located in the county.
	May	investigate and report	upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.
	May	investigate and report	upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected agency.
926(a)	May	employ	one or more experts for the purposes of sections 925, 925(a), 928, 933.1, and 933.5, or any of them.

926(b)	May	employ (with the consent of the Board of Supervisors)	expert auditors or appraisers to assist in the examination of the books, records, accounts, and documents maintained and processed by the county assessor.
926(c)	May not	contract	for services pursuant to section 926(a) to be performed later than six months after the end of the fiscal year during which the grand jury was impaneled.
926(d)	Such contract shall	stipulate	that the product of that contract for expert service shall be delivered on or before a time certain to the then-current grand jury of that county for such use as that jury finds appropriate to its adopted objectives.
927	May, and when requested by the board of supervisors, shall	investigate and report	upon the needs for increase or decrease in salaries of the county-elected officials. A copy of such report shall be transmitted to the board of supervisors.
928	May	investigate and report	upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices.
932	May	order	the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county after investigating the books and accounts of the various officials of the county, as provided in the foregoing sections of this article.
933(a)	Shall	submit	to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year.
933(b)	Shall	submit	one copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk.

933.1	May	examine	at any time the books and records of a redevelopment agency, a housing authority, or a joint powers agency.
	May	Investigate and report	upon the method or system of performing the duties of such agency or authority.
933.5	May	examine	at any time the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the Local Agency Formation Commission (LAFCO) in the county.
	May	investigate and report	upon the method or system of performing the duties of such district or commission.
933.6	May	examine	at any time the books and records of any nonprofit corporation established by or operated on behalf of a public entity the books and records of which it is authorized by law to examine
	May	investigate and report	upon the method or system of performing the duties of such nonprofit corporation.
939.1	May	request	the court to determine whether to conduct a grand jury investigation in public session if the matter affects the general public welfare.
939.2	May	request	issuance of subpoena(s) by the superior court requiring attendance of witnesses whose testimony is material to an investigation.
939.3	May	compel	proceedings under Section 1324 before a grand jury for any felony offense when a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby.
939.6	Shall	receive	only such evidence as would be given by witnesses produced and sworn or furnished by writings, material objects, or other things presented to the senses, or contained in a deposition that is admissible under subdivision 3 of Section 686; or only evidence admissible over objection in trial of a criminal action, unless such evidence is sufficient to support the indictment.

939.7	Shall	weigh	all the evidence submitted to it and when the grand jury believes that other available evidence will explain away the charge, it shall order the evidence to be produced.
	May	require	the district attorney to issue process for the witnesses.
939.8	Shall	find	an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would warrant a conviction by a trial jury.
939.9	Shall	make	no report, declaration, or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury.
939.91(a)	Shall	report and declare	at the request of a person charged and investigated, and upon the approval of the court which impaneled the grand jury, that a charge against such person was investigated and that the grand jury could not as a result of the evidence presented find an indictment.
939.91(b)	Shall	report and declare	that any person called before the grand jury for a purpose, other than to investigate a charge against such person, was called only as a witness to an investigation which did not involve a charge against such person.
			The report or declaration of (a) and (b) shall be issued upon completion of the investigation of the suspected criminal conduct, or series of related suspected criminal conduct, and in no event beyond the end of the grand jury's term.
940	Shall	find and return	an indictment only with the concurrence of at least 12 grand jurors, and it must be endorsed "A True Bill," and the endorsement shall be signed by the Foreperson of the grand jury.

Government Code

3060	May	present	an accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district, or any humane officer for willful or corrupt misconduct in office.
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3061 Shall state the accusation shall state the offense charged in ordinary and concise language, and without repetition.

3062 Shall be delivered the accusation shall be delivered by the Foreperson of the grand jury to the district attorney of the county, unless he is the officer accused.

Welfare and Institutions Code

17006 May inquire into welfare records pertaining to investigation, supervision, relief and rehabilitation of welfare recipients.

Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's name, physical description, and address.

Appendix F

SELECTED PROVISIONS OF THE LAW PERTAINING TO GRAND JURIES

This Procedures Manual does not contain all codes. Areas not directly pertinent to Modoc County are not included. For the codes in their entirety, see the appropriate Code Book or visit <http://www.leginfo.ca.gov/calaw.html> and select the pertinent code.

CONSTITUTION OF CALIFORNIA

ARTICLE 1, § 8: A Grand Jury shall be drawn and summoned at least once a year in each county.

Reviewed through California Legislative Law January 1, 2008

CALIFORNIA CODES CODE OF CIVIL PROCEDURE SECTION 190-219.5 Partial

190. Trial Jury Selection and Management.

This chapter shall be known and may be cited as the Trial Jury Selection and Management Act.

191. Jury Obligation of Citizenship.

The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship.

It is the policy of the State of California that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner, in accordance with this chapter.

192. Formation of Juries.

This chapter applies to the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial courts of the state.

193. Three kinds of Juries.

Juries are of three kinds:

- (a) Grand juries established pursuant to Title 4 (commencing with Section 888) of Part 2 of the Penal Code.
- (b) Trial juries.
- (c) Juries of inquest.

194. Definitions.

The following definitions govern the construction of this chapter:

- (a) "County" means any county or any coterminous city and county.

- (b) "Court" means a superior court of this state, and includes, when the context requires, any judge of the court.
- (c) "Deferred jurors" are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.
- (d) "Excused jurors" are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.
- (e) "Juror pool" means the group of prospective qualified jurors appearing for assignment to trial jury panels.
- (f) "Jury of inquest" is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.
- (g) "Master list" means a list of names randomly selected from the source lists.
- (h) "Potential juror" means any person whose name appears on a source list.
- (i) "Prospective juror" means a juror whose name appears on the master list.
- (j) "Qualified juror" means a person who meets the statutory qualifications for jury service.
- (k) "Qualified juror list" means a list of qualified jurors.
- (l) "Random" means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.
- (m) "Source list" means a list used as a source of potential jurors.
- (n) "Summons list" means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.
- (o) "Trial jurors" are those jurors sworn to try and determine by verdict a question of fact.
- (p) "Trial jury" means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.
- (q) "Trial jury panel" means a group of prospective jurors assigned to a courtroom for the purpose of voir dire.

[195-203. Trial Juries.]

204. Trial Juror Service.

- (a) No eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, economic status, or sexual orientation, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b).
- (b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council.

[205-217. Jury Commissioner Duties and Summons.]

218. Excuse From Service by Jury Commissioner.

The jury commissioner shall hear the excuses of jurors summoned, in accordance with the standards prescribed by the Judicial Council. It shall be left to the discretion of the jury commissioner to accept an excuse under subdivision (b) of Section 204 without a

personal appearance. All excuses shall be in writing setting forth the basis of the request and shall be signed by the juror.

219. Random Selection of Jurors.

- (a) Except as provided in subdivision (b), the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire.
- (b) (1) Notwithstanding subdivision (a), no peace officer, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivision (a) of Section 830.33, of the Penal Code, shall be selected for voir dire in civil or criminal matters.
(2) Notwithstanding subdivision (a), no peace officer, as defined in subdivisions (b) and (c) of Section 830.2 of the Penal Code, shall be selected for voir dire in criminal matters.

219.5. Procedures For Jury Service By Peace Officers.

The Judicial Council shall adopt a rule of court, on or before January 1, 2005, requiring the trial courts to establish procedures for jury service that gives peace officers, as defined by Section 830.5 of the Penal Code, scheduling accommodations when necessary.

[220-237. Trial Jurors in Civil and Criminal Cases.]

Appendix G

CALIFORNIA PENAL CODE SECTIONS

The following codes are revised by California State Legislative Enactments up to and including the first year of the 2007-2008 Regular Session and Rules of Court changes issued by the Judicial Council through October 2007

GRAND JURY PROCEEDINGS PENAL CODE SECTIONS 888-939.91

888. Grand Jury.

A grand jury is a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

Each grand jury or, if more than one has been duly impaneled pursuant to Sections 904.5 to 904.9, inclusive, one grand jury in each county, shall be charged and sworn to investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1.

888.2. "Required Number" Defined.

As used in this title as applied to a grand jury, "required number" means:

- (a) Twenty-three in a county having a population exceeding 4,000,000.
- (b) Eleven in a county having a population of 20,000 or less, upon the approval of the board of supervisors.
- (c) Nineteen in all other counties.

889. Indictment.

An indictment is an accusation in writing, presented by the grand jury to a competent court, charging a person with a public offense.

890. Fees and Mileage for Grand Jurors.

Unless a higher fee or rate of mileage is otherwise provided by statute or county or city and county ordinance, the fees for grand jurors are fifteen dollars (\$15) a day for each day's attendance as a grand juror, and the mileage reimbursement applicable to county employees for each mile actually traveled in attending court as a grand juror.

890.1. Payment and Mileage.

The per diem and mileage of grand jurors where allowed by law shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor upon the written order of the judge of the superior court of the county.

