

2022 TRINITY COUNTY CIVIL GRAND JURY REPORT

COUNTY COUNSEL REVIEW (JUR 2022-001)

BACKGROUND

The Grand Jury is an auxiliary to the Superior Court, charged with investigating citizen complaints pertaining to the actions and performance of public officials. The 2022 Trinity County Grand Jury received an anonymous letter expressing concerns about the role of County Counsel (Prentice|Long, PC) in what the author of the letter alleged to be a series of poor decisions regarding cannabis licensing. The office of the County Counsel serves as attorney for the Board of Supervisors (BOS), County departments, and other public agencies by providing legal advice and representation with the intent to protect the fiscal health of the County through sound legal advice, services, and counseling.

- The complaint cites one specific instance in which County Counsel allegedly advised the BOS to refuse an offer to settle litigation for less than a tenth of what the County ultimately settled for after losing the suit.
- The complaint further alleges that Prentice|Long benefitted financially from the Board's refusal of the initial settlement because of the prolonged litigation that followed. This provided the opportunity for Prentice|Long to log substantial billable hours.
- It is implied that the contractual arrangement between the County and Prentice|Long, which allows hourly billing for litigation, leads to an inherent conflict of interest.
- In response, the 2022 Grand Jury authorized a committee to investigate those allegations. This report presents the results of that investigation, in which information from a variety of mostly public sources is pulled together to evaluate the extent to which complaints such as those expressed in the anonymous letter have merit.

SUMMARY

Through our investigation, the Grand Jury determined that the concerns expressed in the anonymous letter appear to be valid. The Grand Jury found that County ordinances governing cannabis licenses failed to comply with California Environmental Quality Act (CEQA) requirements, resulting in increased legal expenses for defending against and settling litigation. The BOS relied heavily on legal advice supplied by County Counsel that increased the risk the County would require additional legal services, which County Counsel could bill for under their contract. The structure of the contract between the County and County Counsel appears to have the potential to present a conflict of interest. During the investigation, the Grand Jury found that the BOS, under the direction of County Counsel, relied heavily on closed sessions and attorney-client privilege to conceal its deliberations.

Considering these findings, the Grand Jury recommends that the County establish County Counsel as a County employee rather than a contractor or restructure the County Counsel contract to remove the potential for a conflict of interest with respect to litigation. The Grand

Jury further recommends that the BOS adhere to State and County policy requiring that public business be conducted with transparency.

METHODOLOGY

The Grand Jury reviewed many items during their investigation including County budgets in comparison to invoices and expense reports, contracts, Government (State) Code and the BOS Governance Manual, numerous court filings, BOS meeting minutes and electronic versions of meetings. Grand Jury members also conducted interviews with various County departments, attorneys, and private individuals.

DISCUSSION

Cannabis Licensing

Trinity County began issuing commercial cannabis licenses (CCLs) in 2016 under a series of ordinances that acknowledged requirements for CEQA analysis prior to approval and issuance.

- Licensing applications, however, omitted any reference to CEQA compliance and included an Indemnification Form that required that applicants agree to hold the County harmless in the event the County fails to provide environmental clearance under CEQA. These developments were noted by local stakeholders who engaged Greenfire Law, PC, to help protect the interests of County residents harmed by explosive growth in the cannabis industry.
- On August 10, 2016, Greenfire Law delivered a letter to the County objecting to a proposed urgency ordinance that would allow commercial cannabis cultivation of up to 10,000 square feet by as many as 500 permit holders. Zoning Ordinance No. 315, which the urgency ordinance would amend, previously applied only to medical marijuana and limited cultivation to no more than 8 plants and only then on parcels of 10 acres or more. The letter pointed out that the State law governing urgency ordinances (California Government Code (CGC) §65858) is intended to protect the status quo by prohibiting, not authorizing, the introduction of potentially nonconforming land uses.

By 2017, local stakeholders had formed Trinity Action Association, Inc. (TAA), a California Non-profit Corporation, to compel the County to comply with CEQA. After repeated requests from TAA for the County to ensure that its CCL procedures comply with CEQA, continued refusal to comply led TAA to file a legal petition against the County on January 3, 2019.

