


FILE



Office of the  
City Attorney

July 10, 2013

The Honorable Mark A. Cope, Presiding Judge  
Riverside County Superior Court  
4050 Main Street  
Riverside, California 92501

Subject: *City of Riverside's Response to the 2012-2013 Grand Jury Report: City of Riverside, Office of the City Attorney; Our File No: CA13-0765*

Dear Judge Cope:

Pursuant to California Penal Code sections 933 et seq., the City of Riverside hereby submits its response to 2012-2013 Grand Jury report with respect to the advice and counsel provided by the City Attorney's Office to the Community Police Review Commission. The Riverside City Council at its meeting of July 9, 2013, authorized this response.

California Penal Code section 933 requires that the governing body of the public agency, not later than 90 days after the Grand Jury submits a final report, 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. Section 933.05 sets forth the manner in which the governing body must respond to the findings and recommendations.

The following are the applicable findings and recommendations from the Grand Jury report followed by the City's response to each of the items.

Finding 1: The Grand Jury finds that the City Attorney does not consider a supervising deputy city attorney and the remaining deputy attorneys, professionally capable of performing legal advisory duties.

Pursuant to Penal Code section 933.05, the City of Riverside wholly disagrees with the finding. Riverside City Charter section 702 specifically delineates the powers and duties of the City Attorney. The City Attorney shall have the power and may be required to represent and advise the City Council and all City officers in all matters of law pertaining to their offices. The City Attorney shall also have the power to represent and appear for the City in any or all actions or proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee, or former City officer or employee, in any or all actions and proceedings in which any such officer or employee is concerned or is a party for any act arising out of such

The Honorable Mark A. Cope, Presiding Judge  
July 10, 2013  
Page 2

officer's or employee's employment or by reason of such officer's or employee's official capacity.

In the discharge of my duties as the City Attorney, I became aware that Committee #5 ("Committee") of the Riverside County Civil Grand Jury also known as the Law Enforcement Committee was investigating an officer-involved death which had occurred on March 1, 2012. The Committee requested and obtained copies of the investigative reports regarding the incident and subpoenaed and obtained testimony from six Riverside police officers. When I became aware that the Committee was seeking the testimony of the members of the City's Community Police Review Commission and Community Police Review Manager, I made the substantive policy and managerial determination to undertake the representation myself. While I generally believe that my attorneys are professionally capable of performing legal advisory duties, I have a legal and ethical obligation to my client to ensure that the lawyers assigned a given task are competent to do so and possess the requisite legal knowledge and skill. The lawyers of the City Attorney's Office have various competencies and specialize in different areas of municipal law. Their talents are utilized as relevant and necessary to serve the client.

Rule 1.1 of the American Bar Association Model Rules of Professional Conduct requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the presentation.

Moreover, Rule 3-110 of the California State Bar Rules of Professional Conduct provides that an attorney ". . . shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Rule 3-110 defines "Competence" in any legal service as the ability to apply the diligence, learning and skill, and mental, emotional, and physical ability reasonability necessary for the performance of such legal service.

The Grand Jury's report neither addresses nor considers an attorney's ethical obligation to his or her client to perform their duties with the requisite legal knowledge and skill. In this instance, I made the determination as the City Attorney to represent the Community Police Review Commission myself since I have been its primary legal advisor since its creation in 2000. It should also be noted that I personally assisted the City Council's Governmental Affairs Committee in developing the powers, duties and functions of the Commission in 1999 and 2000. Furthermore, I have personally handled all civil grand jury inquiries and investigations for the City Attorney's Office over the past 20 years. Consequently, I made the discretionary managerial decision to provide the Commission with the best legal representation possible. While my attorneys are professionally capable of performing legal advisory duties, it would have potentially been a breach of my ethical duty to my client to have delegated representation to a subordinate attorney under the circumstances present here. As the City Attorney, I have an obligation to provide my client with the best possible legal advice and counsel and to assign the work to the attorneys as I deem necessary and appropriate.

The Honorable Mark A. Cope, Presiding Judge  
July 10, 2013  
Page 3

On April 22, 2013, I was interviewed by the Grand Jury regarding my representation of the Community Police Review Commission. On April 22, Commission Member Ken Rotker was interviewed by the Committee. On April 23, Commission Chair Dale Roberts was interviewed by the Committee. However, I was unavailable to represent the other commission members whose interviews were to take place on April 24 and 25 since my wife was having surgery.

