

Revisiting the Board of Supervisors Travel Policy and Reimbursement Claims

Release Date: April 17, 2008

Summary

The 2007-2008 (hereinafter 2007) Grand Jury chose to continue the investigation that was initiated by the 2006-2007 (hereinafter 2006) Grand Jury into the Board of Supervisors (BOS) Travel Policy and BOS reimbursement claims. The 2007 Grand Jury confirmed several key findings published in the 2006 Grand Jury Report¹ and continues to monitor progress toward a clear and equitable BOS Travel Policy. The 2007 Grand Jury also recommends continued movement toward appropriate procedures for policy implementation and administrative oversight.

The purpose of a travel reimbursement policy is to establish definitive rules and procedures whereby employees are repaid for costs incurred for specified “allowable” business-related expenses. The great variation in district size and in the amount of in-county travel required of different Supervisors has made it difficult to design and implement a travel policy that is equitable to the elected officials and acceptable to them and to the county’s taxpayers.

In-depth investigation by the 2006 and 2007 Grand Juries of the BOS Policies that were in place prior to January 2008 revealed shortcomings in:

- procedures for implementation of the policy; and in
- administrative oversight by the Clerk of the Board (COB), the Auditor’s Office and by the Supervisors, themselves.

Review of the Supervisors’ claims revealed:

- persistent abuse of the Travel Policy by the current Fourth District Supervisor from January 2005 through November 2006;
- questionable weekend travel reimbursement claims by the Fifth District Supervisor;
- policy misinterpretation and a paucity of claim documentation that was readily acknowledged by the (current) Third District Supervisor; and
- that the First and Second District Supervisors have routinely submitted clear and properly documented travel expense claims.

The 2007 Grand Jury also questions some aspects of the BOS Travel Policy that took effect in January 2008.

¹ Grand Jury reports are posted with responses on the Grand Jury website: www.co.mendocino.ca.us/grandjury

On December 11, 2007, the BOS on a 3-2 vote, with Districts One and Two dissenting, adopted a revised Travel Policy that took effect in January 2008.² The new policy:

- offers Supervisors the choice of taking a fixed dollar-amount travel stipend or maintaining detailed records and claiming mileage actually traveled;
- separates mileage reimbursement from reimbursement for allowable hotel stays, imposes a cap of two overnights per week, and limits the stays to weeks in which there is a scheduled BOS meeting;
- identifies some types of legitimate county business and some expenses that will be reimbursed but notes that this list is not all-inclusive and fails to require Auditor approval of expenses not specifically covered;
- specifies the documentation required in order to secure reimbursement.

A significant increased cost of the new policy is that the optional stipend is taxable and may bring increased payroll taxes and retirement costs to both the County and the Supervisors. Supervisors electing the stipend might qualify for larger retirement and/or Social Security benefits, but might also end up with less in after-tax dollars for out-of-pocket travel expenses. The bottom line is that taxable stipends will increase the cost of travel to both the Supervisors and the taxpayers.

In regard to past travel expense claims, the Grand Jury asked that the Fourth District Supervisor fulfill her ethical obligation and repay Mendocino County and its taxpayers the sum of \$3087. This was determined by the Auditor to be the *minimum* amount of overpayments issued between January 2005 and November 2006 on the basis of this Supervisor's "*per diem*" interpretation of the former policy. The request for repayment was reiterated in a letter from the District Attorney to the Fourth District Supervisor dated March 24, 2008. No response was received by the specified April 7, 2008 deadline.

Also as an ethical matter, and one of transparency, the Grand Jury asked the Fifth District Supervisor to explain the purpose of his extensive claims for weekend travel. The response from the Fifth District Supervisor was to supply "At-A-Glance" calendars for the period of 2005 through 2006 that did not explain in any substantive degree the reasons for his travel.

Thus the 2007 Grand Jury has found that the Fourth and Fifth District Supervisors have remained, regrettably, non-responsive to the Jury's requests.

Methods

The Grand Jury reviewed travel claims submitted by the five current Supervisors and conducted interviews with them and with two former Supervisors. With the exception of a telephone conference call with the former Fourth District Supervisor, the Supervisors testified in person and under oath. Jurors also interviewed current and former County Auditors and Clerks of the Board,

² The BOS Travel Policies may be viewed with this report at www.co.mendocino.ca.us/grandjury

County Counsel, the District Attorney (DA), and representatives of the Chief Executive Office. Additional counsel has been received from the State Attorney General's Office. Selected interviews were taped, transcribed and reviewed.

Background

Mendocino County Supervisors are required to live in the districts they represent. They travel regularly to their chambers in Ukiah and to other meetings throughout the county. Depending on their district, some Supervisors travel fewer than 10 miles from their homes to their chambers on Low Gap Road; for others, a round-trip is more than 100 miles. This disparity has made it difficult to arrive at a travel policy that is equitable and fair to all five Supervisors.

The BOS Travel Policies in place prior to January 2008 fell short in that they:

- failed adequately to address legitimate differences in travel costs including mileage and necessary in-county lodging and meals for Supervisors from the more remote Districts;
- left significant gray areas as to what activities qualified for reimbursement;
- did not specify, in writing, exactly what documentation was required to justify expense claims.

The BOS Travel Policies that were in place during 2005-07 allowed Supervisors who had back-to-back meetings on consecutive days to claim reimbursement *either* for driving their round-trip miles each day *or* for driving a single round-trip and applying the auditor-approved value of the second trip to that of overnight lodging. When lodging was chosen, reimbursement was for *either* the cost of the room *or* the value of the round-trip miles, whichever was less.

The option of applying round-trip mileage to the cost of a room resulted from discussion between a former Fourth District Supervisor and former County Auditor. The agreement was intended to apply exclusively to an *occasional* trade-off of the *value of round-trip mileage* for *lodging*. It did not permit reimbursement for meals or any other expense. While a receipt was required to document the lodging cost, claims were submitted for the auditor-approved value of the round-trip mileage because this was typically the lesser amount. The former Fourth District Supervisor exercised the hotel option approximately twice a month.

When the current Fourth District Supervisor took office in January 2005, she interpreted the Travel Policy as a "*per diem*" and began to claim reimbursement for round-trip mileage for each day spent in Ukiah whether or not she either drove the miles or paid for lodging. Full round-trip mileage was claimed on numerous occasions when she stayed at a friend's home or in a room that she rented in a private home for \$100 per month. These claims were defended by the Supervisor as "common practice" and as the only way to pay for expenses related to her job including meals, tires and pet care.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Historically, the COB has managed implementation of the BOS Travel Policy. This is the only instance in the County in which a subordinate is expected to review and sign off on a superior's expense claims, authorizing them for payment by the Auditor/Controller.

A document submitted by the current COB defends the questionable travel expense claims as having been processed in the same manner as others over a nine year period. (The COB's memorandum did not define "others.") The document states that the COB never required receipts for in-county lodging and that she could not have discerned whether or not the claimed mileage had actually been traveled. Since concerns were raised by the 2006 Grand Jury about falsified expense claims that had been processed and signed by the COB, it has been contended by some that the COB only *processed* the claims and was not responsible for *authorizing* them for payment by the Auditor/Controller. The claim form still in use lists the COB as the authorizing party.

