

Richard L. Gilbert
Judge, Retired

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June 15, 2006

Frank Sieferman, Jr., Chair
and Members of the Yolo County Board of Supervisors
625 Court Street
Woodland, California 95695

Re: Yolo County Housing Authority

Dear Chair Sieferman Jr. and Members of the Board:

Our investigation of the Yolo County Housing Authority conducted to assist the Board of Supervisors in its response to the January 24, 2006 Interim Report of the Yolo County Grand Jury is complete. I am submitting two forms of our report. The first is a complete, confidential report for the Board that includes our detailed findings and recommendations. The confidential report includes reference documents and evidence and the forensic accounting report of Ueltzen & Associates, Certified Public Accountants and Forensic Fraud Examiners.

Because the law requires that information on the performance of individual public employees be confidential and because the Authority is an independent public agency which is not part of County government and not under the direct authority of the Board, we are also submitting a summary report for public distribution which does not contain confidential information.

Our investigation did not substantiate many of the findings of the Grand Jury. In fact, many of the Grand Jury facts and findings are, in our opinion, clearly wrong or clearly not supported by reasonable evidence. It is also important to note that the great majority of Authority employees and managers are dedicated, hard working professionals. Nonetheless, we did find several significant problems at the Authority that, in our opinion, require Board action. The recommendations below are based on the following primary findings detailed in the accompanying reports:

1. The Authority and its management have misused restricted housing program funds in connection with several major endeavors including the acquisition and remodeling of their office facilities and in the acquisition of property in the City of Woodland by one of the Authority's non-profits. These transactions took place in violation of federal and state funding rules. Additionally, the Housing Commissioners were misinformed or incompletely informed of the details of the transactions and were deprived of the opportunity to adequately and independently review the actions proposed and taken by staff.

2. There is a history of stress and turmoil at the Authority beginning with the tenure of the current Executive Director. At present, the workplace atmosphere is one of fear and polarization. Staff operate under an inordinate amount of stress. Moreover, these conditions place the Authority at risk for claims of hostile work environment and other workplace related liability claims. There are multiple causes for these conditions which include the personnel practices of Authority management.
3. A long history of polarization and conflict among Housing Commissioners combined with a pattern of inadequate information and advice to the Commission concerning Authority operations and finance has compromised the ability of the existing Commission to carry out its statutory functions of management and control of Authority management and programs. This finding is not intended to question to the motives, intent or integrity of the Commission or its members. The members of the Commission have served to the best of their abilities. Over the last several years, however, their effectiveness has been compromised by the actions of management, conflicts between themselves, and a series of vacancies at the Commission. Several current Commissioners would like to be replaced and the term of the remaining "Resident Commissioner" has expired.

Based on our investigation and analysis and the present circumstances, we recommend:

1. That the Board of Supervisors exercise its authority under Health and Safety Code §34290 to eliminate the independent Housing Authority Commission and declare itself to be the commissioners of the authority for an interim period of approximately six to nine months.
2. That the Board, acting as the Housing Commission, engage the County Administrator to directly oversee and monitor the day to day management of the Authority. This oversight should, in the discretion of the County Administrator, be by existing County staff, an outside contractor selected for that purpose, or both.
3. That the Board, acting as the Housing Commission, direct the County Administrator to conduct an immediate audit of the management, practices and programs of the Authority and of the non-profit "Community Development Corporations" wholly owned by the Authority and to report to the Board (Commission) on what further steps are needed to insure the future success and integrity of the Authority and its programs. The Board may wish to consider requesting the services of the County Auditor-Controller in connection with the necessary review of fiscal systems.

We note that the Commission has scheduled a special meeting for Saturday, June 17. We do not know whether the topics the Commission intends to discuss or the actions it may take will bear on the circumstances we have investigated. It is possible that one or more actions taken by the Commission will mitigate the circumstances resulting in the recommendations above. Accordingly, the Board should be prepared to consider these recommendations in light of any

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And Members of the Yolo County Board of Supervisors
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such developments. Should circumstances warrant, we will be prepared to offer alternatives.

It is the combination of the general findings above that support the recommendations above. It is not reasonable to assume that the two existing vacant Commission seats, as well as the two or three seats that may be vacated shortly can be filled with appointees willing and qualified to serve under the current circumstances. The problems we have found, along with the atmosphere of mistrust and controversy surrounding the Authority, require a swift and immediate response. At present, the only reasonable way to address the identified problems, insure the integrity of the Authority operations at the program level, and restore stability to the workplace in a timely way is to immediately deploy existing County staff resources and provide the direction and guidance of the Board of Supervisors. As noted above, the recommendation to dissolve the independent appointed Housing Commission is that this be for the shortest time needed to address the concerns we have identified and those discovered by the detailed, in-place review recommended above. When necessary changes and systems are in place and stability restored, the Board should re-establish the Housing Commission and Authority as an independent body and appoint Housing Commissioners as required by statute.

Thank you for the opportunity to be of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Gilbert". The signature is fluid and cursive, with a long, sweeping horizontal stroke at the end.

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REPORT TO THE
YOLO COUNTY BOARD OF SUPERVISORS
ON THE
FACTS AND ALLEGATIONS OF THE JANUARY 24, 2006 INTERIM REPORT
OF THE
YOLO COUNTY GRAND JURY
CONCERNING
THE YOLO COUNTY HOUSING AUTHORITY

June 16, 2006

I. Background.

On January 24, 2006, the Yolo County Grand Jury issued an “Interim Report” containing certain findings, facts and recommendations concerning the Yolo County Housing Authority (the “Authority”). The Board retained our office to conduct an independent investigation of the issues and related matters contained in the Grand Jury Report and directed that we report our findings and recommendations to the Board. This report is submitted in accordance with that direction.

II. Scope and Method of Investigation.

Our investigation involved interviews with 29 present and former employees of the Authority, some of whom we contacted and some of whom contacted us; interviews with six of the seven members of the Housing Authority Commission which governs the Agency; gathering

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and reviewing a substantial number of documents and records of the Authority; consultation with local law enforcement representatives; and consultation with staff of the Department of Housing and Urban Development (“HUD”) and of the Office of Migrant Services (“OMS”) of the California Department of Housing and Urban Development.