- The petition asked for judicial relief to have the County acknowledge the applicability of CEQA to cannabis licensing, to identify and address adverse environmental impacts of cannabis cultivation to Trinity County residents and ecosystems, and to permit public access to documents concerning CCL administration as required by the California Public Records Act (CPRA).
- A detailed description of the deficiencies in the County's approach to issuing conditional CCLs and failure to comply with CEQA is included by reference to TAA's petition to the Trinity County Superior Court, Case No. 19CV001 (Summons, Filed 01/03/2019, page

46). After lengthy negotiations, TAA and the County entered into a settlement agreement that became effective on August 9, 2019. Under the agreement, the County agreed to comply with CEQA requirements in its CCL procedures, prepare an Environmental Impact Report (EIR) as soon as possible, permit access to administrative documents as required by CPRA, and pay TAA \$95,000 in compensation for attorney fees (Case 19CV001, Settlement Agreement and Mutual Release of Claims, effective 08/09/2019).

By early 2020, however, TAA became aware that the County was continuing to violate CEQA and the terms of the settlement agreement.

- About 280 renewals CCLs were issued between the settlement date and the end of November 2020, with about half being issued as “provisional licenses,” for which the County deferred CEQA findings.
- About 25% of the CCLs issued during that time span were approved with categorical exemptions.
- In December 2020, the County adopted Urgency Ordinance 1355, which renewed 216 active CCLs until at least September 2021.
- In April 2021, Ordinance 1355 was amended to permit acceptance of renewal applications through May 11, 2021, and stated, without explanation, that the extension did not constitute a CEQA project.
- This resulted in the County receiving 25 applications for licenses that had previously expired. Although the EIR required under the settlement agreement had finally been adopted and the mitigation measures found necessary in the EIR had been incorporated into an Amended Cannabis Program Ordinance (Ordinance 315-849) in December of 2020, the ordinance had not yet been put into practice 9 months later.
- As of August 2021, the mitigation measures incorporated into the Ordinance 315-849 had not been required as a condition of any new, renewed, or extended CCL, nor had individual CEQA review been performed for any of the CCL renewals resulting from any Trinity County urgency ordinance (Statements of Facts).
- The County had instead continued to issue “provisional,” “conditional,” and “CEQA-deferred” CCLs, and directed CCL holders and applicants to delay compliance with mitigation measures required under Ordinance 315-849.

Failure of the County to honor the settlement agreement therefore came before the Trinity County Superior Court on August 27, 2021, and a judgement found in favor of TAA was entered on September 9, 2021. The Court stipulated that the County had breached the terms of the settlement and ordered the County to desist from issuing or reissuing any CCL unless compliance was achieved. The Court further ordered the County to pay \$339,185 to cover attorney fees incurred by TAA (19CV001, ordered 04/22/2022).

The County’s failure to reliably and consistently process and issue CCLs in compliance with CEQA resulted in hardship for Trinity County cannabis farmers who suddenly found themselves unable to operate legally through no fault of their own. Several of those small business owners filed legal action against the County with cases still pending as of late 2022.

In addition, well over 100 cannabis abatement cases were filed by the County in the four years spanning 2018 through 2021. A partial list of litigation involving Trinity County for that period

includes at least 120 likely instances of cannabis abatement, based on filing type and the names of the defendants.

Costs for Legal Service

The surge of litigation related to cannabis represented a profound increase in the ability of County Counsel to invoice the County for additional legal services. In fiscal year (FY) 2016-17, when legal issues associated with cannabis licensing first began to arise, the County paid Prentice|Long about \$486,000 and by FY2021-22 the annual bill had more than doubled to about \$928,000 (Table 1).

- Over the 6-year period spanning those fiscal years, Trinity County paid a total of about \$4 million to Prentice|Long, or in terms of annual average payments, about \$665,000 per year. We were unable to determine what proportion of those payments were related to cannabis issues versus other County issues, but our examination of County expense reports suggest that about \$1.3 million was transferred to the County Counsel account from the Cannabis fund after the Cannabis fund was established in FY2018-19.

