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# **SUPERIOR COURT OF CALIFORNIA – MONO COUNTY**

**GRAND JURY**

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Cindy Kitts  
Grand Jury Foreperson  
2010-2011

June 27, 2011

The Honorable Judge Stan Eller  
Mono County Superior Court  
PO Box 1037  
Mammoth Lakes, California 93546

Dear Judge Eller:

Please find attached the Final Report for the 2010-2011 Mono County Grand Jury. The Grand Jury investigated five complaints, and conducted investigation of two Mono County Agencies as part of the Grand Jury watchdog function.

The 2010-2011 Grand Jury continued a practice initiated by the 2009-2010 Grand Jury of not establishing standing committees, choosing to establish committees based on the interests of each Juror. The method of establishing committees allowed better organization of committees, based on their interests, and time allotted, as well as a better way to spread the work more evenly between Jurors.

With the numerous complaints the 2010-2011 Grand Jury received, we worked hard to complete all the complaints, and have included all the information about all complaints and investigations in the reports. As a change from previous Grand Juries, the 2010-2011 Grand Jury elected to use a format, chosen by Grand Jury members, so that reports carry the same format when submitted.

All of the complaints received by the Grand Jury were thoroughly reviewed, and interviews conducted. The Grand Jury would like to thank the members of the Mono County Agencies to whom we interviewed for their total cooperation. This is true for the agencies we interviewed in the complaints, as well as the interviews with agencies as our watchdog function.

We had the opportunity to do interviews, and gather information about two of the County Agencies, and appreciate their support, and willingness to answer our questions, and give the members of the committee the information they requested in order to complete accurate reports.

This has been a somewhat difficult year, with many trials along the way, but we were able to pull together and complete our duties. The Grand Jury would like to thank Hector Gonzalez for his advice and leadership with regards to questions we had regarding Grand Jury protocol; Alyse Caton for her help in finding meeting rooms, Judge Eller, and Marshall Rudolph. I would also like to thank C.D. Ritter for her help with obtaining the use of the Community Services conference room for our meetings. We appreciate

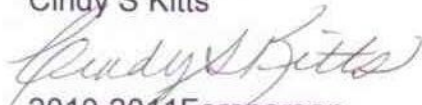
the support and aid that all of you gave us this year. We are fortunate to have such knowledgeable and willing people in the Mono County Superior Court.

I would like to personally thank Pat Agnitch, who served as the Secretary for the 2010-2011 Grand Jury. Pat did a great job taking minutes, and getting them to all the members. I would also like to thank Georgette Noble for her support under sometimes difficult circumstances.

It has been a privilege to serve as the 2010-2011 Grand Jury Foreperson, and to have served on the 2009-2010 Grand Jury. It has been a rewarding experience, and has given me the opportunity to see how the Grand Jury works, as well as how many of the Mono County agencies also work.

I appreciate the opportunity to serve our county and communities, and wish the very best to those who will sit on the 2011-2012 Grand Jury. I offer any help that the new Foreperson may need.

Cindy S Kitts

A handwritten signature in cursive script that reads "Cindy S Kitts".

2010-2011 Foreperson,

Mono County Grand Jury

## THE GRAND JURY SYSTEM

Shrouded in secrecy, the functions of a Grand Jury are not widely known. The following summary describes what a Grand Jury is and does:

The Grand Jury system dates back to 12<sup>th</sup> century England during the reign of Henry II. Twelve “good and lawful men” were assembled in each village to investigate anyone suspected of crimes. The jurors passed judgment based on what they themselves know about a defendant and the circumstances of the case. It was believed that neighbors and associates were the most competent to render a fair verdict. By the end of the 17<sup>th</sup> century, the principle that jurors must reach a verdict solely on the basis of evidence was established, and that practice continues today. Although California Supreme Court decisions have curtailed the historical criminal indictment function, the Grand Jury still serves as an inquisitorial and investigative body functioning as a “watchdog” over regional government.