Administrative oversight of the BOS Travel Policy also fell short of acceptable standards. The agreement regarding substitution of an established mileage credit for in-county hotel costs was verbally communicated to the former COB. It was not immediately incorporated into the BOS Travel Policy though it does appear in a Policy document dated October 8, 2002. Whereas the Grand Jury determined that the Auditor's Office required receipts to document lodging costs, this was apparently unknown to the current COB, who has not required receipts since assuming the position in 1999. Despite rapidly escalating BOS travel claims, the Grand Jury found no evidence that, prior to its own show of interest in the matter, inquires had been made by the Auditor, CEO or BOS to establish *either* the validity of the claims *or* the adequacy of the policy governing them.

The 2007 Grand Jury interviewed and reviewed the expense claims of five current Supervisors and two former Supervisors. The amounts claimed and the quality of documentation varied greatly. Jurors confirmed the 2006 finding that the Fourth District Supervisor misinterpreted the Travel Policy as a "*per diem*" and received at least \$3,087 in over payments based on numerous claims for mileage reimbursement when no miles were traveled and little or no lodging cost had been incurred.

The Jury also confirmed that the Fifth District Supervisor regularly claims extensive weekend travel without documenting the county business being conducted. Most of the notations in his original documentation do not show what business was discussed. Where there is a notation of why the Supervisor was traveling, the notation shows attendance at social events, concerts, county fairs and political gatherings that are not covered under any travel policy.

In fact, the Fifth District Supervisor traveled 41 weekend days out of a possible 105 in 2005. For the 2006 year, the Fifth District Supervisor traveled 36 weekend days out of a possible 105. None of the other Supervisors has claimed an amount of weekend travel even remotely in this range. The Fifth District Supervisor's travel on weekends was in excess of the total weekend travel by all other Supervisors combined for the same period.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

While these behaviors are inconsistent with the BOS Travel Policy and fall far short of established ethical standards, the DA has opined to the Grand Jury that its extensive evidence of false claims does not *prove intent* and, hence, may be insufficient for successful legal action.³ Other reasons that were offered by the DA for failure to investigate were *the cost and lack of staff to pursue recovery of these funds*. The Jury respectfully disagrees with this analysis, but acknowledges that the disruption and financial costs that would result from legal action would further penalize Mendocino County taxpayers.

FINDINGS

1. Mendocino County Supervisors must reside and be present for constituents in their districts as part of their job. They must also travel regularly to scheduled meetings in Ukiah. They are reimbursed for travel to the BOS chambers in Ukiah and for other mileage traveled on county business.

Response: (Board of Supervisors)

The Mendocino County Board of Supervisors (Board) agrees with this finding.

Response: (Chief Executive Officer)

The Mendocino County Chief Executive Officer (CEO) agrees with this finding.

2. Supervisors have very different levels of travel expense largely depending on the district each one represents and where they live. Round-trip home-to-Ukiah travel requires fewer than 10 miles for some supervisors and more than 100 miles for others. Travel in some districts is on major highways; in other areas, it can require the use of a 4-wheel-drive vehicle. Given these variations, establishing an equitable reimbursement policy has been difficult.

Response: (Board of Supervisors)

The Board agrees with the first three sentences of this finding. The Board does not agree with the last sentence, which is conclusionary.

Response: (Chief Executive Officer)

The CEO agrees with the first three sentences of this finding. The CEO does not agree with the last sentence, which is conclusionary.

3. Several key findings of the 2006 Grand Jury were confirmed by the 2007 Grand Jury in an independent inquiry into the BOS Travel and Meal Policy and reimbursement claims:
 - the Fourth and Fifth District Supervisors failed to adhere to the BOS Travel Policy governing reimbursement for in-county travel;

³ The text of Penal Code 932 may be viewed with this report on the Grand Jury website www.co.mendocino.ca.us/grandjury

-
- the COB was responsible for processing and authorizing all BOS reimbursement claims before forwarding them to the Auditor’s Office for payment;
 - the COB is directly subordinate to the BOS and is an at-will employee. This is the only case in the County where a subordinate has been vested with the power to authorize reimbursement of personal expenses submitted by a superior;
 - the BOS travel claim form (Form No. A/C-06) states clearly that signing it certifies “*under penalty of perjury that the within claim and the items therein set out are true and correct.*” Both the COB and the claimant Supervisor are currently required to sign a completed form before it is forwarded to the Auditor’s Office for payment.

Response: (Board of Supervisors)

The Board disagrees with the finding in the first bullet point in that it has no direct knowledge of individual Board members adherence to the BOS Travel Policy, but assumes that all Board members comply with County policies.

The Board agrees with the second bullet point to the extent it defines the role of the Clerk of the Board. The Auditor exercises authority for the final approval of all reimbursement of claims.

The Board agrees with the first sentence of the third bullet point, but has no knowledge regarding this being the only such arrangement in the County.

The Board agrees with the fourth bullet.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

Disagree to the extent that the Fourth District Supervisor did adhere to the reimbursement policy and practice that was in place as of 1/1/05 and I have no knowledge as to the adherence of same by the Fifth District Supervisor.

Cannot agree or disagree with sentence two as I do not know if there are subordinates that authorize travel claims in the County.

Disagree in part with section two as the BOS travel policy in place in 2005-06 references ‘a confirming travel document’ as required by the auditor. It does not state form No. A/C 06 be used and other forms have been used to record mileage and other expenses.

Response: (Current Fifth District Supervisor)

I agree with the Finding.

Response: (Chief Executive Officer)

The CEO disagrees with the finding in the first bullet point in that he has no direct knowledge of individual Board members adherence to the BOS Travel Policy, but assumes that all Board members comply with County policies.

The CEO agrees with the second bullet point.

The CEO agrees with the first sentence of the third bullet point, but has no knowledge regarding this being the only such arrangement in the County.

The CEO agrees with the fourth bullet.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

I have no direct knowledge of the Fourth and Fifth District Supervisors' failure to adhere to the BOS Travel Policy.

Response: (Clerk of the Board)

I disagree partially with Finding No. 3: The Clerk of the Board has had no cause to question the validity of travel charges as presented for payment by either the Fourth or Fifth District Supervisors. The Clerk of the Board is responsible for verifying claims for reimbursement are consistent with the Board's adopted policy, and for *processing* and signing all BOS reimbursement claims prior to submitting them to the Auditor's Office for payment *authorization*. (*Reference Mendocino County Policy No. 18 Travel and Meal Policy, which states under section No. 1.10 "...the County Auditor-Controller shall be the final approving authority regarding reimbursement for any expense."*) The Clerk of the Board position is a department head level position appointed by the Board of Supervisors. The claimant and the COB are required to sign the completed travel reimbursement claim. Once the form has been signed and dollar amounts verified, the form is then forwarded to the Auditor's Office for final authorization and payment. (Until the release of the Grand Jury Report, it was not known by the Clerk that the policy was interpreted by some as a "per diem" policy, and actual claimed expenses were not incurred.)

