August 28, 2017

THE HON. CHARLES MARGINES, Presiding Judge
Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701


Dear Judge Margines:

Please find enclosed a copy of the Orange County District Attorney’s response to Findings F1-F8, and Recommendations R1-R3 of the Orange County Grand Jury Report, “Another Hostile Work Environment? Orange County District Attorney Bureau of Investigation.”

Sincerely,

Tony Rackauckas
District Attorney-Public Administrator

TR:vlb
Enclosure
"Another Hostile Work Environment"

SUMMARY RESPONSE STATEMENT

The Bureau of Investigation (Bureau) is the Orange County District Attorney’s Office’s (OCDA) law enforcement division. The Bureau is comprised of over 130 sworn police Investigators who are seasoned law enforcement professionals who have been recruited from other law enforcement agencies. They have extensive investigative experience, highly developed technical skills, exemplary work records, and outstanding personal histories. The Bureau also employs 90 non-sworn support team members.

Investigators assist prosecutors in trial by developing leads and locating additional witnesses, including uncooperative or reluctant witnesses, ensuring the safety of the victims and witnesses, and engaging in trial strategy with their prosecutor partners. Their work is extensive, which includes writing and serving search & arrest warrants and investigating original cases in complex matters, going the extra mile to ensure that the law is enforced in a just, honest, efficient and ethical manner.

The Bureau’s Special Assignments Unit responds to and investigates officer-involved shootings, custodial deaths, police officer criminal conduct allegations, public corruption, and other sensitive and complex investigations. In addition to working cooperatively with 25 local police agencies, the Orange County Sheriff’s Department, and other state and federal agencies, the OCDA Investigators are assigned to participate on 7 different local state and federal task forces. These task forces allow law enforcement to leverage the abilities and expertise of the various participating agencies which results in coordinated and effective investigations of the highest level crimes.

OCDA Investigators maintain expertise in a number of various units. There over 35 different units where an investigator may be assigned.

- Anti-Terrorism/ Organized Crime
- Automobile Insurance Fraud
- Branch Court Services
- Child Abduction
- Child Abuse
- Civil Gang Injunctions
- Cold Case Homicide Task Force
- Consumer Protection
- Environmental Protection
- DEA Task Force
- DNA Investigations
- Elder Abuse
- Family Protection
- FBI Cyber Crime Task Force
- Felony Panel
- Gangs
- Homicide
- Human Exploitation And Trafficking (HEAT)
- In-Home Support Services Fraud
- Juvenile
- Major Fraud
- Medical Insurance Fraud
- Narcotic Enforcement Team
- Orange County Auto Theft Task Force (OCATT)
- Orange County Gang Reduction and Intervention Partnership (OC GRIP)
- Orange County Housing Fraud
- Orange County Regional Computer Forensics Laboratory
- Professional Standards
- Protective Services Unit/ Threat Assessment
- Public Assistance/ Welfare Fraud
- Real Estate Fraud
- Sexual Assault
- Special Assignments
- TARGET
- Technical Services
- Taskforce Review Aimed at Catching Killers, Rapists & Sexual Offenders (TracKRS)
- U.S. Marshall Task Force
- Vehicular Homicide
- Workers' Compensation Insurance Fraud

The Bureau’s accomplishments have been recognized by outside agencies. In August 2017, Investigator Kevin Ruiz was honored with the “Golden Rule Award” for his extensive work as a non-profit leader with the Orange County Gang Reduction Intervention Partnership (OC GRIP). In October 2016, Investigator Dan Pratt was recognized by the California Welfare Fraud Investigator’s Association for outstanding service. In March 2017, Investigator Paul Litchenberg received a rare FBI commendation from Director James Comey for his extraordinary efforts that resulted in several indictments against individuals running a large racketeering operation. In 2015, Investigator Wes Van Diver was named the California District Attorney’s Investigator of the Year. In 2013, Investigator Larry Montgomery received the same award. The investigative staff has also been recognized for their outstanding work in the Orange County Auto Theft Task Force (OCATT), HEAT (Human Exploitation and Trafficking), OC GRIP, and pioneered the first Rapid DNA program in the State of California.

Against this backdrop of excellence, the OCDA recognizes that some decisions made in the Bureau impacted morale and compromised the professionalism and integrity of the Bureau and the OCDA. When these issues came to light, the OCDA took swift and decisive actions to ensure these issues were corrected before the issuance of this report. Change in leadership, outreach to employees, conducting human resources investigations, and
developing policies that go further than one County policy. The OCDA believes these changes have helped to restore morale and confidence in the future direction of the Bureau.