891. Attempting to Record or Observe Grand Jury Proceedings.

Every person who, by any means whatsoever, willfully and knowingly, and without knowledge and consent of the grand jury, records, or attempts to record, all or part of the

proceedings of any grand jury while it is deliberating or voting, or listens to or observes, or attempts to listen to or observe, the proceedings of any grand jury of which he is not a member while such jury is deliberating or voting is guilty of a misdemeanor.

This section is not intended to prohibit the taking of notes by a grand juror in connection with and solely for the purpose of assisting him in the performance of his duties as such juror.

892. Proceeding Against Corporation.

The grand jury may proceed against a corporation.

893. Qualifications of Grand Jurors.

A person is competent to act as a grand juror only if he possesses each of the following qualifications:

- (1) He is a citizen of the United States of the age of 18 years or older who shall have been a resident of the state and of the county or city and county for one year immediately before being selected and returned.
- (2) He is in possession of his natural faculties, of ordinary intelligence, of sound judgment, and of fair character.
- (3) He is possessed of sufficient knowledge of the English language.

A person is not competent to act as a grand juror if any of the following apply:

- (1) The person is serving as a trial juror in any court of this state.
- (2) The person has been discharged as a grand juror in any court of this state within one year.
- (3) The person has been convicted of malfeasance in office or any felony or other high crime.
- (4) The person is serving as an elected public officer.

894. Exemptions and Excuses From Service.

Sections 204, 218, and 219 of the Code of Civil Procedure specify the exemptions and the excuses which relieve a person from liability to serve as a grand juror.

895. Estimate of Number of Grand Jurors Needed.

During the month preceding the beginning of the fiscal year of the county, the superior court of each county shall make an order designating the estimated number of grand jurors that will, in the opinion of the court, be required for the transaction of the business of the court during the ensuing fiscal year as provided in Section 905.5.

896. Court to Select and List Grand Jurors.

- (a) Immediately after an order is made pursuant to Section 895, the court shall select the grand jurors required by personal interview for the purpose of ascertaining whether they possess the qualifications prescribed by subdivision (1) of Section 893. If a person so interviewed, in the opinion of the court, possesses the necessary qualifications, in order to be listed the person shall sign a statement declaring that the person will be available for jury service for the number of hours usually required of a member of the grand jury in that county.

- (b) The selections shall be made of men and women who are not exempt from serving and who are suitable and competent to serve as grand jurors pursuant to Sections 893, 898, and 899. The court shall list the persons so selected and required by the order to serve as grand jurors during the ensuing fiscal year of the county, or until a new list of grand jurors is provided, and shall at once place this list in the possession of the jury commissioner.

898. Number on List in County of First Class.

The list of grand jurors made in a county having a population in excess of four million shall contain the number of persons which has been designated by the court in its order.

899. Selection by Judicial Districts – List Separate From Trial Jurors.

The names for the grand jury list shall be selected from the different wards, judicial districts, or supervisorial districts of the respective counties in proportion to the number of inhabitants therein, as nearly as the same can be estimated by the persons making the lists. The grand jury list shall be kept separate and distinct from the trial jury list. In a county of the first class, the names for such list may be selected from the county at large.

900. Names Deposited in “Grand Jury Box.”

On receiving the list of persons selected by the court, the jury commissioner shall file it in the jury commissioner's office and have the list, which shall include the name of the judge who selected each person on the list, published one time in a newspaper of general circulation, as defined in Section 6000 of the Government Code, in the county. The jury commissioner shall then do either of the following:

- (a) Write down the names on the list onto separate pieces of paper of the same size and appearance, fold each piece so as to conceal the name, and deposit the pieces in a box to be called the "grand jury box."
- (b) Assign a number to each name on the list and place, in a box to be called the "grand jury box," markers of the same size, shape, and color, each containing a number which corresponds with a number on the list.

901. Jurors Serve for One Year – Provisions.

- (a) The persons whose names are so returned shall be known as regular jurors, and shall serve for one year and until other persons are selected and returned.
- (b) If the superior court so decides, the presiding judge may name up to 10 regular jurors not previously so named, who served on the previous grand jury and who so consent, to serve for a second year.
- (c) The court may also decide to select grand jurors pursuant to Section 908.2.

902. Names Not Drawn During Year May Be Placed on List for Succeeding Year.

The names of persons drawn for grand jurors shall be drawn from the grand jury box by withdrawing either the pieces of paper placed therein pursuant to subdivision (a) of Section 900 or the markers placed therein pursuant to subdivision (b) of Section 900. If, at the end of the fiscal year of the county, there are the names of persons in the grand jury box who have not been drawn during the fiscal year to serve and have not served as

grand jurors, the names of such persons may be placed on the list of grand jurors drawn for the succeeding fiscal year.

903.1. Commissioner to Furnish Names of Qualified Persons.

Pursuant to written rules or instructions adopted by a majority of the judges of the superior court of the county, the jury commissioner shall furnish the judges of the court annually a list of persons qualified to serve as grand jurors during the ensuing fiscal year of the county, or until a new list of jurors is required. From time to time, a majority of the judges of the superior court may adopt such rules or instructions as may be necessary for the guidance of the jury commissioner, who shall at all times be under the supervision and control of the judges of the court. Any list of jurors prepared pursuant to this article must, however, meet the requirements of Section 899.

903.2. Investigation of Qualifications of Prospective Jurors.

The jury commissioner shall diligently inquire and inform himself in respect to the qualifications of persons resident in his county who may be liable to be summoned for grand jury duty. He may require any person to answer, under oath to be administered by him, all such questions as he may address to such person, touching his name, age, residence, occupation, and qualifications as a grand juror, and also all questions as to similar matters concerning other persons of whose qualifications for grand jury duty he has knowledge.

The commissioner and his assistants, referred to in Sections 69895 and 69896 of the Government Code, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.

903.3. Return to Judges of Recommended List.

Pursuant to the rules or instructions adopted by a majority of the judges of the superior court, the jury commissioner shall return to the judges the list of persons recommended by him for grand jury duty. The judges of the superior court shall examine the jury list so returned and from such list a majority of the judges may select, to serve as grand jurors in the superior court of the county during the ensuing year or until a new list of jurors is required, such persons as, in their opinion, should be selected for grand jury duty. The persons so selected shall, in the opinion of the judges selecting them, be persons suitable and competent to serve as jurors, as required by law.

903.4. Judges Need Not Select Jurors From List.

The judges are not required to select any names from the list returned by the jury commissioner, but may, if in their judgement the due administration of justice requires, make all or any selections from among the body of persons in the county suitable and competent to serve as grand jurors regardless of the list returned by the jury commissioner.

904. Order for Grand Jury to Be Drawn.

Every superior court, whenever in its opinion the public interest so requires, shall make and file with the jury commissioner an order directing a grand jury to be drawn. The order shall designate the number of grand jurors to be drawn, which may not be less than 29 nor more than 40 in counties having a population exceeding four million and not less than 25 nor more than 30 in other counties.

904.4. Additional Grand Jury Impanelment in Counties of Specified Populations.

- (a) In any county having a population of more than 370,000 but less than 400,000 as established by Section 28020 of the Government Code, the presiding judge of the superior court, upon application by the district attorney, may order and direct the drawing and impanelment at any time of one additional grand jury.
- (b) The presiding judge may select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors. When a sufficient number of competent persons have been selected, they shall constitute the additional grand jury.
- (c) Any additional grand jury which is impaneled pursuant to this section may serve for a period of one year from the date of impanelment, but may be discharged at any time within the one-year period by order of the presiding judge. In no event shall more than one additional grand jury be impaneled pursuant to this section at the same time.
- (d) Whenever an additional grand jury is impaneled pursuant to this section, it may inquire into any matters that are subject to grand jury inquiry and shall have the sole and exclusive jurisdiction to return indictments, except for any matters that the regular grand jury is inquiring into at the time of its impanelment.
- (e) If an additional grand jury is also authorized by another section, the county may impanel the additional grand jury authorized by this section, or by the other section, but not both.

904.6. Additional Grand Jury Impanelment.

- (a) In any county or city and county, the presiding judge of the superior court, or the judge appointed by the presiding judge to supervise the grand jury, may, upon the request of the Attorney General or the district attorney or upon his or her own motion, order and direct the impanelment, of one additional grand jury pursuant to this section.
- (b) The presiding judge or the judge appointed by the presiding judge to supervise the grand jury shall select persons, at random, from the list of trial jurors in civil and criminal cases and shall examine them to determine if they are competent to serve as grand jurors. When a sufficient number of competent persons have been selected, they shall constitute the additional grand jury.
- (c) Any additional grand jury which is impaneled pursuant to this section may serve for a period of one year from the date of impanelment, but may be discharged at any time within the one-year period by order of the presiding judge or the judge appointed by the presiding judge to supervise the grand jury. In no event shall more than one additional grand jury be impaneled pursuant to this section at the same time.
- (d) Whenever an additional grand jury is impaneled pursuant to this section, it may inquire into any matters which are subject to grand jury inquiry and shall have the sole and exclusive jurisdiction to return indictments, except for any matters which the regular grand jury is inquiring into at the time of its impanelment.
- (e) It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal

grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned for that purpose. All persons selected for the additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county.