The Mono County Grand Jury, as a civil Grand Jury, is not charged with the responsibility for criminal indictments except in the case of elected or appointed county officials. Its primary function is the examination of county and city government, including special legislative districts such as community service districts and fire protection districts. The Grand Jury seeks to ensure that government is not only honest, efficient and effective, but also conducted in the best interest of the citizenry. It reviews and evaluates procedures, methods and systems used by governmental agencies to determine compliance with their own objectives and to ensure that government lives up to its responsibilities, qualifications and the selection process of a Grand Jury are set forth in California Penal Code Section 888 et seq.

The Grand Jury responds to citizen complaints and investigates alleged deficiencies or improprieties in government. In addition, it investigates the county’s finances, facilities and programs. The Grand Jury cannot investigate disputes between private citizens or matters under litigation. Jurors are sworn to secrecy, and all citizen complaints are treated in strict confidence.

The Mono County Grand Jury is a volunteer group of 11 citizens from all walks of life throughout the county. Grand jurors serve a year-long term beginning July 1, and the term limit is two consecutive years. Lawfully, the Grand Jury can act only as an entity. No individual grand juror, acting alone, has any power or authority. Meetings of the Grand Jury are not open to the public. By law, all matters discussed by the Grand Jury and votes taken are kept confidential until the end of term.

One of the major accomplishments of a Grand Jury is assembling and publishing its Final Report. This document is the product of concentrated group effort and contains recommendations for improving various aspects of governmental operations. When it is completed, the Final Report is submitted to the presiding judge of the Superior Court. After release by the court, it is directed first to county department heads for review, then to the communications media. The Final Report is a matter of public record, kept on file at the court clerk’s office. It is also available on line at: [www.monocourt.org](http://www.monocourt.org).

## GRAND JURORS AND COMMITTEES

### 2010-2011 Grand Jurors:

Cindy Kitts, Foreperson  
Benton

Pat Agnitch, Secretary  
Crowley Lake

Laura Archibald  
Crowley Lake

Ron Glende  
Crowley Lake

Ralph Haber  
Swall Meadows

Glenn Inouye  
Swall Meadows

Michael Katusich  
Walker

Georgette Noble  
Walker

Michele Royalty  
Mammoth Lakes

Dawn Vereuck  
Mammoth Lakes

### Grand Jury Committees:

#### 10-01: Mono County Sheriff's Department

Ralph Haber, Chair  
Michael Katusich  
Georgette Noble

#### 10-03: Eastern Sierra Unified School District

Michele Royalty, Chair  
Pat Agnitch  
Ron Glende  
Glenn Inouye  
Cindy Kitts  
Georgette Noble

#### 10-05: Mono County Department of Child Welfare Services

Georgette Noble, Chair  
Ralph Haber  
Cindy Kitts

#### 10-07: Swall Meadows

Dawn Vereuck, Chair  
Pat Agnitch  
Ron Glende  
Cindy Kitts  
Michele Royalty

#### Jail Report

Pat Agnitch  
Glenn Inouye  
Michael Katusich  
Georgette Noble

#### 10-02: Town of Mammoth Lakes Finance Department (Withdrawn by Complainant)

Dawn Vereuck, Chair  
Michele Royalty

#### 10-04: Mono County Public Works Department

Pat Agnitch, Chair  
Glenn Inouye  
Cindy Kitts

#### 10-06: Eastern Sierra Unified School District (Combined with Case #10-03)

#### Continuity Committee

Ralph Haber, Chair

**Note: The Foreperson is a member of all committees**

## **GRAND JURY ADVISORS**

**Stan Eller**

Judge, Superior Court– Mono County

**Hector Gonzalez, Jr.**

Court Executive Officer, Superior Court– Mono County

**George Booth**

Mono County District Attorney

**Marshall Rudolph**

Mono County Counsel

**MONO COUNTY GRAND JURY FOR THE YEAR 2010-2011  
COMPLAINT 10-01  
MONO COUNTY SHERIFF'S DEPARTMENT  
FINAL REPORT BY GRAND JURY INVESTIGATION COMMITTEE**

**SUMMARY:**

**Complaint:** The 2009-2010 Grand Jury received a letter on April 12, 2010 from a citizen who complained that a Deputy Sheriff and a Deputy Safety Officer of the Mono County Sheriff's Department had harassed this individual and engaged in heavy-handed tactics on August 28, 2009.

