

FINAL

CGJA Guidelines for Chapter Implementation Review of Past Grand Jury Recommendations (2013)

CGJA encourages each of its local chapters to establish a program for Implementation Review (“Chapter IR”) consistent with these guidelines to determine whether the governmental entities and officials have followed through with the action they said they would take in response to the grand jury’s recommendations (see CGJA Articles of Incorporation, Section B.10).

Under state law, the local government entities and officials that are investigated by the grand jury must respond to any recommendations in the grand jury’s final reports. The allowable responses are that the entity or official: (1) has taken the action recommended in the report; (2) will take the action by a particular date; (3) will study the recommendation within six months of the date the report was released, with a description of the study and a timeframe; or (4) disagrees with the recommendation and will not take the action, with an explanation. (Penal Code 933.05).

Should the chapter find a failure to respond properly, the failure should be called to the sitting grand jury’s attention. The grand jury may contact the court, which in turn may insist that the entity or elected official provide a legally sufficient response. In some cases, contempt of court proceedings may be necessary.

1. Chapters wishing to conduct IR activities should form an IR Committee to supervise its IR Program and decide how the chapter will interface with the sitting grand jury and/or communicate with respondent governmental entities and officials.
2. Chapters must design their Chapter IR program to assure mutual support of the sitting grand jury and to avoid any conflict in jurisdiction or roles. Chapter IR activities must not adversely affect or impair the sitting grand jury’s relationship or ability to deal with the local governmental entity or official in question or otherwise interfere with its activities.

3. Chapters should inform the local Superior Court of its Chapter IR program and procedures as a matter of cooperation and courtesy. Chapters may also inform the sitting grand jury's legal advisors of the program.
4. Any chapter member who is a sitting grand juror must not be a member of the IR committee or participate in Chapter IR activities to avoid a possible confusion of roles.
5. Chapter members must not engage in statutory activities of the sitting grand jury: e.g., formal interviewing, investigating, or report-writing activities. Only sitting grand juries have the power, authority, and limited immunity to do these activities. This does not preclude the chapter from meetings with public officials to discuss their implementation of grand jury recommendations or compiling their own Chapter IR reports for internal use.
6. The chapter may disseminate a governmental entity or official's response to a Chapter IR inquiry by way of a confidential complaint to the sitting grand jury or a factual statement to the public or news media. When communicating with the public or the media, care should be taken to accurately portray an official's comments. It would be helpful to have the official's response in writing and to provide the full text to the public or media to avoid any claim that the official's comments are mischaracterized.
7. Each Chapter IR inquiry addressed to a local governmental entity or official should be initiated with a written communication to the entity or official on the chapter letterhead so there is a record of what was represented and requested by the chapter. Attachment A is a suggested form of chapter letterhead and correspondence to use for this purpose with appropriate adaptations.
8. While a chapter logo may include a reference to "X County Chapter of the California Grand Jurors' Association", the CGJA logo may not be used for Chapter IR activities.

9. In their Chapter IR activities, former grand jurors should clearly represent themselves as members of a former grand jurors' organization, as former grand jurors, or as private citizens speaking for themselves. They must not identify their specific involvement in preparation or approval of a grand jury report(s) in order to protect the secrecy of grand jury deliberations and votes.
10. Former grand jurors must always be mindful of their lifetime confidentiality oath when carrying out their Chapter IR program. Among other things, they cannot disclose confidential information they learned while serving as grand jurors, including the names or identities of any individuals interviewed by the grand jury, evidence and information gathered in its investigation but not published in a final report and how any grand juror voted on any issue.
11. Chapter members must always be professional and avoid any inflammatory statements or provocative activities in carrying out their Chapter IR program in order to minimize the possibility of legal liability or the impairment of the chapter's credibility.
12. Potential liability for Chapter IR activities could arise from defamation, invasion of privacy, harassment, interference with prospective business advantage or acting outside the scope of permitted activities - among other causes of action. CGJA does not carry insurance that would provide indemnity or defense for any litigation against a chapter or former grand juror for IR activities. See Attachment B for detailed discussion of liability and insurance issues related to Chapter IR.
13. Upon request, CGJA will provide timely comments and suggestions of a procedural nature to a local chapter on its proposed Chapter IR program, activities or services.
14. CGJA will continue to provide chapters and members with information on how other chapters are dealing with Chapter IR and continuity issues.