Because of the need to review and analyze financial records, we engaged the services of Ueltzen & Company, a Sacramento based Forensic Accounting firm for assistance. Ms. Joy Urquhart, a Certified Public Accountant and Certified Fraud Examiner, worked with us on our review. Some of the witness interviews were conducted by Ken MacHold, a licensed private investigator with fraud and white collar crime investigative experience gained over many years as a peace officer with law enforcement agencies and a district attorney’s office.

Executive Director David Serena, Deputy Executive Director Hanan Bowman, and the current and newly hired General Services Manager, Robert Hencier, were each interviewed at length.

Unless otherwise requested by Authority employees, interviews were conducted away from Authority offices and privately. All but a few witness interviews were tape-recorded. Summaries of these interviews were prepared.

We began our investigation focused on the topics of the Grand Jury Report. As other issues of potential consequence emerged, we looked into those to the extent they may be pertinent to the general management, fiscal and workplace issues raised by the Grand Jury.

We also received information, complaints and allegations appearing to fall outside the defined scope of our charge. We did not pursue individual employee complaints of workplace issues such as missed promotions or poor evaluations unless we developed information that such specific complaints evidenced a broader pattern subject to our inquiry. Some issues and allegations were relevant, but either not substantiated or of such minor significance as to not warrant description here. All such matters are referenced in the summaries of witness statements. Similarly, we received some complaints about the operations of specific programs. Unless relating to the broader themes of our inquiry, we did not pursue those complaints as we felt they were best addressed separately by Authority management and/or the Commission.

III. The Housing Authority.

The Yolo County Housing Authority is established pursuant to the requirements of the California Health and Safety Code. A housing authority may be an independent public entity governed by an independent Housing Commission appointed by the Board of Supervisors or, at the election of the Board of Supervisors, may be an adjunct to county government with the Board of Supervisors serving as the Housing Commission. The Yolo County Board of Supervisors

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elected to create an independent Authority governed by an appointed Commission by resolution adopted in February of 1950. The Authority is totally independent of the County of Yolo and the Board of Supervisors both in its governance and funding. Simply put, the Board is not the “boss” of the Commission. The Board remains interested in the operation of the Authority as the Board has the power to remove individual commissioners for cause after a hearing and can change the nature of the Authority by disbanding the independent Commission and constituting itself as the Housing Commission.

Generally, housing authorities are charged with providing for the housing needs of seniors, low income and other disadvantaged citizens. Funds for this purpose are provided primarily through “grants” and other funding sources administered by the federal Department of Housing and Urban Development (“HUD”). HUD funds and programs are strictly regulated and the use of funds is generally limited to the programs for which the funds are designated. There are two primary HUD supported housing programs: “Conventional Housing”, where the Authority owns and rents the housing units, and “Section 8” housing where the Authority contracts with private landlords to rent housing to qualified clients and the clients receive “vouchers” to offset their housing costs. The Authority also manages the budgets and housing for migrant workers through contracts with the California State Office of Migrant Services, a part of the Department of Housing and Community Development (“OMS”). As with HUD funds, OMS funds are “categorical” funds generally available only to support migrant housing programs.

Housing authorities also regularly and lawfully engage in general economic development activities, including those beyond the direct provision of housing and housing assistance. In Yolo County, the Authority has begun to undertake such activities. The Authority has established two non-profit “Community Development Corporations” to facilitate those activities. Each is a separate, though wholly owned, entity. “New Hope CDC”, formerly known as the Yolo Housing Foundation, owns the “Cottonwood Meadows” senior living apartments and owns a commercial building and property at Kentucky and East Streets in Woodland. Another CDC, “Nueva Esperanza” was established for the purpose of owning the Kentucky Avenue property but the transactions necessary to effect that ownership have not yet been completed. Kentucky remains part of New Hope CDC. Issues pertaining to these corporations are discussed below.

IV. Legal Limitations on Contents of Report.

The Law prohibits public disclosure of confidential personnel information. In order to respect the rights of Authority employees who have made complaints and those of Authority employees against whom complaints have been made, we cannot include details about any allegation reported by the Grand Jury or independently investigated by us concerning “hostile work environment” issues or alleging malfeasance or nonfeasance in our public report. This limitation is particularly important here as the Authority is an independent public agency not governed by the Board of Supervisors.

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Because of the Board's general interest in the governance of the Authority, we have presented detailed findings supporting our conclusions in two separate, confidential reports to the Board, ours and that of Ueltzen & Co.

IV. Findings and Conclusions.

This report presents our findings and conclusions in two sections. In Section V we describe the most significant findings we believe are of concern to the Board. Several of the issues we address are not topics of the Grand Jury report. In Section VI, we present our findings and conclusions with respect to each of the Grand Jury's determinations.

V. Independent Findings and Conclusions.

Based on our investigation, we have reached the following general conclusions:

The Authority and Commission have been generally successful in carrying out their statutory mandates for the provision of housing to the disadvantaged populations of Yolo County.

The members of the Housing Commission are citizens who accepted the call to voluntary public service, in most cases at the request and urging of members of the Board of Supervisors. While we have specific criticisms of certain actions sanctioned by the Commission and are concerned about the degree of the Commission's oversight of staff, it is important to note that the individual commissioners have served selflessly and have done their best to support the mission of the Authority within the limits of their resources. Part-time citizen governing boards like the Housing Commission are substantially dependent on the information provided by staff and must rely on staff expertise to guide their policy level decisions. The Commissioners also rely on the good faith of staff in fairly researching and presenting options and in disclosing both the pros and cons of proposed actions. To the extent this report contains criticisms of the Housing Commission, those criticisms must be understood in that context.

We have identified several areas of concern relating to the operations of the Yolo County Housing Authority. These findings mostly concern management decisions and practices and are:

1. The Authority and its management have misused restricted housing program funds in connection with several major endeavors including the acquisition and remodeling of their office facilities and in the acquisition of property in the City of Woodland by one of the Authority's non-profits. These transactions took place in violation of federal and state funding rules. Additionally, the Housing Commissioners were misinformed or incompletely informed of the details of the transactions and were deprived of the opportunity to adequately and

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independently review the actions proposed and taken by staff.

2. There is a history of stress and turmoil at the Authority beginning with the tenure of the current Executive Director. At present, the workplace atmosphere is one of fear and polarization. Staff operate under an inordinate amount of stress. Moreover, these conditions place the Authority at risk for claims of hostile work environment and other workplace related liability claims. There are multiple causes for these conditions which include the personnel practices of Authority management.