**Methods:** The 2010-2011 Grand Jury accepted the complaint as #10-01. The investigation by the Grand Jury included interviews, document reviews and a review of the audio digital recording made during the August 28, 2009 interactions between officers of the Sheriff's Department and the complainant.

**Findings:** The Grand Jury concluded the complainant's complaints against the Mono County Sheriff's Department were well founded: the officers did not investigate properly, did not document properly, and did not report properly. The Grand Jury also found the deputies who went to the complainant's business to deliver a safety code acted unprofessionally.

**Recommendations:** The Grand Jury recommended that the Sheriff's Department conduct their own internal investigation of the August 28, 2009 event, institute a training program for its officers to follow guidelines, ensure that reports are completed, that County Codes and related information are available to business owners, and that officers follow existing Policies and Procedures in their interactions with the public.

**BACKGROUND:**

The complainant wrote to the Grand Jury on April 12, 2010 with two complaints. The first was directed at a Deputy Safety Officer and the second towards an additional deputy. They are summarized as follows:

1. A Deputy Safety Officer of the Mono County Sheriff's Department intimidated and harassed the complainant on August 28, 2009.
  - a. The Deputy Safety Officer intimidated and harassed the complainant by bringing two extra deputies to serve a single safety notice, and by threatening a citation and fine for noncompliance.
  - b. The Deputy Safety Officer informed the complainant on May 9, 2009 of a code violation citation that the complainant rejected as unjustified. The complainant ordered the Deputy Safety Officer off the property. The

complainant stated the belief that the August 28 incident was a result of this May 9, 2009 earlier confrontation with the Deputy Safety Officer.

- c. A few days after the May 9 confrontation, the complainant observed the Deputy Safety Officer performing actions and duties in an unsafe and dangerous manner, and the complainant reported this to the Deputy Safety Officer's supervisor. The complainant stated the belief that the August 28 incident was also in retribution for the complainant's reporting the unsafe behavior of the Deputy Safety Officer.
  - d. The Deputy Safety Officer and the Sheriff's Department did not provide safety information for the complainant's business, even when requested by the complainant.
  - e. The complainant stated that he, the complainant, was unable to work with the Deputy Safety Officer, in a productive manner.
2. A deputy of the Mono County Sheriff's Department harassed the complainant on August 28, 2009, when the deputy decided the complainant possessed and was under the influence of illegal drugs, and who then initiated an inappropriate drug investigation. A container of prescriptive pills was found in complainant's trailer. He did not have a prescription for the medication, so there was some evidence of a controlled substance.

#### METHODS:

A three-member Investigative Committee of the 2010-2011 Grand Jury conducted five interviews and reviewed a number of documents. The interviewees included: the complainant, the Sheriff, the deputy present on August 28, 2009, a second deputy also present on August 28, and the Deputy Safety Officer's supervisor. (The Deputy Safety Officer has since retired from the Sheriff's Department and could not be located).

Nine sets of documents were received and reviewed:

- An audio digital recording of the deputy's interaction with the complainant during the incident on August 28, 2009, made by the deputy as normal practice;
- The deputy's official report of the incident, filed two days later;
- The response, a week later, from the Mono County District Attorney's office acknowledging receipt of the deputy's report;
- The one-page notice copied from a safety code and served on the complainant by a Deputy Safety Officer;
- The Policies and Procedures Manual for the Mono County Sheriff's Department;

- State of California Policies and Procedures Manual covering the complainant's business;
- State of California ABC's of Law with respect to customers of the complainant's business and the operations of the business;
- A letter from the medical doctor confirming prescribed medications for the complainant; and
- Several other letters the complainant had written with regard to the event that would support the complaint sent to the Grand Jury.

## FINDINGS:

1. Deputy Safety Officer's Intimidation and Harassment on August 28, 2009:
  - a. The complainant stated that the Deputy Safety Officer arrived in a marked Mono County Sheriff car on August 28, 2009 accompanied by two additional deputies to deliver a safety code. The complainant complained feeling intimidated and harassed by the unnecessary presence of the additional officers.

