Complaint 06-07-02: Merced County District Attorney

Harassment by District Attorney Investigator

Introduction

The complainant was convicted of embezzlement approximately six (6) years ago and received one (1) year in jail, five (5) years probation, and was ordered to pay restitution to the victim. The complainant alleges that the Investigator from the Merced County District Attorneys office, who was the investigating officer, continued his involvement in the case even after the case had been adjudicated and the required probationary period was completed.

Method of Investigation and Documentation

The Law and Justice Committee of the Grand Jury interviewed the complainant to obtain additional information beyond the information available in the formal complaint. The complainant explained that she used her store discount to purchase clothing and she would then sell the clothing at the full retail price, depriving the victim of the income the store could have received if the clothing would have been purchased at the store for the full retail price. The complainant also accused the investigator of discussing the case with a local newspaper reporter on a weekly basis. The complainant stated that all of the “harassment” was the result of the investigator’s friendship with the storeowner.

The committee also interviewed the victim of the embezzlement and she stated that the complainant falsified checks written to store by writing her own first and last name on the check, cashing the check and keeping the money. In addition money was stolen from the cash register and clothing was stolen from the store by the complainant by entering the store after closing time. As part of the restitution ordered by the Court, the complainant was required to pay the victim $100,000 upfront and the agreed upon balance at a rate of $250.00 per month until the entire agreed upon restitution of $157,219.63 was paid. During the probationary period, the complainant had no probation officer assigned since the case was in “banked caseload”, which means that the case has no probation officer and is monitored by clerical staff, if monitored at all. Since the victim had no one to talk to at the Probation Department and the complainant would miss making the required payments, the victim would contact the investigator who would in turn contact Probation and the Merced County Revenue and Reimbursement Division to obtain information on the status of the case.

The committee obtained the case records from the Revenue and Reimbursement Division to review the payment history, including the missed payments as stated by the victim. The division had excellent records and all payment actions were fully documented.

The committee also interviewed the investigator of the case. He explained that normally D.A. investigators are responsible for supporting the District Attorney’s office in the prosecution of cases. However, it was the policy of the former District Attorney that if the investigators had the time, they could handle white-collar crimes directly since he felt that his office was better equipped to handle that type of crime than the local police department. The investigator readily admitted that he had a special interest in this case because he got to know the victim during the initial investigation and prosecution of the case. In addition, he has very strong feelings that white-collar crime victims are not well represented by the criminal justice system and that victim frequently suffers a greater loss than perpetrator. The investigator agreed that because the victim had no point of contact at the Probation Department, that he on occasion would contact county departments to obtain information and relay that information to the victim. The investigator stated that even though his continued involvement was out of the ordinary, he in no way harassed the complainant. The investigator denied having contact with the local newspaper reporter and stated that local crime reporters routinely monitor police communications and it is not unusual for reporters to have extensive information on criminal activity in the county. The committee reviewed the case file with the investigator and the committee verified the information obtained from the victim. The committee also explored with the investigator how the amount of the restitution was determined since the victim told the committee the actual loss to store was around $360,000.00. The investigator stated that the amount that was ultimately agreed upon by all concerned, was based on the whole-sale value of the merchandise, losses related to the falsified checks and the money taken from the cash register. However, even though the victim went along with the settlement amount, she still maintains that the higher amount is the actual loss to the business.

An additional problem that the victim faces is that once the perpetrator's probationary period was completed, there is no way to enforce the payment of the restitution short of the victim going to civil court to enforce the original court ordered settlement. In this case, it is likely that the legal cost involved in enforcing the restitution payments would make the civil action cost prohibitive.

Findings

1. The continued involvement by the District Attorney Investigator in a case that had been fully adjudicated was unusual, but the Grand Jury determined that the investigator's involvement did not constitute harassment of the complainant.
2. The failure of the Probation Department to assign a Probation Officer to the case while the perpetrator was on probation left the victim no alternative but to continue to contact the D.A. Investigator when the perpetrator failed to make the restitution payment as required by the court ordered settlement.
3. The complainant was less than honest with the Grand Jury committee during the initial interview, and left the committee with the impression that the embezzlement was a relatively minor white-collar crime and that she was the victim of an over reaction by the criminal justice system. However, after interviews with the victim and the investigator, it appears that the complainant received lenient treatment beyond what she deserved.
4. The victim of the embezzlement continues to have to deal with the misdeeds of the complainant nearly six years after the crimes were committed and it is unlikely that the criminal justice system will be able to make the business whole.