904.8 Additional Grand Juries in County of Los Angeles.

[County specific]

905. At Least One Grand Jury a Year.

In all counties there shall be at least one grand jury drawn and impaneled in each year.

905.5. Service During County Fiscal Year.

- (a) Except as otherwise provided in subdivision (b), the grand jury shall be impaneled and serve during the fiscal year of the county in the manner provided in this chapter.
- (b) The board of supervisors of a county may provide that the grand jury shall be impaneled and serve during the calendar year. The board of supervisors shall provide for an appropriate transition from fiscal year term to calendar year term or from calendar year term to fiscal year term for the grand jury. The provisions of subdivisions (a) and (b) of Section 901 shall not be deemed a limitation on any appropriate transition provisions as determined by resolution or ordinance; and, except as otherwise provided in this chapter, no transition grand jury shall serve more than 18 months.

906. Drawing Names.

The order shall designate the time at which the drawing will take place. The names of the grand jurors shall be drawn, and the list of names certified and summoned, as is provided for drawing and summoning trial jurors. The names of any persons drawn, who are not impaneled upon the grand jury, may be again placed in the grand jury box.

907. Penalty for Failure to Attend.

Any grand juror summoned, who willfully and without reasonable excuse fails to attend, may be attached and compelled to attend and the court may also impose a fine not exceeding fifty dollars (\$50), upon which execution may issue. If the grand juror was not personally served, the fine shall not be imposed until upon an order to show cause an opportunity has been offered the grand juror to be heard.

908. Determining Members Constituting Grand Jury.

If the required number of the persons summoned as grand jurors are present and not excused, the required number shall constitute the grand jury. If more than the required number of persons are present, the jury commissioner shall write their names on separate ballots, which the jury commissioner shall fold so that the names cannot be seen, place them in a box, and draw out the required number of them. The persons whose names are on the ballots so drawn shall constitute the grand jury. If less than the required number of persons are present, the panel may be filled as provided in Section 211 of the Code of Civil Procedure. If more of the persons summoned to complete a grand jury attend than are required, the requisite number shall be obtained by writing the names of those summoned and not excused on ballots, depositing them in a box, and drawing as provided above.

908.1. Manner of Filling Vacancies.

When, after the grand jury consisting of the required number of persons has been impaneled pursuant to law, the membership is reduced for any reason, vacancies within an existing grand jury may be filled, so as to maintain the full membership at the required number of persons, by the jury commissioner, in the presence of the court, drawing out sufficient names to fill the vacancies from the grand jury box, pursuant to law, or from a special venire as provided in Section 211 of the Code of Civil Procedure. A person selected as a grand juror to fill a vacancy pursuant to this section may not vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of the person's selection.

908.2. Selection of Grand Jurors.

- (a) Upon the decision of the superior court pursuant to Section 901 to adopt this method of selecting grand jurors, when the required number of persons have been impaneled as the grand jury pursuant to law, the jury commissioner shall write the names of each person on separate ballots. The jury commissioner shall fold the ballots so that the names cannot be seen, place them in a box, and draw out half of the ballots, or in a county where the number of grand jurors is uneven, one more than half. The persons whose names are on the ballots so drawn shall serve for 12 months until July 1 of the following year. The persons whose names are not on the ballots so drawn shall serve for six months until January 1 of the following year.
- (b) Each subsequent year, on January 2 and July 2, a sufficient number of grand jurors shall be impaneled to replace those whose service concluded the previous day. Those persons impaneled on January 2 shall serve until January 1 of the following year. Those persons impaneled on July 2 shall serve until July 1 of the following year. A person may not serve on the grand jury for more than one year.
- (c) The provisions of subdivisions (a) and (b) do not apply to the selection of grand jurors for an additional grand jury authorized pursuant to Section 904.6.

909. Qualification and Swearing in of Jurors.

Before accepting a person drawn as a grand juror, the court shall be satisfied that such person is duly qualified to act as such juror. When a person is drawn and found qualified he shall be accepted unless the court, on the application of the juror and before he is sworn, excuses him from such service for any of the reasons prescribed in this title or in Chapter 1 (commencing with Section 190), Title 3, Part 1 of the Code of Civil Procedure.

910. No Challenge Except for Want of Qualification.

No challenge shall be made or allowed to the panel from which the grand jury is drawn, nor to an individual grand juror, except when made by the court for want of qualification, as prescribed in Section 909.

911. Oath.

The following oath shall be taken by each member of the grand jury: "I do solemnly swear (affirm) that I will support the Constitution of the United States and of the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this

state, committed or triable within this county, of which the grand jury shall have or can obtain legal evidence. Further, I will not disclose any evidence brought before the grand jury, nor anything which I or any other grand juror may say, nor the manner in which I or any other grand juror may have voted on any matter before the grand jury. I will keep the charge that will be given to me by the court."

912. Foreperson.

From the persons summoned to serve as grand jurors and appearing, the court shall appoint a Foreperson. The court shall also appoint a Foreperson when the person already appointed is excused or discharged before the grand jury is dismissed.

913. Demand for Impaneling by Attorney General.

If a grand jury is not in existence, the Attorney General may demand the impaneling of a grand jury by those charged with the duty to do so, and upon such demand by him, it shall be their duty to do so.

914. Charge by Court; Training for Juries Considering Civil Matters.

- (a) When the grand jury is impaneled and sworn, it shall be charged by the court. In doing so, the court shall give the grand jurors such information as it deems proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.
- (b) To assist a grand jury in the performance of its statutory duties regarding civil matters, the court, in consultation with the district attorney, the county counsel, and at least one former grand juror, shall ensure that a grand jury that considers or takes action on civil matters receives training that addresses, at a minimum, report writing, interviews, and the scope of the grand jury's responsibility and statutory authority.
- (c) Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.

914.1. Instructions as to Investigation of County Government.

When a grand jury is impaneled, for purposes which include the investigation of, or inquiry into, county matters of civil concern, the judge of the superior court of the county, in addition to other matters requiring action, shall call its attention to the provisions of Chapter 1 (commencing with Section 23000) of Division 1 of Title 3, and Sections 24054 and 26525 of the Government Code, and instruct it to ascertain by a careful and diligent investigation whether such provisions have been complied with, and to note the result of such investigation in its report. At such time the judge shall also inform and charge the grand jury especially as to its powers, duties, and responsibilities under Article 1 (commencing with Section 888) of Chapter 2, and Article 2 (commencing with Section 925), Article 3 (commencing with Section 934) of this chapter, Article 3 (commencing with Section 3060) of Chapter 7 of Division 4 of Title 1 of the Government Code, and Section 17006 of the Welfare and Institutions Code.

914.5. Investigative Activities Budgeted.

The grand jury shall not spend money or incur obligations in excess of the amount budgeted for its investigative activities pursuant to this chapter by the county board of supervisors unless the proposed expenditure is approved in advance by the presiding judge of the superior court after the board of supervisors has been advised of the request.

915. Inquiry Into Offenses and Matters of Civil Concern.

When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room, except when operating under a finding pursuant to Section 939.1, and inquire into the offenses and matters of civil concern cognizable by it. On the completion of the business before the grand jury or expiration of the term of prescribed service of one or more grand jurors, the court shall discharge it or the affected individual jurors.

916. Selecting of Officers—Setting Rules of Procedure.

Each grand jury shall choose its officers, except the Foreperson, and shall determine its rules of proceeding. Adoption of its rules of procedure and all public actions of the grand jury, whether concerning criminal or civil matters unless otherwise prescribed in law, including adoption of final reports, shall be only with the concurrence of that number of grand jurors necessary to find an indictment pursuant to Section 940. Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable.

916.1. Foreperson Pro Tempore.

If the Foreperson of a grand jury is absent from any meeting or if he is disqualified to act, the grand jury may select a member of that body to act as Foreperson Pro Tempore, who shall perform the duties, and have all the powers, of the regularly appointed Foreperson in his absence or disqualification.

917. Presentation of Offenses by Indictment.

The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

918. Grand Juror May Report Public Offences Known to Him.

If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he may declare it to his fellow jurors, who may thereupon investigate it.

919. Subjects of Inquiry.

- (a) The grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.
- (b) The grand jury shall inquire into the condition and management of the public prisons within the county.
- (c) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county.

920. Inquiries Into Land Transfers.

The grand jury may investigate and inquire into all sales and transfers of land, and into the ownership of land, which, under the state laws, might or should escheat to the State of California. For this purpose, the grand jury may summon witnesses before it and examine them and the records. The grand jury shall direct that proper escheat proceedings be commenced when, in the opinion of the grand jury, the evidence justifies such proceedings.

921. Access to Prisons and Public Records.

The grand jury is entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

922. Removal of Public Officers.

The powers and duties of the grand jury in connection with proceedings for the removal of district, county, or city officers are prescribed in Article 3 (commencing with Section 3060), Chapter 7, Division 4, Title 1, of the Government Code.