The deputy's report of the incident stated that the Deputy Safety Officer asked that the deputy and one additional officer to be present on August 28. The report stated that the three officers arrived in three marked vehicles. The complainant approached the officers, and the Deputy Safety Officer handed the complainant a one-page copy of the Safety Code, which the complainant read and acknowledged.

The audio digital recording made by this deputy confirmed the Deputy Safety Officer told the complainant that the complainant was in violation of a safety code requirement for which a citation and fine could be issued. The complainant said the safety device looked appropriate and a good idea and that it would be immediately purchased. (Proof of this purchase was given to the Investigative Committee). The complainant questioned the Deputy Safety Officer why it was necessary to bring additional officers to serve this notice. The Investigative Committee could hear on the audio digital recording that the complainant maintained composure and at no time displayed agitation or anger.

In the interviews, the Investigative Committee asked the Sheriff, and the two deputies involved if it was unusual to bring supporting officers along when delivering a code document. They all stated that while it might be unusual in this circumstance, an officer is trained to err on the side of safety. If the officer has any concern regarding safety, backup support should be considered. According to the deputy's report and the audio

digital recording, no safety concerns occurred. The complainant was not cited for the absence of the safety device.

- b. The complainant was of the opinion that the Deputy Safety Officer brought the extra officers and acted in a threatening manner because of two earlier incidents. According to the complainant, the Deputy Safety Officer showed up on May 9, 2009 and stated to the complainant that there was equipment on the premises that was in violation of the code. The complainant told the Investigative Committee that he offered to show the Deputy Safety Officer evidence that no violation was present. The Deputy Safety Officer rejected the offer; they argued; and the complainant finally ordered the Deputy Safety Officer to get off the property, which the Deputy Safety Officer did.

When the Investigative Committee interviewed the Deputy Safety Officer's supervisor, the supervisor said that the Deputy Safety Officer verbally reported his visit on May 9 to the complainant, but the Deputy Safety Officer said that the complainant feloniously threatened the Deputy Safety Officer, who was forced to flee to safety. This may have been the reason the Deputy Safety Officer decided to bring backup on Aug 28. However, the Investigating Committee had no access to the Deputy Safety Officer to verify this. The supervisor told the Investigative Committee that neither the Deputy Safety Officer, the supervisor, nor any other officer filed a report, or initiated any investigation of this claimed felony, and no documentation is available.

In the written complaint, the complainant had no knowledge of the Deputy Safety Officer's version of what occurred on May 9. The Investigative Committee discovered the second version when it compared the interviews of the complainant and the Deputy Safety Officer's supervisor. At the time the complaint was written, the complainant had no knowledge that the Deputy Safety Officer had reported that confrontation to his superior and to other officers in the Sheriff's Department as a felonious assault.

- c. A few days later, the second incident occurred that the complainant felt contributed to the August 28, 2009 confrontation. The complainant told the Investigative Committee of observing the Deputy Safety Officer running into boats, while on the lake, and reported these observations to the Deputy Safety Officer's supervisor. When interviewed, the supervisor acknowledged receiving this verbal complaint from the complainant, but did not write a report, so there was no specific written report of the "unsafe and dangerous manner".
- d. The complainant stated that the Mono County Sheriff's Department, and particularly the Deputy Safety Officer neither provided nor assisted the complainant in obtaining safety materials. In its interview with the Deputy Safety Officer's supervisor, the Investigative Committee showed the

supervisor the materials it obtained from the complainant, and the supervisor stated these materials were unfamiliar, he did not know their content, or their distribution. In return, the supervisor gave the Investigative Committee a much larger book containing the relevant State and County laws and practices, saying that this larger manual was the guide used by the Deputy Safety Officer. The supervisor reported to the Investigative Committee that the source of the safety notice handed to the complainant on August 28 was unknown. Ten days later, the supervisor informed the Investigative Committee finding that it was from p. 211 of that book. The supervisor stated that he did not know what the Deputy Safety Officer distributed to relevant citizens.