4. The 2007 Grand Jury received and reviewed the required responses from the BOS and the CEO to Findings and Recommendations included in the 2006 Grand Jury BOS Travel Policy Report.⁴ There were material discrepancies between the BOS and CEO responses to Findings 18 and 19, which relate to the COB's responsibility for authorizing the Supervisor's expense claims.
- **Regarding Finding 18:** The CEO's Office agreed that *"...The Clerk of the Board processes and authorizes all BOS reimbursement claims and forwards them to the Auditor's Office for payment."* The BOS agreed that *"...the COB processes claims for reimbursement and forwards them to the Auditor's Office,"* but noted that *"...The Auditor however, exercises authority for final approval of all reimbursement claims pursuant to adopted policies."*
 - **Regarding Finding 19:** The CEO's Office agreed that *"...The Clerk of the Board is directly subordinate to the BOS and is an at-will employee. This is the only case in the County where a subordinate is vested with the power to authorize personal expenses submitted by a superior."* The BOS response *"...agrees with this Finding to the extent that the Clerk is directly subordinate to the BOS and is an at-will employee."* However, the BOS response states that *"...the Clerk does not have the vested authority to authorize*

⁴ The report and responses are published on the Grand Jury website www.co.mendocino.ca.us/grandjury

personal expenses of individual board members. The authority to authorize expenses is the responsibility of the Auditor.”

Response: (Board of Supervisors)

The Board agrees with this finding regarding the difference in responses from the Board and the CEO to last year’s Grand Jury report.

Response: (Chief Executive Officer)

The CEO agrees with this finding regarding the difference in responses from the Board and the CEO to last year’s Grand Jury report, with clarification that the quote labeling the County Auditor-Controller as the final approving authority regarding reimbursement for any expense is taken from County Policy #18, which governs County employee travel, not Board travel.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

There was an assumption on the part of the Auditor-Controller that the Clerk of the Board, in authorizing the payments to Supervisors, was obtaining the necessary information and backup in order to do so. Claim forms were not submitted to this office in such a way that we could verify the accuracy of the claim.

Response: (Clerk of the Board)

I agree with Finding No. 4 in that the 2006 responses from the CEO and BOS differ. I agree with the BOS responses to findings No. 18 and 19 of the 2006 Grand Jury report. The Auditor is the Chief Financial Officer of the County and supervises the accounting practices of various organizations. Mendocino County Policy No. 18 Travel and Meal Policy, states under section No. 1.10 “...*the County Auditor-Controller shall be the final approving authority regarding reimbursement for any expense*”. The Clerk of the Board office receives Board members expense claims, verifies the claimed amounts, and processes the claim pursuant to the Board’s adopted policy. If discrepancies are detected, the claims are returned to the claimant for further attention. Once the claim has been processed for reimbursement, it is transmitted to the Auditor’s Office for final authorization and payment.

5. The BOS and (former) CEO both agreed to implement 2006 Recommendation 3, that “...*Supervisors submit all BOS authorized travel and other reimbursement claims directly to the County Auditor, rather than the Clerk of the Board Office for final approval. The COB will continue to serve an administrative function in preparing the documents.*”

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Clerk of the Board)

I agree with Finding No. 5.

6. As of March 2008, the COB continues to act as approving manager for the BOS Travel expense reimbursement claims. She is still the only employee in the County who approves her managers' reimbursement claims. The current CEO is not moving forward to transfer authorization of BOS Travel reimbursement claims from the COB to the Auditor's Office.

Response: (Board of Supervisors)

The Board disagrees with this finding in that the Board has asked the current CEO to review and establish a revised process for submitting, authorizing and paying reimbursement claims for Board Members.

Response: (Chief Executive Officer)

The CEO disagrees with this finding in that he is reviewing the situation and CEO staff is working with the Auditor-Controller to establish a revised process for submitting, authorizing, and paying reimbursement claims for Board members.

Response: (Clerk of the Board)

I disagree partially with Finding No. 6 (see above responses to Finding Nos. 4 and 5). The Clerk of the Board is responsible for *processing* the claims and *verifying claims* against the Board's adopted policy, however, the final authority for payment *authorization* rests with the Auditor/Controller.

7. The 2006 Grand Jury documented violations to the following sections of the BOS Travel Policy that was effective through June 2007:

- **Section A (2) (d):** *"Supervisors with meetings "back-to-back" may elect to stay overnight rather than drive back and forth and will be reimbursed not to exceed the mileage rate that would have been charged for travel."*
- **Section A (3):** *"Attendance at social and other meetings, which the member would attend regardless of his/her Supervisory position are not reimbursable. Attendance at retirement or similar functions will not be reimbursed unless the Board has requested a member to attend as their representative."*
- **Section B (5):** *"Board members will be reimbursed for official travel to functions or organizations of which the County or an individual Supervisor is an official member. If a Board member wishes reimbursement for meetings for which he or the County is not a member, said reimbursement would have to be determined by a majority vote of the Board of Supervisors."*

Response: (Board of Supervisors)

The Board neither agrees nor disagrees with this finding as it has no direct knowledge of information utilized by the Grand Jury.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Chief Executive Officer)

The CEO neither agrees nor disagrees with this finding as he has no direct knowledge of the information utilized by the Grand Jury.

8. The 2007 Grand Jury confirmed the 2006 finding that in the case of the Fourth District Supervisor, an incorrect interpretation of the travel policy as a “*per diem*” resulted in claims for reimbursement when no miles were actually traveled and no cost was incurred for overnight lodging.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

I agree this was the finding however I disagree with the finding and how it was arrived at. The Fourth District Supervisor incurred more expenses for travel than were submitted or reimbursed.

9. When requested by the 2006 Grand Jury to present travel diaries, journals, receipts, or other original evidence of meetings and travel, the Fourth District Supervisor first stated that she had forgotten to bring them and then said that she did not maintain such records. She informed the 2007 Grand Jury that she did not and does not maintain an engagement calendar to record travel and business-related appointments.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The Fourth District Supervisor stated information was not retained for this entire period nor was it required to be. Additionally, the Supervisor offered to attempt to provide information regarding specific dates if requested to do so. Specific date information was not requested.

10. The County Auditor could only estimate the amount of overpayments to the Fourth District Supervisor through November 2006 because the Fourth District Supervisor did not support her travel claims with lodging receipts and documentation of dates, destinations and County business purpose of her travel expenditures.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

Lodging receipts were not required under the policy implementation of the BOS travel policy when I assumed office in 2005. Additionally, dates, destinations and business purpose of travel were sufficient for the previous Auditor to reimburse the claims. In several instances the Fourth District Supervisor provided more detailed documentation of travel than was provided in claims submitted by other supervisors during a similar time frame.

Response: (Auditor-Controller)

I agree with the Finding.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

11. In lieu of accurate records, the Fourth District Supervisor proposed, to the 2006 Grand Jury and to the Auditor, a formula to estimate what percentage of her mileage claims had actually been driven. Applying this formula, 27% of the mileage for which the Supervisor had been reimbursed was not actually traveled.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The Fourth District Supervisor did not submit a formula to estimate mileage in lieu of accurate records. The Fourth District Supervisor submitted travel claims consistent with the travel policy in 2005-2006 and consistent with those of her immediate predecessor. The Grand Jury suggested a formula be used to address their concerns. This was prior to an actual review of past records and the Clerk of the Board's memo stating the past practice as evidenced by those records.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

I have no direct knowledge of the procedure by which a formula was arrived at. The Grand Jury asked me to apply a formula they had determined.