3. A long history of polarization and conflict among Housing Commissioners combined with a pattern of inadequate information and advice to the Commission concerning Authority operations and finance has compromised the ability of the existing Commission to carry out its statutory functions of management and control of Authority management and programs. This finding is not intended to question to the motives, intent or integrity of the Commission or its members. The members of the Commission have served to the best of their abilities. Over the last several years, however, their effectiveness has been compromised by the actions of management, conflicts between themselves, and a series of vacancies at the Commission. Several current Commissioners would like to be replaced and the term of the remaining “Resident Commissioner” has expired.

Fiscal Management and Oversight.

1. The Authority misused categorical program funds. Our investigation revealed a number of instances where the Authority used restricted HUD or OMS funds for un-related Authority activities. These instances include:
 - A. The August 26, 2004 transfer of funds from various Authority accounts, including HUD related and OMS regulated Migrant Program reserve funds, into a Certificate of Deposit (CD) required as collateral by a bank in connection with an extension of credit to acquire and remodel the Authority’s new office building.

Our investigation reveals that in August of 2004, the Authority was in the process of acquiring and remodeling its current office facility at 147 W. Main Street in Woodland. As part of the financing for the acquisition and remodeling, Authority management sought credit from the Yolo Community Bank (now “NVB”). The bank extended a \$1,800,000 loan secured by a trust deed on the property, a \$1,100,000 loan to be secured by a Certificate of Deposit to be placed with the bank in that amount from Authority funds, and a \$700,000 unsecured line of credit (“LOC”).

The financing proposal was described to the Commission in the agenda packet for their August 10, 2004 meeting. In that "Issue Paper", the Authority (and public) were informed that the \$1.1 million needed to fund the CD would come from general agency reserves in the Authority's account with the State managed "Local Agency Investment Fund" ("LAIF"). In fact, the LAIF did not have adequate funds for that purpose.

On August 26, 2004, the Authority transferred a total of \$1.1 million to the CD account at Yolo Community Bank from 5 separate Authority bank accounts. Included in these transfers were transfers from 2 accounts containing funds designated as reserves relating to the Migrant Housing Programs administered by the Authority on behalf of the Office of Migrant Services of the State of California Department of Housing and Community Development ("OMS").¹

OMS staff has confirmed that the Authority's use of the migrant reserve funds for this purpose was a violation of the rules and regulations concerning the uses of those funds. In short, the funds can only be used for migrant housing purposes. The encumbrance of the funds as security for the acquisition and remodel of the Authority's office facility was a clear violation of OMS rules.

As noted above, the Housing Commissioners were informed that adequate funds existed in the Authority's "LAIF" (Local Agency Investment Fund) general reserve account to fund the CD. This was not true. Authority records contain documentation of the LAIF account balance near the time of the transfers of only just over \$600,000. \$615,000.00 was transferred from the LAIF by David Serena on August 19, 2004. These records establish that the representation to the Commission that there were adequate LAIF general reserves funds was false and that management knew that representation to be false when the Commission was informed in 2004.

In a letter sent to us after his interview, Authority management suggested the holding of the funds in the CD did not violate rules prohibiting "commingling" and mixed use of funds so long as the source fund is repaid with interest. After the amount of reserves was questioned by OMS staff, the Authority replaced most or all of the funds used and is in the process of determining the lost interest to be repaid. The letter reflects a lack of understanding of the importance of fund segregation. It is not the "commingling" that is the issue. In some instances it is permissible to "pool" or "commingle" categorical funds into a single investment account so long as the pooled funds are receiving the same or better return on investment (interest) as they would receive if held separately.² The problem is that it is not proper to use or encumber

¹ The Authority operates three housing facilities for migrant workers, one in Dixon, one near Davis and one in Madison. The structures are owned by OMS and managed by the Authority pursuant to contracts between the Authority and OMS. The Dixon facility operated by the Authority involves a JPA between the Authority and the Dixon (Solano County) Housing Authority.

² In fact, it is technically not appropriate to "pool" or "commingle" OMS funds in all cases, even for investment purposes. Some of those funds relate to underlying USDA loan funding and USDA regulations require some reserve funds to be in "supervised" bank accounts requiring two signatures for withdrawal, including USDA

categorical funds such as by pledging them as security for a loan for purposes unrelated to migrant housing and even that proper use would require OMS approval which was neither sought or obtained here.³

- B. The use of restricted Authority funds as part of the early “bridge” financing of the acquisition of the Kentucky Avenue commercial property by New Hope CDC.

It is necessary to understand the background of this transaction. Authority management, acting for New Hope CDC, was interested in finding a suitable commercial property to acquire. The original idea was to buy a property to rent to other non-profit organizations or to provide a place to support “start-up” companies as an aspect of economic development. The Kentucky Ave. property seemed well suited. At the time, the sellers had an SBA loan on the property. A question arose about the ability of the Authority or New Hope to assume the SBA loan. The buyers were concerned and said they would not sell to New Hope or the Authority. Rather than explore direct financing alternatives to pay off the SBA loan, management determined a plan to find a third party to buy the property and then re-sell it to New Hope. Authority management approached an acquaintance of the Executive Director, who agreed to put a group together to make the purchase. The idea was that the group would fund the initial purchase then re-sell to New Hope at a profit as a return on their short term investment.

The buyer group had difficulty raising the entire purchase price without a funding commitment from the ultimate buyer, New Hope. To solve this problem, the Authority “loaned” New Hope \$850,000. \$700,000 of this amount was funded by the line of credit extended to the Authority in connection with the financing of their office acquisition and remodel.⁴ \$150,000 came from Migrant Program reserves⁵. \$25,000 of Authority funds also formed part of the down payment cash. New Hope then loaned the \$850,000 to a company to acquire the property (“NEK Woodland One, LLC”, “NEK”). NEK obtained a loan of \$970,000 from investors and other cash for the balance of the purchase price, \$1,850,000. A few months later, New Hope acquired the property from NEK for \$2,025,000 using bank financing to pay NEK. NEK and its principals thus received a profit of \$175,000, less some expenses.

approval. OMS officials do not criticize the absence of such procedures by the Authority, however, as that rule is generally not known or enforced. We, likewise, make no criticism in that regard.