On April 16, 17 and 18, I advised the Grand Jury that I was unavailable to represent the commission members and requested that the interviews be rescheduled. These requests are documented in letters dated April 16 and April 18 to the Grand Jury Foreperson. I also strongly urged the Committee to consult with representatives of either the Riverside County District Attorney's Office or the County Counsel's Office regarding the reasonableness of my request to reschedule the interviews.

Unfortunately, I was forced to file a motion to modify four of the subpoenas after efforts to informally resolve the scheduling issue failed. Attached is a copy of the motion and its exhibits which include my letters of April 16 and April 18.

On May 1, 2013, I sent a letter to County Counsel Pamela Walls and Assistant District Attorney Creg Datig requesting a resolution of the scheduling issue without any further court intervention. I advised them of my interest in expediting the interviews in order to allow the Grand Jury to complete their work prior to the expiration of their term at the end of June. I requested that the interviews of the four remaining witnesses be rescheduled to mutually agreeable dates and times as soon as possible. I did not receive any response to my May 1 letter until I received a phone call from County Counsel on the morning of May 20, 2013 asking to reschedule the interviews and to take the motion off calendar. On May 20, 2013, a Notice of Taking Motion to Modify Subpoenas off calendar was filed with the court avoiding the necessity for the hearing on May 23, 2013. Attached is a copy of the notice.

County Counsel requested that the remaining interviews be rescheduled for May 23. I was then able to facilitate the scheduling of the interviews with the Committee and they proceeded as requested. Also attached are the emails between County Counsel and myself regarding the rescheduling of the four remaining interviews.

In sum, I do not believe that it is within the Grand Jury's power or otherwise appropriate for the Grand Jury to question the discretionary managerial decision of the City Attorney as to how to best discharge his duties and obligations under the Riverside City Charter and the Rules of Professional Conduct.

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

The Honorable Mark A. Cope, Presiding Judge  
July 10, 2013  
Page 4

Pursuant to Penal Code section 933.05, the City of Riverside wholly disagrees with this finding. The Grand Jury incorrectly asserts that the inclusion of my letters of April 16 and April 18 to the Motion to Modify the Subpoenas constituted a violation of Penal Code section 939.22. Section 939.22 has no application to the factual circumstances presented here. Section 939.22 precludes an attorney representing a witness under oath before a Grand Jury from disclosing or using anything heard in the Grand Jury room other than in the representation of the witness he or she represents. The Grand Jury does not allege that I disclosed or used anything heard in the Grand Jury room other than in the representation of the witness that I represented. Moreover, Penal Code section 939.22 applies to an attorney representing a witness whose testimony is taken under oath. Since I appeared as a witness before the Grand Jury with separate legal counsel representing my interests, section 939.22 does not apply to me. That section applied to the attorney representing me before the Grand Jury. The only secrecy admonition to which I am bound as a witness was that which was given to me on April 22.

Given my concerns as City Attorney that the Grand Jury may seek information protected by the attorney-client and attorney work-product privileges contrary to established law, I sent my letters of April 16 and 18 to the Grand Jury and copied the Presiding Judge as well as representatives of the District Attorney's Office and County Counsel's Office. As the court is aware, the Grand Jury is not a wholly independent body. Rather, it is under the control of the Superior Court and its Presiding Judge. At no time did the Presiding Judge or the District Attorney express any concerns with the manner and/or content of my communications with the Grand Jury. All of the information set forth in the letters and motion was derived from sources outside of the Grand Jury room and I at no time violated the secrecy admonition related to my testimony before the Grand Jury. The Grand Jury does not allege nor cite to any information derived from my interview before the Grand Jury. In fact, the correspondence of concern to the Grand Jury dated April 16 and April 18 occurred before my interview with the Grand Jury on April 22. It was legally impossible for me to have violated the secrecy admonition given on April 22.

On May 20, 2013, County Counsel sent a letter advising me of Penal Code section 939.22. Not referenced nor included within the Grand Jury's report is my letter of May 21, 2013 to County Counsel. In the attached letter, I specifically advised County Counsel that the reference in my correspondence to the nature of the pending Grand Jury investigation was derived from information obtained outside of the Grand Jury room and was made in order to assist the District Attorney, County Counsel, and the Presiding Judge in their evaluation as to the appropriateness and legality of the Grand Jury's conduct. I received no response to my letter of May 21 from County Counsel or the Grand Jury.

In sum, I was well within my legal rights as the City Attorney to share my concerns with the Presiding Judge, District Attorney and County Counsel. I have at all times complied with section 939.22 and there is no factual basis for an allegation to the contrary.

The Honorable Mark A. Cope, Presiding Judge  
July 10, 2013  
Page 5

Recommendation 1: The City Attorney shall review the qualifications of all attorneys and ensure they are professionally capable of performing legal advisor duties as defined in their job descriptions.

