

# **Chief Probation Officer Reporting Structure**

## **Who's In Charge Here?**

### **Summary**

The Nevada County Grand Jury investigated the Nevada County Probation Department's reporting relationship to the Nevada County Board of Supervisors and to the Nevada County Superior Court. The Nevada County Probation Department is responsible for the preparation of pre-sentencing reports for the Nevada County Superior Court and the supervision of adult and juvenile offenders.

California Penal Code Section 1203.6 provides that the Nevada County Superior Court Judges appoint and may remove the Chief Probation Officer. It further provides that the Nevada County Board of Supervisors sets the salary for the Chief Probation Officer.

The Nevada County Grand Jury finds that the Nevada County Superior Court and Nevada County must work closely together to ensure the Probation Department is run effectively. The Nevada County Grand Jury further finds that the Chief Probation Officer has not been receiving effective supervision from the Presiding Judge of the Nevada County Superior Court. Further, the Presiding Judge of the Nevada County Superior Court and the Nevada County Chief Executive Officer have not been communicating about the Chief Probation Officer's job performance. Finally, there is no formal agreement in place between the Nevada County Superior Court and Nevada County about how the Chief Probation Officer should be supervised. This situation allows the Chief Probation Officer to act without proper professional oversight.

The Nevada County Grand Jury recommends that Nevada County and the Nevada County Superior Court enter into a formal agreement which defines roles and responsibilities and establishes effective communication regarding the supervision of the Nevada County Chief Probation Officer. The agreement should facilitate measurement of the Chief Probation Officer's job performance against established job goals and objectives in annual performance reviews.

### **Reasons for Investigation**

In response to complaints, the Nevada County Grand Jury (Jury) exercised its oversight responsibilities pursuant to California Penal Code Section 925 and investigated the reporting structure relating to the Nevada County Probation Department (NCPD) and the Chief Probation Officer (CPO).

## **Background**

The NCPD is responsible for the preparation of pre-sentencing reports for the Nevada County Superior Court (Court) and for the supervision of juvenile offenders and adult felons and misdemeanants to ensure their adherence to court-ordered conditions of their probation.

California Penal Code (CPC) Section 1203.6 provides that the CPO is appointed by the Court and may be removed from that position only by the Court. It further provides that the CPO's salary and the budget for the NCPD are set by the Nevada County Board of Supervisors (BOS).

## **Procedures Followed**

The Jury interviewed the former CPO, NCPD management and staff, a representative of the Probation Peace Officers Association (PPOA), the Nevada County Chief Executive Officer (CEO), the Nevada County Director of Human Resources and the Presiding Judge of the Nevada County Superior Court (Presiding Judge).

The Jury reviewed documents including the CPC, the California Welfare and Institutions Code (WIC) and a draft version of the NCPD Policy and Procedure Manual (P&P).

## **Facts**

- F.A.1.** The NCPD is a county probation department within the State of California.
- F.A.2.** CPC Section 1203.6 states that the adult probation officer shall be appointed and may be removed for good cause in a county with more than two Superior Court Judges by a majority of the Judges of that county.
- F.A.3.** Nevada County has more than two Superior Court Judges.
- F.A.4.** CPC Section 1203.6 states that the salary of the adult probation officer shall be established by the BOS.
- F.A.5.** In Nevada County, the adult probation officer has the title Chief Probation Officer .
- F.A.6.** The CPO is responsible for the day-to-day operations of the NCPD.
- F.A.7.** CPC Section 1203.6 states that the CPO shall appoint and may remove all assistants, deputies and other persons employed in the Probation Department, and their compensation shall be established, according to the merit system or civil service system provisions of the county.