12. The formula was based on travel records submitted to the Auditor in 2007 in response to the 2006 Grand Jury travel investigation. The formula was rejected by the Grand Jury as an inaccurate representation of the undocumented travel that was claimed between January 2005 and November 2006 when the Supervisor was claiming a "per diem" for each day spent in Ukiah.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The formula referenced was suggested by a Grand Jury member to the Fourth District Supervisor to resolve differences of opinion as to the travel policy interpretation. The Fourth District Supervisor has no knowledge as to a rejection of the formula by the Grand Jury.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

I have no direct knowledge of the Grand Jury's rejection of the formula. Finding 13 states this.

13. The Auditor was not made aware of the Grand Jury's rejection of the formula or of the reason for this rejection. Lacking any substantive documentation of the expense claims, she estimated that the Fourth District Supervisor owed the County at least \$3,676.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

I have no knowledge of communication between the Auditor and the Grand Jury.

Response: (Auditor-Controller)

I agree with the Finding.

14. The Fourth District Supervisor then submitted newly found expense documentation to the Auditor, including copies of 15 monthly rent checks of \$100 each to rent a room in a private home for use when County business required her to stay in Ukiah.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

Documents were not 'newly found'. The auditor asked for additional travel documentation hereto fore not required.

Response: (Auditor-Controller)

I agree with the Finding.

15. The rental period was from June 2005 through August 2006. The Auditor noted that overnight stays during this time should be reimbursed at the rate of \$3.33/day (the pro-rated daily lodging cost at \$100/30) rather than on the basis of round-trip mileage.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

This was the Auditor's assessment when attempting to arrive at an amount that may have been overpaid to the Fourth District Supervisor.

Response: (Auditor-Controller)

I agree with the Finding.

16. On the basis of the additional documentation submitted by the Fourth District Supervisor, the Auditor reduced the amount owed from \$3676 to \$3087.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The amount referenced was outlined in a memo from the auditor dated 6/26/07. It clearly states "may" have been overpaid. It also states that a historical analysis of past claims was not done. It is not a comprehensive audit of the Fourth District Supervisor's claims, the immediate past Fourth District Supervisor or any other supervisor's claims.

Response: (Auditor-Controller)

I agree with the Finding.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

17. The Fourth District Supervisor acknowledged having received the overpayment. In a memo to the Auditor, dated June 20, 2007, she stated:

“...The Mendocino County Grand Jury has asked that I pay to the County of Mendocino an amount you determine to be appropriate under your interpretation of the Board of Supervisors Travel and Meal Policy.”

“...While I do not feel your initial methodology included all pertinent factors, I am committed to concluding this matter by June 28, 2007, in a manner satisfactory to you and to the Grand Jury.”

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The statement as quoted does not acknowledge receiving an overpayment. Committing to concluding a matter without review of-or absent pertinent documents and analysis of- past practice, would be wrong. The documents to conclude this matter expeditiously are available.

Response: (Auditor-Controller)

I agree with the Finding.

18. Based on this commitment, the 2006-07 Grand Jury Report states that it *“...anticipated that the funds would be recovered.”*
19. When the funds had not been repaid by the June 28, 2007, deadline, the 2006 Grand Jury instituted legal action under the provisions of Penal Code Section (PC) 932 ordering the DA to recover \$3,087 in overpayments made by the County to the Fourth District Supervisor.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The action did occur as listed but I do not believe an overpayment occurred. The Fourth District Supervisor incurred more costs in conducting County business during the timeframe listed than were submitted for reimbursement.

Response: (District Attorney)

I agree with the Finding.

20. PC 932 is the only remedy available to a Grand Jury that establishes cause to seek repayment of public funds.⁵

Response: (District Attorney)

I disagree wholly or partially with the Finding.

21. The District Attorney declined to investigate the matter and suggested that the Grand Jury seek action in Small Claims Court.⁶

Response: (District Attorney)

I disagree wholly or partially with the Finding.

Penal Code § 932 is not the only remedy available to the Grand Jury. The grand jury may use the Small Claims Court to collect the \$3,087 they claim is owned to the County by Supervisor Smith. See response to Finding No. 22.

Additional remedies available for misuse of public funds or falsifying expense claims are outlined in Government Code § 83232.4 as follows:

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.
- (c) Civil penalties for misuse of public resources pursuant to §8314.
- (d) Prosecution for misuse of public resources, pursuant to Penal Code §424.

My analysis of the available remedies is outlined in further detail in correspondence to the Grand Jury dated August 22, 2007. A copy is attached hereto and incorporated herein by reference as Exhibit A.

The Mendocino County Grand Jury Manual [Manual] provided to guide jurors makes no mention of Penal Code § 932 as a remedy available to the Grand Jury. Rather, the manual directs the Grand Jury as follows:

The primary duty of the regular Grand Jury is to investigate the functions of city and county government agencies, schools, and districts. . . . At the end of its term, the Grand Jury publishes recommendations in a report that is distributed to public officials, libraries, and the news media, and listed on the Grand Jury's website . . .

⁵ Penal Code 932 may be reviewed with the electronic version of this report at www.co.mendocino.ca.us/grandjury

⁶ The District Attorney's response to the Grand Jury's 932 Order may be reviewed with the electronic version of this report at www.co.mendocino.ca.us/grandjury

See also *Board of Retirement of the Santa Barbara County Employees' Retirement System v. Santa Barbara County Grand Jury* (1997) 58 Cal. App. 4th 1185, 1191. Investigation Reports and recommendations are the purview of the Grand Jury; not prosecutions. It should be further observed that only 3 cases have referenced Penal Code § 932: they occurred in 1901, 1903 and 1941.

I was informed that grand jury members attended a California Grand Jurors Association training seminar and learned that the members were not familiar with the use of Penal Code § 932. A history of Mendocino County Grand Jury Investigations since 1982 is included with the Grand Jury Manual. There have been no instances of the Grand Jury ordering the District Attorney to institute an action pursuant to Penal Code § 932.

The District Attorney is the legal advisor to the Grand Jury. Government Code § 26501; Manual at 39. While the mandatory language of Penal Code § 932 appears to dictate that the District Attorney must carry out the directives of the Grand Jury, other factors indicate that a body of citizens, acting as a quasi-judicial entity, cannot overrule the crime charging discretion and ethical duties of the District Attorney.

The public prosecutor is vested with discretion in deciding whether to prosecute. Govt C §§ 26500, 26501, *People v. Gephart* (1979 Cal.App.3d Dist) 93 Cal. App. 3d 989, **California Criminal Law Procedure and Practice** (CEB 2008) § 7.11. No one may institute criminal proceedings without the concurrence, approval, or authorization of the district attorney. *Hicks v. Board of Supervisors* (2977, Cal App 4th dist) 69 Cal. App. 3d 228.

A district attorney is ethically bound only to bring charges supported by probable cause. California Rules of Professional Conduct, rule 5-110, Criminal Law, *supra* at § 7.11.

22. A Grand Jury has no statutory or other authority to seek action in Small Claims Court.

Response: (District Attorney)

I disagree wholly or partially with the Finding.