923. Convening on Demand of Attorney General.

- (a) Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, direct the grand jury to convene for the investigation and consideration of those matters of a criminal nature that he or she desires to submit to it. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.
- (b) Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, petition the court to impanel a special grand jury to investigate, consider, or issue indictments for any of the activities subject to fine, imprisonment, or asset forfeiture under Section 14107 of the Welfare and Institutions Code. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do. If the evidence presented to the grand jury shows the commission of an offense or offenses for which jurisdiction would be in a county other than the county where the grand jury is impaneled, the Attorney General, with or without the concurrence of the district attorney in the county with jurisdiction over the offense or offenses, may petition the court to impanel a special grand jury in that county. Notwithstanding any other provision of law, upon request of the Attorney General, a grand jury convened by the Attorney General pursuant to this subdivision may submit confidential information obtained by that grand jury, including, but not limited to documents and testimony, to a second grand jury that has been impaneled at the request of the Attorney General pursuant to this subdivision in any other county where venue for an offense or offenses shown by evidence presented to the first grand jury is proper. All confidentiality provisions governing information, testimony, and evidence presented to a grand jury shall be applicable except as expressly permitted by this subdivision. The Attorney General shall inform the grand jury that transmits confidential information and the grand jury that receives confidential information of any exculpatory evidence, as required by Section 939.71. The grand jury that transmits information to another grand jury shall include the exculpatory evidence disclosed by the Attorney General in the transmission of the confidential information. The Attorney General shall inform both the grand jury transmitting the confidential information and the grand jury receiving that information of their duties under Section 939.7. A special grand jury convened pursuant

to this subdivision shall be in addition to the other grand juries authorized by this chapter or Chapter 2 (commencing with Section 893).

- (c) Upon certification by the Attorney General, a statement of the costs directly related to the impanelment and activities of the grand jury pursuant to subdivision (b) from the presiding judge of the superior court where the grand jury was impaneled shall be submitted for state reimbursement of the costs to the county.

924. Disclosing Information or Indictment Before Arrest.

Every grand juror who willfully discloses the fact of an information or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

924.1. Disclosing Evidence, Proceedings, or Votes.

- (a) Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury has said, or in what manner he or she or any other grand juror has voted on a matter before them, is guilty of a misdemeanor.
- (b) Every interpreter for the disabled appointed to assist a member of the grand jury pursuant to Section 939.11 who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he or she or any member of the grand jury has said, or in what manner any grand juror has voted on a matter before them, is guilty of a misdemeanor.

924.2. Disclosing Testimony on Order of Court.

Each grand juror shall keep secret whatever he himself or any other grand juror has said, or in what manner he or any other grand juror has voted on a matter before them. Any court may require a grand juror to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before the grand jury by any person, upon a charge against such person for perjury in giving his testimony or upon trial therefore.

924.3. Immunity From Questioning Except for Perjury.

A grand juror cannot be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

924.4. Providing Information to Succeeding Grand Jury.

Notwithstanding the provisions of Sections 924.1 and 924.2, any grand jury or, if the grand jury is no longer impaneled, the presiding judge of the superior court, may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request.

924.6. Disclosing Testimony If No Indictment Is Returned.

If no indictment is returned, the court that impaneled the grand jury shall, upon application of either party, order disclosure of all or part of the testimony of a witness before the grand jury to a defendant and the prosecutor in connection with any pending or subsequent criminal proceeding before any court if the court finds following an in camera hearing, which shall include the court's review of the grand jury's testimony, that the testimony is relevant, and appears to be admissible.

925. Investigation of County Operations.

The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926.

925a. Ability to Examine Records of City Joint Powers Agency.

The grand jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, departments, functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.

The grand jury may investigate and report upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected agency.

As used in this section, "joint powers agency" means an agency described in Section 6506 of the Government Code whose jurisdiction encompasses all or part of a county.

926. Employment of Experts and Assistants—Auditors or Appraisers—Length of Contracted Services

- (a) If, in the judgment of the grand jury, the services of one or more experts are necessary for the purposes of Sections 925, 925a, 928, 933.1, and 933.5 or any of them, the grand jury may employ one or more experts, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court. Expenditures for the services of experts and assistants for the purposes of Section 933.5 shall not exceed the sum of thirty thousand dollars (\$30,000) annually, unless such expenditures shall also be approved by the board of supervisors.

- (b) When making an examination of the books, records, accounts, and documents maintained and processed by the county assessor, the grand jury, with the consent of the board of supervisors, may employ expert auditors or appraisers to assist in the examination. Auditors and appraisers, while performing pursuant to the directive of the grand jury, shall have access to all records and documents that may be inspected by the grand jury subject to the same limitations on public disclosure as apply to the grand jury.
- (c) Any contract entered into by a grand jury pursuant to this section may include services to be performed after the discharge of the jury, but in no event may a jury contract for services to be performed later than six months after the end of the fiscal year during which the jury was impaneled.
- (d) Any contract entered into by a grand jury pursuant to this section shall stipulate that the product of that contract shall be delivered on or before a time certain to the then-current grand jury of that county for such use as that jury finds appropriate to its adopted objectives.

927. Need for Salary Adjustments—Report Thereon to Board of Supervisors.

A grand jury may, and when requested by the board of supervisors shall, investigate and report upon the needs for increase or decrease in salaries of the county-elected officials. A copy of such report shall be transmitted to the board of supervisors.

928. Needs of County Officers.

Every grand jury may investigate and report upon the needs of all county officers in the county, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices. Such investigation and report shall be conducted selectively each year. The grand jury shall cause a copy of such report to be transmitted to each member of the board of supervisors of the county.

929. Public Release of Grand Jury Report Containing Unprivileged Material and Findings.

As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation provided that the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released. Prior to granting approval pursuant to this section, a judge may require the redaction or masking of any part of the evidentiary material, findings, or other information to be released to the public including, but not limited to, the identity of witnesses and any testimony or materials of a defamatory or libelous nature.

930. Comments on Officials Not Privileged.

If any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by such grand jury such comments shall not be deemed to be privileged.

931. Expenses.

All expenses of the grand jurors incurred under this article shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor upon the written order of the judge of the superior court of the county.

932. May Order the District Attorney to Sue to Recover Money Due County.

After investigating the books and accounts of the various officials of the county, as provided in the foregoing sections of this article, the grand jury may order the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county. The order of the grand jury, certified by the Foreperson of the grand jury and filed with the clerk of the superior court of the county, shall be full authority for the district attorney to institute and maintain any such suit.

933. Comments and Reports on Grand Jury Recommendations.

- (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.
- (b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.
- (c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

933.05. Response to Grand Jury Recommendations—Content Requirements; Personal Appearance by Responding Party; Grand Jury Report to Affected Agency.

- (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
- (d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
- (e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.
- (f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge.

No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

933.06. Adoption of Grand Jury Report When 10 or More Jurors Concur—Conditions.

- (a) Notwithstanding Sections 916 and 940, in a county having a population of 20,000 or less, a final report may be adopted and submitted pursuant to Section 933 with the concurrence of at least 10 grand jurors if all of the following conditions are met:
 - (1) The grand jury consisting of 19 persons has been impaneled pursuant to law, and the membership is reduced from 19 to fewer than 12.
 - (2) The vacancies have not been filled pursuant to Section 908.1 within 30 days from the time that the clerk of the superior court is given written notice that the vacancy has occurred.
 - (3) A final report has not been submitted by the grand jury pursuant to Section 933.
- (b) Notwithstanding Section 933, no responsible officers, agencies, or departments shall be required to comment on a final report submitted pursuant to this section.

933.1. Examination of Operations of Redevelopment, Housing and Joint Powers Agencies.

A grand jury may at any time examine the books and records of a redevelopment agency, a housing authority, created pursuant to Division 24 (commencing with Section 33000) of the Health and Safety Code, or a joint powers agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such agency or authority.

933.5. Examination of Books of Special District or Commission.

A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission.

933.6. Examination of Operations of Nonprofit Corporation Established by or Operated on Behalf of Public Entity.

A grand jury may at any time examine the books and records of any nonprofit corporation established by or operated on behalf of a public entity the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such nonprofit corporation.

934. Advice of Judge, District Attorney or County Counsel.

- (b) The grand jury may, at all times, request the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney

General. Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

- (c) The Attorney General may grant or deny a request for advice from the grand jury. If the Attorney General grants a request for advice from the grand jury, the Attorney General shall fulfill that request within existing financial and staffing resources.

935. Appearance of District Attorney Before Jury.

The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the district attorney, or assistant district attorney, or deputy district attorney, or anyone employed by or connected with the office of the district attorney, is being investigated by the grand jury, such district attorney, or assistant district attorney, or deputy district attorney, or all or anyone or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity but only as a witness, and he shall only be present while a witness and after his appearance as such witness shall leave the place where the grand jury is holding its session.

936. Special Counsel and Special Investigators—Attorney General May Employ.

When requested so to do by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury. The services of such special counsel and special investigators shall be a county charge of such county.

936.5. Special Counsel and Special Investigators—Superior Court Judge May Employ.

- (a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.
- (b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the Attorney General. The order shall be stayed pending the appeal made under this section.
- (c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds.