- F.A.8.** All employees of the NCPD other than the CPO are Nevada County employees and are subject to Nevada County personnel policies and procedures.
- F.A.9.** The former CPO resigned his position effective April 1, 2012.
- F.A.10.** The Jury was advised that by agreement among the Judges of the Nevada County Superior Court, the Presiding Judge has primary responsibility for providing day-to-day supervision of the CPO.
- F.A.11.** The BOS and the CEO have no legal authority to supervise the activities of the CPO.
- F.A.12.** The Presiding Judge never met with the former CPO for the specific purpose of giving job performance feedback and guidance.
- F.A.13.** The Presiding Judge never set performance goals and objectives for the former CPO.
- F.A.14.** The Presiding Judge never prepared an annual performance evaluation of the former CPO.
- F.A.15.** The CEO prepared multiple annual performance reviews of the former CPO's job performance.
- F.A.16.** The CEO rated the former CPO below average or unacceptable on annual performance evaluations for the past three years.
- F.A.17.** The Jury was advised that the CEO e-mailed the annual performance evaluations of the former CPO to the Presiding Judge.
- F.A.18.** The Jury was advised that the Presiding Judge never reviewed the annual performance evaluations of the former CPO prepared by the CEO.
- F.A.19.** The Jury was advised that the Presiding Judge never provided any comments to the CEO regarding the annual performance evaluations of the former CPO.
- F.A.20.** There is no agreement between Nevada County and the Court concerning the supervision of the CPO.
- F.A.21.** The current P&P is dated effective July 1, 2003.
- F.A.22.** Probation Department staff testified that the existing P&P lacked sufficient guidelines in numerous categories, including means to complain effectively about the conduct of the CPO since he reports to the Superior Court and not to Nevada County as they do.

- F.A.23.** In late 2009, as a result of a negotiated settlement of an employee grievance, an agreement was made between Nevada County management and the PPOA that the former CPO must produce an updated P&P and put it into effect.
- F.A.24.** As of March 31, 2012, in violation of the terms of the negotiated settlement, the former CPO had not produced and put into effect a revised P&P.

## **Findings**

- F.I.1.** As of March 28, 2012, Nevada County and the Court had no formal agreement regarding their respective roles and responsibilities concerning the evaluation and supervision of the CPO.
- F.I.2.** As of March 28, 2012, there had been no communication between Nevada County and the Court to define their roles and responsibilities with respect to the supervision of the CPO.
- F.I.3.** There is a lack of effective communication between the CEO and the Presiding Judge with respect to the evaluation and supervision of the CPO.
- F.I.4.** The California Penal Code does not clearly define the roles and responsibilities of Nevada County and the Court in the supervision of the CPO.
- F.I.5.** The Court, as represented by the Presiding Judge, has not provided effective supervision of the CPO.
- F.I.6.** Without effective supervision by the Court and with no formal agreement in place between Nevada County and the Court, the CPO position is self-managed.
- F.I.7.** The employment status of the former CPO was not affected by the annual performance reviews written for that individual by the CEO.
- F.I.8.** The BOS, represented by the CEO, was unable to affect the employment status of the CPO.
- F.I.9.** The failure of the NCPD to produce an updated P&P Manual places Nevada County in the position of violating a negotiated settlement of an employee grievance.

## **Recommendations**

- R.1.** The Nevada County Board of Supervisors and the Nevada County Superior Court should develop and adopt a formal agreement which

- defines the roles and responsibilities of the Nevada County Board of Supervisors and the Nevada County Superior Court with respect to the supervision of the Chief Probation Officer,
  - establishes an effective communication process between the Nevada County Board of Supervisors and the Nevada County Superior Court, related to the supervision of the Chief Probation Officer,
  - provides measurement of the job performance of the Chief Probation Officer against established job goals and objectives in annual performance reviews.
- R.2.** The Nevada County Probation Department should implement a comprehensive policy and procedures manual consistent with existing state and local laws and regulations.

## **Responses**

Nevada County Board of Supervisors: Findings 1 through 8 and Recommendation 1 – Due Date: September 17, 2012

Nevada County Superior Court: Findings 1 through 7 and Recommendation 1

Nevada County Chief Probation Officer: Finding 9 and Recommendation 2– Due Date: August 17, 2012



**NEVADA COUNTY SUPERIOR COURT  
OFFICE OF THE JURY COMMISSIONER  
201 CHURCH STREET, SUITE 6  
NEVADA CITY, CA 95959**

Thomas M. Anderson  
*Presiding Judge of the  
Grand Jury*

Audrey M. Golden  
*Deputy Jury Commissioner*

**(530) 265-1475**

August 14, 2012

Keith Overbey Foreman  
Nevada County Civil Grand Jury  
950 Maidu Avenue  
Nevada City, CA 95959

Dear Keith:

This is the response to Nevada County Grand Jury Report, Chief probation Officer Reporting Structure Who's in Charge. I have asked the Deputy Jury Commissioner to forward this response on to you.