The Grand Jury has standing to sue in small claims court. **The Small Claims Court, A Guide to Its Practical Use** (California Dept. of Consumer Affairs) at 9. A legal entity “can be represented by a regular employee, an officer, or a director . . .” *Id.* Legal Intern Nicola Gladitz confirmed this information on June 12, 2008, in a conversation with small claims advisor Dennis O’Brien (866) 820-8663.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Precedent also confirms that a county grand jury does, in fact, have standing in the California small claims court. *Board of Retirement of the Santa Barbara County Employees' Retirement System v. Santa Barbara County Grand Jury* (1997) 58 Cal. App. 4th 1185. Further, small claims courts have broad jurisdiction and complexity of issues does not affect their jurisdiction *City and County of San Francisco v. Small Claims Court* (1983) 141 Cal. App.3d 470.

23. The funds due to Mendocino County remained unpaid when the 2007 Grand Jury was seated in July 2007. The new Panel elected to continue the BOS Travel Policy investigation due to the outstanding funds and the fact that inadequacies in the policies and procedures had not been addressed.
24. The written BOS Travel Policy that was already in place in 2005 and remained in place through June 2007, and the current policy that took effect in January 2008, cover all reimbursable in-county travel. This includes in-county mileage and overnight stays when there are back-to-back meetings. Meals associated with in-county over-night stays are not covered under any of the BOS Travel Policies.

Response: (Board of Supervisors)

The Board agrees with this Finding.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The 2005 travel policy references management personnel reimbursement rates that are delineated in Mendocino County Policy #18. Also, other travel compensation is addressed by resolution.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I agree with the Finding.

25. The Fourth District Supervisor stated that the Travel Policy in effect from 2005 through June 2007 was confusing and that she did not completely understand it. She further stated that she had interpreted the Travel Policy as a “*per diem*”, i.e., a fixed amount to which she was entitled whether or not she had *either* mileage *or* lodging expenses.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The 2005 BOS travel policy is not clearly worded. As an example, it does not state receipts are required for in-county travel, yet retroactively they have been requested of the Fourth

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

District Supervisor. The management policy clearly states receipts are *not* required under certain circumstances and, meals are also provided in-county under certain circumstances. My interpretation of the travel policy was that of my predecessor as the records reflect.

26. The Fourth District Supervisor persisted in submitting travel claims according to her “*per diem*” interpretation even after discussing the Travel Policy with the former Auditor late in 2005 (her first year in office) and being told that it was incorrect.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

I did not discuss the travel policy with the Auditor in late 2005.

27. The 2007 Grand Jury confirmed that the Fourth District Supervisor claimed 22 round-trips in June of 2006 including 17 round-trips in 18 consecutive days. For the same month, she had paid monthly rent of \$100 for a room in Ukiah for use as a bedroom “...as needed to do her job.”

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The Fourth District did not submit claims for 22 round trips in June of 2006. Nor were there 17 round trips in 18 consecutive days submitted. This is incorrect as the records reflect.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

My review of the travel claim for June of 2006 indicates 17 round trips in 19 consecutive days.

28. The Fourth District Supervisor discussed her “*per diem*” interpretation with the former Auditor again in December 2006 and received the same answer.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The Fourth District Supervisor did not discuss the travel policy with the Auditor in December 2006. I *asked* the Auditor for a meeting to conduct an exit interview *during December 2006*. This meeting did not occur until January 2007, just prior to his leaving office.

29. Under Section (A) (2) (d) of the Travel Policy (prior to June, 2007), if no miles are traveled and no cost is incurred for lodging, no reimbursement is permitted.

Response: (Board of Supervisors)

The policy language specifically states “(d) Supervisors with meetings “back to back” may elect to stay overnight rather than drive back and forth and will be reimbursed not to exceed the mileage rate that would have been charged for travel”. The policy speaks for itself.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

This is not what the policy states.

30. *Reimbursement* is defined as repayment of funds actually spent.

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Current Fourth District Supervisor)

I agree with the Finding.

31. The 2007 Grand Jury observed no “confusion” as to this interpretation except on the part of the Fourth District Supervisor. When interviewed, all Supervisors acknowledged that *reimbursement* means being repaid money for funds actually expended in accordance with the Travel Policy.

Response: (Board of Supervisors)

The Board neither agrees nor disagrees with this finding in that it has no direct knowledge of the information utilized by the Grand Jury.

32. Ethics training provided to the Supervisors by County Counsel includes the admonition that elected officials are required to know and abide by applicable reimbursement policies.

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Current First District Supervisor)

I agree with the Finding.

Response: (Current Second District Supervisor)

I agree with this finding. I have attended the Ethics training provided by the County Counsel’s office and fully understand the reimbursement policies.

Response: (Current Third District Supervisor)

Response: (Current Fourth District Supervisor)

I agree with the Finding.

Response: (Current Fifth District Supervisor)

I agree with the Finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

33. Supervisors of the First, Second, Third and Fifth Districts and the former Fourth District Supervisor each indicated that they understood the meaning of the Travel Policies in effect for the period of 2005-2007. Each of them rejected the interpretation of the mileage allowance as a “*per diem*.” Each of them rejected the argument that mileage could be claimed when there had been no expense either for driving or for lodging.

Response: (Current First District Supervisor)

I agree with the Finding.

Response: (Current Second District Supervisor)

I agree with the Finding.

Response: (Current Third District Supervisor)

Response: (Current Fourth District Supervisor)

I neither agree or disagree with this finding as I have no knowledge of what the individuals listed “indicated” they understood of BOS travel policies in discussions with the Grand Jury.

Response: (Current Fifth District Supervisor)

The Fifth District Supervisor neither agrees nor disagrees with this Finding as he has no knowledge of what the other four supervisors “indicated,” “understood,” or “rejected.”

34. Review of the expense claims of all current Supervisors and two retired Supervisors revealed great variation both in the amount of travel expense claimed and in the level of documentation provided.
35. Only the District One and District Two Supervisors routinely support their claims with receipts and by indicating the destination and business purpose of their travel. While most claims appear reasonable, other Supervisors provide little or no backup documentation.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Current First District Supervisor)

I agree with the Finding.

Response: (Current Second District Supervisor)

I agree with the Finding.

36. Supervisors for the First, Second and Third Districts did not claim any substantial weekend travel; the Fourth District Supervisor had some weekend travel and was unable to describe for the Grand Jury the county-related business purpose of the travel.

Response: (Current First District Supervisor)

I agree with the Finding.

Response: (Current Second District Supervisor)

I agree with this finding. I have relatively rare weekend business travel and when I have had such travel, I have and will continue to show receipts indicating destination and reason for such travel.

Response: (Current Third District Supervisor)

Response: (Current Fourth District Supervisor)

I neither agree or disagree with this finding. I have limited knowledge of other supervisors travel. The Fourth District Supervisor provided information for weekend travel as well as weekday travel.

37. The Fifth District Supervisor claimed extensive weekend travel compared with the other Supervisors. He declined to explain the purpose of this travel and refused to provide backup documentation until a subpoena was issued for his records. The subpoenaed documents did not support his travel claims.

Response: (Current Fifth District Supervisor)

Sentence 1. The Fifth District Supervisor neither agrees nor disagrees with this statement as he has no knowledge of the other four supervisors travel rates.

