

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title: Appearance of Conflict of Interest

Report Dated: 6/2/14

Response Form Submitted By:

Board of Supervisors

Response MUST be submitted, per Penal Code §933.05, no later than:

9/7/14

We have reviewed the report and submit our responses to the FINDINGS portion of the report as follows:

- x We agree with the Findings numbered:
6
- x We disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
1, 2, 3, 4, 5, 7, 8

We have reviewed the report and submit our responses to the RECOMMENDATIONS portion of the report as follows:

- x The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:
1
 - The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:
-

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- x The following Recommendation(s) require further analysis, and **attached as required**, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
2 and 3
- The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, **attached, as required** is an explanation therefore:
-

We have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 3

We understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

We understand that we must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: Douglas L. Losak

Title: Acting County Counsel

Signed: _____

Date: _____

**MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND
JURY REPORT TITLED:**

MENTAL HEALTH - AN APPEARANCE OF A CONFLICT OF INTEREST

FINDINGS:

F1 - NVBH and Ortner are clearly linked in both business and professional matters.

The Board of Supervisors disagrees in part with this finding with clarification. Ortner Management Group (OMG) is the Administrative Services Organization (ASO) for Mendocino County for Mental Health Services. North Valley Behavioral Health Services (NVBH) is a subcontractor of OMG.

F2 - As administrator of NVBH-Fairfield, the BHRS Director had a business and financial Relationship with Ortner through NVBH-Fairfield immediately prior to coming to work for the County.

The Board of Supervisors disagrees in part with this finding with clarification. The Behavioral Health and Recovery Services Director worked for OMG between 2008 and 2010. In September 2010, he was hired by Mendocino County as a consultant for Mental Health Services on an independent contractor basis. He was hired as the BHRS Director on April 16, 2012.

F3 - The Grand Jury perceived a possible conflict of interest in the selection of Ortner for the privatization contract for adult mental health services.

The Board of Supervisors disagrees wholly with this finding. The Grand Jury's "perception" is not a finding. If this finding was meant to assert that there was a conflict of interest in the selection of OMG to provide mental health services for the County, the Board of Supervisors wholly disagrees. There has been no evidence brought forward that establishes that there was any conflict of interest by anyone involved in awarding the contract to OMG.

F4 - There was a lack of transparency to the public regarding the timelines and the changing work relationships between the consultants and the management of H&HS.

The Board of Supervisors disagrees wholly with this finding. To begin with, it is unclear what the Grand Jury means "regarding the timelines and the changing work relationships between the consultants and the management of H&HS". However, whether the comment refers to the employment history of the current BHRS Director, his relationship with H&HSA management, or the process for obtaining and awarding proposals for mental health services, in every instance, contracts were awarded and relationships established based on an open process available for anybody to review.

F5 - There was a lack of transparency to the public as to the legal relationship and responsibilities of the concerned parties during the changing work relationships.

The Board of Supervisors disagrees wholly with this finding. It is unclear what the Grand Jury means "as to the legal relationship and responsibilities of the concerned parties during the changing work relationships." However, whether the comment refers to the relationships and responsibilities of the current BHRS Director, H&HSA management, or the contractor for adult mental health services, the specific duties and responsibilities are a matter of public record with substantial information available online, including the contract for Adult Mental Health Services.

F7 - Given the response published by the County in the *Request for Proposal Addendum No. 1*, the Grand Jury finds the County guidelines are insufficient to address perceptions of undue influence.

The Board of Supervisors disagrees wholly with this finding. Addendum No. 1, referenced above, simply requires County employees to disclose their names if they were part of an organization/group bidding on the contract in question. The guidelines are clear that County employees must fully disclose their employment with the County when bidding on a public contract.

F8 - It is not entirely clear to the Grand Jury whether or not there was undue influence in the selection process.

The Board of Supervisors wholly disagrees with this finding. To begin with, the lack of clarity on the part of the Grand Jury is not a finding. In addition, the Board of Supervisors believes there was no undue influence in the process for awarding the Mental Health contract in question. The County took all reasonable measures to ensure the selection process was transparent and void of undue influences. The Grand Jury has provided no documentation to the contrary.

RECOMMENDATIONS:

R1 - The Board of Supervisors develop and adopt policies and procedures to require senior management and/or staff to recuse themselves from any board or department activity that could have, or might have the appearance, of a positive financial impact on themselves or any of their immediate family. (F1, F2, F3, F4, F5, F7)

This recommendation has been implemented long before it was recommended by the Grand Jury. The County has adopted a Conflict of Interest Code, attached as exhibit A. This policy requires the designated employees to comply with the Conflict of Interest Code in Title 2, California Code of Regulations, §18730. However, this regulation requires designated employees to avoid actual conflicts, although it does encourage the

avoidance of appearances of conflicts. In addition, the County has adopted Policy 1, which has guidelines and polices regarding contracting and purchasing.

