

County of Mendocino
Grand Jury
www.co.mendocino.ca.us/grandjury

Post Office Box 939
Ukiah, CA 95482
grandjury@co.mendocino.ca.us

**Grand Jury Report Transmittal
(with Instructions and Response Form for Required Respondents)**

Meredith Lintott
District Attorney
100 N. State Street
Ukiah, CA 95482

Date: 6/14/2010

RE: Report Titled *It's Not Over Yet*

Dated: 6/14/10

Your response to the attached report by the 2009/2010 Mendocino County Civil Grand Jury is required pursuant to Penal Code §933.05 (enclosed). Penal Code §933.05 also requires that your response to the Findings and Recommendations contained in the report be in writing and be submitted within **60 days for individual responses from elected county officers or agency head** or within **90 days for governing bodies** (including such entities as school boards, city councils and the Board of Supervisors).

Penal Code §933.05(f) specifically prohibits disclosure of the contents of this report by a public agency or its officers or governing body prior to the release to the public. The report will be released to the public and posted on the grand jury website two (2) or more days after the date of this letter.

The Penal Code is specific as to the format of responses. Complete and sign the enclosed Response Form and attach any additional comments as required.

Should you have any questions after reviewing the enclosures, please contact me at **grandjury@co.mendocino.ca.us** or at the address above.

Sincerely,

Katharine Wylie
Foreperson
Mendocino County Grand Jury

SUMMARY OF PENAL CODE 933.05

Penal Code § 933.05 provides for only two (2) acceptable responses with which agencies and/or departments (respondents) may respond with respect to the **findings** of a Grand Jury report :

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the findings, *in which case the respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.*

Penal Code § 933.05 provides for only four (4) acceptable responses with which agencies and/or departments (respondents) may respond with in respect to the **recommendations** of the Grand Jury.

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be 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, with a timeframe for the matter to be prepared for discussion by the officer or head of the agency/department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six (6) 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 a detailed explanation therefore.

However, If a finding and/or recommendation of the Grand Jury addresses **budgetary** or **personnel** matters of a county agency/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/department.

**Grand Jury Report
RESPONSE FORM**

RE: Report Titled: *It's Not Over Yet*

Report Dated: 6/14/10

Response Form Submitted By:

Meredith Lintott
District Attorney
100 N. State Street
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than: 8/14/2010

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- I (we) agree with the Findings numbered:
1, 4, 7
- I (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.
2, 3, 5, 6

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- The following Recommendation(s) have have been implemented and **attached, as required**, is a summary describing the implemented actions:
4
- 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:

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)

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:

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

Number of Pages attached: _____

I 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.

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

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

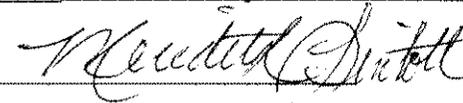
- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov
- The County's Executive Office: ceo@co.mendocino.ca.us

Second Step: Mail all originals to:

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

Printed Name: Meredith J. Lintott

Title: District Attorney of Mendocino County

Signed:  Date: 8/6/10

Grand Jury Report: It's Not Over Yet!
District Attorney Response

Finding No. 2:

California Penal Code §932 clearly states that the district attorney shall “institute and maintain an action” to recover money due to the County.

Response:

Penal Code §932 is simply authority for a District Attorney to exercise discretion to maintain an action. Allow it to speak for itself: “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 to the county. The order of the grand jury, certified by the foreman 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.”

Finding No. 3

California Penal Code §932 also states that the order of the grand jury shall be full authority for the district attorney to institute and maintain any such suit.

Response:

Please see Response to Finding No 2 above.

Finding No. 5:

The MCDA chose not to institute the civil proceedings against a Supervisor which were cited in PC §932.

Response:

The District Attorney disagrees with Finding No. 5. The District Attorney, after carefully reviewing the matter, did choose not to file because, as discussed below, there was insufficient evidence of intent. The current District Attorney believes that this was also the decision of the previous District Attorney. The current District Attorney has chosen to recommend an alternative method that will fully reimburse the county without the expenses of a lawsuit and the evidentiary problems of a lawsuit: to recommend that the Auditor, under the authority of Government Code section 53232.4, commence payroll deductions. The same purpose is achieved at much less cost to the county.

Grand Jury Report: It's Not Over Yet!
District Attorney Response

Finding No. 6:

The MCDA's response to a 2009-2010 GJ request to enforce Penal Code §932 and recover overpayments of travel funds made to a Mendocino County supervisor, was not made because the MCDA stated that prosecutorial discretion allowed the MCDA's office not to pursue this matter.

Response:

The District Attorney disagrees with this finding as there is no 2009-2010 report on file until the completion of this response. If the GJ is referring to prior responses, the responses speak for themselves. The basis for lack of criminal prosecution was the element of specific intent to defraud – it could not be proved, based on the evidence provided that the Supervisor had a specific intent to defraud. Thus to bring criminal charges would be unethical.

Recommendation No. 4:

In the absence of the recovery of BOS travel overpayment(s), the Mendocino County District Attorney pursue collection of those funds. (Findings 1-7).

Response:

In previous responses, the District Attorney has informed the Grand Jury that a criminal charge could not be brought due to ethical concerns because there was insufficient evidence of a specific intent to defraud the County on the part of Supervisor.