Sentence 2. The Fifth District Supervisor disagrees with the first part of this statement as he spent approximately seven hours in several sessions of this and the previous Grand Jury discussing county travel policy and his travel. Both Grand Juries had been provided with copies of the Fifth District Supervisor's Travel Reimbursement Auditor-Controller Form No. A/C-06. The presiding member of the first full Grand Jury interview, in reviewing these records commended the Fifth District Supervisor for the "accuracy" of these materials.

Sentence 2. The Fifth District Supervisor disagrees with the second part of this statement as he "refused" nothing "until a subpoena was issued for his records." The Fifth

District Supervisor requested that he be subpoenaed in order that his testimony would be heard by the full Grand Jury. The issued subpoena included a request that personal notebooks be provided and, after discussions with his attorney and the Chairman of the Grand Jury, they were.

Sentence 3. The Fifth District Supervisor neither agrees or disagrees with this statement as he has no knowledge of what the Grand Jury was seeking, beyond sworn information provided in form No. A/C-06, that would “support” or “not support his travel claims.”

38. Most of the notations provided by the Fifth District Supervisor in his original documentation do not show what business was discussed and where there is a notation of why the Supervisor was traveling, the notation typically shows attendance at social events, concerts, county fairs or political gatherings.

Response: (Current Fifth District Supervisor)

The Fifth District Supervisor disagrees with this Finding as it characterizes the information in the notebooks as “his original documentation,” which it was not. County policy does not reference, much less require “original” or “back-up” documentation: the terms are inventions of this Grand Jury. Every request that the Fifth District Supervisor submitted for reimbursement for travel expenses complied in full with County Travel policies and reporting procedures. Every request was approved by the County Auditor. Travel Reimbursement Forms No. A/C-06 were signed under penalty of perjury, are complete and accurate, and are available for public review.

39. The Fifth District Supervisor traveled on 41 weekend days out of a possible 105 in 2005 and 36 weekend days out of a possible 105 in 2006. None of the other Supervisors claimed an amount of weekend travel even remotely in this range.

Response: (Current Fifth District Supervisor)

The Fifth District Supervisor agrees with Sentence 1 of this Finding. He neither agrees nor disagrees with Sentence 2 as he has no knowledge of the claims of the other supervisors.

40. The Fifth District Supervisor’s travel on weekends was in excess of the total weekend travel by all other Supervisors combined for the same period.

Response: (Current Fifth District Supervisor)

The Fifth District Supervisor neither agrees nor disagrees with this Finding as he has no knowledge of the “total weekend travel by all other Supervisors combined.”

41. The 2007 Grand Jury further determined that neither the Auditor’s Office, the CEO’s office, nor the COB’s office concurred with a “*per diem*” interpretation of Section (A)(2)(d) of the BOS Travel Policy. According to all of these respondents, when no miles were driven and no cost incurred for lodging, no reimbursement was due.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Chief Executive Officer)

The CEO agrees with this finding with regard to the lack of concurrence by the CEO's office on a *per diem* interpretation, but cannot speak to the views of the other offices.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

I have no direct knowledge of the Chief Executive Office's, or the Clerk of the Board's concurrence with a "per diem" interpretation.

Response: (Clerk of the Board)

I agree with Finding No. 41.

42. Current and past auditors have always required receipts to document in-county lodging expenses; the COB's Office collected lodging receipts prior to 1999 but has not done so on a regular basis since 1999.

Response: (Chief Executive Officer)

The CEO neither agrees nor disagrees with this finding in that he has no direct knowledge of the information utilized by the Grand Jury.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

I have no direct knowledge of the timeframe for which lodging receipts have, or have not, been submitted.

Response: (Clerk of the Board)

I disagree partially with Finding No. 42. Where lodging is claimed, a receipt is required, and provided, pursuant to County Policy. The Clerk of the Board office has consistently enforced and upheld this requirement pursuant to adopted policy. If claims for lodging were not accompanied by the required receipt, the claim was returned to the claimant for required documentation.

43. The BOS Travel Policy that took effect in January 2008 requires receipts for reimbursement of all lodging costs and clearly specifies the documentation required for this and other expenses.⁷

Response: (Board of Supervisors)

The Board agrees with this finding.

⁷ The 2008 BOS Travel Policy may be viewed with the electronic version of this report at www.co.mendocino.ca.us/grandjury

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

No policy is ever 100% clear, but the new Board of Supervisors Travel Policy makes great strides toward clarity for all concerned.

Response: (Clerk of the Board)

I agree with Finding No. 43.

44. During 2007, the newly elected Third District Supervisor, who resides outside Laytonville, also claimed commute mileage reimbursement in order to offset the cost of a modest secondary residence in Willits.

Response: (Current Third District Supervisor)

45. The Travel Policies specify reimbursement for “overnight stays for back-to-back meetings.” No allowance is provided for the cost of maintaining a second residence. When the 2007 Grand Jury asked the Third District Supervisor whether he was prepared to repay the excess mileage reimbursement to the County, he readily agreed to do so.

Response: (Board of Supervisors)

The Board agrees with the first two sentences of this finding. The Board has no knowledge of interactions between the Grand Jury and individual Board members.

Response: (Current Third District Supervisor)

Response: (Chief Executive Officer)

The CEO agrees with the first two sentences of this finding. The CEO has no knowledge of interactions between the Grand Jury and any Board member.

Response: (Auditor-Controller)

I agree with the Finding.

46. When asked once again, by the 2007 Grand Jury to compensate the County for excessive reimbursement claims, the Fourth District Supervisor declined to make the repayment, as she had previously agreed to do. She stated that the policy was “*confusing*,” the practice was “*common procedure*,” and that she had many expenses as a result of her job including “*tires, pet care and meals away from home*.”

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Response: (Current Fourth District Supervisor)

I disagree wholly or partially with the Finding.

The Fourth District Supervisor declined to repay the County for excessive reimbursement claims as they were not excessive. They were filed consistently in compliance with the travel policy in place when I assumed office, as the records reflect.

47. Tires are among the car costs covered by the allowed government mileage rate for reimbursement for miles actually driven. Pet care, in-county meals and other incidentals are not reimbursable under any county travel policy.

Response: (Board of Supervisors)

The Board agrees partially with this finding, while acknowledging the costs of County service, many of them unreimbursed. Under specified circumstances in-county meals can be reimbursed both for Board members and for County employees.

Response: (Current Fourth District Supervisor)

I agree with the first sentence. I disagree in part with second sentence as in-county meals *are* reimbursable under Policy # 18 and the BOS travel policy of 2005-2006, under certain circumstances.

Response: (Chief Executive Officer)

The CEO agrees partially with this finding, but points out that, under certain circumstances, in-county meals can be reimbursed.

Response: (Auditor-Controller)

I disagree wholly or partially with the Finding.