Table 1: Payments to Prentice|Long for services to Trinity County by fiscal year since initiation of cannabis licensing. Payments for services to special districts are excluded.

Fiscal Year	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Payments to Prentice Long	\$485,828	\$478,319	\$750,918	\$734,187	\$613,538	\$927,831

- Total legal costs, however, were even higher, as the County retained additional legal assistance in the form of Derek Cole of Cole-Huber, LLP, to serve as Special Counsel with the task of defending against the litigation brought by TAA. Despite the efforts of the Special Counsel, who was under the guidance and supervision of County Counsel, the County also incurred expenses for settlements and judgements of more than \$435,000. In total, cumulative legal expenses incurred during the six years from FY2016-17 through FY2021-22 exceeded \$4.5 million (Figure 1).

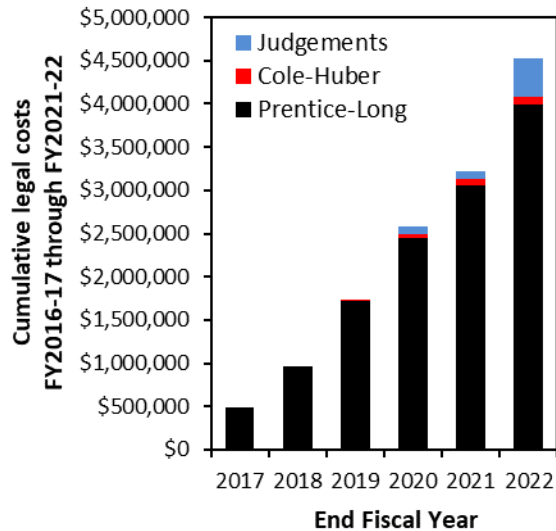


Figure 1: Cumulative legal costs to Trinity County from FY2016-17 through FY2021-22.

Role of County Counsel in TAA Judgement

More than one individual interviewed for this investigation suggested that the Grand Jury review the video recording of the BOS meeting of April 6, 2021, when the Board voted to decline the offer from TAA to settle for \$30,000. Discussion of that agenda item commences at 47 minutes and 40 seconds (47:40) into the video of the afternoon portion of that meeting (available at <https://www.youtube.com/watch?v=tkCv5sDWiLQ>), when Margaret Long of Prentice|Long begins to explain County Counsel’s opinion that the County could not accept TAA’s offer. Margaret Long states that the TAA settlement had been on the agenda for a previous BOS meeting but got pulled from the agenda because County Counsel and the County Administrative Officer (CAO) had determined that TAA was not a legal entity at that time. According to Long, TAA’s state license had been suspended for failure to pay 2020 taxes. To quote Long: “Because of that, when a business is suspended it can’t act as a business; it doesn’t exist. So, what it means is it can’t enter into a settlement agreement or a contract; it can’t accrue attorney’s fees because they don’t exist as an entity...”

Long’s opinion was followed by several questions from the BOS. Among them, Supervisor Brown asked if the County might wait for TAA to resolve their licensing issue before engaging them. Long responded that their request for attorney’s fees was invalid (51:45 into the video) “The argument that I would make is that they are not entitled to past attorney’s fees, which are a component of that settlement agreement, based on the fact that some if not all of them were accrued during a period of time that they didn’t exist.”

At 55:55 into the video, Supervisor Cox asks if the Special Counsel retained in early 2019 to represent the County in the TAA case (Derek Cole) was connected to the on-line conference stream. Cole answered that he was connected. Supervisor Cox asks Cole if he concurs with Long’s opinion. Long immediately interrupts, saying (56:25):

“Special Counsel is not different from County Counsel; Special Counsel is through County Counsel’s office, so as County Counsel I supervise all Special Counsel, so we are the same entity for the purpose of looking into this.”

Supervisor Cox then asks if it is appropriate for her to ask Special Counsel his opinion. Long responds that Supervisor Cox can ask questions, but she would be unlikely to get an answer and adds that if Supervisor Cox is asking for complex legal advice it should be in closed session.