³ The same applies to HUD funds. Documents from the HUD Office of Inspector General (“OIG”) reflect that such use of HUD funds is wrong and in violation of HUD policy. Repayment of imputed interest does not make the use appropriate but is simply a required remedial step.

⁴ This is discussed above.

⁵ There are records in the Authority files proposing that the \$850,000 be funded \$627,972.60 from the LOC and \$222,027.40 from the \$1.1 million loan secured by the CD. These records are contrary to the funding mechanism described above and identified in the Authority’s FY June 30, 2005 audited Annual Financial Report. Even if that occurred, there would have been HUD regulatory violations.

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The \$700,000 loan was repaid to the Authority when New Hope CDC acquired and refinanced the property. The other \$150,000 of the \$850,000 loan from the Authority to New Hope and the \$25,000 in Authority funds used as part of the down payment remain unpaid. No interest has been paid on those amounts. The \$150,000 transaction is now carried on the books of the Authority as a receivable and as a payable by New Hope. HUD regulations prohibit such fund use. Additionally, it does not appear the Authority was reimbursed by CDC for interest paid by the Authority on the \$700,000 drawn on the line of credit.

The Kentucky Ave. transaction violated HUD rules in that HUD regulated funds, the \$25,000, was directly used in the transaction and the use of the \$700,000 LOC loan funds improperly placed HUD program funds and assets at risk. Such an encumbrance for a non-HUD program use is inappropriate.

2. Questionable fiscal judgment was used in the acquisition of the Kentucky Avenue property.

Though some criticize the selection of the particular property for purchase, the evidence supports the conclusion that, all other things being equal, the choice of the Kentucky Ave. property was a reasonable investment for future appreciation and return on investment. However, once the Authority began the acquisition process, poor judgment was used in carrying out the transaction.

Resorting to a personal acquaintance of Mr. Serena without exploring other alternatives or the market rates for short term bridge financing was poor judgment at best. It would be anticipated that any lender or investor like NEK would be entitled to a reasonable return on their investment, no matter how short term. NEK appears to have received a return of around 17% for a three month period, an annualized rate of return of nearly 70%. This appears excessive. At the least the profit is so high as to raise serious questions of the arms length nature of the transaction. We believe that the transaction raises serious questions concerning management's judgment in pursuing the transaction.

In addition to the violations of OMS and HUD program rules described above, to the extent an inordinate profit was received by the "middle man" in the purchase, the transaction could have violated procurement rules or been a gift of public funds.

Workplace Management.

1. Workplace Environment.

Several credible current and former employee witnesses, indicated that the Authority workplace is one beset by fear and intimidation. Credible employee witnesses describe themselves and others falling out of favor with management as being made uncomfortable (ignored, berated, transferred, passed over) or singled out for criticism. Loyal employees are used as “spies”. Even witnesses who expressed support for current management and who were critical of the charges and motivation of the Grand Jury and those complaining to the Grand jury expressed fear of reprisals for talking with us. One employee supportive of current management described fear the office was bugged and managers listening in on employee conversations.

To be fair, many employees make very positive reports of current management and the accomplishments of the Authority. Management is, despite most criticisms regarded as dedicated to the clients the Authority serves.

A significant number of claims by employees and former employees have been made against the agency. Concerns about management disregard for work-place rules and procedures have prompted criticism by the Authority’s JPA insurers, recommendations for training, loss of coverage and increases in insurance rates. Our review indicates management may have been justified in initiating some of the adverse employment actions that have resulted in claims against the Authority. Nonetheless, the methods used in the past and described by current employees, including those described by supporters and detractors and by employees and former employees, show that the Authority often ignores appropriate procedures in the termination or discipline of employees, even where discipline or termination is appropriate.

B. Hiring and Retention of the Former “Finance Director”.

The long time Finance Director, John Hunter, left the Authority for other employment in March, 2004. The Authority sought to replace that individual. A committee was established to screen applicants and recommend candidates to the Executive Director. Among the candidates were a then current finance department employee with an accounting background (and who soon after obtained CPA status) and an outside candidate. Background investigations, including credit checks, were done and past employers contacted.

The candidate selected proved completely unsuited to the work and, after too long a tenure was dismissed. The details of these events must be confined to our confidential report. We have concluded that management made serious errors of judgment in hiring and for continuing the employment of this individual. This retention resulted in true financial chaos at the Authority and was a significant contributing factor to the Authority’s need to bring in an

outside consulting firm to, quite literally, re-construct its books at a cost that likely exceeded \$200,000.

3. Lack of response to workplace issues.

There have been several incidents, detailed in our confidential report, where management failed to adequately respond to workplace problems resulting in unnecessary disruption of the workplace and negative impacts on employees.

Misinformation to the Commission – Compromise of the Commission’s Ability to Exercise Independent Oversight of YCHA Operations and Management

As reflected in the confidential Ueltzen & Co. report and in the discussion above on the source of funds for the CD involved in the YCHA office building work, the financial information provided to the Housing Commission has been inaccurate and misleading, particularly during the tenure of the former finance director. Current management cannot necessarily be faulted for all of these omissions, though the evidence we have gathered suggests at least some misinformation was allowed or encouraged, if not directed, by management. It is also important to note that the current General Services (finance) Manager is a reputable and honest professional trying to make sense of a difficult situation. Accordingly, we believe that if there are any inaccuracies in current financial reporting to the Commission, it is not intentional conduct by support staff.⁶

Prior to the recent resignation of one of two “Resident Commissioners” and of the chair of the Commission, the Commission often voted 4 to 3 on controversial matters, with the then majority supporting staff. The evidence suggests the Commission has become polarized with the majority strongly supporting management and the minority convinced management should be changed and mistrusting and opposing many staff initiatives. With the two resignations, there remain 2 dissenters, 2 Commissioners strongly supportive of management and one Commissioner who might be characterized as a “swing vote”.

⁶ There may still be issues in this regard. For example, we recently learned that the Authority is indebted to the County in the amount of approximately \$350,000.00 for contractual payments in lieu of property taxes. This debt has been outstanding for several years. County inquiries to the Authority about payment went unanswered until recently, when a partial payment was made. We understand the matter is sitting with David Serena who has not allowed staff to resolve the issues or respond to the County. Despite such a significant outstanding debt, the Authority continues to make expenditures for non-core activities, such as the recent expenditure to support an art center to be housed at YCHA’s former offices on Lemen Street. We question whether the Commission is truly informed of the current financial status of YCHA.