936.7. Sacramento County—Retention of Special Counsel for Grand Jury.

- (a) In a county of the eighth class, as defined by Sections 28020 and 28029 of the Government Code, upon a request by the grand jury, the presiding judge of the superior court may retain, in the name of the county, a special counsel to the grand jury. The request shall be presented to the presiding judge in camera, by an affidavit, executed by the foreperson of the grand jury, which specifies the reason for the request and the nature of the services sought, and which certifies that the appointment of the special counsel is reasonably necessary to aid the work of the grand jury. The affidavit shall be confidential and its contents may not be made public except by order of the presiding judge upon a showing of good cause. The special counsel shall be selected by the presiding judge following submission of the name of the nominee to the board of supervisors for comment. The special counsel shall be retained under a contract executed by the presiding judge in the name of the county. The contract shall contain the following terms:
- (1) The types of legal services to be rendered to the grand jury; provided, (i) that the special counsel's duties shall not include any legal advisory, investigative, or prosecutorial service which by statute is vested within the powers of the district attorney, and (ii) that the special counsel may not perform any investigative or prosecutorial service whatsoever except upon advance written approval by the presiding judge which specifies the number of hours of these services, the hourly rate therefore, and the subject matter of the inquiry.
 - (2) The hourly rate of compensation of the special counsel for legal advisory services delivered, together with a maximum contract amount payable for all services rendered under the contract during the term thereof, and all service authorizations issued pursuant
 - (3) thereto.
 - (4) That the contract may be canceled in advance of the expiration of its term by the presiding judge pursuant to service upon the special counsel of 10 days' advance written notice.
- (b) The maximum contract amount shall be determined by the board of supervisors and included in the grand jury's annual operational budget. The maximum amount shall be subject to increase by the presiding judge through contract amendment during the term thereof, subject to and in compliance with the procedure prescribed by Section 914.5.
- (c) The contract shall constitute a public record and shall be subject to public inspection and copying pursuant to the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). However, at the sole discretion of the board of supervisors, any or all of the following steps may be taken:
- (1) The nomination by the presiding judge, and any or all actions by the board of supervisors in commenting upon the nominee and the comments, may be made confidential.
 - (2) The deliberations and actions may be undertaken in meetings from which the public is excluded, and the

communication containing comments may constitute a confidential record which is not subject to public inspection or copying except at the sole discretion of the board of supervisors. Moreover, any written authorization by the presiding judge pursuant to paragraph (1) of subdivision (a) shall constitute a confidential record which is not subject to public inspection or copying except in connection with a dispute concerning compensation for services rendered.

937. Subpoena of Interpreter—Compensation.

The grand jury or district attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, such interpreter may be present at the examination of witnesses before the grand jury. The compensation for services of such interpreter constitutes a charge against the county, and shall be fixed by the grand jury.

938. Reporter in Criminal Investigations.

- (b) Whenever criminal causes are being investigated before the grand jury, it shall appoint a competent stenographic reporter. He shall be sworn and shall report in shorthand the testimony given in such causes and shall transcribe the shorthand in all cases where an indictment is returned or accusation presented.
- (c) At the request of the grand jury, the reporter shall also prepare transcripts of any testimony reported during any session of the immediately preceding grand jury.

938.1. Transcript of Reporter's Notes.

- (a) If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and deliver to the clerk of the superior court in the county an original transcription of the reporter's shorthand notes and a copy thereof and as many additional copies as there are defendants, other than fictitious defendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete the certification and delivery within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The clerk shall file the original of the transcript, deliver a copy of the transcript to the district attorney immediately upon receipt thereof and deliver a copy of such transcript to each such defendant or the defendant's attorney. If the copy of the testimony is not served as provided in this section, the court shall on motion of the defendant continue the trial to such time as may be necessary to secure to the defendant receipt of a copy of such testimony 10 days before such trial. If several criminal charges are investigated against a defendant on one investigation and thereafter separate indictments are returned or accusations presented upon said several charges, the delivery to such defendant or the defendant's attorney of one copy of the transcript of such investigation shall be a compliance with this section as to all of such indictments or accusations.
- (b) The transcript shall not be open to the public until 10 days after its delivery to the defendant or the defendant's attorney. Thereafter the

transcript shall be open to the public unless the court orders otherwise on its own motion or on motion of a party pending a determination as to whether all or part of the transcript should be sealed. If the court determines that there is a reasonable likelihood that making all or any part of the transcript public may prejudice a defendant's right to a fair and impartial trial, that part of the transcript shall be sealed until the defendant's trial has been completed.

938.2. Salary or Fees of Reporter.

- (a) For preparing any transcript in any case pursuant to subdivision (a) of Section 938.1, the stenographic reporter shall draw no salary or fees from the county for preparing such transcript in any case until all such transcripts of testimony in such case so taken by him are written up and delivered. Before making the order for payment to the reporter, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he has written up and delivered all testimony taken by him, in accordance with subdivision (a) of Section 938 and Section 938.1.
- (b) Before making the order for payment to a reporter who has prepared transcripts pursuant to subdivision (b) of Section 938, the judge of the superior court shall require the reporter to show by affidavit or otherwise that he has written up and delivered all testimony requested of him in accordance with that subdivision.

938.3. Services Charge Against County.

The services of the stenographic reporter shall constitute a charge against the county, and the stenographic reporter shall be compensated for reporting and transcribing at the same rates as prescribed in Sections 69947 to 69954, inclusive, of the Government Code, to be paid out of the county treasury on a warrant of the county auditor when ordered by the judge of the superior court.

938.4. Meeting Room and Other Support.

The superior court shall arrange for a suitable meeting room and other support as the court determines is necessary for the grand jury. Any costs incurred by the court as a result of this section shall be absorbed by the court or the county from existing resources.

939. Persons Permitted to Be Present During Sessions.

No person other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1, 939.11, and 939.21, and the officer having custody of a prisoner witness while the prisoner is testifying, is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939.5 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

939.1. Public Sessions on Request Under Court Order.

The grand jury acting through its Foreperson and the attorney general or the district attorney may make a joint written request for public sessions of the grand jury. The request shall be filed with the superior court. If the court, or the judge thereof, finds that the subject matter of the investigation affects the general public welfare, involving the

alleged corruption, misfeasance, or malfeasance in office or dereliction of duty of public officials or employees or of any person allegedly acting in conjunction or conspiracy with such officials or employees in such alleged acts, the court or judge may make an order directing the grand jury to conduct its investigation in a session or sessions open to the public. The order shall state the finding of the court. The grand jury shall comply with the order.

The conduct of such investigation and the examination of witnesses shall be by the members of the grand jury and the district attorney.

The deliberation of the grand jury and its voting upon such investigation shall be in private session. The grand jury may find indictments based wholly or partially upon the evidence introduced at such public session.

939.11. Interpreter for Disable Grand Juror.

Any member of the grand jury who has a hearing, sight, or speech disability may request an interpreter when his or her services are necessary to assist the juror to carry out his or her duties. The request shall be filed with the superior court. If the court, or the judge thereof, finds that an interpreter is necessary, the court shall make an order to that effect and may require by subpoena the attendance of any person before the grand jury as interpreter. If the services of an interpreter are necessary, the court shall instruct the grand jury and the interpreter that the interpreter is not to participate in the jury's deliberations in any manner except to facilitate communication between the disabled juror and the other jurors. The court shall place the interpreter under oath not to disclose any grand jury matters, including the testimony of any witness, statements of any grand juror, or the vote of any grand juror, except in the due course of judicial proceedings.

939.2. Subpoenas for Witness.

A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his opinion is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

939.21. Minor or Dependent Person Witness for Prosecution Authorized to Bring Support Person to Grand Jury Proceeding.

- (a) Any prosecution witness before the grand jury in a proceeding involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 368, 647.6, or former Section 647a, who is a minor or a dependent person, may, at the discretion of the prosecution, select a person of his or her own choice to attend the testimony of the prosecution witness for the purpose of providing support. The person chosen shall not be a witness in the same proceeding, or a person described in Section 1070 of the Evidence Code.
- (b) The grand jury foreperson shall inform any person permitted to attend the grand jury proceedings pursuant to this section that grand jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. The foreperson also shall admonish that person not to prompt, sway, or influence the witness in any way. Nothing in this section shall preclude the presiding judge from exercising

his or her discretion to remove a person from the grand jury proceeding whom the judge believes is prompting, swaying, or influencing the witness.

939.3. Refusal to Answer or Produce Evidence.

In any investigation or proceeding before a grand jury for any felony offense when a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, proceedings may be had under Section 1324.

939.4. The Foreperson May Administer Oath.

The Foreperson may administer an oath to any witness appearing before the grand jury.

939.5. Prejudice of Grand Juror.

Before considering a charge against any person, the Foreperson of the grand jury shall state to those present the matter to be considered and the person to be charged with an offense in connection therewith. He shall direct any member of the grand jury who has a state of mind in reference to the case or to either party which will prevent him from acting impartially and without prejudice to the substantial rights of the party to retire. Any violation of this section by the Foreperson or any member of the grand jury is punishable by the court as a contempt.