Supervisor Gogan follows up by asking if Cole might ever represent the Board as counsel in any situation. Long answers (58:30):

“He would under my direction. So, is the question is there any time he wouldn’t be under County Counsel’s direction? The answer is no. I supervise all legal services provided by the County.”

A public comment period is then opened to members of the public connected to the conference stream. At 1:00:55 into the video John Letton, retired Superior Court Judge and member of TAA, joins on-line to comment. He begins with:

“There’s been some sad misrepresentations here. Let me just say that our communication with the County has been through Derek Cole. Derek Cole has received up-to-date information with regard to this corporate status situation on a daily basis. It was addressed in the letter that was addressed to the Board dated yesterday, which you should have received through Derek Cole, and it would be extremely odd for an entity involved in litigation, whatever the status, to communicate with anyone other than the counsel of record. The counsel of record is Derek Cole. I really wish you’d hear from him on this point.”

After providing additional details concerning TAA’s legal status and resolution of the tax issue, Letton offers to answer any questions the BOS might have.

After numerous other comments from the public, Supervisor Gogan makes a motion to deny the settlement. The motion is seconded for discussion. During discussion of that motion, Supervisor Cox notes that Long had acknowledged that it is permissible to ask a question of Cole, and again asks for Cole’s opinion on potential ramifications of denying TAA’s settlement offer (1:45:30). Cole responds that he had said everything he can say during prior closed sessions and that he stands on what he said in closed session.

Supervisor Cox expresses concern that TAA’s status will be resolved and that the case will go to court. She indicates that she wants to share certain information she had discussed with Cole outside of closed session and asks Long if that is allowed. Long answers (1:54:32):

“No, attorney-client privilege. You shouldn’t be discussing anything, any communication you had with attorneys.”

Later in the meeting (2:01:30), Supervisor Cox restates her reservations about declining the TAA settlement offer:

“I have this concern in the back of my mind that something we’re unaware of yet may have been cured, in which case what could have gone away for five digits will become a large six digits, and a court telling us how to proceed...”

After several minutes of clarifying discussion Cox suggests a subsequent motion to have staff confirm TAAs legal status and defer a decision on the TAA offer to the next BOS meeting. That motion did not pass. The BOS then voted 4-1 to decline the TAA settlement, ultimately resulting in the County paying a six-digit settlement and being directed by the Court on how to proceed, precisely as Supervisor Cox had warned.

Lack of Transparency

Throughout their investigation, 2022 Grand Jury members encountered significant bureaucratic obstacles to information gathering. Administrative records such as County Counsel's invoices, court proceedings, and BOS activities could be obtained only with difficulty or not at all.

Perhaps the most critical information denied to the Grand Jury were invoices submitted to the County by Prentice|Long. Given that the original complaint that led to this investigation focused on the allegation that County Counsel profited by leading the County into litigation, a means to evaluate the nature of the services Prentice|Long had been billing for was considered critical.

The Grand Jury asked the County Administrator's office for detailed invoices from Prentice|Long and were supplied with 55 pages of invoices for August through December 2021, on which all information regarding the services billed for had been redacted (Figure 2).

As those redacted invoices are of little use, we asked the representative of County Counsel assigned to assist the Grand Jury if Prentice|Long would provide the unredacted invoices or authorize their release. The response to that request was that the invoices are protected by attorney-client privilege and cannot be released.

The Grand Jury finds this rationale for denying information on public expenses problematic, as we expect invoices to primarily identify the kinds of legal services provided and which cases were represented. Privileged details, if any existed, could be redacted without redacting virtually the entire document.

An ongoing lack of transparency in the deliberations of the BOS and its use of closed sessions is also apparent. In calendar year 2016 through April 5, 2022 (the most recent meeting for which BOS meeting minutes were available at the time of writing), the BOS held 124 closed sessions. Of 243 separate agenda items that were discussed in those sessions, the BOS reported the outcomes of those discussions only 20 times (about 8% of the time). The minutes reports are, in the majority of cases, limited to phrases such as "direction given to staff" or similar language that conveys no meaningful information. This is particularly troublesome for the purposes of this investigation when the discussions involved litigation. Minutes frequently fail to identify the case or cases discussed, and rarely report any decision.

