



Tuolumne County Employment Practices

Rules, Regs and Recruiting
June 30, 2020



The mighty oak, a symbol of strength.

Photo: Luann Hopkins



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Summary

The Tuolumne County Civil Grand Jury is widely known for its government watchdog functions. However, one of the lesser-known duties of the Grand Jury is to dispel significant public misconceptions. This report lays to rest misconceptions of the county's handling of its recruitment for Public Defender.

Additionally, this report discusses how the public defender salary is determined, personnel rules and regulations, and succession planning, with findings and recommendations for improvement.

Glossary

At-Will	Job classification that affords no legal recourse for the employee, in the event of termination, with or without cause.
CAO	County Administrative Officer reports to Board of Supervisors, responsible for overall county management
County Counsel	Primary legal advisor to the Board of Supervisors and other county departments, committees, and commissions
Deputy County Counsel	Legal advisor to county departments, under the direction of County Counsel
Ethical Wall	A screening mechanism that protects a client from a conflict of interest by preventing one or more lawyers within an organization from participating in any matter involving that client
FPPC	Fair Political Practices Commission
Key Employee	A position of unique value to an organization
External Recruitment	Method to fill vacant position that is available to any qualified person

Internal Recruitment	Method to fill vacant position from within existing staff
Public Defender	Director of program providing legal counsel and representation to adult and juvenile indigents charged with criminal violations
Status Quo	The existing state of circumstances
Succession Plan	A process and plan to identify and develop new leaders within an organization

Background

In January 2019, Tuolumne County’s Public Defender retired after twenty-six years of county employment. County staff began an external recruitment process for his replacement. The recruitment and appointment process subsequently became the subject of local public controversy.

The Grand Jury became aware of citizen concerns regarding transparency, conflicts of interest and unfair treatment in county hiring and employment practices for this key county position.

Following an initial inquiry, including both a review of public documents and conversations with concerned citizens, the Grand Jury chose to proceed with an investigation.

Methodology

The Grand Jury reviewed the following documents:

- ▶ Tuolumne County Board of Supervisors Meeting Agenda Materials and Minutes
- ▶ Tuolumne County Public Defender Job Description
- ▶ Tuolumne County Executive/Confidential Unit Compensation Plan
- ▶ Tuolumne County Compensation Schedules
- ▶ Koff & Associates Compensation and Classification Spreadsheet
- ▶ Tuolumne County Personnel Rules and Regulations
- ▶ Tuolumne County Code
- ▶ Tuolumne County Conflict of Interest Protocols for Indigent Defense Counsel
- ▶ Tuolumne County Conflict of Interest Protocols for County Counsel
- ▶ Tuolumne County Conflict of Interest Protocols for Public Defender
- ▶ California Fair Political Practices Commission (FPPC) Website
- ▶ California Government Code
- ▶ Letter from Deputy County Counsel to FPPC: Request for Formal Opinion
- ▶ Letter from FPPC to Deputy County Counsel: Letter of Advice
- ▶ Deputy County Counsel June 3, 2019 Email to Union Democrat Newspaper
- ▶ Deputy County Counsel July 16, 2019 Statement to the Board of Supervisors

During this investigation, the Grand Jury interviewed seven people including key county staff.

Discussion

Public Defender Recruitment and Appointment

The position of Tuolumne County Public Defender is an appointed, at-will position that serves at the pleasure of the Board of Supervisors. The Board of Supervisors is the hiring authority for this position (Government Code §27700 et seq.).

In January 2019 Tuolumne County's long-term Public Defender retired after twenty-six years of county employment. This retirement provided a rare opportunity for qualified individuals to apply for an important leadership position. County Human Resources began an external recruitment process to search for a replacement. The external recruitment process includes advertising in local news outlets, professional organization publications and statewide job posting websites.

In response to the search efforts, thirteen applications were received. Of those thirteen applications, five were dismissed by human resources because they did not meet the minimum qualifications laid out in the job description.

Seven applicants were interviewed by two different panels. The first panel was comprised of county employees, who interviewed the applicants for overall fit within the county culture. The second panel, comprised of professional peers interviewed the applicants for their knowledge, skills, and abilities.

The two-panel process resulted in four applicants who were recommended for interview by the Board of Supervisors. Of those four applicants, two withdrew from competition, and the remaining two applicants were interviewed by the Board.

One of the thirteen applicants for the position is the spouse of a member of the Board of Supervisors. This applicant is and has been employed as a Deputy Public Defender for 7.5 years.

The Fair Political Practices Commission (FPPC) was created in the aftermath of the Watergate scandal. California was the first state to pass a comprehensive political reform package. Proposition 9, known today as The Political Reform Act, was passed as a ballot measure by California voters in the June 1974 election. The Act includes provisions regulating campaign finance, lobbying activity, and conflicts of interest.

A legal opinion concerning this potential conflict of interest (due to the spouse of the applicant serving on the Board of Supervisors) was requested and received by the FPPC.