Pursuant to Penal Code section 933.05, the recommendation will not be implemented because it is not warranted based upon the facts and circumstances presented above. It is not reasonable for the Grand Jury to question discretionary managerial decisions of the City Attorney as to how best to represent his client in a given set of circumstances. The authority of the Grand Jury is limited to procedural and operational matters, and is distinguishable from "substantive concerns involving the merit, wisdom, or expediency of . . . policy determinations." See 78 Ops. Cal. Atty. Gen. 290 (1995).

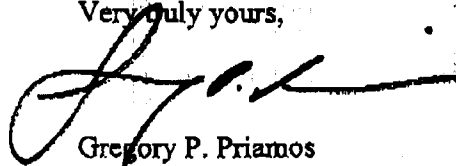
Notwithstanding the foregoing, I have and will consistently review the qualifications, training, and experience of all of the City Attorney staff and ensure that they remain professionally capable of performing their duties to the client. I am proud of the members of the City Attorney's Office and the excellent work they do every day for the City of Riverside.

Recommendation 2: The City of Riverside, Office of the City Attorney, shall refresh their memory on the responsibilities of the Grand Jury and shall honor the secrecy of the Grand Jury.

The recommendation will not implemented because it is not based upon the facts and circumstances set forth above. This recommendation is based on an incorrect interpretation and application of the law and further, there are no facts to support any violation of a secrecy admonition issued by the Grand Jury.

Should you have any questions, please do not hesitate to contact me directly.

Very truly yours,



Gregory P. Priamos  
City Attorney

GPP/aak

Attachments

EXEMPT FROM FEE PURSUANT TO GOVERNMENT CODE §6103

1 GREGORY P. PRIAMOS, City Attorney, SBN 136766  
2 JAMES E. BROWN, Supervising Deputy City Attorney, SBN 16257  
3 CITY OF RIVERSIDE  
4 City Hall, 3900 Main Street  
Riverside, California 92522  
Telephone (951) 826-5567  
Facsimile (951) 826-5540

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

APR 23 2013  
R. Mc Elyea

5 Attorneys for Witnesses CLAUDIA SMITH, JOSPEH ORTIZ  
6 JANE ADAMS AND FRANK HAUPTMANN

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF RIVERSIDE**

9 In the Matter of:  
10 CIVIL GRAND JURY SUBPONEAS

) CASE NO. **RIC 1304847**  
)  
) **NOTICE OF MOTION AND MOTION**  
) **TO MODIFY SUBPOENAS SERVED**  
) **BY THE RIVERSIDE COUNTY**  
) **GRAND JURY; MEMORANDUM OF**  
) **POINTS AND AUTHORITIES;**  
) **DECLARATION OF GREGORY P.**  
) **PRIAMOS IN SUPPORT THEREOF**  
)  
) [C.C.P. sec. 1987.1]

16 Date: 5/23, 2013  
17 Time: 8:30 a.m.  
18 Department: 02

19 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

20 **PLEASE TAKE NOTICE** that on 5/23, 2013, at 8:30 a.m., Claudia Smith,  
21 Joseph Ortiz, Jane Adams and Frank Hauptmann will move for an order to modify the subpoena  
22 issued by the Grand Jury. This motion is based upon the following grounds:

- 23 1. Counsel for the witnesses is unavailable on the dates set forth in the subpoena; and  
24 2. Efforts to resolve this scheduling matter informally and without Court  
25 assistance have failed. The Grand Jury refused to consider rescheduling these appearances.


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This motion will be based upon this notice, the memorandum of points and authorities, as well as any oral and documentary evidence which may be properly presented at the hearing on this motion.

DATED: April 23, 2013

CITY OF RIVERSIDE  
GREGORY P. PRIAMOS, City Attorney  
JAMES E. BROWN, Supervising Deputy City Attorney

By:   
JAMES E. BROWN, Attorney for Claudia Smith,  
Joseph Ortiz, Jane Adams and Frank Hauptmann

1 **MEMORANDUM OF POINTS AND AUTHORITIES**  
2 **IN SUPPORT OF MOTION TO MODIFY SUBPOENA**  
3

4 **1. INTRODUCTION and FACTS**

5 One of the three basic functions of a Grand Jury is to act as a public "watchdog" by  
6 investigating and reporting upon the affairs of local government. (See McClatchy Newspapers v.  
7 Superior Court (1988) 44 Cal 3d 1162 at 1170 and Penal Code Sections 919 and 925, et. Seq.)

