THE MONTEREY COUNTY DISTRICT ATTORNEY'S RESPONSES TO THE 2006 MONTEREY COUNTY GRAND JURY FINAL REPORT

Recommendations 7.1 (Elected Officeholder's Residency Requirements)

R 7.1 reads: "The City Attorney of each city in conjunction with the Monterey County District Attorney should review and determine residency of its Mayor and City Council members. If any Mayor or City Council Member is found not to meet the residency requirements for elected public office as required by the city's charter of general law, the Mayor or Council member should be required to vacate his or her office."

District Attorney's Response:

R 7.1 (Elected Officeholder's Residency Requirements): The District Attorney's Office disagrees. The powers of the District Attorney are only those conferred by the state constitution or by statute. Primary responsibility for city office elections resides with city election officials. There is no authorization for the District Attorney to interfere with the jurisdiction of city officials by monitoring residency qualifications. The only role that the District Attorney can play in this process is to prosecute an office seeker for perjury if that person makes a material false statement under oath or its equivalent. Historically, these cases have reached the District Attorney's Office through citizen complaints or by referral from election officials. In appropriate cases, the District Attorney's Office has filed charges and obtained convictions for Election Code violations.

The District Attorney's lack of authority to block an ineligible person from running for office is underscored by the lack of a role for the District Attorney in removing an ineligible person from office. There are no criminal penalties for an unqualified candidate who seeks public office. There are only civil remedies for the problem. The two remedies are an election contest and a *quo warranto* action.

Election Code Section 16100 sets out the permissible grounds for contesting an election result. It states in part: "Any elector of a . . . city . . . may contest any election held therein, for any of the following causes: . . . (b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office." Division 16, Election Contests, gives no role to the District Attorney to dispute the validity of election results. An elector—a qualified voter—must bring a civil action.

Quo warranto proceedings are set out in the Code of Civil Procedure Sections 803-811. In part, Section 803 provides that: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . ." Section 810 indicates that a private party may file a complaint with the permission of the Attorney General. Section 811 states that the city council may also file such an action. The District Attorney has no authority to file a *quo warranto* action.

2-1-07

Recommendations 7.2 (Elected Officeholder's Residency Requirements)

R 7.2 reads: "The County Counsel, in conjunction with the Monterey County District Attorney, should review and determine the residency status of each member of the Board of Supervisors. If any member is found not to meet the residency requirements of the County, the Board of Supervisors member should be required to vacate his or her office."

District Attorney's Response:

R 7.2 (Elected Officeholder's Residency Requirements): The District Attorney's Office disagrees. The same legal analysis presented in response to Recommendation 7.1 applies here as well. The primary responsibility for monitoring elections belongs to the Registrar of Voters and the Election Department. Removal of an unqualified person from public office at the county level is likewise a civil matter with no legal authority for the involvement of the District Attorney.

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Finding 9.6: Food Service Inspections

F 9.6 reads: "Lack of citation authority requires additional time and effort by health inspectors and the District Attorney's Office."

District Attorney's Response:

F 9.6 (Food Service Inspections): The District Attorney's Office disagrees. Citations to appear in court may only be issued by peace officers. Health Department Inspectors do not have peace officer status under the California Penal Code. To give Health Department inspectors peace officer status requires a change in state law. Citations to appear may only be used in lieu of arrest. The peace officer issuing the citation must have had authority to arrest the person to whom the citation was issued. Generally, a peace officer may only arrest on a regulatory offense if the offense occurs in the officer's presence. Typically, Health Department investigations consist of gathering evidence about an offense that the inspector did not witness.

The authority to issue citations will not increase the speed at which these cases are processed. The courts currently require the District Attorney's Office to review citations issued by peace officers. If state law was changed to give authority to issue citations by Health Department inspectors they would also be subject to this review for legal sufficiency of the evidence.

We have worked closely and will continue to work closely with Health Department Inspectors to ensure that individuals and business which can be proven to be responsible for violating dumping statutes and other environmentally based laws, will be prosecuted either criminally, civilly, or both.

Recommendation 9.12: Agricultural E. coli

R 9.12 reads: "MCHD in conjunction with the District Attorney's Office should enforce existing requirements of Monterey County Code 10.41.020 prohibiting disposal of materials by dumping."