The FPPC opined that the conflict preventing this applicant from applying for the open Public Defender position applies to the Board of Supervisors in its entirety. Therefore, the spouse could not simply recuse themselves, and allow the remaining supervisors to vote on such an appointment. Further, because this applicant's employment with the county predated the spouse's elected term, status quo employment is allowed.

The public expressed concerns of perceived conflicts of interest and unfair treatment of candidates for the Public Defender position.

Public perception, including letters to the editor of the Union Democrat Newspaper suggested that this applicant was treated unfairly and was denied the opportunity to apply for the position in favor of another candidate. The Grand Jury has determined that this perception is not based in fact.

The successful candidate for the Public Defender position is the spouse of Tuolumne County Counsel. Again, the public perceived a conflict of interest because County Counsel is the chief legal advisor to the Board of Supervisors and as such would typically advise the Board of legal boundaries in hiring practices. Additionally, County Counsel typically would review negotiated employment contracts with county department heads, of which Public Defender is one.

The ethical wall is a common and routine practice in law firms to avoid conflicts of interest. In this instance, an ethical wall was created, thereby removing County Counsel from all involvement in the recruitment, appointment, and contract negotiations of the Public Defender.

Behind the ethical wall, a deputy county counsel served as an advisor to the Board of Supervisors for the purpose of the Public Defender recruitment. During this assignment, Deputy County Counsel reported to the CAO, and paper and electronic files were kept in a location not accessible to County Counsel. This report does not examine how this arrangement may have affected the working relationship between County Counsel and Deputy County Counsel on other matters.

In addition, County Counsel and the Public Defender entered into separate Conflict of Interest Protocol Agreements with Tuolumne County to memorialize and define how their conflicts of interest would be addressed during their respective tenures.

The Conflict of Interest Protocols drafted by an outside law firm, Hanson Bridgett LLP of Sacramento, directs, in part as follows:

The County Counsel's Office and the Public Defender's Office are not prohibited from appearing or advising on the same cases or matters. However, County Counsel and Public Defender will use best efforts not to appear or advise on cases or matters that spouse also appears on the County's behalf. In the event either is required to appear on or advise on cases or matters that spouse also appear on, each will provide client with written disclosure of relationship with spouse.

The Public Defender Conflict of Interest and Protocol Agreement transfers juvenile dependency and LPS conservatorship matters to the Conflicts Division within the Public Defender's office.

County Counsel is recused from all matters related to the Public Defender employment contract.

The Grand Jury notes the inconsistency among the sources of advice and legal support for the Board of Supervisors elected/appointed spouses, versus the Public Defender/County Counsel who are also spouses, and public officials.

Request for Advice from the FPPC, a neutral organization, free of cost, for the Board of Supervisors conflict questions, is accessible for public scrutiny. Whereas for County Counsel and Public Defender a legal opinion from a private law firm is protected under attorney-client privilege. Furthermore, the Conflict of Interest protocols drafted by the private law firm (not a neutral organization) are subject to legal fees.

Further, this report does not address how the County Counsel/Public Defender conflict of interest arrangement affects their work with other county departments, agencies, or the courts.

Department Head Salaries

Another source of public concern surrounds the salaries of Public Defender and other county department heads. The public expressed concerns regarding elevated salaries for Public Defender and others in the face of a \$4.2 million budget deficit.

The Grand Jury reviewed the Tuolumne County Executive/Confidential Unit Compensation Plan, the Koff & Associates Compensation and Classification Study materials, and current county salary schedules.

The 2014 Koff & Associates Compensation and Classification Study revealed significant disparities between current pay and market rates for most employee classifications. Tuolumne County uses several similar counties (Amador, Calaveras, El Dorado, Mariposa, Merced, Placer, Stanislaus, and San Joaquin) to compare salaries for each position/classification of county employees. Elected department head salaries are tied to the closest similar non-elected county position for comparison purposes.

Following completion of the Koff Study, the county determined it was financially unable to match current salaries to full market value and decided to adjust pay schedules to a percentage of market median. In the case of the Public Defender, the pay variation between current and market median is approximately 30%. A plan was devised to bring salaries closer to the median of the market over time.

It was determined by County Administration and Human Resources to recruit for the Public Defender position at a salary that more closely matches the median of the market for that position, to attract qualified and desirable candidates. Ultimately, the Public Defender was hired with a starting salary several pay ranges above the classification of the prior Public Defender and other elected department head positions. Consequently, other elected department head salaries were reclassified to a higher salary range to maintain parity among those classes of county positions.

County Personnel Rules & Regulations

The Grand Jury, during this investigation discovered that the County Personnel Rules and Regulations are dated August 1997. Much has changed in twenty-two years in employment law and human resources best practices; most notably in the State of California. An update of the County's Personnel Rules and Regulations is long overdue.