939.6. Evidence Admissible; Law Enforcement Officer Testimony as to Hearsay.

- (a) Subject to subdivision (b), in the investigation of a charge, the grand jury shall receive no other evidence than what is:
 - (1) Given by witnesses produced and sworn before the grand jury;
 - (2) Furnished by writings, material objects, or other things presented to the senses; or
 - (3) Contained in a deposition that is admissible under subdivision 3 of Section 686.
- (b) Except as provided in subdivision (c), the grand jury shall not receive any evidence except that which would be admissible over objection at the trial of a criminal action, but the fact that evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.
- (c) Notwithstanding Section 1200 of the Evidence Code, as to the evidence relating to the foundation for admissibility into evidence of documents, exhibits, records, and other items of physical evidence, the evidence to support the indictment may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statement of a declarant made out of court and offered for the truth of the matter asserted. Any law enforcement officer testifying as to a hearsay statement pursuant to this subdivision shall have either five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

939.7. Grand Jury Weighs Evidence.

The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

939.71. Prosecutor Informs Grand Jury Of Exculpatory Evidence/Legislature intent.

- (b) If the prosecutor is aware of exculpatory evidence, the prosecutor shall inform the grand jury of its nature and existence. Once the prosecutor has informed the grand jury of exculpatory evidence pursuant to this section, the prosecutor shall inform the grand jury of its duties under Section 939.7. If a failure to comply with the provisions of this section results in substantial prejudice, it shall be grounds for dismissal of the portion of the indictment related to that evidence.
- (c) It is the intent of the Legislature by enacting this section to codify the holding in *Johnson v. Superior Court*, 15 Cal. 3d 248, and to affirm the duties of the grand jury pursuant to Section 939.7.

939.8. Grand Jury Indictment.

The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury.

939.9. Grand Jury Conducts Its Own Investigation.

A grand jury shall make no report, declaration, or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury. A grand jury shall not adopt as its own the recommendation of another grand jury unless the grand jury adopting such recommendation does so after its own investigation of the matter as to which the recommendation is made, as required by this section.

939.91. Grand Jury Finds No Indictment/Report To Court.

- (a) A grand jury which investigates a charge against a person, and as a result thereof cannot find an indictment against such person, shall, at the request of such person and upon the approval of the court which impaneled the grand jury, report or declare that a charge against such person was investigated and that the grand jury could not as a result of the evidence presented find an indictment. The report or declaration shall be issued upon completion of the investigation of the suspected criminal conduct, or series of related suspected criminal conduct, and in no event beyond the end of the grand jury's term.
- (b) A grand jury shall, at the request of the person called and upon the approval of the court which impaneled the grand jury, report or declare that any person called before the grand jury for a purpose, other than to investigate a charge against such person, was called only as a witness to an investigation which did not involve a charge against such person. The report or declaration shall be issued upon completion of the investigation of the suspected criminal conduct, or series of related suspected criminal conduct, and in no event beyond the end of the grand jury's term.

**THE PLEADINGS
PENAL CODE
SECTIONS 940 - 945**

940. Number Of Grand Jury Members Required For Indictment.

An indictment cannot be found without concurrence of at least 14 grand jurors in a county in which the required number of members of the grand jury prescribed by Section 888.2 is 23, at least eight grand jurors in a county in which the required number of members is 11, and at least 12 grand jurors in all other counties. When so found it shall be endorsed, "A true bill," and the endorsement shall be signed by the Foreperson of the grand jury.

943. Indictment/Names Of Witnesses.

When an indictment is found, the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the Court.

944. Indictment Presented By Foreperson.

An indictment, when found by the grand jury, must be presented by their Foreperson, in their presence, to the court, and must be filed with the clerk. No recommendation as to the dollar amount of bail to be fixed shall be made to any court by any grand jury.

945. Indictment Proceedings Against Defendant Not In Custody.

When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in Sections 979 to 984, inclusive, against a defendant who fails to appear for arraignment.

1324. Self-Incrimination; Order Compelling Testimony; Exemption From Prosecution; Perjury; False Swearing, Contempt, Etc.

In any felony proceeding or in any investigation or proceeding before a grand jury for any felony offense if a person refuses to answer a question or produce evidence of any other kind on the ground that he or she may be incriminated thereby, and if the district attorney of the county or any other prosecuting agency in writing requests the court, in and for that county, to order that person to answer the question or produce the evidence, a judge shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction, and that person shall comply with the order. After complying, and if, but for this section, he or she would have been privileged to withhold the answer given or the evidence produced by him or her, no testimony or other information compelled under the order or any information directly or indirectly derived from the testimony or other information may be used against the witness in any criminal case. But he or she may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order. Nothing in this section shall prohibit the district attorney or any other prosecuting agency from requesting an order granting use immunity or transactional immunity to a witness compelled to give testimony or produce evidence.

1324.1.

In any misdemeanor proceeding in any court, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, the person may agree in writing with the district attorney of the county, or the prosecuting attorney of a city, as the case may be, to testify voluntarily pursuant to this section. Upon written request of such district attorney, or prosecuting attorney, the court having jurisdiction of the proceeding shall approve such written agreement, unless the court finds that to do so would be clearly contrary to the public interest. If, after court approval of such agreement, and if, but for this section, the person would have been privileged to withhold the answer given or the evidence produced by him, that person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any fact or act concerning which, in accordance with such agreement, he answered or produced evidence, but he may, nevertheless, be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or in producing evidence in accordance with such agreement. If such person fails to give any answer or to produce any evidence in accordance with such agreement, that person shall be prosecuted or subjected to penalty or forfeiture in the same manner and to the same extent as he would be prosecuted or subjected to penalty or forfeiture but for this section.

Appendix H

Reviewed through California Legislative Law January 1, 2008

CALIFORNIA CODES GOVERNMENT CODE SECTION 3060-3074

3060. Accusation Against A County Officer.

An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors, or at least eight grand jurors in a county in which the required number of members of the grand jury is 11.

3061. Charges.

The accusation shall state the offense charged in ordinary and concise language, and without repetition.

3062. Delivery To Accused.

The accusation shall be delivered by the Foreperson of the grand jury to the district attorney of the county, unless he is the officer accused.

3063. Notice Timeline.

The district attorney shall have a copy of the accusation served upon the defendant, and by notice in writing shall require the accused to appear before the superior court of the county, at a time stated in the notice, and answer the accusation. Appearance shall not be required in less than 10 days from the service of the notice. After service, the original accusation shall be filed with the clerk of the court.

3064. Appearance.

The defendant shall appear at the time stated in the notice and answer the accusation, unless for some sufficient cause the court assigns another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

3065. Defendant Response To Accusation.

The defendant may answer the accusation either by objecting to its sufficiency or any article therein, or by denying the truth of the accusation.

3066. Objection To Sufficiency of Accusation.

If he objects to the legal sufficiency of the accusation, the objection shall be in writing. The objection need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

3067. Denial To Truth of Accusation.

If he denies the truth of the accusation, the denial may be oral and without oath. The denial shall be entered upon the minutes.

3068. Objection Not Sustained.

If an objection to the sufficiency of the accusation is not sustained, the defendant shall answer thereto forthwith.

3069. Pleading.

If the defendant pleads guilty, or refuses to answer the accusation, the court shall render judgment of conviction against him. If he denies the matters charged, the court shall immediately, or at such time as it appoints, try the accusation.

3070. Trial By Jury.

The trial shall be by a jury, and conducted in all respects in the same manner as the trial of an indictment.

3071. Defendant And District Attorney.

The district attorney and the defendant are each entitled to such process as is necessary to enforce the attendance of witnesses as upon a trial of an indictment.

3072. Conviction And Judgement.

Upon a conviction and at the time appointed by the court it shall pronounce judgment that the defendant be removed from office. To warrant a removal, the judgment shall be entered upon the minutes, and the causes of removal shall be assigned therein.

3073. Proceedings For Removal Of District Attorney.

The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered by the Foreperson of the grand jury to the clerk, and by him to a judge of the superior court of the county. The judge shall appoint a person to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings.

3074. Removal For Willful Or Corrupt Misconduct In Office: Limitation.

Any officer subject to removal pursuant to this article may be removed from office for willful or corrupt misconduct in office occurring at any time within the six years immediately preceding the presentation of an accusation by the grand jury.

SECTION 23000-23027

23000. Definition of County.

A county is the largest political division of the State having corporate powers.

23001. Division Of State Into Counties.

The State is divided into counties, named, bounded, and constituted as provided in this title.

23002. Counties As Legal Subdivisions.

The several existing counties of the State and such other counties as are hereafter organized are legal subdivisions of the State.

23003. Implied Powers Of A County.

A county is a body corporate and politic, has the powers specified in this title and such others necessarily implied from those expressed.

23004. Granted Powers Of A County.

A county may:

- (a) Sue and be sued.
- (b) Purchase, receive by gift or bequest, and hold land within its limits, or elsewhere when permitted by law.
- (c) Make contracts and purchase and hold personal property necessary to the exercise of its powers.
- (d) Manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require.
- (e) Levy and collect taxes authorized by law.