- e. The complainant stated in the complaint: "I want very much to work with the various agencies here, but this previous situation with the County has made me completely distrustful of this agency". In the Investigative Committee's interview, the complainant stated that the context of this quote referred to the Sheriff's Department, and especially to this Deputy Safety Officer. In the interview with the Investigative Committee, the complainant reiterated repeatedly about being unable to work with the Deputy Safety Officer.

The Investigative Committee questioned each of the two deputies, the Safety Officer's supervisor and the Sheriff, and each reported that they perceived the complainant to be unreliable, excitable, and argumentative.

## 2. Deputy Harassments on August 28, 2009:

The audio digital recording confirmed that the deputy interrupted the Deputy Safety Officer and began to interrogate the complainant about agitation and drug use. The voices of the Deputy Safety Officer and the other deputies did not appear on the recording after the deputy initiated questioning. The deputy's first comment to the complainant was to calm down, followed by a question about agitation. The Investigative Committee could not detect this agitated behavior on the audio digital recording. During the next recorded 30-45 minutes, the deputy reported observations of the complainant's pupils, eyelid tremor, eye redness, as well as pulse rate, speech rate and agitation, postural steadiness, and general calmness. The deputy linked each observation back to drugs that the deputy suspected the complainant had taken. The Investigative Committee could find no evidence on the recording that demonstrated agitation or aggression. The Investigative Committee heard the complainant agreeing to all requested searches without complaint.

The deputy asked the complainant's permission to search the truck parked next to the residence, which the deputy also asked permission to search. The complainant agreed. The deputy asked the complainant to produce any guns present (which were seized), and medications (which were seized). The complainant showed the deputy where each item in the home was located. The deputy read the complainant a Miranda warning, and requested that the

complainant come to the Sheriff's Station for further drug testing, including a blood sample to be drawn by an EMT. The complainant agreed to come voluntarily. The deputy handcuffed the complainant, drove to the Station, and proceeded to repeat the same observational tests and measure blood pressure. After the blood test, a deputy returned the complainant to the individual's business.

The deputy's written report of the incident indicated that some of the physical observations of the complainant were consistent with use of a single drug: some observations indicated a central nervous system depressant and others a central excitant. The deputy explained these contradictions by concluding that the complainant may have taken more than one kind of central nervous system narcotic drug.

The deputy, in both report and interview, did not accept any of the complainant's explanations, all of which the Investigative Committee could hear on the audio digital recording. The complainant stated that he has a chronic eye disease that produces red eyes, and had constricted pupils because the sun was very bright. The complainant denied being agitated, but admitted to being a fast talker. The Investigative Committee heard the deputy on the audio recording frequently repeating the statement that these questions were being asked for the complainant's own benefit.

The Investigative Committee reviewed a copy of the action report prepared by the District Attorney (DA) and sent back to the Sheriff's Department about a week later on September 10, 2009. This action report noted that the State's results of the blood tests were all negative, and concluded that no further investigation or arrest was justified.

The Investigative Committee asked the deputy about the training and experience received in detecting the presence of illegal drugs. The deputy stated having 29 years of experience in high drug areas regarding characteristics and behavior indicative of drug ingestion. The Investigative Committee asked the deputy if it was possible that the complainant might display these behaviors without having ingested any drugs, and that the behavior observed might be attributed to personality, abetted by eye disease and the circumstances. The deputy did not accept these possibilities, and reported that narcotics are always the cause of these behaviors and symptoms. He said to the complainant on the audio recording: "The eyes don't lie."

The Investigative Committee asked the deputy about the State's negative drug findings, and the deputy reported he disagreed with the State's findings.

3. Adherence to the Policies and Procedures Manual of the Sheriff's Department:

The Investigative Committee requested a copy of the Sheriff's Department's Policies and Procedures Manual, which was furnished. It contains the required policies and procedures covering all of their operations, including investigations

and reports. The Investigative Committee examined this manual for policies and procedures that applied to the activities of the officers in the Sheriff's Department involved in these complaints.