R2 - A clause be added to any consultant contract stating explicitly: "All information gathered by the consultant under this contract shall be considered privileged and confidential. It shall not be divulged to a third party without the express written consent of the *appropriate* agency head." (F1, F2, F3, F4, F5, F7)

The recommendation that this language be added "to any consultant contract" will not be implemented, because it is not reasonable as it is contrary to law. In many instances, information gathered by a consultant will be a matter of public record as required by law. If the information is already deemed confidential, the contractor would be obligated to maintain that confidentiality regardless of the language in the contract. Likewise, situations involving a possible conflict of interest are already governed by law.

R3 - The Board of Supervisors adopt a policy prohibiting any County employee from participating in any decision regarding the selection or rejection of any RFP or other contract that involves any former employer within three years of the employee's termination from the former employer. (F1, F2, F3, F4, F5, F7).

The recommendation requires further analysis. The Board of Supervisors will request County staff to investigate this issue and provide a response within the next six months.

**CONFLICT OF INTEREST CODE
COUNTY OF MENDOCINO**

The Political Reform Act, Government Code §§81000-91015, requires each state and local government agency to adopt and promulgate a Conflict of Interest Code. The Fair Political Practices Commission has adopted a regulation, found in Title 2, California Code of Regulations, §18730, which contains the terms of a standard Conflict of Interest Code. This code can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments of the Political Reform Act. The terms of the standard Conflict of Interest Code in Title 2, California Code of Regulations, §18730 and any amendments to it duly adopted by the Fair Political Practices Commission have been incorporated by reference by Resolution of the Board of Supervisors of Mendocino County, along with attached Appendixes A through D, in which members and employees are designated and disclosure categories are set forth, and the place of filing is specified. Such terms and amendments and Appendixes shall constitute the Conflict of Interest Code of the County of Mendocino.

Designated employees shall file statements of economic interest with the agency. Upon receipt of the statements of the various designated members and employees, the designated agency shall make and retain a copy and forward the original of these statements to the place of filing as indicated on Appendix C attached.

APPENDIX A

**CONFLICT OF INTEREST CODE
COUNTY OF MENDOCINO**

PART I - DESIGNATED EMPLOYEES

Under provisions of this Code, designated employees shall file statements of economic interests. The following are designated employees because their positions involve the making or participating in the making of decisions, which could affect private financial interests materially. The financial effect of a government decision is material if the decision will have a significant effect on a person's or business entity's real property or source of income in question. Any investments, interests in real property and sources of income held by the designated employee's spouse or dependent children must be reported as though held by the designated employee personally.

Consultants to the County of Mendocino hold designated positions under this Conflict of Interest Code and are required to comply with the disclosure requirements described below. The Chief Executive Officer may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer shall forward a copy of this determination to the Board of Supervisors. However, nothing herein will excuse any such consultant from any other provision of this Conflict of Interest Code.

<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE CATEGORY</u>	
<u>(BU 1010) CLERK OF THE BOARD</u>		
Clerk of the Board of Supervisors	3	
<u>(BU 1020) EXECUTIVE OFFICE</u>		
Assistant Chief Executive Officer	1	
Deputy Chief Executive Officer	1	
Administrative Analyst I/II	1	
Economic Development Coordinator	1	
Senior Administrative Analyst	1	
<u>(BU 1110) AUDITOR-CONTROLLER</u>		
Auditor-Controller	3	
Assistant Auditor-Controller	3	
<u>(BU 1120) ASSESSOR</u>		
Assessor Clerk -Recorder	1	
Assistant Assessor	1	
Chief Property Appraiser	1	
Real Property Appraiser I/II/III	1	
Senior Auditor-Appraiser	1	
Auditor-Appraiser	1	