15. Chapters should share the results of successful IR efforts with CGJA and each other through CGJA's informational resources, including the *Grand Jurors' Journal*, the Annual Conference, the regional meetings, the *Grand Jury Achievement Report*, and its website at www.cgja.org.

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Approved by the CGJA Board of Directors on May 28, 2013.

ATTACHMENT A

[CHAPTER LOGO] _____ COUNTY CHAPTER

CALIFORNIA GRAND JURORS' ASSOCIATION

[Date]

[Agency name and address]

Dear [Name of Agency Department Head],

We are writing to you as residents of _____ County and members of the _____ County Grand Jurors' Association (or name Chapter uses). Our Association is composed of **former members** of past _____ County Grand Juries. Our goals are to support the grand jury system and promote local government accountability. One of our tasks is to follow-up on prior Grand Jury recommendations to ascertain the status of their implementation.

[Agency Name]'s response to recommendation No. [x] in the 2010-2011 Grand Jury Report indicated intent to take action, but we are not aware that action was in fact taken.

In the 2010-2011 Report, the Grand Jury recommendation No. [x] was that:

"[Exact wording of recommendation]."

The response from [Agency Name] to this recommendation was that:

"[Exact response of Agency]."

We would appreciate your letting us know by [date] of the status of, and time estimate for, the implementation of your action in response to this Grand jury recommendation.

Please send your reply electronically to [Chapter member name] at [email address]. We will share this letter and your reply with the current [term] _____ County Grand Jury. We appreciate your cooperation.

Sincerely yours, [Name]

ATTACHMENT B TO CGJA CHAPTER IR GUIDELINES

Guideline 12: DISCUSSION of Liability and Insurance issues posed by CGJA Chapter Implementation Review (IR) activities

CAVEAT: The following discussion does not constitute legal advice or opinion and may not be relied upon as such. CGJA does not give legal advice and this should not be deemed as such. There is no privilege that attaches to this communication from CGJA and it may be shared with others.

Insurance issues: As stated in Guideline 12, CGJA does not carry insurance that would provide indemnity or defense for any litigation against a Chapter or individual for IR activities. We discuss this insurance issue first before addressing what the potential liability issues might be in conducting IR because Chapters and private individuals need to be clear that their own conduct is, other than within very narrow parameters including acting within the scope of one's limited authority, more likely than not unprotected, uninsured or uninsurable.

Under the California Penal Code, a seated grand jury is extended a certain level of immunity from liability as it appropriately pursues its responsibilities defined by statute and as interpreted in case law and legal opinions. Not so as to any CGJA Chapter or private individual. Consequently, in pursuing IR activities, CGJA Chapters and private individuals should be very circumspect in their conduct of IR. Even if a Chapter carries either Directors' and Officers' Liability insurance or General Liability insurance, the question of whether any such insurance policy will provide indemnity or defense or both to the Chapter or its members in the conduct of IR is unanswerable until an aggrieved third party actually files or otherwise presents a claim and the Insurance carrier then assesses whether any portion of the allegations in a claim falls within the coverage limits under the policy. Similarly, if a former grand juror acting as a private individual participates in IR and ends up the target of a lawsuit by anyone the former grand juror has spoken with or about or written about during IR efforts, the former grand juror may seek protection through his/her own homeowners' insurance carrier or personal umbrella insurance carrier. Applicability of coverage under any of such insurance policies will depend, as stated above, on whether the third party's allegations fall within the scope of coverage provided by the carrier.