**FINDINGS AND RESPONSES**

**Finding F1**

"Multiple consensual relationships involving some members of Bureau management have contributed to a perception of favoritism and cronyism among some in the Bureau. This perception stems from the promotion of some who have been engaged in intimate relationships with their supervisors, whether or not those promotions were deserved, and a belief by some that participation in activities that occur outside the workplace impact promotion decisions. This has created the perception of a hostile work environment for some."

*Response to Finding F1:* Disagree partially with the finding

The OCDA is committed to a hostile free work environment. This has always been the policy of the OCDA both in writing and in practice. As recently as March 31, 2015, and March 1, 2017, District Attorney Tony Rackauckas, issued a memo to all OCDA employees that the Office was fully committed to the County’s Equal Employment and Anti-Harassment Policy and Procedures (EEO) and provided a copy of the policy to all employees (Attachments A and B.) Additionally, on Feb. 26, 2016, the District Attorney issued a similar memo with a copy of the County’s Equal Employment and Anti-Harassment Policy and Procedure and also included a copy of the Office of the District Attorney Ethical Employee Conduct Guidelines (Attachment C.) All OCDA employees signed an acknowledgement form confirming their receipt of the policies (Attachment D.) Each memo outlines the Office’s intent and commitment to non-discrimination and promoting employees on ability and job performance. Further, the memos make it clear that sexual harassment in any form would not be tolerated and that anyone working in the OCDA who believed he or she was a victim of discrimination or harassment of any kind is encouraged to report the incident.

The OCDA’s strong commitment to the EEO policies is further demonstrated by the mandatory training of its employees in this area. In April of 2015, all non-manager/supervisors were required to complete an online training in “Workplace Harassment: Prevention and the Law.” At the end of 2015 and into 2016, all OCDA managers and supervisors completed mandatory EEO training: “Prevention of Harassment, Discrimination and Retaliation Training.” The District Attorney is requiring all managers and supervisors to attend Equal Employment Opportunity and Anti-Harassment training on September 28, 2017. (Attachment E.)

To address the stated perceived issues within the Bureau, the Office initiated an independent investigation to determine the validity of this perception. Personnel actions have been taken including changes in Bureau leadership. The OCDA is committed to determine if any policy violations have occurred and the appropriate actions will be taken. In addition, the Bureau is proactively developing several new policies that prohibit this
type of conduct. (Attachments F and G.) The OCDA is currently in the Meet & Confer process with the respective union, as required.

**Finding F2**

“Current county sexual harassment training for Bureau employees does not appear adequate. Many Bureau employees appear to be unaware of the policy. Some OCDA management seemed unaware of the implications of a hostile work environment and what constitutes sexual harassment.”

**Response to Finding F2**: Disagree partially with the finding

As stated in the Response to Finding 1, the OCDA is firmly committed to a hostile-free work environment. The OCDA will ensure that all employees, including members of the Bureau, receive adequate training to ensure the work environment is free of harassment and discrimination. There will be a special emphasis upon the OCDA managers and supervisors to be excellent role models and to support the OCDA and County’s commitment to these principles. This will include taking prompt and appropriate action to avoid and minimize any reported occurrences of discrimination.

**Finding F3**

“The current county sexual harassment policy does not prohibit supervisor-subordinate intimate relationships.”

**Response to Finding F3**: Agree with the finding.

The County of Orange maintains and enforces an anti-harassment policy that broadly covers sexual harassment conduct. The County may not, however, specifically address supervisor-subordinate intimate relationships. It has always been the policy and the practice of the OCDA to prohibit such a relationship. The Bureau is developing a stronger policy against nepotism and conflicting relationships. (Attachment G.) The OCDA is currently in the Meet & Confer process with the unions, as required.

**Finding F4**

“The absence of a transparent assignment process that uses investigators’ skill sets has contributed to the perception of favoritism among some Investigators.”

**Response to Finding F4**: Disagree partially with the finding

Investigative transfers and assignments are assessed based on Office needs, while balancing investigative experience and expressed preferences. Once a year, an assignment preference list is completed by Investigators so they can express their desired work assignments. This list may be updated throughout the year by the investigator. As office needs arise in various locations and units, the Bureau management will review the interested candidates based on the assignment preference list, their background and experience, and the particular responsibilities of that assignment. In addition to office needs, some transfers and assignments are initiated to broaden the Investigators’ experience. Another factor impacting investigative movement is that some assignments
are more desired and popular than others and the ability to move investigators to their most desired assignments is not always feasible.

The OCDA acknowledges that there may have been in the past some decisions by the Bureau’s management relative to transfers and assignments that were perceived as being based on factors other than merit and office needs. As stated in the introduction and elsewhere in this Response, the OCDA took steps months before the issuance of this report to ensure that the process is fair and objective.