<u>(BU 1130) TREASURER-TAX COLLECTOR</u>		
Assistant Treasurer-Tax Collector	1	
<u>DESIGNATED POSITIONS</u>		
	<u>DISCLOSURE CATEGORY</u>	
<u>(BU 1160) GENERAL SERVICES AGENCY</u>		
General Services Agency Director	1	
Buyer	3	
<u>(BU-1210) COUNTY COUNSEL</u>		
Chief Deputy County Counsel	1	
Deputy County Counsel I/II/III/IV	1	
<u>(BU 1320) HUMAN RESOURCES</u>		
Director of Human Resources	3	
Human Resources Manager	3	
<u>(BU 1410) ELECTIONS</u>		
Assistant Registrar of Voters	3	
<u>(BU 1610) BUILDING AND GROUNDS</u>		
Facility and Fleet Division Manager	3	
<u>(BU 1620) GARAGE</u>		
Supervising Auto Mechanic	3	
<u>(BU 1910) DOT: LAND IMPROVEMENTS</u>		
Deputy Director of Transportation: Land Improvements	1	
County Surveyor	1	
Civil Engineer	1	
<u>(BU 1941) COUNTY CLERK</u>		
Assistant Clerk Recorder	3	
<u>(BU 1960) INFORMATION SERVICES</u>		
Information Services Division Manager	3	
Information Systems Operations Manager	3	
Information Systems Network Manager	3	
<u>(BU 2070) DISTRICT ATTORNEY</u>		
Administrative Services Manager	3	
Assistant District Attorney	1	
Chief Deputy District Attorney	1	
<u>(BU 2080) PUBLIC DEFENDER</u>		
Public Defender	3	
Assistant Public Defender	3	
<u>(BU 2085) ALTERNATE PUBLIC DEFENDER</u>		
Alternate Defender	3	

<u>(BU 2090) CHILD SUPPORT SERVICES</u>		
Child Support Services Director	3	
Chief Child Support Attorney	1	
<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE</u>	
	<u>RE</u>	
	<u>CATEGOR</u>	
	<u>Y</u>	
<u>(BU 2310) SHERIFF/CORONER</u>		
Sheriff-Coroner	1	
Undersheriff	1	
Sheriff's Captain	1	
Sheriff's Lieutenant	1	
Administrative Services Manager I/II	3	
<u>(BU 2510) JAIL</u>		
Correction's Lieutenant	3	
Sheriff's Captain	3	
<u>(BU 2550) JUVENILE HALL</u>		
Probation Division Manager	3	
<u>(BU 2560) PROBATION</u>		
Administrative Services Manager	3	
Chief Probation Officer	3	
Probation Division Manager	3	
<u>(BU 2710) AGRICULTURE</u>		
Agricultural Commissioner/Sealer of Weights and Measures	2	
Assistant Agricultural Commissioner/Sealer of Weights Measures	2	
<u>(BU 2851) PLANNING AND BUILDING SERVICES</u>		
Planning and Building Services Director	1	
Planner I/II/III	1	
Chief Planner	1	
Senior Planner	1	
Code Enforcement Officer I/II	2	
Chief Building Inspector	2	
Senior Building Inspector	2	
Building Inspector I/II/III	2	
<u>(BU 2860) ANIMAL CARE & CONTROL</u>		
Program Administrator	1	
<u>(BU 3010) TRANSPORTATION (DOT)</u>		
Transportation Director	1	
Assistant Transportation Director	1	
Deputy Director of Transportation: Admin/Business Services	1	

Deputy Director of Transportation: Engineering	1	
Deputy Director of Transportation: Maintenance Services	1	
Maintenance Operations Coordinator	3	
Civil Engineer	1	
Engineer I/II	1	
Senior Civil Engineer	1	
Right of Way/Environmental Agent	1	
Equipment Superintendent	3	
<u>DESIGNATED POSITIONS</u>	<u>DISCLOSURE</u>	
	<u>RE</u>	
	<u>CATEGOR</u>	
	<u>Y</u>	
<u>(BU 4010) PUBLIC HEALTH BRANCH (PH)</u>		
Director of Public Health Branch	1	
Public Health Officer	1	
<u>(BU 4011) PH: ENVIRONMENTAL HEALTH</u>		
Director Environmental Health	1	
Environmental Health Specialist I/II	2	
Senior Environmental Health Specialist	3	
Environmental Health Manager	3	
<u>(BU 4012) PH: ALCOHOL/OTHER DRUG</u>		
Alcohol/Drug Program Deputy Director	3	
<u>(BU 4013) PH: NURSING</u>		
Public Health Nursing Deputy Director	3	
<u>(BU 4050) MENTAL HEALTH BRANCH</u>		
Mental Health Branch Director	3	
Chief Psychiatrist	3	
Administrative Services Manager II	3	
<u>(BU 4510) DOT: SOLID WASTE</u>		
Deputy Director of Transportation: Solid Waste	1	
<u>(BU 5010) SOCIAL SERVICES BRANCH</u>		
Social Services Branch Director	3	
Deputy Director Social Services	3	
Staff Services Administrator	3	
Program Manager	3	
Veterans' Service Officer	3	
Deputy Public Guardian/Administrator	3	
Senior Program Manager	3	
Program Administrator	3	
<u>(BU 5020) HEALTH AND HUMAN SERVICES AGENCY</u>		
Health and Human Services Agency Director	3	
Health and Human Services Agency Assistant Director	3	