We note another issue of concern. The Authority has initiated eviction proceedings against the remaining Resident-Commissioner, Carley DeBerry. We have not investigated or evaluated the basis of the eviction and express no opinion whether there may be a legitimate issue concerning Mr. DeBerry's continued eligibility for residence in Authority housing. We are concerned however, about the proceedings:

1. General Counsel for the Commission, is prosecuting the eviction. We believe this compromises counsel's ability to independently advise the Commission of the issues concerning an action against one of its members. There may be no specific conflict of interest but there is, we believe, a clear appearance of such.
2. Because of the fact that Mr. De Berry has consistently voted with the "minority" of commissioners as described above and because of the general sensitivity of an action which, if successful, would have the collateral effect of disqualifying De Berry from service as a commissioner, it would have been sound policy to, for example, request HUD or another housing authority for at least an informal review of the facts and circumstances to assure that the Authority had a solid basis for proceeding. The dual capacity of counsel as noted above, makes such a step all the more important.

Whether or not appropriate, the pending proceedings against De Berry are another challenge to the ability of the Commission to effectively carry out its obligations of independent policy, fiscal and management oversight.

David Serena has been the target of criticism literally since he was first appointed. We believe at least some of the criticisms have been motivated by the ill will of persons opposed to his ascension to the position of Executive Director. This ill will continues in some quarters today. Serena was the choice of the Commission majority. Members of the Commission have been justifiably angered by the continued flow of criticism and attack on Serena and the Authority and have been placed in a difficult situation. It appears, however, that the years of battles have created a "circle the wagon" mentality where no criticism is accepted as potentially true and where the Commission majority appears to have placed its unwavering and uncritical trust in the Executive Director. Nearly all criticism is denounced as "racist" or "political". This unhealthy situation does not serve the public interest.

VI. Analysis of The Grand Jury's "Facts" and "Findings"

The Grand Jury Report sets out "Facts" under three headings: "The Executive Director", "Financial Matters" and "Legal Issues". There are six "Findings", apparently based on the "Facts". We found that an unfortunate number of "Facts" and "Findings" reported by the Grand Jury were not supported by the results of our investigation. Certain aspects of those conclusions and other matters not mentioned by the Grand Jury were of concern and are reported above. What follows is our review of the specific allegations of the Grand Jury.

Grand Jury "Fact":

"The Executive Director The Executive Director of the HA was not in the top 10 candidates for the position and did not have the necessary educational background, training or job experience to justify his employment. Prior to his employment at the HA, there is no record that he was ever employed in any housing-related occupations. Witnesses believe he was a farm worker union organizer before he was hired and that he has a Master's Degree in Hispanic Studies. The Executive Director's employment was orchestrated and approved by the voting majority of the Board of Commissioners, despite objections by the Commission's screening committee and others."

Finding of Investigation:

This information is not correct. Executive Director Serena was hired after a recruitment process directed by the Commission and assisted by a professional "headhunter" consulting firm. Serena was among the top candidates selected for interview. Before employment at the Authority, Serena worked at several non-profit organizations providing low-income and migrant housing in Monterey and Santa Clara Counties. He had both management and budget experience. The Commission duly selected Serena to be the Executive Director and there is no credible evidence of any manipulation of the hiring process. We believe this finding is based on the beliefs of witnesses who were not involved in the process and not privy to the extensive records documenting the thorough search and vetting process. We have reviewed many of those records and they support the conclusion we report here.

Grand Jury "Fact":

"New employees are hired, not for their qualifications or abilities, but for their potential for loyalty to the Executive Director. Many of the new hires are single mothers who desperately need to get and keep their jobs. The incentives to do what they are told are manifest."

Finding of Investigation:

The conclusion is false in part and misleading. There happen to be a few "single mothers" employed at the Authority. There are not and were never "many" new hires who were single mothers. The notion that those employees who are "single mothers" are somehow unqualified or are more susceptible to influence than other employees dependent on their work

for their support and the support of families is an unfortunate, unproven and somewhat insulting characterization of the employees. What we have learned of the employees in this category is that they are hard working, dedicated employees.

Grand Jury "Fact":

"The work environment created by the Executive Director is one of fear and unease. All employees are required to work in enclosed rooms; all doors, including the kitchen and bathrooms, are locked. All employees are required to locate their computer screens facing the door and employees must sit with their backs to their doors to enable the Executive Director to inspect their computer screens.

Employees are discouraged from interacting with one another, even on business-related matters. All of the HA is segregated so that one unit is not aware of what another may be doing on common tasks.

Other than the public entrance and reception area, all other portions of the new HA office complex are off limits. Commissioners have reported that they are not allowed to tour the facilities to inspect the operations, even though such inspections are encouraged by the HUD guidelines."

Finding of Investigation:

It is true computer screens have generally been placed facing towards doors so that they can be seen by management. There were a few incidents of employee abuse of computer internet access which Serena offers as justification for the practice. The practice is not necessarily unusual but, in the context of other management practices, supports concerns about an overly controlling management style. The reference to locked doors is very misleading. Doors are locked for employee security and are opened through an electronic key system such that all employees have appropriate access to work place areas, including bathrooms.

Except as generally implicated by the workplace issues discussed above, there is no evidence of unit segregation or that employees are not permitted to interact as is reasonably necessary to accomplish their assigned tasks.

One Commissioner reports concerns about accessing the Authority facility. There is no evidence members of the Commission have been impeded in conducting Commission authorized activities requiring their presence at Authority sites. The reference to the building being "off limits" is misleading. Employees have access to the facility as needed and clients are regularly meeting with employees in private offices, one of the benefits realized by the Authority at its new offices.

Concerns regarding the work environment are discussed above.

Grand Jury “Fact”:

“Multiple actions have been filed against the Executive Director and HA for harassment and creating a work environment. The first of these actions was filed within two months of his hiring and was settled for \$135,000.

HA employees have no protection from harassment or “unjustified termination.” The HA employees are represented by a local Teamsters’ Union and have no civil service protections. They can be hired and fired at will, without appeal.

Some employees who are out of favor with the Executive Director have been given settlements allowing them to work at home on non-essential tasks for full pay, for as long as eighteen months. These settlements contain non-disclosure clauses.”