**Finding F5**

“Supervisor and commander positions lack an adequate management training requirement. This has led to either a failure to uniformly enforce OCDA and county policies surrounding workplace behavior or at least a perceived failure to do so.”

**Response to Finding F5:** Disagree wholly with the finding

The Bureau actively participates in the Commission on Peace Officer Standards and Training (POST). This commission was established by the California Legislature in 1959 to set minimum selection and training standards for California law enforcement. More than 600 agencies participate in the POST program and the participating agencies agree to abide by the standards established by POST.

Every supervisor in the Bureau is required to attend an 80-hour mandated Supervisory course and this course must be completed within 12 months of promotion or appointment to a first level supervisory position. The Bureau has five supervising investigators who have completed the prestigious Sherman Block Supervisory Leadership Institute. This is an eight-month course designed to stimulate personal growth, leadership and ethical decision-making for law enforcement supervisors. The Bureau is committed to sending all of their supervisors through this program. In addition to POST mandated training, the Bureau sends their supervisors to internal affairs training, background investigations and assertive supervision.

Each Commander (second level supervisor) is required to attend a 104-hour mandated Management Course designed to assist supervisors transitioning to middle managers. This course must also be completed within 12 months of their promotion. Four out of five Bureau Commanders have attended a POST 80-hour Executive Development Course and with the final Commander scheduled to finish by the end of the year. One Commander has completed the POST Command College and another Commander is currently enrolled in the program. The Command College is a 16-month program designed to prepare law enforcement leaders of today for the challenges of the future.

In 2015, the County launched the PDX training program for all County managers and supervisors to receive quality, standardized training. The expected results are real and sustainable changes to culture, operations and the quality of the supervisory and managerial workforce.

All Bureau Supervisors and Commanders are provided adequate management training and are required to uniformly enforce Department and County policies.
Finding F6
“Some employees report they do not feel comfortable going to OCDA or county Human Resource Services staff to report incidents of harassment for fear they will not be afforded confidentiality, the complaint will be dismissed, or they will face retaliation.”

Response to Finding F6: Disagree partially with the finding.

Prior to the release of the Grand Jury report, the OCDA’s Human Resources (HR) Department did not receive any complaints regarding the issues raised in the report. The OCDA is unaware of any complaints received by central County HR, which is independent from the OCDA. When the OCDA became aware of rumors and prior to the issuance of the Report, the OCDA took measures to create an environment that encourages employees to feel comfortable when approaching HR. Six months prior to the report, HR was moved to a different floor away from the executive management offices. The OCDA will continue to foster an environment where all employees are comfortable in reporting incidents of harassment. The OCDA believes the recent leadership changes made in the Bureau have restored confidence to the employees who believed their voices would not be heard or that they faced retaliation or reprisal.

Finding F7
“Under the current leadership, the Bureau is run much more like a police department than a support unit for a law firm and this has led several employees to invoke the law enforcement code of silence about alleged inappropriate behavior in the Bureau.”

Response to Finding F7: Disagree partially with the finding.

The OCDA Bureau’s primary role is to support the prosecution of cases conducted by the prosecutors. This is no easy task as over 60,000 cases are filed yearly by the prosecutors. The vast majority of investigators are working every day to prepare cases for trial or other court proceedings. In addition to its function of supporting the prosecution of cases, the Bureau is also responsible for being the primary investigating agency in several specialized crimes, handling the investigations from inception similar to a traditional police department. These specialized investigations consist of officer involved shootings, custodial deaths, police officer misconduct, major fraud, cold case homicides, auto insurance fraud, workers’ compensation insurance fraud, medical providers’ fraud, public works (prevailing wage) fraud, cyber-crimes, animal cruelty, environmental crimes, consumer protection fraud, child abduction, code enforcement and organized crime. The Bureau also participates in law enforcement task forces targeting certain sophisticated criminal activities.

The Bureau works collaboratively with the legal staff in several successful programs:

Human Exploitation And Trafficking Unit
In 2013, in response to proposition 35, our office created the Human Exploitation And Trafficking Unit. This program was designed to vigorously prosecute perpetrators who commercially exploit and traffic women. Since the inception, there have been a total of
1,864 criminal filings, over 230 felony convictions with a majority of cases resulting in state prison sentences, and six life sentences.

**Rapid DNA**
In 2015, our office became the first rapid DNA program in the state (1 of 4 in the USA). This unit has processed 241 samples, 74 of the samples resulted in the identification of the perpetrator (41 percent).

**Local DNA Database**
OCDA began collecting voluntary DNA database samples from defendants in 2007. Since its inception, 160,000 samples have been collected, 644 crime scene DNA profiles have resulted in the identification of a potential perpetrator in 15 types of crimes, including homicide and sexual assaults.