<u>(BU 6110) LIBRARY</u>		
County Librarian/Director	3	
Assistant County Librarian	3	
<u>(BU 7110) MUSEUM</u>		
Museum Director	3	

PART II - DESIGNATED BOARDS, COMMISSIONS AND EMPLOYEES

Under the provisions of the standard code, the following Boards and Commissions and their designated members and employees make or participate in the making of decisions which may foreseeably have a material effect on any financial interest:

	<u>CATEGORY</u>
<u>Airport Land Use Commission</u> (all Commissioners)	2
<u>Air Quality Management District</u> (all Board members)	2
Air Pollution Control Officer	2
Senior Air Quality Specialist	2
Air Quality Management District Hearing Board	2
Air Quality Program Coordinator	2
<u>Archaeological Commission of Mendocino County</u> (all Commissioners)	2
<u>Building Appeals Board</u> (all Board members)	2
<u>Gualala Municipal Advisory Council</u> (all members)	1
<u>Laytonville Municipal Advisory Council</u> (all members)	1
<u>Mendocino Historical Review Board</u> (all Board members)	2
<u>Mendocino County Indian Gaming Local Community Benefit Committee</u> (all Committee members)	1, 2, 3
<u>Solid Waste Hearing Board</u> (all Board members)	2
<u>Water Agency</u> (all Board members)	1
General Manager	1
Hydrologist	1

PART III: CONSULTANTS

(As of September 23, 2008 - this area is not applicable and is to be left blank)

APPENDIX B

**CONFLICT OF INTEREST CODE
COUNTY OF MENDOCINO**

***DISCLOSURE CATEGORIES FOR DESIGNATED POSITIONS
(EMPLOYEES, COMMISSION AND BOARD MEMBERS)
AND CONSULTANTS***

CATEGORY 1: All sources of income, relative to investments in businesses and real estate (except principal place of residence). *Consultants¹

CATEGORY 2: All investments, sources of income and interest in real property subject to the regulatory, permit or licensing authority of the employee's department.

CATEGORY 3: All investments and sources of income derived from sources, which are:

- A. Contractors or subcontractors engaged in the performance of work or services of the type utilized by the County of Mendocino or the employees' department, or
- B. Manufacturers, sellers or lessors of supplies, machinery or equipment of the type utilized by the County of Mendocino or the employee's department.

¹ *Consultants.

Consultants shall disclose pursuant to Category subject to the following limitation:

The Chief Executive Officer of the County may determine in writing that a particular Consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the Consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. Such determination shall be a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

APPENDIX C

**CONFLICT OF INTEREST CODE
COUNTY OF MENDOCINO**

PLACE OF FILING

PART I - DESIGNATED EMPLOYEES

Where: County Clerk-Recorder
County of Mendocino
Administration Center
501 Low Gap Rd., Rm. 1020
Ukiah, CA 95482

The County Clerk shall furnish to each designated employee upon his or her appointment and termination, and annually during such designated employee's tenure, a Form 700 - Statement of Economic Interests. The designated employees will submit the completed Form 700 - Statement of Economic Interests to the County Clerk for filing.

PART II - BOARDS, COMMISSIONS AND COMMITTEES (and designated employees of same)

Where: County Clerk-Recorder
County of Mendocino
Administration Center
501 Low Gap Rd., Rm. 1020
Ukiah, CA 95482

The County Clerk shall furnish to each designated member upon his or her appointment and termination, and annually during such designated member's tenure, a Form 700 - Statement of Economic Interests. The members will submit the completed Form 700 - Statement of Economic Interests to the County Clerk for filing.

PART III - CONSULTANTS

Where: County Clerk-Recorder
County of Mendocino
Administration Center
501 Low Gap Rd., Rm. 1020
Ukiah, CA 95482

The Assessor-County Clerk-Recorder shall furnish each designated Consultant upon his or her contract commencement and termination, and annually during such designated Consultants tenure, a Form 700 - Statement of Economic Interests. The Consultant will submit the completed Form 700 - Statement of Economic Interests to the County Clerk for filing.

APPENDIX D

County Officers, Boards and Commissions required to file Conflict of Interest Disclosure Statements pursuant to Government Code §87200 et seq. are not subject to County Conflict of Interest Code:

Board of Supervisors (all Supervisors)
County Treasurer- Tax Collector
District Attorney
Chief Executive Officer
County Counsel
County Planning Commissioners
Retirement Board Members