Finding of Investigation:

The Authority has been subject to what appears to be an inordinate number of claims by employees and former employees alleging a variety of wrongs relating to promotion, assignment, and termination. We discuss this issue above.

The Authority has personnel policies and procedures containing grievance and appeal procedures. These policies are the rough equivalent to “civil service”, in that they provide the legitimate reasons for taking action against an employee, provide the process to be followed and provide appeals of those decisions by the affected employees. Line and supervisory employees are organized in a bargaining unit that is represented by Teamsters Local 150. Individual employees and the Union are free to pursue grievances within the Authority procedures or to relevant State agencies. The finding about employee actions against the Authority shows that employees do have and do pursue available remedies.

There is evidence a single employee was given an extended “work at home” assignment to resolve complaints. There is evidence that, despite continued full time pay, there were not full time assignments during much of the “work at home” period. While this event is subject to question there is no evidence of any other instance of this occurring.

Grand Jury “Fact”:

“The Executive Director has knowingly hired undocumented aliens and persons with criminal records, bankruptcies or other financial improprieties. HUD policy prohibits such hiring.”

Finding of Investigation:

It is necessary to break this “fact” down to its component statements.

There is evidence of a single instance of a non-citizen employee hired without required work authorization documentation. There is no evidence the Executive Director had knowledge the employee did not possess the required documentation. Moreover, when the problem was noted, the employee, who was always qualified to have a permit, was quickly granted the required work permit by INS. The Grand Jury’s use of the plural phrase, “undocumented aliens” derogatorily suggests a pattern of hiring that is wholly unsupported by the evidence we reviewed and gathered. We believe the suggestion that there was more than one instance of the hiring of an improperly documented employee is based on rumor.

We saw no evidence of the hiring of any individual with a criminal record.

There is evidence an employee was hired despite having filed for bankruptcy protection before he was hired under circumstances where that fact, coupled with other evidence of his fitness, suggested the hiring decision was a bad one. There is no blanket prohibition in HUD regulations pertaining to hiring of persons with a past history of bankruptcy. Such a blanket prohibition would likely be unlawful.

Grand Jury “Fact”:

“The HA is now classified as a “Troubled Agency” by HUD for numerous irregularities”

Finding of Investigation:

HUD uses a point system to evaluate various aspects of a housing authority’s performance relative to HUD criteria. A “Troubled Agency” rating is a very poor classification. According to HUD, the Authority is not now and was never classified as a “Troubled Agency”. The most recent rating, issued after the Grand Jury issued its report, was “Standard Performer”. At the time of the issuance of the Grand Jury report, the Authority was classified as a “High Performer”.

Grand Jury “Fact”:

“Evidence has been presented that the Executive Director will retaliate against any Commissioner or employee who challenges or even questions him. Any person deemed by him to be uncooperative is first threatened and then retaliated against. The voting majority of the Board of Commissioners has been complicit in some of these actions. Some of the witnesses who appeared before the Grand Jury, either

willingly or under subpoena, expressed concerns about retaliation if they appeared. There are numerous instances showing these concerns are justified, including physical threats, property damage, evictions, terminations, etc. There is evidence that the Executive Director altered, destroyed and/or backdated documents to support his retaliatory acts.”

Finding of Investigation:

There is support for some the general conclusions expressed here as discussed above. There is no credible evidence of any physical threat or property damage. We believe we interviewed the individual who claims to have been subjected to acts of vandalism and implied physical threats. That witness had no evidence connecting the acts complained of to Serena or the Authority. We believe the conclusion offered by the witness was entirely speculative.

Grand Jury “Fact”:

“Travel for the Executive Director is paid by HA credit cards. It has been alleged that he has changed his travel plans at the last minute for his convenience on several occasions. These changes have caused the HA to purchase full-fare tickets and absorb the extra cost of the nonrefundable tickets. It has also been testified to that the Executive Director and one or more Commissioners have traveled to training and conference sites, but have not attended the meetings. He regularly books himself into \$600-700/day rooms.”

Finding of Investigation:

We have interviewed employees handling travel planning and billing and have reviewed records of travel and travel expense. There is no support for any of these “facts”. There has never been the use of \$600-\$700 per day hotel room for the Executive Director on Authority paid travel. There have been a few occasions where a number of rooms for employees on approved trips were charged on the Executive Director’s credit card resulting in total charges in the \$600-\$700 range. Rooms are typically around \$100.00 per night or less. There was one instance we saw of a last minute travel plan change resulting in increased cost. There was one instance involving travel for a Housing Commissioner and the Executive Director where a communication error resulted in them not being properly registered for the event they traveled to attend. We saw no abuse of travel at the agency generally or by the Executive Director in particular.

Grand Jury “Fact”:

“During the time that the General Services Manager position was vacant, the Executive Director alone decided which bills would and would not be paid.”

Finding of Investigation:

This is true. Moreover the Executive Director is still involved in accounts payable decisions. This practice compromises some necessary checks and balances in the management of Authority finances.

Grand Jury "Fact":

"Witnesses stated that the Executive Director and recording secretary are the only HA staff permitted to interact with the Commissioners. It has been reported that the Executive Director has altered the official minutes of Commission meetings."

Finding of Investigation:

It is not completely true that staff are prevented from appropriate interaction with the Commission, though there is some evidence staff have been challenged following even informal contact with Commissioners. Staff regularly make reports in their area to the Commission at Commission meetings. A few staff and Commissioners would prefer more "informal" off-agenda contacts. The Authority does appear to direct staff-Commission contacts "through channels". There is nothing improper or unusual in this practice in the public or private sectors.

There is no evidence Commission minutes have been altered. Minutes are prepared after each meeting and submitted to the Commissioners for approval at the next meeting. The "approved" minutes are then signed and filed as the official record of the meeting. Changes from the minutes as filed when compared to the minutes as presented for approval can be seen easily by comparing the minute sets. This allegation was made to us by a witness who made no such comparison, but simply believed things were "added" or "missing". The Commission does not make permanent recordings of its meetings. A proposal to do this through the acquisition and installation of recording equipment was recently considered and rejected, according to the Commission minutes, due to cost (around \$40,000.00). Assuming there are no less costly alternatives, the Commission should reconsider the decision, particularly in light of the long history of allegations and mistrust. A permanent, publicly available record of the transaction of Commission business should help to restore and maintain trust in the work of the Authority.