District Attorney's Response:

R 9.12 (Enforcement of Monterey County Code 10.41.020): The District Attorney's Office agrees in part and disagrees in part. We agree that it is the obligation of the District Attorney to enforce appropriate cases that have been investigated thoroughly and are supported by proof beyond a reasonable doubt. We have worked and will continue to work with Health Inspectors or personnel from any other investigative agency that presents evidence of violation of statutes prohibiting the illegal dumping of materials.

If there is an inference from this recommendation that the Health Department and District Attorney's Office are not enforcing existing laws, then we do not agree. The District Attorney's Office works closely with the Health Department inspectors. Dumping cases

which can involve all sorts of materials including waste or toxic materials are rarely committed in the presence of witnesses. As a result, these types of cases are very difficult to prove. The mere presence on roadways, etc., of waste material is not necessarily evidence of who is responsible for the dumping. Health Department Inspectors are normally the first responders and if they are able to obtain sufficient evidence of responsibility then they refer the matter to the District Attorney's Office for legal review.

The cooperative working relationship between the District Attorney's Office and the Health Department is demonstrated by a number of successful prosecutions in calendar year 2006. These cases involved hazardous materials, ammonia releases, hazardous waste accumulated in dumpsters, hazardous materials in underground storage tanks, and sewage seeping into farm fields. Over $1,600,000 was obtained as penalties and reimbursement for investigative agency costs. These prosecutions were either criminal, civil, or a combination of both. Where cases involving dumping or violations of any other related environmental laws are presented for review and meet constitutional requirements for prosecution they are vigorously pursued. We look forward to continuing to work with Health Department inspectors and other governmental agencies in order to protect our environment.

THE MONTEREY COUNTY DISTRICT ATTORNEY'S RESPONSE TO THE 2006 MONTEREY COUNTY GRAND JURY FINAL REPORT

Recommendation 15.3 (Monterey County Jail)

R 15.3 reads: The District Attorney's Office should expedite the trial and sentencing of inmates housed at the jail facility in order to reduce overcrowding. The Grand Jury cannot and did not investigate the Superior Court in relation to this matter. However, the Superior Court should also expedite trial and sentencing whenever possible."

District Attorney's Response:

R 15.3 (Monterey County Jail): The District Attorney's Office agrees in part. In the criminal justice system police and prosecutors must abide by statutory and constitutional requirements. Defendants are entitled to statutory and constitutional rights both state and federal. One of the basic rights of the defendant as set forth in the Constitution and protected by statute is the right to a speedy trial. It is the responsibility of the prosecution to meet the requirements set forth in the 6th Amendment Right to a Speedy Trial. The failure to do so could result in a dismissal of the case and the release of the defendant. According to the Judicial Council of California's 2006 Court Statistics Report, Monterey County had disposed of 77% of felony cases within 30 days which ranked third out of 58 counties in the state of California. Additionally, Monterey County ranked eighth out of the 58 counties on disposing of felony cases within 12 months. This is a credit to the court, the district attorney, and the defense bar and is an indication that jail overcrowding is not a result of failure to expeditiously process cases by the District Attorney (or the Superior Court.)

The inference that the District Attorney (and the Superior Court) are responsible in some way for the overcrowding of the jail is an erroneous conclusion and is not supported by any finding. Defendants who are in pre-trial custody awaiting trial are guaranteed their 14th Amendment Due Process Rights. Absent a waiver of time by the defendant, defendants must be tried within the statutory time frames for both misdemeanors and felonies. Defendants in pre-trial custody tend to be charged with serious felonies and have been unable to make bail or there may be a no bail condition. As part of the importance of ensuring that due process rights are guaranteed, defendants and sometimes the People will request continuances from the court. Reasons for continuances vary but could be that evidence needs to be tested, such as for DNA, or attorneys need more time to prepare for trial. It is fair to say that most requests for continuances come from the defendant however, prosecutors may request continuances where for instance witnesses, police officers, or deputies are unavailable to testify because of training schedules or vacations.

In any event, the court will determine whether good cause exists for granting a continuance no matter which party requests it or if both parties request it. Those judicial determinations are within the sole discretion of the trial judges who are vigilant in ensuring that the defendant and the People receive a fair trial in accordance with constitutional mandates. Once a defendant is convicted, in accordance with statute, he will be sentenced within three weeks unless there is good cause to continue the sentencing. With the growth of California's population the need for additional jail cells is a matter that is being addressed by the Governor and the Legislature. Until there is an ability to expand the capacities of our local jail to accommodate California's increasing population overcrowding will continue to be a problem.