23004.1. Recovery Of Payment For County Medical Treatment.

- (a) Subject to the provisions of Section 23004.3, in any case in which the county is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment, including prostheses and medical appliances, to a person who is injured or suffers a disease, under circumstances creating a tort liability upon some third person to pay damages therefor, the county shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished, or shall, as to this right, be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.
- (b) The county may, to enforce such rights, institute and prosecute legal proceedings against the third person who is liable for the injury or disease in the appropriate court, either in its own name or in the name of the injured person, his guardian, personal representative, estate, or survivors. Such action shall be commenced within the period prescribed in Section 340 of the Code of Civil Procedure. In the event that the injured person, his guardian, personal representative, estate, survivors, or either of them brings an action for damages against the third person who is liable for the injury or disease, the county's right of action shall abate during the pendency of such action, and continue as a first lien against any

judgment recovered by the injured or diseased person, his guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease, to the extent of the reasonable value of the care and treatment so furnished or to be furnished. When the third person who is liable is insured, the county shall notify the third person's insurer, when known to the county, in writing of the lien within 30 days following the filing of the action by the injured or diseased person, his guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease; provided, however, that failure to so notify the insurer shall not prejudice the claim or cause of action of the injured or diseased person, his guardian, personal representative, estate, or survivors, or the county.

23004.5. County Owned Or Operated Health Care Facilities.

Health care facilities, including, but not limited to, hospitals and clinics licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that are owned or operated by counties may establish, maintain, and carry on their activities through one or more corporations, joint ventures, or partnerships for the direct benefit of those health care facilities and the health services that they provide. Nothing in this section shall be construed to exempt facilities conducting their activities in accordance with this section from the licensure requirements set forth in Division 2 (commencing with Section 1200) of the Health and Safety Code, when those requirements are applicable. Nothing in this section shall be construed to eliminate the necessity of prior approval by the county's board of supervisors, at a noticed public hearing, of any transfer of the assets of a county health system and the consideration therefor.

23005. Powers Exercise Through Board Of Supervisors Or Agents Of Board.

A county may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board or authority conferred by law.

23006. Non Liability Of Payment By County.

Any contract, authorization, allowance, payment, or liability to pay, made or attempted to be made in violation of law, is void, and shall not be the foundation or basis of a claim against the treasury of any county.

23007. Giving Or Lending To Person Or Corporation.

Except as specified in this chapter, a county shall not, in any manner, give or loan its credit to or in aid of any person or corporation. An indebtedness or liability incurred contrary to this chapter is void.

23007.5. Credit For Service To An Elective Officer of Member Of Board Of Supervisors.

(a) Notwithstanding any other provision of law:

- (1) A county shall not grant credit for service to an elective officer or member of the board of supervisors for service that the elective officer or member has not performed.
- (2) A county shall not pay contributions for credit for service if an elective officer or member has not performed the service, regardless of the fact that the elective officer or member of the board of supervisors may personally elect to contribute for additional credit for service.

- (b) The prohibition provided by this section does not preclude an elective officer or member of the board of supervisors from choosing to receive credit for service in a retirement system by paying his or her own contributions for that purpose pursuant to the applicable provisions of the retirement system.

23008. Supplying Goods Or Services To Districts or Municipalities.

Whenever it is economical and satisfactory to do so, a county may lease equipment, perform work, or furnish goods for any district or municipal corporation within the county, if before the work is done or the goods are ordered or furnished by the county, an amount equal to the cost, or an amount 10 percent in excess of the estimated cost, is so reserved from the funds of the district or municipal corporation to be charged that it may be transferred to the county, when the work is completed or the goods are supplied.

23009. Manner Of Payment For Goods Or Services.

In such event, charges for work done or goods supplied may be made by claims and warrants upon the district or municipal corporation or by properly approved bill, in such form and manner as the auditor directs, from the department, division, or account supplying the goods or service to the district or municipal corporation supplied, and payment may be made by transfer of funds upon the books of the auditor and treasurer, on order of the board of supervisors, without the formality of claim and warrant.

23010. Authority To Lend And Borrow Funds.

- (a) Pursuant to a resolution adopted by its board of supervisors, a county may lend any of its available funds to any community services district, county waterworks district, mosquito abatement district, pest abatement district, fire protection district, flood control and water conservation district, recreation and park district, regional park district, regional park and open-space district, regional open-space district, resort improvement district, or public cemetery district located wholly within the county, if its funds are or when available will be in the custody of the county or any officer of the county, in order to enable the district to perform its functions and meet its obligations. The loan shall not exceed 85 percent of the district's anticipated revenue for the fiscal year in which it is made or for the next ensuing fiscal year, and shall be repaid out of that revenue prior to the payment of any other obligation of the district.
- (b) Pursuant to a resolution adopted by its board of supervisors, a county may loan any of its available funds to a special district, in order to enable the district to perform its functions and meet its obligations. The loan shall not exceed 85 percent of the special district's anticipated property tax revenue projected to be generated for the fiscal year in which it is made or for the next ensuing fiscal year within that portion of the district's territory which is located within the county. The loan shall be repaid out of any available revenue of the special district prior to the payment of any other obligation of the district. For purposes of this subdivision, "special district" means a special district, as defined in Section 54775, which is located in more than one county.
- (c) The board of supervisors may borrow funds from the county or from other garbage disposal districts, not to exceed 85 percent of the district's anticipated revenue for the fiscal year in which they are borrowed or for the next ensuing fiscal year. In levying taxes or prescribing and collecting

fees or charges as authorized by this division, the board of supervisors may raise sufficient revenues to repay the loans. The board of supervisors may lend available district funds to another garbage disposal district, subject to the terms and conditions set forth in this section. Nothing contained in this section shall prohibit the board of supervisors from borrowing funds from banks or other financial institutions when the best interests of the district are served thereby.

- (d) Notwithstanding any other provisions of law, funds, when borrowed by a garbage disposal district pursuant to subdivision (c), shall forthwith increase the appropriations of the district for which they are needed. The governing body of the entity from which the funds are borrowed may specify the date and manner in which the funds shall be repaid. The loan shall not exceed 85 percent of the district's anticipated revenue for the fiscal year in which it is made or for the next ensuing fiscal year, and shall be repaid out of that revenue prior to the payment of any other obligation of the district.
- (e) The district shall pay interest on all funds borrowed from the county at the same rate that the county applies to funds of the district on deposit with the county.

23010.1. Loans To Fire Protection Districts and Manner For Repayment.

Pursuant to a resolution adopted by its board of supervisors, a county may lend any of its available funds to any fire protection district located wholly within the county if the funds of the fire protection district are or, when available, will be in the custody of the county treasurer, for the acquisition of real or personal property and the construction of structures needed for district purposes.

The board of supervisors in the resolution shall specify the date and manner in which the funds shall be repaid. The resolution may require the repayment of the loan in equal annual installments. The loan shall be repaid within the time specified in the resolution which shall not in any event exceed 10 years.

23010.2. Loans To Cities and Manner For Repayment.

The board of supervisors may loan to any city within its limits which has been incorporated for less than one year an amount not exceeding eighty-five percent (85%) of the city's anticipated revenues for the fiscal year in which such loan is made. Such loans shall be repaid within the fiscal year in which made.

23010.3. Additional Construction Of Conveyance Works In Connection With Sewer Or Drainage Improvements.

Upon adoption of an authorizing resolution by the board of supervisors, in connection with the construction of any sanitary sewer, storm sewer, or drainage improvements, a county may expend any of its available funds for any additional cost of construction of any conveyance works in excess of the construction required for the current project, or for a portion of the cost of conveyance works directly benefiting properties in an area outside the area to be served by the current project, if the board of supervisors first finds and declares in that resolution, that there is an area outside the area to be served by the current project which may in the future utilize the conveyance works; that additional construction of conveyance works for the current project is necessary to serve the outside area in the future; and that the board of supervisors will have the right in the future to use, or to permit the use of, the conveyance works and the additional

construction which will benefit the outside area. In lieu of a county contribution of funds for additional construction or for a portion of the cost of the conveyance works where an outside area is directly benefited, the board of supervisors may agree to reimburse, from future connection fees, any entity or person described in subdivisions (a) to (g), inclusive.

The provisions of this section shall be applicable in cases in which improvements are to be constructed by any of the following:

- (a) A county pursuant to the "The Improvement Act of 1911," Division 7 (commencing with Section 5000) of the Streets and Highways Code.
- (b) A county pursuant to the "Municipal Improvement Act of 1913," Division 12 (commencing with Section 10000) of the Streets and Highways Code.
- (c) A county in any other manner.
- (d) Any district which is governed by the board of supervisors of the county in which the work is to be performed.
- (e) Any district, not governed by the board of supervisors of the county in which the work is to be performed, with which the board of supervisors has contracted so as to assure the right of the county to use the conveyance works and the additional construction, for the future benefit of the outside area.
- (f) Any incorporated city with which the board of supervisors has contracted so as to assure the right of the county to use the conveyance works and the additional construction, for the future benefit of the outside area.
- (g) Any person, if the works when completed are to be dedicated or conveyed to the county or to a district governed by the board of supervisors of the county in which the work is to be performed.

