



MAILING ADDRESS:
GRAND JURY SUITE 12
411 E. CANON PERDIDO ST.
SANTA BARBARA, CA
93101-7531

TEL: (805) 568-2291
FAX: (805) 568-3301
email: sbcgj@sbcgj.org
http:// www.sbcgj.org

GRAND JURY SANTA BARBARA COUNTY

May 16, 2011

Ms. Chandra Wallar
County Executive Officer
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Dear Ms. Wallar:

This document constitutes an Activity Report issued by the 2010-11 Santa Barbara County Civil Grand Jury (Jury) regarding Santa Barbara County's at-will employee discipline policy. It was prepared in accordance with the *California Penal Code Sections 925 and 928*.

The Jury received seven complaints concerning a highly publicized termination of an at-will employee. Additionally, a lawsuit filed by another at-will employee, who was terminated by a different county department, resulted in a \$431,000 judgment against the county.¹ Because there were two separate departments involved in these terminations, the Jury perceived the problem to be systemic.

"An 'At-Will Employee' refers to an employee whom an employer can terminate at will for any reason or for no reason at all.... Apart from this there is also an enormous body of federal and state law limiting an employer's ability to terminate employees for reasons having to do with race, ethnicity, religion, marital or disability status and, in some cases, sexual orientation.... In short an employer cannot fire employees in any way that constitutes discrimination, a violation of state public policy, or contradicts any actual or implied promise regarding the criteria or procedures for employee termination."²

Due to the two termination incidents mentioned above, the Jury conducted a focused review of county discipline policy and procedure as they relate to at-will employees. The Jury did not investigate the specific issues involved in either termination. The initial concern was whether county policy and procedure had been followed in these two cases. The Jury interviewed pertinent staff, most importantly Human Resources and County Counsel departments, and examined various documents relating to employee discipline.

¹ Lompoc Record, September 10, 2010

² At-Will Employee Law & Legal Definition, <http://definitions.uslegal.com/a/at-will-employee/>

All of those interviewed were open and cooperative. As a result, the Jury learned Santa Barbara County did not, at that time, have a written policy or procedure requiring that department heads consult with Human Resources or County Counsel before terminating at-will employees.

The Jury found:

- No county policy or procedure had been ignored or violated because no written policy or procedure existed
- Department heads (both elected and appointed) could independently terminate at-will employees
- The absence of a requirement for internal consultation increased the exposure of county taxpayers to lawsuits and claims by at-will employees

Concurrently and expeditiously, county staff developed a written disciplinary action policy. In January, 2011 the county implemented the new policy, entitled “Coordination of Disciplinary Actions” and began training department heads in its use.

The “...objective of the policy is to ensure coordination among County departments, Human Resources, and County Counsel on disciplinary matters, by:

1. Enhancing the quality and timeliness of the services County departments receive from Human Resources and County Counsel;
2. Ensuring the County’s compliance with all applicable laws and rules;
3. Producing consistent and supportable disciplinary practices Countywide;
4. Protecting the County from the risks of liability associated with disciplinary actions.”³

This new policy requires that “Departments will contact Human Resources as soon as it appears likely that an investigation could lead to serious disciplinary action....” The Human Resources Department generally has the primary responsibility for coordinating with the department and County Counsel, although there are situations that require the lead of County Counsel. Now, the involved department, Human Resources, and County Counsel are required to consult and reach consensus regarding appropriate action. As a result, county government and taxpayer risk have been reduced. This new written policy, particularly the requirement for consensus, is a significant improvement over previous practice. The officials responsible for this achievement are to be commended.

Pursuant to *California Penal Code Section 933.05* this report does not require a response.

Sincerely,

Kathryn D. McKee
Foreperson

cc: Santa Barbara County Board of Supervisors
Santa Barbara County Counsel
Santa Barbara County Human Resources Director

³ County of Santa Barbara, On-line Policies & Procedures Manual, Coordination of Disciplinary Actions, Activated -January 2011