**Gang Injunctions**
Since 2006, the courts have granted 13 gang injunctions, enjoining over 500 gang members and protecting vulnerable citizens and children from intimidation and criminal activities of gang members.

**Homicide Unit**
Since 2004, the Homicide Unit has worked tirelessly to obtain 340 criminal convictions, resulting in a conviction rate of 90 percent.

**TracKRS/ Orange County Cold Case Taskforce**
The task force was created in 2014. Since the inception of the task force, 12 cold case homicides have been solved with the oldest case dating back to 1974. There are still 1,000 cold cases that must be solved in Orange County.

**Vehicular Homicide**
The Vehicular Homicide Unit is a model statewide on how to prosecute vehicular homicides, including aggressive enforcement of the Watson case which permits certain driving under the influence cases to be tried as a murder. Since 2008, the unit has obtained 90 vehicular death convictions, including 11 second degree murder convictions.

**Economic Crimes Division**
Major Fraud Unit has original cases involving real estate fraud, cyber-crimes, white collar crimes and elder fraud. These cases regularly involve multiple victims with multiple perpetrators resulting in multi-million dollar losses. Environmental Fraud and Consumer Protection enforcement has protected our residents from hazardous waste violations and unfair business practices. The Consumer Protection, Environmental Units and Major Fraud often make the perpetrator pay for their criminal activity, reducing the burden on the taxpayers. The Insurance Fraud Unit has identified several medical fraud billing schemes which is responsible for hundreds of millions of dollars in fraudulent billing and the arrest of numerous medical professionals.
Orange County Gang Reduction Intervention and Partnership (OC GRIP)
OC GRIP is presently in 54 schools and presented to 3900 students throughout Orange County. GRIP partners with 565 parents who volunteer as “parent-greeters” to provide a safer environment for the students on campus. Over 500 families receive CSP services, including counseling, food and housing assistance, medical referrals and school supplies. In 2016-17 school year truancies went from 1877 to 856 unexcused absences, a 54 percent reduction. GRIP hosts seven soccer camps for 355 students, Taekwondo and leadership training for 60 students, Get Safe After School Programming for 150 students, volleyball camps and sends 50 students to the Pythian Camp in the summer.

Public Assistance Division
Since 2012, In Home Support Services (IHSS) investigated 1,024 referrals and collected $467,071 in restitution and saved the taxpayers $4,140,529 in cost savings. The Criminal Unit investigated 5,414 referrals which resulted in 378 felony complaints and collected $1,476,538 in restitution. The Orange County Housing Authority (OCHA) investigators are responsible for conducting the largest Section 8 housing fraud case in Orange County history.

The OCDA does not believe that the manner in which the Bureau carries out its responsibilities is connected to any perceived code of silence.

Finding F8
“There is a perception among some Bureau employees that some members of OCDA management have not consistently enforced the Orange County zero-tolerance policy towards sexual harassment.”

Response to Finding F8: Agree partially with the finding.

As stated in the above responses, the OCDA has always been, and continues to have a zero-tolerance policy towards sexual harassment. Annual EEO training and messages from the OCDA are provided and reinforced. The OCDA took several measures including a Bureau-wide anonymous survey in May 2017 to solicit feedback from employees in an effort to improve morale and confidence in the future direction of the Bureau.

RECOMMENDATIONS AND RESPONSES

Recommendation R1
“The OCDA should implement comprehensive management training of all management in the Bureau.”

Response to Recommendation R1: Implemented

As outlined in response to Finding 5, all Bureau Supervisors and Commanders have always been required to attend extensive and comprehensive leadership training.
**Recommendation R2**

“The OCDA should ensure all employees receive comprehensive sexual harassment training annually and periodically follow up to ensure policies are being followed.”

**Response to Recommendation R2: Implemented**

As outlined in responses to Findings 1 and 2, EEO training is conducted annually. A mandatory manager and supervisor training is scheduled for Sept. 28, 2017. Harassment in any form, including sexual, is not tolerated and the OCDA will continue to encourage employees to report inappropriate conduct.

**Recommendation R3**

“Bureau management should recognize the Bureau’s role in the mission of the OCDA, prioritize assignments accordingly, and develop an assignment process that better uses the experience and skills of investigators.”

**Response to Recommendation R3: Implemented**

The Bureau has an assignment process in place as described in response to Finding 4. The OCDA has taken steps and will continue to ensure that the process is fair and objective. It is understood that the Bureau’s primary role is to support the prosecution of OCDA cases. There are also important collateral areas that require the Bureau to be the originating and main investigative force.