The board of supervisors may impose a connection fee upon any person or district in the outside area to be paid to the county as a condition to connecting to any conveyance works which have been augmented by additional construction, or which have been found by the board of supervisors to directly benefit the outside area, pursuant to this section. The connection fee shall be a prorated share of the total cost of the additional construction, or of the portion of the costs of the conveyance works where an outside area is directly benefited. The fee may include a reasonable amount for administrative costs associated with the collection of the fee and to provide reimbursement to an entity or person described in subdivisions (a) to (g), inclusive. In computing the total cost of the additional construction, or of the portion of the costs of the conveyance works where an outside area is directly benefited, the board of supervisors shall include an amount attributable to interest from the date of completion of the construction to the date of connection and, in the event the board of supervisors agrees to reimburse, from future connection fees, any entity or person described in subdivisions (a) to (g), inclusive, all accrued interest shall be payable to that entity or person.

This section shall not decrease or limit any other power vested in counties or boards of supervisors.

23010.4. Upon receipt of an application from the governing body of any school district maintaining a school within a county, requesting to borrow funds from the county for the purpose of removing or replacing asbestos-derived materials used in constructing, insulating, or furnishing one or more of those schools, and declaring the existence of

such asbestos-derived material to be potentially detrimental to the health of pupils, teachers, and others using the school, the county board of supervisors may loan, and the school district may borrow, the requested county funds upon such terms and conditions as are mutually agreed upon by the respective governing bodies, provided that the loan shall be repaid only from the school district's deferred maintenance fund established pursuant to Section 39618 of the Education Code.

23011. Corporate Name Of County.

The name of a county designated in this chapter is its corporate name, and it shall be designated thereby in any action or proceeding touching its corporate rights, property, and duties.

23012. Name Of Counties.

The names of the counties of the State are:

Alameda	Kings	Placer	Shasta
Alpine	Lake	Placer	Sierra
Amador	Lassen	Plumas	Siskiyou
Butte	Los Angeles	Riverside	Solano
Calaveras	Madera	Sacramento	Sonoma
Colusa	Marin	San Benito	Stanislaus
Contra Costa	Mariposa	San Bernardino	Sutter
Del Norte	Mendocino	San Diego	Tehama
El Dorado	Merced	San Francisco	Trinity
Fresno	Modoc	San Joaquin	Tulare
Glenn	Mono	San Luis Obispo	Tuolumne
Humboldt	Monterey	San Mateo	Ventura
Imperial	Napa	Santa Barbara	Yolo
Inyo	Nevada	Santa Clara	Yuba
Kern	Orange	Santa Cruz	

23013. Establishing A Department Of Corrections.

The board of supervisors of any county may, by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farms and road camps, their functions and personnel.

The boards of supervisors of two or more counties may, by agreement and the enactment of ordinances in conformity thereto, establish a joint department of corrections to serve all the counties included in the agreement, to be headed by an officer appointed by the boards jointly.

23014. Establishment Of Revolving Fund; Designated Uses; Reimbursement.

Pursuant to a resolution adopted by its board of supervisors by a four-fifths vote of all of the members of the board of supervisors, a county may appropriate any of its available moneys to a revolving fund not to exceed five hundred thousand dollars (\$500,000) to be used by any county sanitation district, county flood control district, or county maintenance district, located wholly within the county for the acquisition of real or personal property, environmental impact studies, fiscal analysis, engineering services, or the construction of structures or improvements needed in whole or in part for district

purposes. The revolving fund shall be reimbursed from service fees, connection charges, tax revenues or other moneys available to the district, and no sums shall be disbursed from the fund until an agreement with a term not exceeding 10 years has been made between the board of supervisors and the governing board of the district encompassing the method by, and the time within, which the district is to reimburse the fund. Reimbursement of the fund from tax revenue shall not exceed in any one fiscal year an amount equal to one cent (\$0.01) on the tax rate or twenty-five thousand dollars (\$25,000), whichever is less. The district shall reimburse the fund for any amount disbursed to the district within 10 years after disbursement, together with interest at the current rate per annum received on similar types of investments by the county as determined by the county treasurer.

23015. Limited County Participation In Rehab Programs For Offenders.

A county may conduct or participate in programs for the training, education or rehabilitation of wards or offenders, including, but not limited to, programs in which state or federal funds are granted or reimbursable. In connection therewith, a county may contract with federal, state or local public agencies, private persons, corporations and other business entities, and may make such expenditures of county funds as may be required for the conduct of, or participation in, such programs.

23025. Deaf Teletype Equipment.

A county, whether general law or chartered, which provides any emergency services, shall provide deaf teletype equipment at a central location within the county to relay requests for such emergency services.

23026. Public Notice of County Employees' Retirement/Salary Increase Benefits.

In any county which has established a county employees' retirement system pursuant to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4), the board of supervisors shall make public, at a regularly scheduled meeting of the board, all salary and benefit increases that affect either or both represented employees and nonrepresented employees. Notice of any salary or benefit increase shall be included on the agenda for the meeting as an item of business in compliance with the requirements of Section 54954.2. Notice shall occur prior to the adoption of the salary or benefit increase, and shall include an explanation of the financial impact that the proposed benefit change or salary increase will have on the funding status of the county employees' retirement system.

The board of retirement, or board of investments in a county in which a board of investments has been established pursuant to Section 31520.2, is authorized, consistent with its fiduciary duties, to have an enrolled actuary prepare an estimate of the actuarial impact of the salary or benefit increase. The actuarial data shall be reported to the board of supervisors.

Nothing in this section shall be construed to limit or lessen the requirement imposed by Section 7507 that the costs associated with increases in public retirement plan benefits be determined by an enrolled actuary and publicly disclosed two weeks prior to an adoption of the increase in public retirement plan benefits.

23027. Special Tax Authorization By Board Of Supervisors.

The board of supervisors of any county may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 and any

other procedures as may be applicable. The special taxes shall be applied uniformly to all taxpayers or all real property within the county, or any involved portion thereof, except that unimproved property may be taxed at a lower rate than improved property.

24054. Liability For Illegal Allowance Of Claims

Any officer authorizing, aiding to authorize, auditing, allowing, or paying any claim or demand upon or against the treasury of any county, or any fund thereof, in violation of law or of the constitution is liable personally and upon his official bond to the person damaged by such illegal action, to the extent of his loss by reason of the nonpayment of his claim.

25250. Audit Of Officers' Accounts

At least biennially the board of supervisors shall examine and audit, or cause to be audited, the financial accounts and records of all officers having responsibility for the care, management, collection, or disbursement of money belonging to the county or money received or disbursed by them under authority of law. The audit shall encompass the immediately preceding two-year period, or any portion thereof not included in a prior audit. This financial examination or audit may be performed in coordination with the investigations conducted by the grand jury under Section 925 of the Penal Code, or the board of supervisors may resolve to accept reports delivered pursuant to Section 933 of the Penal Code in lieu of its own separate examination if such reports are found to fulfill some or all of the requirements of this section. In connection with the requirements of this section and Section 25253, the board of supervisors may employ the services of an independent certified public accountant or licensed public accountant to perform an examination of the financial statements in accordance with generally accepted auditing standards.

26525. Illegal Payment Of Funds; Unauthorized Warrants; Actions To Recover Money Paid Or To Restrain Payment

If the board of supervisors without authority of law orders any amount paid as salary, fees, or for any other purposes and the money is actually paid, or if any county officer draws any warrant in his own favor or in favor of any other person without authorization by the board or law and the warrant is paid, the district attorney shall institute suit in the name of the county to recover the money paid, and 20 percent damages for the use thereof. If the money has not been paid on the order or warrants, the district attorney upon receiving notice thereof shall commence suit in the name of the county to restrain the payment. An order of the board is not necessary in order to maintain the suits.

54950. Declaration, Intent; Sovereignty (Brown Act)

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

54950.5. This chapter shall be known as the Ralph M. Brown Act.

Appendix I

WELFARE AND INSTITUTIONS CODE SECTIONS

17000. RESIDENTS

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

17006. INVESTIGATIONS, SUPERVISION AND REHABILITATION; RECORDS

(a) (1) The board of supervisors of every county as a board, or by committee or by any person or society as it may authorize, shall investigate every application for relief from the funds of the county, shall supervise by periodic visitation every person receiving that relief, shall devise ways and means for bringing persons unable to maintain themselves to self-support, and shall keep full and complete records of the investigation, supervision, relief, and rehabilitation as shall be prescribed by the department. These records shall be confidential and shall not be open to examination or inspection, except by the grand jury of the county or by a board or an officer of the state or the county charged with the supervision or direction of that relief or with the control or expenditure of funds applicable to that relief. Any citizen shall be entitled to demand and receive from the board, officer, committee, person, or society having custody of these records a statement of the amount, character, and value of the relief received by any person.

(b) (1) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by an applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker.

(2) For purposes of this subdivision, "criminal act" means only an act that is in violation of state or local law.

(3) Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's name, physical description, and address.

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