PRENTICE LONG, PC
 2240 Court Street
 Redding, CA 96001
 Telephone: 530-691-0800
 Fax: 530-691-0700

August 01, 2021
 Invoice No. 4494

Trinity County
 11 Court Street, Room 230
 Weaverville, CA 96093

Client Number: 510.000 Trinity County
 Matter 512.153 Trinity County Marijuana Litigation
 For Services Rendered Through 7/26/2021.

Fees				
<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
6/14/2021	Desta Lugo	[REDACTED]	1.00	\$125.00
6/15/2021	Desta Lugo		1.10	\$137.50
6/21/2021	Desta Lugo		1.10	\$137.50
6/21/2021	Desta Lugo		1.00	\$125.00
6/24/2021	Desta Lugo		4.50	\$562.50
6/24/2021	Desta Lugo		0.20	\$25.00
6/28/2021	Kelsey Walsh		4.00	\$800.00
6/28/2021	Kelsey Walsh		0.40	\$80.00
6/28/2021	Kelsey Walsh		1.00	\$200.00
6/28/2021	Kelsey Walsh		0.90	\$180.00
6/28/2021	Kelsey Walsh		1.00	\$200.00
6/28/2021	Kelsey Walsh		1.00	\$200.00
6/28/2021	Kelsey Walsh		1.00	\$200.00
6/28/2021	Kelsey Walsh		1.00	\$200.00

Continued On Next Page




Figure 2: Example of redacted Prentice|Long invoice. Descriptions of services provided are replaced with grey box on every page.

Decisions are reported for exactly five of approximately 200 different litigation cases discussed in closed session since 2016. All five of the reported decisions involved a settlement with the litigant, although no information is provided concerning the nature of the settlement or sum paid, if any. Of 11 cases of liability claims against the County discussed in closed session during this same period, one instance of a vote to deny a claim and one instance of a vote to settle a claim are reported, again with no mention of the settlement amount.

This scant reporting out of closed session, which we found to be an impediment to our investigation, appears to be inconsistent with both State statute and with the policy of the Trinity County BOS. The Brown Act requires local legislative bodies in California to report any action taken in closed session and the vote of every member present.

Among the numerous requirements described in the Brown Act, it is of special relevance here that if a legislative body accepts a settlement offer, it “shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.” Similarly, the disposition of claims “shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the

substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.”

The requirements of the Brown Act are repeated in Trinity County policy as well. The Governance manual and Board of Supervisors operating rules and procedures, which was updated in 2020 (Resolution No. 2020-084) states:

“All meetings of the Board shall be conducted in accordance and in compliance with the Ralph M. Brown Act.”

It also stipulates that:

“Executive/closed sessions may be used by the Board of Supervisors for deliberations involving personnel, certain negotiation matters and litigation. The Board of Supervisors may make motions or vote on any matters considered in closed session. However, such action must be specifically reported to the public upon coming out of closed session.”

In addition, it is possible that the BOS may have, at times, concealed the true nature of closed discussions. The Brown Act limits closed sessions to subject matter it deems confidential, including legal strategy for litigation, discussion that could compromise security, and personnel evaluation where individual privacy is required. The 2016-2017 Grand Jury found that in 2016 the BOS purported to hold closed session personnel evaluations of County Counsel 11 times between January 2016 and January 2017 and claimed that multiple supervisors interviewed told the Grand Jury that those session frequently involved other matters, including legal advice regarding the development of cannabis cultivation ordinances (Financial and Administrative Committee Final Report FAR 2016-2017-003).

The 2016-2017 Grand Jury findings would, by themselves, be of limited interest to the 2022 Grand Jury if not for the subsequent responses to those findings from County Counsel and the BOS. These findings are particularly concerning because both County Counsel and BOS flatly denied that numerous evaluations of County Counsel were reported in the minutes.