During the investigation, the Grand Jury also learned that across the range of departments that some mid-level employees are unable to qualify for department head positions because they lack supervisory experience. Most County departments are too small to impose a hierarchical structure for mid-level staff to gain such experience. The County does not have a succession plan in place to identify, train and mentor promising candidates for future leadership roles.

Succession planning systematically identifies, assesses, and develops talent as a key component for organizational success. It is an ongoing process that enables an organization to plan or recover when critical talent is lost.

Findings

- F1.** Despite public perception, conflict of interest rules were not violated during the recruitment and appointment of the Public Defender.
- F2.** Despite public perception, adequate precautions were in place in the form of an ethical wall to remove County Counsel from all involvement in the appointment of the Public Defender.
- F3.** The Tuolumne County Personnel Rules and Regulations were last updated in 1997, leaving them woefully in need of an update to current human resource practices.
- F4.** Tuolumne County does not have a key employee succession plan in place, which stifles upward mobility and professional growth for certain mid-level positions.
- F5.** Conflict of Interest Agreements were entered into with the County and County Counsel and the County and the Public Defender to establish and maintain conflict of interest protocols.
- F6.** Salaries for Tuolumne County Public Defender and other similar department heads are fair and equitable as determined by an independent study.

Recommendations

- R1.-2.** To avoid public misperceptions, the Grand Jury recommends County Administration improve methods of communication and transparency during high-level and potentially controversial personnel activities, by explaining its goals through various methods such as print, voice, and social media. The FPPC should be consulted whenever possible so that opinions and advice on conflicts of interest that are of public interest are neutral, cost effective, and open and accessible to the public. (F1, F2)
- R3.** The Grand Jury recommends 1997 Personnel Rules and Regulations are updated, approved, and posted to the County website by December 31, 2020. (F3)
- R4.** The Grand Jury recommends County Administration and Human Resources develop a Key Employee Succession plan by June 30, 2021. (F4)

Request for Responses

The following responses are required, pursuant to California Penal Code §933 and §933.05, no later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to the reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertain-

ing to matters under the control of the governing body and every elected or appointed county official or agency head for which the Grand Jury has jurisdiction shall comment within 60 days to the presiding judge of the superior court.

From the following county officials within 60 days:

- ▶ The Tuolumne County Administrative Officer: R3
- ▶ The Tuolumne County Administrative Officer: R4

Invited Responses

- ▶ The Tuolumne County Administrative Officer: R1-2
- ▶ The Tuolumne County Human Resources Director: R3, R4

Bibliography

California Government Code Section 27700 et seq; Board of Supervisors is hiring authority for the position of Public Defender

County Conflict of Interest Protocol Regarding Indigent Defense Contract Official/Employee Covered: County Counsel, March 31, 2017

County Conflict of Interest Protocol Regarding Public Defender's Office Official/Employee Covered: County Counsel, June 30, 2019

County Conflict of Interest Protocol Regarding Public Defender's Office Official/Employee Covered: Public Defender, June 30, 2019

Deputy County Counsel Request for a Formal Opinion for Member of Board of Supervisors, February 20, 2019

Letter to the Editor: Union Democrat June 22, 2019

Letter to the Editor: Union Democrat June 22, 2019

Union Democrat Article: People React to Tuolumne County Potentially Not Being Able to Use All Beds at New Jail, August 20, 2019

State of California Fair Political Practices Commission Letter of Advice: File No. A-19-034; dated August 21, 2019

Tuolumne County Board of Supervisors Meeting Materials, June 18, 2019

Tuolumne County Public Defender Position Description, April 2019

Tuolumne County Board of Supervisors Agenda Report: Employment Agreement Public Defender, June 18, 2019

Tuolumne County 2017-2020 Executive/Confidential Unit Compensation Plan, and amendments thereto

Tuolumne County Code, Chapter 2.12.110; Appointment of Department Heads

Tuolumne County Personnel Rules and Regulations, August 1997

Tuolumne County Compensation and Classification Study, Koff & Associates, 2014

Tuolumne County Job Code Listing

<https://www.tuolumnecounty.ca.gov/DocumentCenter/View/11761/Classification-Listing>

Tuolumne County Pay Range/Step Table

https://www.tuolumnecounty.ca.gov/DocumentCenter/View/527/Pay_Ranges?bidId=

Deputy County Counsel Email to Union Democrat, June 3, 2019

Disclaimer

This report was issued by the 2019-2020 Tuolumne County Grand Jury except for two jurors who are related to former employee(s) of Tuolumne County, or who has a real or perceived bias. These grand jurors were excluded from all parts of the investigation, including interviews, deliberations, and the writing and approval of this report.

Reports issued by the grand jury do not identify the individuals who have been interviewed. Penal Code §929 requires that reports of the grand jury not contain the name of any person or facts leading to the identity of any person who provides information to the grand jury.

Tuolumne County Organizational Chart - Exhibit A:



Vision: Tuolumne County is a place where all citizens enjoy opportunities to thrive in a safe, healthy and productive community.