Liability issues: Also as stated in Guideline 12, potential liability for Chapter IR activities could arise from defamation, invasion of privacy, harassment, interference with prospective business advantage or acting outside the scope of permitted activities - among other causes of action. Potential liability might even result from apparently appropriate conduct pursued by a Chapter or private individual because a third party may misunderstand, misinterpret or otherwise misperceive the actions and/or words of the Chapter or individual.

The following is a brief description of potential claims that an aggrieved third party might pursue against a Chapter or individual in its/ his/her conduct of IR. They are listed in no particular order of likelihood or size of potential exposure.

Action outside of the scope of permitted activities: A claim that a Chapter acted in a manner that violates the Chapter's charter or bylaws or other governing document or law. This could include a claim that the Chapter is conducting IR in a manner that overreaches into the province of the seated grand jury and constitutes the Chapter inappropriately acting as a shadow grand jury. It could also include a claim that a Chapter misrepresented (either intentionally or negligently) its authority to the third party in the conduct of IR and induced the third party to rely on that authority in providing information that he/she would not otherwise have revealed. This could even give rise to a claim of fraud.

Defamation: A claim that a Chapter or individual made an intentional false communication, either written (libel) or spoken (slander), that harmed the third party's reputation, decreased the respect, regard, or confidence in which the third party is held, or induced disparaging, hostile, or disagreeable opinions or feelings against the third party. Although writing and speaking the truth is a defense to this claim, Chapters and individuals will want to remain strictly within the boundaries of the truth, as the costs of defending such a lawsuit can be prohibitive, not to mention the disruption in one's life.

Invasion of privacy: A claim that a Chapter or individual intruded into the personal life of a third party without just cause, which can give the third party whose privacy has been invaded a right to bring a lawsuit for damages against the individual or Chapter that intruded. It encompasses workplace monitoring, Internet privacy, data collection, and other means of disseminating private information.

Harassment: A claim that a Chapter's or individual's course of conduct annoyed, threatened, intimidated, alarmed, or put the third party in fear of his/her safety. Harassing behavior may include, but is not limited to, epithets, derogatory comments or slurs and lewd propositions, assault, impeding or blocking movement, offensive touching or any physical interference with normal work or movement, and visual insults, such as derogatory posters or cartoons. This is a particularly concerning claim since even a comment that a Chapter member or individual may intend as a meaningless joke or tease could potentially lead to a claim of harassment.

Interference with prospective economic advantage: A claim that a Chapter or individual knew of an economic relationship between a third party and another, and acted or intended to commit acts designed to disrupt that relationship to the detriment of the third party. This tort seeks to protect the relationship of trust and confidence between two persons as regards a third person.

Breach of confidentiality: A claim that a former grand juror breached his/her lifetime oath of confidentiality about grand jury matters not otherwise made public in a published grand jury report. A claim of intentional breach by a Chapter member or

individual can result in a misdemeanor charge, and a claim of negligent breach can result in a charge of contempt of court.

Assault and battery: A claim that a Chapter member or individual acted in a way that created apprehension in a third party of an imminent, harmful, or offensive contact, or acted to threaten harm with an apparent, present ability to carry out the threat to the third party (assault); or committed a harmful or offensive touching of a third party (battery). These potential claims may not seem likely in the context of conducting IR, but are included to illustrate that even seemingly harmless contact with a third party can be experienced or misconstrued by the third party as offensive, frightening, or invasive and therefore actionable.

Slip and fall: A claim that a Chapter or individual had contact with a third party in an atmosphere or environment controlled by the Chapter or individual in which unsafe conditions existed and the third party was harmed as a result of the unsafe conditions, or in an environment not controlled by the Chapter or individual but into which the third party entered at the invitation of the Chapter or individual and harm resulted to the third party.

Conclusion: Any person participating in IR activities should conduct oneself professionally, at arms-length, with scrupulous respect for the truth, within the scope of a defined Chapter charter/guidelines, seeking only to confirm information concerning the implementation of report recommendations agreed to by the government entity or individual.