8 On April 16, 2013, Don Rapp and Mike Pernarelli, the Foreperson and a Juror serving on  
9 the Civil Grand Jury for Riverside County, served eight (8) subpoenas on the Riverside City  
10 Attorney's Office. These subpoenas were for Commissioners of the Community Police Review  
11 Commission ("CPRC"), the Manager of the CPRC and the City Attorney. Appearances pursuant  
12 to these subpoenas were set at various times on April 22 through April 25, 2013. Copies of these  
13 subpoenas are attached to the Priamos declaration as Exhibit "A".

14 The Riverside City Attorney, Gregory P. Priamos, has served as legal advisor to the  
15 CPRC since its inception in 2001. Upon receipt of these subpoenas, Mr. Priamos checked his  
16 schedule and found that he would be out of the office and unavailable to attend the interviews as  
17 ordered pursuant to the subpoenas on April 24 and 25, 2013. Mr. Priamos faxed a letter to Mr.  
18 Rapp, Foreperson of the Grand Jury advising of his unavailability on April 24 and 25 and  
19 offering any time convenient for the Grand Jury the week of April 29, 2013. A copy of this letter  
20 is attached as Exhibit "B" to Mr. Priamos' declaration.

21 In response to this letter, Mr. Rapp and Mr. Pernarelli called Mr. Priamos and discussed  
22 the matter on April 16. Mr. Rapp and Mr. Pernarelli told Mr. Priamos that they would  
23 reschedule his interview from April 24 to April 22, but that they would not reschedule any of the  
24 remaining witness interviews. They explained that they would not be taking any testimony  
25 under oath, so the witnesses would not be entitled to have counsel present with them at the  
26 interview. This conversation is memorialized in a letter drafted by Mr. Priamos and attached as  
27 Exhibit "C" to his declaration.



1 **2. CODE OF CIVIL PROCEDURE SECTION 1987.1 PROVIDES THESE**  
 2 **WITNESSES WITH THE ABILITY TO SEEK COURT INTERVENTION FOR**  
 3 **THE PURPOSE OF MODIFYING THESE SUBPOENAS**

4 Code of Civil Procedure Section 1987.1 states that:

5 If a subpoena requires the attendance of a witness or the production of books, documents,  
 6 electronically stored information, or other things before a court, or at the trial of an issue therein,  
 7 or at the taking of a deposition, the court, upon motion reasonably made by any person described  
 8 in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity  
 9 to be heard, may make an order quashing the subpoena entirely, modifying it, or directing  
 10 compliance with it upon those terms or conditions as the court shall declare, including protective  
 11 orders. In addition, the court may make any other order as may be appropriate to protect the  
 12 person from unreasonable or oppressive demands, including unreasonable violations of the right  
 13 of privacy of the person.

14 Penal Code Section 939.22 (a) states in pertinent that:

15 Any witness who is called to give testimony under oath before a civil grand jury may  
 16 have counsel present on his or her behalf while he or she is testifying. In order to prevent these  
 17 witnesses from having their counsel present during these interviews, the Grand Jury has  
 18 indicated that they will not be taking testimony from the witnesses under oath. This will thereby  
 19 deny their ability to have counsel present with them during the interview.

20 Nevertheless, witnesses before a Grand Jury are entitled to have counsel outside the  
 21 Grand Jury room during their interview so that the witness may meet and confer with counsel as  
 22 necessary. The Right to Counsel is sacrosanct and guaranteed by both the United States and  
 23 California Constitutions. The Grand Jury's refusal to modify the terms of the subpoenas by  
 24 continuing the interviews for a few days denies these witnesses their right to have the assistance  
 25 of their chosen counsel.

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**3. CONCLUSION**

A simple request to continue interviews was made in good faith by counsel for witnesses herein. This request was based on the unavailability of counsel and would only delay the interviews by a few days. Nevertheless, the Grand Jury refused to grant this reasonable request, leaving witnesses no choice but to seek Court intervention. These witnesses merely ask that these interviews be rescheduled to a mutually agreeable time such that their counsel may attend these interviews.