Recommendations

1. The District Attorney should establish formal policies that will set guidelines for the investigative staff involvement in cases that have been adjudicated.

2. The Probation Department should not “bank” cases that involve serious crimes such as embezzlement, and should not recommend an end to probationary periods unless the provisions of the court judgment has been complied with.
3. The process to enforce a Restitution Order puts the burden on the victim of the crime and should be made part of adjudication of the case. The victim should not have to enforce the order.

Probation Department Response to Grand Jury Report.

2. Finding: The failure of the Probation Department to assign a probation officer to the case while the perpetrator was on probation left the victim no alternative but to continue to contact the District Attorney Investigator when the perpetrator failed to make restitution payment as required by the Court ordered settlement.

2. Recommendations: The Probation Department should not "bank" cases that involve serious crimes such as embezzlement and should not recommend an end to probationary periods unless the provisions of the Court Judgment have been complied with.

This writer agrees with the recommendation, however, resources within the Department Budget do not allow for the assignment of a Probation Officer in such cases. The Probation Department has 2105 adults on felony probation that are on a "Banked" (unsupervised) caseload.

Because the Department is committed to public safety, those felons who represent the greatest threat are the ones placed on a supervised caseload (assigned to probation officer).

To put this situation in prospective, the Probation Department has, as of this date, 3393 adult felons on formal probation. Of these, 3393, 8 probation officers are supervising 1288. That means that each officer is supervising an average caseload of 151.

Because the Department was unable to supervise the entire 3393 probationers, a "Banked" caseload was developed and only those cases deemed less of a threat to public safety were assigned to this caseload.

In the case referred to in this complaint and subsequent recommendation, the offender is not a threat to public safety and has a low probability of re-offending.

The Probation Department does not like the practice of assigning cases to a "Banked" caseload and supervision of probationers goes to the very heart of what Probation is. Because of budget constraints up until last year, the Department had little choice in the matter.

I'm pleased to report however, that during the last budget cycle (05-06) the CEO and Board of Supervisors recognized the need to allocate more resources to Adult Supervision Services.

The Board of Supervisors approved the hiring of an additional Adult Supervision Unit consisting of a Supervising Probation Officer and 5 Deputy Probation Officers. This unit will complete risk Assessments for all adults on Probation and provide needed supervision. While this unit certainly cannot supervise all offenders currently on Probation, it is part of the Department's 5-year plan to supervise all probationers on Probation.

It is the hope of the Department that over the next several years the "Banked" caseload will no longer exist, and we will be able to meet an obligation relative to supervision of offenders.

This writer is appreciative of the support of the CEO and Board of Supervisors in recognizing this critical need and their support of the Department in providing resources to correct the problem.

With respect to the Departments' allowing the probationer in this case to go off probation, five years is the maximum amount of probation that can be granted, and there can be no extension.

Please know that the Probation Department is working very hard to assess all adults currently on probation for risk to the community and providing commensurate supervision. In addition, we are hopeful that additional funding for more supervision officers will be available through the State and County.

Brian L. Cooley

Chief Probation Officer

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January 19, 2007

Grand Jury Foreperson
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Re: Response to report 06-07-02

The District Attorney's office has an obligation to secure justice in each case we file, which often includes both incarceration and pursuit of restitution where appropriate. In reviewing the complaint, we share the Grand Jury's conclusion that the involvement of our Investigator in seeking to secure full restitution to an embezzlement victim was not inappropriate or of a harassing nature.

With respect to the Grand Jury's recommendation that our office establish formal policies that will set guidelines for the investigative staff in cases that have been adjudicated, we are in the process of completing a Policies and Procedures Manual for the District Attorney's Investigative Division. I am reviewing the final document to see that the recommendation of the Grand Jury is addressed.

Please do not hesitate to contact me if you have additional comments or concerns. Thank you for your continued service as members of the Merced County Grand Jury.

Cordially,

Larry D. Morse II
District Attorney