There are occasions when meals are reimbursed, both for Supervisors and for other County employees. Section 4.2 of Mendocino County Policy #18 details those circumstances when County employees may be reimbursed for meals during travel within the County. The BOS Travel policy, Section II B 4 states “*Meal reimbursement for Board members, who, as part of official County business, attend an event that charges for a meal, will be paid for the full cost of the meal.*”

48. On December 12, 2007, the BOS approved a revised travel policy, effective in January 2008. The revised document stipulates that the Board of Supervisors shall review this policy in January of each year commencing January 2009. Under this policy, reimbursement for travel within Mendocino County is subject to the following terms:

A. Mileage

1. *For travel necessary for official business within the county, each member of the Board of Supervisors may elect before January 1 or before July 1 of each year to:*

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

a. *To receive a vehicle allowance in the following amount for his/her district:*

(Taxable) Vehicle Allowance proportionate to geographic areas and distances:

<i>First District</i>	<i>\$500 per month</i>
<i>Second District</i>	<i>\$250 per month</i>
<i>Third District</i>	<i>\$1,000 per month</i>
<i>Fourth District</i>	<i>\$900 per month</i>
<i>Fifth District</i>	<i>\$800 per month</i>

OR

b. *To itemize and claim actual mileage for utilization of his/her own vehicle for official County business within the County borders, including travel to and from home office to official business.*

2. *Mileage will be reimbursed at the same rate as set for County personnel.*⁸

C. Lodging

1. *Supervisors conducting official business in the County seat may elect to stay overnight rather than drive back and forth to their residences and will be reimbursed for actual lodging costs incurred, not to exceed the established local government hotel rate, for up to two (2) nights during a week with a regularly scheduled Board of Supervisors' meeting.*

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I agree with the Finding.

49. Only the Second District Supervisor has elected to itemize his mileage costs. Reimbursement for itemized mileage under II (A) (1) (b) is not taxable income. The mileage allowance (stipend) described under (A) (1) (a) is fully taxable and may bring increased payroll taxes and retirement costs to both the County and the Supervisors.⁹ In return, Supervisors electing the stipend might qualify for larger retirement and/or Social Security payments.

⁸ Current mileage rate is \$.505/mile).

⁹ For 2008, increased County costs might include up to 11% pension, 4% COLA, 4% deferred compensation and Medicare/Social Security in excess of 7%. Supervisor costs will vary.

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I agree with the Finding.

50. The revised policy makes no allowance for reimbursement of more than two overnight stays in a week and limits hotel reimbursement to weeks with a regularly scheduled Board of Supervisors' meeting. Lodging receipts are required. Meals associated with overnight stays are not reimbursed.

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Current Fourth District Supervisor)

I agree with the Finding. This is an accurate statement of the current BOS travel policy. Lodging receipts are required and the policy clearly states this unlike the previous BOS policy in effect in 2005-06 which did not state receipts were required.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I agree with the Finding.

51. Regarding reimbursement for travel expenses related to official county business, the 2008 Travel Policy defines *County Business* in Section I General Policy, (A) (B) and (C):

A. *Official Business*

Official business of the Board of Supervisors includes but is not limited to attendance at regular Board meetings, special Board meetings, Board standing committee meetings, Board special assignment committee meetings, Board of Equalization meetings, and other County business.

B. *Reimbursable Expenditures*

The types of occurrences that qualify a member of the Board of Supervisors to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses include the following:

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

-
1. *Communicating with representatives of regional, state and national governments on County adopted policy positions;*
 2. *Attending educational seminars designed to improve officials' skill and information levels;*

Participating in regional, state and national organizations whose activities affect the County's interests;

Attending County events;
 3. *Implementing a County-approved strategy for attracting or retaining businesses to the County, which will typically involve at least one staff member;*
 4. *Meeting with and addressing concerns of constituents.*

C. Non-Reimbursable Expenditures

The types of occurrences that do not qualify for reimbursement of expenses include:

1. *Attendance at social and other meetings, which the member would attend regardless of his/her supervisor position. Attendance at retirement or similar functions will not be reimbursed unless the Board has requested a member to attend as their representative.*
2. *Any expenditure related to political campaigning for themselves or others.*
3. *Expenses of family members accompanying Board members on official business.*

Response: (Board of Supervisors)

The Board agrees with this finding.

Response: (Chief Executive Officer)

The CEO agrees with this finding.

Response: (Auditor-Controller)

I agree with the Finding.

52. The Grand Jury notes that the clause in Section I (A) that defines types of allowable county business concludes with the statement "...but not limited to..." and is, in fact, open-ended.

Response: (Board of Supervisors)

The Board disagrees with this finding. The phrase "but is not limited to" is in the middle of a sentence that begin with "Official business of the Board of Supervisors includes" and ends

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

with a list of different types of Board meetings, “and other County business”. Being bookended between “Official business” and “County business” provides a framework and guidance for the definition of County business activities that allow for reimbursed travel, and cannot be considered open-ended.

Response: (Chief Executive Officer)

The CEO disagrees with this finding. The phrase “but is not limited to” is in the middle of a sentence that begin with “Official business of the Board of Supervisors includes” and ends with a list of different types of Board meetings, “and other County business”. Being bookended between “Official business” and “County business” provides a framework and guidance for the definition of County business activities that allow for reimbursed travel, and cannot be considered open-ended.

Response: (Auditor-Controller)

I agree with the Finding.

Recommendations

The Grand Jury recommends that:

1. As a matter of accountability and transparency, the Fifth District Supervisor make public a full and clear disclosure of the purpose of his extensive weekend travel (Findings 3, 32, 33, 37-40).

Response: (Current Fifth District Supervisor)

This recommendation has been implemented in compliance with County Policies in place through 2007.

2. The Fourth District Supervisor repay to the County of Mendocino the amount of \$3,087 that was established by the Auditor to represent travel reimbursement overpayments (Findings 3, 8-17, 19, 24-30, 32, 33, 36, 46, 47, 50).

Response: (Current Fourth District Supervisor)

Recommendation will not be implemented because it is not warranted and/or are not deemed reasonable.

The Fourth District Supervisor submitted claims in the same manner as her immediate predecessor. Extensive review of those documents clarifies the travel reimbursements in question were filed in a like manner to her predecessor. A review of predecessor’s claims spanned four calendar years and over 125 pages of documents representing the entire reimbursement file of predecessor for this time period to the best of my knowledge. My claims have been filed consistent with the immediate predecessor and the policy interpretation in place when I assumed office.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

-
3. The Third District Supervisor review with the Auditor his mileage reimbursement claims filed during 2007, and that he repay, as he has agreed to do, any excess reimbursement, as determined by the Auditor (Finding 32, 33, 36, 44, 45).

Response: (Current Third District Supervisor)

4. Responsibility for review of the Supervisors' travel reimbursement claims be formally transferred from the Clerk of the Board to the Auditor's Office, and that:
- a) reimbursement claim forms be revised to indicate this change in oversight responsibility, and
 - b) that the Auditor be diligent in enforcing the 2008 BOS Travel Policy including expense documentation. (Findings 3-6, 34, 35, 42, 43).

Response: (Board of Supervisors)

The Board will implement this recommendation and requests that CEO staff work with the Auditor-Controller to implement the recommendation no later than September 30, 2008.

Response: (Chief Executive Officer)

The CEO will implement this recommendation and will work with the Auditor-Controller to implement as soon as possible, but no later than September 30, 2008.

Response: (Auditor-Controller)

Recommendation has not been implemented, but will be implemented in the future. It is my hope that this can be implemented with the beginning of the fiscal year 2008/09.