DATED: April 23, 2013

CITY OF RIVERSIDE  
GREGORY P. PRIAMOS, City Attorney  
JAMES E. BROWN, Supervising Deputy City Attorney

By:   
JAMES E. BROWN, Attorney for Claudia Smith,  
Joseph Ortiz, Jane Adams and Frank Hauptmann

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**DECLARATION OF GREGORY P. PRIAMOS**

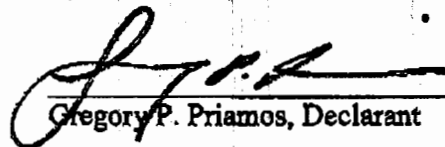
I, Gregory P. Priamos, declare under the penalty of perjury, as follows:

1. I am an attorney at law duly licensed to practice law before all of the courts of the State of California. I am the City Attorney with the City of Riverside and am counsel for the moving parties. I have personal knowledge of the following facts, and if called to testify as to them, could and would competently do so.
2. That on April 16, 2013 the Riverside County Civil Grand Jury served eight (8) subpoenas on the Riverside City Attorney's Office. These subpoenas were for Commissioners of the Community Police Review Commission ("CPRC"), the Manager of the CPRC and the City Attorney. True and correct copies of these subpoenas are attached to these moving papers as Exhibit "A".
3. That appearances pursuant to these subpoenas were set at various times on April 22 through April 25, 2013.
4. That I am personally unavailable on April 24 and 25, 2013 to represent my clients.
5. That on April 16, 2013 a letter was faxed to Mr. Rapp, Foreperson of the Grand Jury advising of my unavailability on April 24 and 25 and offering any time convenient for the Grand Jury the week of April 29, 2013. Attached hereto as Exhibit "B" is a true and correct copy of the letter advising unavailability.
6. That on April 17, 2013 Mr. Rapp and Mr. Pernarelli called and discussed my unavailability. Mr. Rapp and Mr. Pernarelli stated that they would reschedule my interview from April 24 to April 22, but that they would not reschedule any of the remaining witness interviews so that I could be present to represent my clients, the witnesses herein.
7. That on April 18, 2013 a letter was sent memorializing my conversation with Mr. Rapp and Pernarelli. Attached hereto as Exhibit "C" is a true and correct copy of the letter dated April 18 memorializing this conversation.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this twenty-third day of April, 2013, at Riverside, California.

  
Gregory P. Priamos, Declarant

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IN THE SUPERIOR COURT  
OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

**GRAND JURY SUBPOENA**

THE PEOPLE OF THE STATE OF CALIFORNIA:

To: CLAUDIA SMITH  
CITY OF RIVERSIDE  
3900 MAIN STREET  
RIVERSIDE, CALIFORNIA 92522

GOOD CAUSE APPEARING THEREFORE,

YOU ARE COMMANDED to appear before the 2012-13 Riverside County Grand Jury of the County of Riverside, State of California, at the Office of the Riverside County Grand Jury of said Court, 3901 Lime Street, Second Floor, in Riverside City, County and State aforesaid on **Wednesday, April 24, 2013, at 10:00 a.m.**, as a witness upon an investigation pending before said Grand Jury.

Any questions relating to this matter should be directed to Don Rapp, Grand Jury Foreperson at (951) 955-8990.

Disobedience of this subpoena may be punished by a fine, imprisonment, or both. A warrant may issue for your arrest if you fail to appear.

Given under my hand this 15 day of April, 2013.

  
MARK A. COPE, PRESIDING JUDGE  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

I hereby certify that at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_, I served the within subpoena by delivering a copy of the subpoena to the witness personally, or by delivering two copies to his or her immediate superior at the public entity or agent designated at \_\_\_\_\_

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Reason not served: \_\_\_\_\_

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IN THE SUPERIOR COURT  
OF RIVERSIDE COUNTY, STATE OF CALIFORNIA  
GRAND JURY SUBPOENA

THE PEOPLE OF THE STATE OF CALIFORNIA:

To: JOSEPH T. ORTIZ  
CITY OF RIVERSIDE  
3900 MAIN STREET  
RIVERSIDE, CALIFORNIA 92522

GOOD CAUSE APPEARING THEREFORE,

YOU ARE COMMANDED to appear before the 2012-13 Riverside County Grand Jury of the County of Riverside, State of California, at the Office of the Riverside County Grand Jury of said Court, 3901 Lime Street, Second Floor, in Riverside City, County and State aforesaid on **Thursday, April 25, 2013, at 10:00 a.m.**, as a witness upon an investigation pending before said Grand Jury.

Any questions relating to this matter should be directed to Don Rapp, Grand Jury Foreperson at (951) 955-8990.

Disobedience of this subpoena may be punished by a fine, imprisonment, or both. A warrant may issue for your arrest if you fail to appear.

Given under my hand this 15 day of April, 2013.

  
MARK A. COPE, PRESIDING JUDGE  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

I hereby certify that at \_\_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_, I served the within subpoena by delivering a copy of the subpoena to the witness personally, or by delivering two copies to his or her immediate superior at the public entity or agent designated at \_\_\_\_\_

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Reason not served: \_\_\_\_\_