Thanks to you and the other members of the Grand Jury.

Sincerely,

A handwritten signature in blue ink, appearing to read "TMA".

Thomas M. Anderson  
Presiding Judge of the  
Civil Grand Jury

*Rec'd 8/14/2012*

**Response to:**  
**Nevada County Grand Jury Report**  
**Chief Probation Officer Reporting Structure**  
**Who's in Charge Here**

**RESPONSE OF THE NEVADA COUNTY SUPERIOR COURT ("The Court")**

- F.I.1 As of March 28, 2012, Nevada County and the Court had no formal agreement regarding their respective roles and responsibilities concerning the evaluation and supervision of the CPO. (F.A.# 20)

**The Court agrees. No "formal" agreement is in place; however, see response to F.I.2 and Attachment A in further response.**

- F.I.2 As of March 28, 2012, there had been no communication between Nevada County and the Court to define their roles and responsibilities with respect to the supervision of the CPO. (F.A.# 10 - 20)

**The Court partially agrees. Prior to County CEO Haffey raising the issue in mid-2011, the County and Courts for many, many years operated under an informal agreement which required little discussion. Pursuant to this informal understanding, the Courts supervised the professional role of the CPO as it related to the CPO's duties to the Courts, and the County supervised the administrative functions of the Probation Office. Some discussion that would typically occur took place in connection with the hiring of a replacement CPO, as was the case with the hiring of CPO John Wardell and CPO Doug Carver. The nature of the discussion was a collaborative working of two independent branches of government. In mid-2011, in response to then pending administrative issues concerning the CPO, Mr. Haffey suggested a fundamental structural change wherein either the County or the Courts would assume full responsibility for the hiring, firing, evaluation and performance of the CPO. Since March 28, 2012, the Courts and County have engaged in additional conversation concerning the issue of roles and responsibilities.**

As a separate, additional response, Finding F.I.2 references the Grand Jury's factual findings F.A #10-20. To the extent that these findings are incorrect factual and legal conclusions, they do not support Finding F.I.2. Specifically, as to:

- F.A.10. Supervision of the CPO's performance in providing probation services to the Courts is not something the full bench delegates to the Presiding Judge. It is a duty inherent to the job of Presiding Judge, who is selected by the judges to serve at will in that capacity. The Presiding Judge, on behalf of the full bench, has primary responsibility for the supervision of the CPO's delivery of professional probation services and to ensure that they meet the needs of the Courts and the requirements of law. The Presiding Judge is not, and has not historically been,**

responsible for the administration of the Probation Department as to matters that are not related to the delivery of probation department services. That has been a County function.

- F.A.11. The CPO is a county employee and a county department head. The BOS and the CEO have legal authority to supervise the administrative activities of the CPO, especially in areas relating to human resources, employee relations, budget and financial management. Until recently (when the Board of Supervisors included appointment authority within the County's merit system) the ultimate authority to hire, suspend, restrict professional services, or fire the CPO is vested with the Courts. Stated somewhat differently, the only prior restriction on County authority was that it could not terminate the CPO, unless the measure was either approved or taken by the Court itself. Moving forward, while the County has assumed the authority to terminate the CPO, other disciplinary measures may be taken, but they must not conflict with the CPO's duties to the Courts.
- F.A.12. The Court is not aware of either the CEO or the Presiding Judge requesting any meeting for the specific purpose of evaluating CPO job performance, feedback and guidance, except for discussions initiated in mid-2011 to the present.
- F.A.13. Performance goals and objectives for the Probation Department were not set by the Presiding Judge. That has been a County function. The Presiding Judge, either individually, or through the Criminal Courts Committee, has continuously monitored the professional performance of the CPO, making recommendations and giving directives as required. It is correct that this task was not performed on a point-in-time basis, but was ongoing, a process that better meets the needs of the Courts.
- F.A.14. The Courts' current draft of the pending MOU includes annual joint performance reviews by the Courts and County, each of them being focused on their respective areas of control.
- F.A.15-19. Following the release of the Grand Jury report, the Courts requested copies of evaluations and transmittals of the evaluations. The County provided various documents. With the exception of documents received in 2011, relevant to the event precipitating the report, the Courts have not previously been privy to nor received any such evaluations or reports. The information in the Grand Jury report in that regard appears to be an incorrect statement or misunderstanding of the facts. Not having received the CEO's performance reviews, the Courts cannot comment on them.