Grand Jury "Fact":

"Tenants receiving HA assistance are prohibited from sheltering or abetting gang or drug activities. Failure to comply is cause for immediate eviction. Known gang members have moved into subsidized housing units with family members and drug sales have continued unabated."

Finding of Investigation:

Staff reports that there is good cooperation between the Authority and local law enforcement. However, our contacts with the three law enforcement agencies with jurisdiction

over the Authority's primary facilities paint a somewhat different picture.

Law enforcement supports that, over the years, the Authority has made progress dealing with criminal conduct activities at its facilities. While law enforcement reports that on-site Authority staff continues to be cooperative during calls for service at Authority sites, there has recently been little or no general communication about ongoing criminal conduct by residences, including residents known or suspected by law enforcement to be involved in local gangs. For example, the officer who recently served as the gang expert for the West Sacramento Police Department was not acquainted with the Authority staff member charged with law enforcement liaison there. Also, the swing shift sergeant at Woodland P. D. was not acquainted with the authority "Resident Initiative Coordinator" in Woodland with liaison responsibilities. We observed gang related graffiti near Authority facilities consistent with the gang activity information provided us by law enforcement. It appears that the flow of communication has been reduced since the creation of a court ordered "Safety Zone" in West Sacramento intended to reduce gang activities. We are not aware of why earlier regular contacts in Woodland have changed. Accordingly, substantial question is raised whether the Authority is using all of its available resources to eliminate criminal conduct at its facilities. The Authority should immediately re-establish appropriate lines of communication with relevant law enforcement at both the administrative and line levels. The responses of Authority staff to our inquiries in light of this information raises questions as well. We are concerned the employees were either unaware of the issue or, perhaps, concerned to be candid for fear of making negative comments about the Authority in light of the atmosphere there.

Grand Jury "Fact":

"Witnesses also alleged that employees of the HA are taking kickbacks from tenants."

Finding of Investigation:

This suggestion was made by a witness we interviewed who we believe also spoke with the Grand Jury. On inquiry, the witness offered only unsupported speculation and possessed no facts to support the charge. We believe the charge is not true.

Grand Jury "Fact":

"The Executive Director negotiated a new employment contract before his original contract had expired. He drafted this contract with the legal staff he hired, then submitted it to the Commission. The contract includes:

- A "no-cut" provision, requiring two years full salary on termination, as well as a retroactive pay raise. The Executive Director altered the agenda to move the approval of his contract to a later meeting, when the supporting votes would be present, had the original agenda been followed, the contract would have been rejected,
- The Executive Director receives a salary of \$130,000 per year, plus \$20,000 for expenses, but he also submits receipts for expense reimbursement. He also receives a car allowance, alleged to be \$600

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- per month.
- Witnesses testified that HA funds may have been used to pay his personal credit card debt.”

Finding of Investigation:

Some of these “facts” are true, others are not. Mr. Serena was given an employment contract in October of 2002 which expired in December, 2006. A new contract was approved in April, 2005 with a term ending in December, 2008. The result is a two year extension of the term of employment of the Executive Director. A minority of Commissioners disagreed with the early contract extension. Consideration of approval of the new contract was scheduled for the Commission meeting of April 5, 2005. Over objections and without a vote of the Commission, consideration of the contract was “pulled” from the Agenda by Serena. At the time, two Commissioners who later voted to approve the contract were absent. There is evidence the majority in attendance would have rejected the contract. The contract approval was re-scheduled for May 10, 2005 when it was approved by a 4-3 vote. A retroactive pay increase was also approved. We believe the matter could not have been properly withdrawn from the April 5 agenda without an approving vote of the Commission. Nonetheless, the matter could have been re-considered later even if it had not passed on April 5.

The contract calls for a salary of \$119,680 per year and includes a \$6,000 per year (\$500.00 per month) auto allowance and benefits consistent with other Authority managers. The Executive Director has authority for discretionary spending on Authority business in accordance with a budget line item approved by the Commission in its regular budget process.

We were presented with no evidence of personal credit card bills paid for by the Authority and our review of financial records demonstrated no such payments. Some witnesses “believed” or “suspected” this had happened, but offered no actual proof or observation.

The Executive Director’s employment can be terminated at any time for “cause” – misfeasance or malfeasance. The contract may be cancelled by the Authority at any time for any or no reason on 90 days notice with the payment of 8 months salary.

Grand Jury “Fact”:

“Financial Matters

In 2004 a new General Services Manager was selected and hired by the Executive Director, over the objection of the HA hiring committee. This was an individual with absolutely no bookkeeping, accounting or financial management experience, who kept no records, no receipts, and no General Ledger.

- The General Services Manager had previously filed for bankruptcy. HUD regulations prohibit the employment of any person in such a position who has filed for bankruptcy. The Executive Director

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- was aware of the bankruptcy and other credit issues at the time of hiring.
- The General Services Manager developed his own system of accounting on an Excel spreadsheet with no backup documentation. Employees and vendors were often not paid or their checks bounced. Some vendors will no longer extend credit to the HA. Records were lost and/or destroyed.
- Social Security taxes were withheld from employees' paychecks, but not forwarded to the Social Security Administration for credit to the employees' retirement accounts. This occurred for at least two years and some of the funds remain unaccounted for. Some of the employees are unsophisticated and may not realize the omissions occurred.
- As a result of the General Services Manager's incompetence, the annual HUD audit could not be completed properly. The HA spent in excess of \$300,000 on outside accounting firms, as well as consultants, in order to organize the books to submit an audit to HUD. Whether the audit was credible to HUD is unknown to the Grand Jury at this time.
- The General Services Manager failed to bill the State for more than \$1 million for the Migrant Worker Program.
- This individual was fired for incompetence and was immediately rehired as a \$50-an-hour "consultant." He does no work at the facility during business hours, but sometimes arrives at the office after the close of business. The Grand Jury has been, unable to determine what services, if any, he provides or the total compensation paid.

Finding of Investigation:

We discuss in general terms, to the extent possible here, the circumstances of the hiring of the former finance director above. We did not believe it necessary to investigate or report on specific problems during his tenure except as detailed above and bearing on the current circumstances at the Authority

Grand Jury "Fact":

- “• Funds have been rerouted from their designated purpose in order to alleviate cash flow problems. It is estimated that the HA currently has a negative cash flow in excess of \$500,000.”