The Investigative Committee found four relevant policies. These included:

1. A citizen's complaint is to be acknowledged when received, and further responded to when an investigation of the complaint is completed (see complaint 1a and 1c);
2. When the department learns of a code violation committed by a citizen, it is to be documented in a report (complaint 1a);
3. When the department initiates an investigation of a citizen for a potentially illegal act (e.g. illegal drug possession), the citizen is to be informed of the outcome of the investigation regardless of whether charges are filed (complaint 2);
4. If an officer observes a citizen engaged in potentially illegal behavior, a report is to be filed and an investigation initiated (complaint 1b).

The Investigative Committee asked the Sheriff about each of these policies and procedures. The Sheriff acknowledged that these policies are included in the Policies and Procedures Manual, and that officers are expected to follow them.

## DISCUSSION:

1. Intimidation and Harassment by Safety Officer on August 28, 2009:
  - a. The deputy's report and the audio digital recording of the conversations established that the two actions claimed by the complainant to have occurred on August 28, 2009 did occur (two extra deputies, and a threat of citation and fine). The Investigative Committee concluded that the three deputies arriving together on August 28 made the complainant feel intimidated. The complainant's question to the Deputy Safety Officer, heard on the recording, confirms that the complainant felt the extra officers were unnecessary to serve a code document.

The Investigative Committee concluded that it was reasonable for the complainant to feel intimidated and harassed by the deputies, and that bringing backup officers by the Deputy Safety Officer was reasonable given the previous interaction with the complainant. Further, it is in the Deputy Safety Officer's duty to inform a citizen if a citation may be made.

- b. The Investigative Committee reached no conclusion regarding the confrontation on May 9, 2009. It was unable to do so because no report was issued, no investigation occurred, no witnesses were interviewed, and the participants' versions could not be compared. The Investigative

Committee concluded that the absence of an investigation and report was contrary to the policies and procedures of the Sheriff's Department.

- c. The Investigative Committee verified that the complainant did provide a verbal complaint directly to the Deputy Safety Officer's Supervision against the Deputy Safety Officer regarding the performance of duties, and that complaint was received but not acknowledged, and no follow up communication was provided to the complainant, as stated in the Policy and Procedures Manual. The complainant did not know the outcome of this complaint, but stated he believed the actions of the Deputy Safety Officer on August 28, 2009 resulted from his earlier complaint. The Investigative Committee cannot determine whether the Deputy Safety Officer's actions on August 28, 2009 resulted from this complaint because no report of the complaint was written. The Investigative Committee concluded that the absence of communications to the complainant was contrary to the policies and procedures of the Sheriff's Department.
  - d. The Investigative Committee determined that the Deputy Safety Officer's supervisor was uninformed about safety materials, such as which ones that were required, what the Deputy Safety Officer was to do about violations, or where to find relevant codes. The Investigative Committee also concluded that the Sheriff's Department does not have adequate procedures to insure that citizens, who are responsible for the safety of the public, have access to safety literature.
  - e. The Investigative Committee noted the statement in the complainant's complaint that the individual had become completely distrustful of this agency (the Sheriff's Department) and of this Deputy Safety Officer. It also noted statements made by every Officer interviewed, including the Sheriff, that they distrusted the complainant as being unreliable, a drug user, and angry. From these statements, the Grand Jury concluded that the relationship between the complainant and the Sheriff's Department, including the Deputy Safety Officer, was a difficult one.
2. Harassment by Deputy Sheriff on August 28:

The Investigative Committee concluded that the deputy harassed the complainant on August 28 by beginning and continuing a drug investigation without sufficient or justifiable evidence of drug use. The deputy concluded his investigation without ever acknowledging to the complainant that the drug test from the State of California Department of Justice laboratory was negative. The laboratory data was available one week after the confrontation. The Investigative Committee also concluded the deputy was erroneous in conduct and evaluation of the situation. The Investigative Committee found the deputy's conclusion that the State testing laboratory made an error was not credible. The District Attorney determined that there was no justification for further investigation or arrest, based on the State's blood test results. The Investigative Committee found no justification for the deputy's conduct during the confrontation on August 28, 2009.