F.A.20-22. The P & P would typically concern issues of internal department management, not the delivery of probation services to the Courts. The issues that called for a revision of the P & P did not relate to the delivery of probation services, but to personnel matters for which the County had historically asserted control and responsibility. If specifically requested for input on an issue such as the P&P, the Courts would have likely responded.

F.I.3 There is a lack of effective communication between the CEO and the Presiding Judge with respect to the evaluation and supervision of the CPO. (F.A.# 12, 16 - 19)

**The Court partially agrees. Prior to the appointment of the current CEO, the Court and County communicated as needed with respect to the CPO. Absent an MOU, the County CEO apparently was unaware of when communication with the Courts was necessary or desirable concerning CPO issues.**

F.I.4 The CPC does not clearly define the roles and responsibilities of Nevada County and the Court in the supervision of the CPO. (F.A.# 2, 4, 8, 10, 11)

**The Court agrees. The California Penal Code provides a framework for the appointment of the CPO, but it does not specifically define County and Court roles as related to funding, personnel policies, office management and the like.**

F.I.5 The Court, as represented by the Presiding Judge, has not provided effective supervision of the CPO. (F.A.# 12 - 14, 17 - 19)

**The Court strongly disagrees. The Presiding Judge, either individually, or through the Criminal Courts Committee, has continuously monitored the professional performance of the CPO, making recommendations and giving directives as required. It is correct that this task was not performed on a point-in-time basis, but was ongoing, a process that better meets the needs of the Courts.**

F.I.6 Without effective supervision by the Court and with no formal agreement in place between Nevada County and the Court, the CPO position is self-managed. (F.A.# 6, 7, 10 - 19)

**The Court disagrees. The Court provided ongoing supervision for the CPO's professional duties to the Court. The CEO provided annual evaluations covering county functions.**

F.I.7 The employment status of the former CPO was not affected by the annual performance reviews written for that individual by the CEO. (F.A.# 15 - 19)

**The Court partially agrees. The CEO did not include the Courts in the CPO evaluation process. Further, the CEO could not terminate the CPO. The CEO could and did impose other disciplinary measures. Prospectively, the BOS/CEO has**

**amended the County's merit system to include authority to impose a terminating sanction on a CPO.**

- F.I.8 The BOS, represented by the CEO, was unable to affect the employment status of the CPO. (F.A.# 8, 15 - 20)

**The Court partially agrees. The CEO could not terminate the CPO. The CEO could and did impose other disciplinary measures. Prospectively, the BOS/CEO has amended the County's merit system to include authority to impose a terminating sanction on a CPO.**

- F.I.9 The failure of the NCPD to produce an updated P&P Manual places Nevada County in the position of violating a negotiated settlement of an employee grievance. (F.A.# 21 - 24)

**The Court neither agrees nor disagrees. The Court was not involved in the prior settlement.**

#### Recommendations

- R.1. The Nevada County Board of Supervisors and the Nevada County Superior Court should develop and adopt a formal agreement which
- defines the roles and responsibilities of the Nevada County Board of Supervisors and the Nevada County Superior Court with respect to the supervision of the Chief Probation Officer,
  - establishes an effective communication process between the Nevada County Board of Supervisors and the Nevada County Superior Court, related to the supervision of the Chief Probation Officer,
  - provides measurement of the job performance of the Chief Probation Officer against established job goals and objectives in annual performance reviews. (F.I.# 1 - 8)

**The Court agrees. Negotiation of an MOU is in process.**

- R.2. The Nevada County Probation Department should implement a comprehensive policy and procedures manual consistent with existing state and local laws and regulations. (F.I.# 9)

**The Court agrees.**