Finding of Investigation:

We report, above, on specific issues regarding funds transfers. We have not performed an audit with the depth and detail adequate to responsibly comment on other potential inappropriate fund transfers or on the overall "cash flow" situation of the Authority. We doubt the Grand Jury has done such an audit and believe the conclusion may derive from witness reports unsupported by a financial review.

Grand Jury "Fact"

- “• Witnesses alleged that HA maintenance employees are performing services on commercial properties owned by New Hope and Nueva Esperanza, HA spin-off corporations. Witnesses stated that these staff members were ordered to falsify HUD documents to indicate the work was performed on HA residential properties. At the same time, maintenance on HA properties has been neglected.”

Finding of Investigation:

Our investigation could not substantiate this accusation. Interviews with maintenance workers and supervisors shows that work is performed by Authority employees on New Hope CDC property (Cottonwood Meadows and Kentucky Ave.), but that the time is charged back to New Hope and paid.

Grand Jury "Fact"

- “• The Executive Director received approval from the Commission to install a new accounting software system. Since the purchase of the system, the Executive Director has not provided the Commission with an accurate financial statement. The Chairman of the Commission determined that if the financial statement was not accurate, there should be no financial accounting to the Commission until such time as the software problems were resolved.
- The Commission has had no financial accounting for more than six months and the software problems are not fixed. If and when a financial statement will be available to the Board of Commissioners is not known.
- The accounting software package is used by HAs around the country and while not considered the most sophisticated system, an expert has testified that it is adequate to the needs of the HA. The problems reported to have caused the delays attributed to software system are highly unlikely. There are allegations that the Executive Director continuously requests technical changes from the vendor, some of which the program is not designed to do.”

Finding of Investigation

We have determined that the Authority acquired a new accounting software package from a reputable vendor. The decision to acquire a new system appears more than amply supported. We have discovered two concerns about the system acquisition and installation. First, it has been suggested that the software version the Authority received was a “Beta” (“final test”) version and was not fully refined and completed by the creators. We did not further investigate this allegation. We did determine that in the implementation of the new system, the Executive Director would not permit the old system to be run concurrently with the new system during the transition. This proved to be a significant problem and Serena ultimately relented. Serena characterized this as his way to get reluctant employees used to the new system and claims he quickly reversed himself when problems arose. There is credible evidence that Serena ignored staff concerns in not timely allowing parallel running (typical in such transitions) and delayed necessary parallel running until there were substantial problems.

Grand Jury "Fact":

- “• Loans that the HA could not pay were restructured to substantially higher principal amounts.”

Finding of Investigation:

We have not analyzed the cash flow issues posed by the sequence of finance transactions. As reliably described to us by the Deputy Executive Director, however, we believe this is not true and that the restructured loans in question were the temporary financing on the new building which was replaced, as always contemplated, by permanent financing.

Grand Jury "Fact":

- “• Witnesses allege that questionable transactions have occurred between non-profit and for-profit HA entities. These entities, have used HA funds for the purchase of commercial properties. It has been reported that the Federal Office of the Inspector General is investigating the HA for irregularities with the purchase and rehabilitation of their new office building at 147 West Main St., Woodland.”

Finding of Investigation:

The office facility and Kentucky Ave. transactions are discussed above. Our findings are generally supportive of this determination. OIG cannot reveal if an active investigation is or is not pending. HUD may undertake a more general, extraordinary review of Authority finances in the future.

Grand Jury "Fact":

- “• The HA provides a college scholarship fund for teens. There appears to be no criteria or requirement that a recipient actually use the funds for higher education purposes. The \$1,000 scholarships are made payable to the recipient and there is no follow-up. Civic groups who sponsor events such as car shows provide money for this fund. Those proceeds have been insufficient to cover the cost of the payouts. Whether HA funds were used for this unauthorized purpose is unknown.”

Finding of Investigation:

Our investigation supports the conclusion that none of the charges about the scholarship program are true. There are scholarship criteria, requirements for verification of education which are enforced and no proof of financial mismanagement.

Grand Jury "Fact":

“Accounting employees are kept in separate offices and are not allowed to talk to one another.”

Finding of Investigation:

This is not true. Accounting department employees operate as a team under the direction

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of General Services Manager Robert Hencier and those employees report satisfaction with that management.

Grand Jury “Fact”

“Legal Issues

The HA has contracted with a private law firm for legal representation at an hourly rate.

- These attorneys were hired by the Executive Director; their contract has a provision that their services cannot be terminated if there is any active litigation against the HA. Given the number of actions (current and potential), it is unlikely that the contract with this firm can ever be terminated under these provisions.
- These attorneys are ostensibly counsel to the HA. However, it appears that the Executive Director primarily confers with counsel, acts on the Commissioners’ behalf and deals with legal issues against the HA.
- Legal fees are reported to exceed \$300,000 annually. This significantly exceeds annual legal fees paid by housing authorities that are many times larger than the HA. County Counsel is authorized by State law to provide such services and can do so at an estimated cost of less than \$100,000.”

Finding of Investigation:

The allegation that the Authority cannot terminate the contract with the Kronick firm if there is active litigation is not true. The Grand Jury has badly misinterpreted the legal services agreement. The agreement is terminable at will. The provision the Grand Jury appears to rely on in fact protects the Authority from having the firm withdrawing from pending litigation without Court approval. This provision is consistent with the best interests of the Authority and is entirely consistent with the Rules of Professional Conduct for Attorneys and the California Rules of Court.

It is true that Counsel confers primarily with the Executive Director. Legal counsel need not and does not attend all Commission meetings. Legal issues raised are routinely routed through the Executive Director to counsel. It is our observation that, while proper, this practice, along with and substantially because of, the other management practices, may have impeded the ability of the Commission at times to receive legal advice and consultation independent of potential influence by the Executive Director.

The finding concerning the amounts expended on legal fees is not correct. Legal fees have averaged approximately \$11,000 per month recently. This may or may not be “excessive” and such a determination would, at a minimum, require an exhaustive and detailed review of billings and the matters to which the billings relate. Without analyzing the specific services needed by the Authority, it is impossible to estimate the charges County Counsel would make if

that office were willing and able to serve as counsel to the Authority.