In the District Attorney's Response to the Grand Jury Report "Revisiting the Board of Supervisors Travel Policy and Reimbursement Claims" dated April 17, 2008, the District Attorney directed the Grand Jury to Government Code § 53232.4, as providing additional remedies:

Penalties for misuse of public resources or falsifying expense reports in violation of expense reporting polices may include, but are not limited to, the following:

- (a) The loss of reimbursement privileges.
- (b) Restitution to the local agency.

Grand Jury Report: It's Not Over Yet!
District Attorney Response

(c) Civil penalties for misuse of public resources pursuant to §8314.

(d) Prosecution for misuse of public resources, pursuant to Penal Code §424.

The Grand Jury has given no direction to the Auditor-Controller to seek "restitution" as outlined in subsection (b).

The District Attorney continues to submit that a criminal or civil lawsuit cannot be brought under the circumstances; however, in an effort to collect the claimed overpayment, the District Attorney has issued an "Order" to the Auditor-Controller directing that the overpayment be collected via payroll deductions. Said order is made pursuant to GC §53232.4(b). Please see attached a copy of correspondence from the District Attorney to the Auditor-Controller dated August 6, 2010.

Hopefully, this simply remedy, which will not require a lawsuit, will prove effective in settling the overpayment without the cost and expense of trial.



MENDOCINO COUNTY DISTRICT ATTORNEY'S OFFICE

MEREDITH J. LINTOTT • DISTRICT ATTORNEY

ELIZABETH NORMAN • ASSISTANT DISTRICT ATTORNEY

COURTHOUSE ► tel. 707.463.4211 • fax 707.463.4687 • Post Office Box 1000 • Ukiah, CA 95482
COAST OFFICE ► tel. 707.964.5624 • fax 707.961.2429 • 700 South Franklin Street • Fort Bragg, CA 95437

August 6, 2010

Meredith J. Ford
Mendocino County Auditor-Controller
501 Low Gap Road, Rm 1080
Ukiah, CA 95482

Re: Order for Payroll Deductions
Supervisor Kendall Smith

Dear Ms. Ford:

This letter is in reference to overpayments made by the County of Mendocino to Supervisor Kendall Smith for travel expenses incurred between January 2005 and November 2006.

You established the overpayment as \$3,087. Demand has been made upon Smith to repay this sum by you, the District Attorney (see attached correspondence dated March 24, 2008), as well as by the Grand Jury. No payments have been tendered by Supervisor Smith.

NOW THEREFORE: Pursuant to Government Code section 53232.4, you are hereby directed to immediately commence payroll deductions from Supervisor Kendall Smith's pay roll checks until the sum of \$3,087 is paid in full.

Very truly yours,

MEREDITH J. LINTOTT
District Attorney

MJL/hs

cc: Supervisor Kendall Smith
Grand Jury

MEREDITH J. LINTOTT
DISTRICT ATTORNEY

ELIZABETH NORMAN
ASSISTANT DISTRICT ATTORNEY



OFFICE OF THE
DISTRICT ATTORNEY

March 24, 2008

COURT HOUSE
P.O. BOX 1000
UKIAH, CA 95482
(707) 463-4211
Fax (707) 463-4687

WILLITS OFFICE
125 E. COMMERCIAL ST., SUITE 230
WILLITS, CA 95490
(707) 459-6128
Fax (707) 459-7747

COAST OFFICE
700 S. FRANKLIN ST.
FORT BRAGG, CA 95437
(707) 964-5624
Fax (707) 961-2429

JAMES L. LARSON, ESQ.
311 N. McPherson Street
P.O. Box 1369
Fort Bragg, CA 95437

March 24, 2008

Re: Grand Jury Investigation – Kendall Smith

Dear Jim:

As you may know, the Mendocino County Grand Jury is continuing its investigation of Kendall Smith's travel reimbursement claims.

From our last conversation, I understand that you no longer represent Ms. Smith in this matter. I respectfully request that you either forward this correspondence to Ms. Smith's new counsel, or directly to Ms. Smith, as the case may be.

Recently, I have had two sessions with the Grand Jury pertaining to Kendall's travel claims. I wish to assure you that the Grand Jury intends to pursue reimbursement to the County by Kendall for trips she claimed between Fort Bragg and Ukiah when there was no actual travel and when her cost of overnight lodging was little or nothing because she either stayed with friends or in a room which she rented for \$100 per month.

The Jury is committed to bringing this matter to light in the context of a broader discussion of the BOS Travel Policy. The Jurors have amassed a substantial body of evidence that Kendall's claim of mileage reimbursement as a fixed "per diem" was not accepted by any other Supervisor or County officer and was in violation of the County's reimbursement policy.

The Grand Jury does not wish to take legal action. They simply want the County's elected officials to rise to the high ethical level that befits their public roles. The County Auditor established \$3,087 as the minimum amount of overpayments made to Kendall between January 2005 and November 2006. This amount was estimated on the basis of a formula that Kendall created and submitted to the Auditor in lieu of the receipts and travel logs customarily maintained to support business expense claims. Kendall

James L. Larson
March 24, 2008
Page Two

communicated to the Auditor that she was prepared to settle the matter by June 28, 2007; she then reneged on this commitment.

The Grand Jury has requested a response to this letter prior to April 7, 2008. I look forward to hearing from you and hope that this matter can be resolved without further legal action.

Very truly yours,


MEREDITH J. LINTOTT
DISTRICT ATTORNEY

MJL/hs
cc: Dennis Scoles