Response: (Clerk of the Board)

Recommendation No. 4 (a & b) will not be implemented because they are not warranted and/or are not deemed reasonable. Oversight of the *processing and review* of Board member expenses claims should rest with the individual responsible for managing the budget. The Auditor is diligent in enforcing the Board's expense reimbursement policy, which clearly articulates which expenses are reimbursable in the performance of Supervisorial duties. Careful attention is paid to the processing of all claims for reimbursement of public funds. As an additional measure in policy oversight and enforcement, a signed declaration will be required of any newly elected Board member, clearly documenting that the policy is in no way intended to reflect a "per diem" expense plan.

5. When the 2008 BOS Travel Policy is reviewed, in January 2009, the Supervisors:
- a) eliminate the taxable stipend and establish the option of being assigned an appropriate County vehicle (Findings 48-52);

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

b) require Auditor approval for reimbursement of any expense related to business that is not explicitly defined in county policy as allowable county business (Finding 52);

c) approve a meal allowance, at the approved county rate, (only) for dinners on nights when a Supervisor claims a reimbursable in-county hotel stay (Findings 24 and 50).

Response: (Board of Supervisors)

This recommendation requires further analysis. The Board will consider these three recommendations in January 2009 during the review of the Board Travel/Reimbursement Policy.

Response: (Current First District Supervisor)

Recommendation has not yet been implemented, but will be implemented in the future.

Response: (Current Second District Supervisor)

I wholeheartedly agree with this recommendation. This recommendation has not yet been implemented, but I look forward to it being implemented in the future, after the review in January 2009.

Response: (Current Third District Supervisor)

Response: (Current Fourth District Supervisor)

Recommendation requires further analysis. It is a policy determination by the BOS, and as such, cannot be implemented by an individual supervisor.

Response: (Current Fifth District Supervisor)

Recommendation requires further analysis. Implementation of these recommendations requires the support of three or more supervisors.

Response: (Chief Executive Officer)

This recommendation requires further analysis. The CEO will assist in the January 2009 review of the Board Travel/Reimbursement Policy and provide information regarding the costs and impacts of the Grand Jury recommendation.

Response: (Auditor-Controller)

5.a. Recommendation requires further analysis.

I believe the taxable stipend is reasonable, and the provision of County vehicles is unnecessary.

5.b. Recommendation has not yet been implemented, but will be implemented in the future.

It is my hope that this can be implemented with the beginning of the fiscal year 2008/09.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

5.c. Recommendation requires further analysis.

The BOS Travel Policy states that the Supervisor may “elect” to stay overnight rather than drive back and forth to their residence. To me, this implies that the stay is for the convenience of the Supervisor, and a meal should not be reimbursed.

Comments

The 2007 Grand Jury is indebted to the numerous current and former Mendocino County officials, and to both seated and former Supervisors who contributed to this report with their candid responses during lengthy interviews.

Testimony overwhelmingly rejects the contention that it has been common practice to claim commute mileage as a “*per diem*” when miles are not driven and no lodging expense is incurred. While it has been the auditor-approved practice of some Supervisors to claim commute miles in lieu of occasional lodging for back-to-back meetings, lodging receipts have always been required by the Auditor’s Office and were routinely collected by the COB’s office until 1999.

With two notable exceptions, in-depth review of the expense claims of all current Supervisors raised questions. Most of these were quickly resolved by referencing calendars or other backup documents. The purpose of extensive weekend travel by the Fifth District Supervisor remains essentially unsubstantiated; the Third District Supervisor promptly acknowledged that he might have misinterpreted the Travel Policies in place in 2007 as allowing him to collect mileage to offset the cost of his second residence in Willits where he spends some work nights. Only the Fourth District Supervisor persists in defending mileage reimbursement she claimed as a “*per diem*”, when no miles were driven and no lodging cost was incurred.

The revised BOS Travel Policy took effect in January 2008. The document discusses, though not conclusively, what constitutes “county business” and what does not. It specifies what documentation is required for reimbursement of actual expenses. It provides Supervisors with the option of *either* documenting their actual in-county mileage (including commute miles) *or* receiving a taxable stipend in an amount calculated to reflect the size of each district and its distance from Ukiah. Only the Second District Supervisor has elected to itemize mileage.

The new policy addresses several important issues. It offers Supervisors a way to avoid the need for detailed record keeping, if they wish to do so. It cleanly separates mileage reimbursement from reimbursement for allowable hotel stays, imposes a cap of two overnights per week, and limits the stays to weeks in which there is a scheduled BOS meeting.

A potential added cost of the new policy is that whereas mileage reimbursement is not taxed, the optional stipend is fully taxable and might bring increased payroll taxes and retirement costs to both the County and the Supervisors. Supervisors electing the stipend might qualify for a larger retirement benefit and/or a larger Social Security payment.

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

A perfect, one-size-fits-all BOS Travel Policy is likely to remain elusive. The stress and hazards of long-distance travel are inescapable.

The fact that parity was not achievable under the old travel policy is regrettable; however, it in no way justifies the documented falsification of expense reports by the Fourth District Supervisor to claim mileage reimbursement when she stayed in Ukiah and incurred little or no expense either for travel or for lodging. The request for repayment was reiterated in a letter from the District Attorney to the Fourth District Supervisor dated March 24, 2008. No response was received by the specified April 7, 2008 deadline.

Questions remain as to whether the new stipend option will level the economic playing field for Supervisors in the different Districts. Ultimately, the only way to accomplish that elusive goal may be to require travel logs and receipts, as is common practice in government and most private business settings. While this alternative continues to draw resistance from a few Supervisors, the Grand Jury strongly concurs with those who support it as the only fair and accurate way to document legitimate business expenses for reimbursement at taxpayer expense. Another possibility is to offer the option of a county car in place of the current travel stipends.

Required Responses

Board of Supervisors (collective response)

(Findings 1-7, 24, 29-32, 43, 45, 47-52; Recommendations 4 and 5).

Current First District Supervisor

(Findings 32-33, 35-36; Recommendation 5).

Current Second District Supervisor

(Findings 32, 33, 35, 36; Recommendation 5).

Current Third District Supervisor

(Findings 32, 33, 36, 44, 45; Recommendations 3 and 5).

Current Fourth District Supervisor

(Findings 3, 8-17, 19, 24-30, 32, 33, 36, 46, 47, 50; Recommendations 2 and 5).

Current Fifth District Supervisor

(Findings 3, 32, 33, 37-40; Recommendations 1 and 5).

County Executive Officer

(Findings 1-7, 24, 29, 30, 32, 41-43, 45, 47- 52; Recommendations 4 and 5).

1st District: Michael Delbar; 2nd District: Jim Wattenburger; 3rd District: John Pinches (previously Hal Wagenet); 4th District: Kendall Smith (previously Patti Campbell); 5th District: David Colfax.

Auditor-Controller

(Findings 3, 4, 10-17, 24, 27, 41-43, 45, 47-52; Recommendations 4 and 5).

District Attorney

(Findings 19-22).

Clerk of the Board

(Findings 3-6, 41-43; Recommendation 4).

The following documents are available with the electronic version of report on the Grand Jury website: www.co.mendocino.ca.us/grandjury

2006-07 Grand Jury report: Are You Getting What You Pay For? A Report on the Board of Supervisors Travel Policy (June 7, 2007)—Published with responses

Travel Policy in effect prior to June 2007

2008 Travel Policy

Text of Penal Code Section 932

Mendocino County District Attorney's response to PC 932 Order filed by the 2006-07 Grand Jury