During our investigation, we obtained the BOS minutes from 2016 and can verify that 11 closed sessions purportedly for evaluating County Counsel appear in the record. The only other information concerning those sessions in the minutes is “Evaluation was held” for 10 of the sessions and “Direction given to staff” for the remaining session.

Furthermore, County Counsel responded to the 2016-2017 Grand Jury Finding #9 implying that the Grand Jury members were in legal jeopardy for raising questions about whether closed sessions discussions were in compliance with the Brown Act. Finding #9 reads:

“During the evaluation sessions named in previous Findings, the BOS and the CC [County Counsel] did not use or discuss the agreed upon criteria or standards for CC’s performance (because none existed) and did not use or discuss the performance review form named in previous Findings.”

County Counsel responded, in part, with:

“The Grand Jury is asking responding party to commit a misdemeanor crime by discussing activities. Responding party will not commit a misdemeanor, or violate attorney/client privilege. *Further, responding party will caution the Grand Jury that asking parties to reveal*

what occurred in closed session is illegal and publishing illegally obtained information is not proper.” [Emphasis is ours.]

This above response from County Counsel appears to conflict with the Brown Act, which states in CGC §54963(e) that it is not a violation to disclose to a district attorney or grand jury information concerning illegal actions taken by a legislative body or to express an opinion concerning the legality of the actions taken. That section furthermore clarifies that it is not a violation to disclose information acquired by being present in a closed session that is not confidential information, which is defined in CDC §54963(b) as information “that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.”

The 2022 Grand Jury recognizes that the membership of the upcoming BOS is entirely different from the membership in 2016 and 2017. The finding of the 2016-2017 Grand Jury regarding closed sessions and the responses to those findings are nonetheless still relevant because the BOS continues to be guided by the same County Counsel, and current practices regarding closed sessions are similar to those objected to by the previous Grand Jury.

County Counsel Contract and Potential Conflict of Interest

As noted earlier, the anonymous complaint letter that led the Grand Jury to undertake this investigation expresses the opinion that County Counsel (CC) may have intentionally advised actions that would lead to litigation and require additional services that Prentice|Long could bill for under their contract. It would be difficult to argue that many of the decisions made regarding the development of commercial cannabis ordinances and the handling of related litigation over the past five years, presumably under Counsel’s guidance, were not mistakes. Whether mistakes such as attempting to circumvent CEQA or settle with TAA were intended to generate litigation or were simply a function of poor judgement cannot be determined. We can, however, review the contract that County Counsel operates under and evaluate whether its structure has the potential to encourage a preference for litigation.

In January 2015, Trinity County entered a contract with Prentice and Epperson LLP that named Margaret Long to serve as County Counsel (Contract Number 14-253). The contract stipulated a flat annual fee of \$125,000 for non-litigation legal services to the BOS. Those services are listed as including attendance at two regular monthly BOS meetings, other meetings as requested by the BOS, and related transactional and advisory legal services. A separate annual fee of \$40,000 was to be billed to cover legal services for Child Protective Services, although services for appeal and writ matters would be billed at an additional hourly rate. Additional billing rates for conservatorship, guardianship, and employee arbitration matters are also specified.

Litigation matters, which the contract defines as “any court action or any adjudicatory proceeding before an administrative agency, hearing officer, mediator, or arbitrator,” is not included in any of the above fees. The contract stipulates that litigation matters will be billed at \$200 per hour per attorney, plus costs. As defined in the contract, “billable time includes reviewing materials, drafting letters and pleadings, research, telephone calls, consultations, depositions, appearances in court (including waiting for the case to be called), and any other time required to represent the County in each matter.”

The contract described above was amended on July 21, 2015 (Amendment No. 1), to:

- 1) Change the name of the law firm in the opening paragraphs of the contract from Prentice and Epperson LLP to Prentice, Long and Epperson, LLP;
- 2) Change the annual fee for Child Protective Services from \$40,000 to \$60,000.

In all other respects the terms of the contract remained the same.

The contract was amended a second time on February 17, 2016. Amendment No. 2 consisted of:

- 1) Reiterating that the name of the law firm in the opening paragraphs of the contract be changed to Prentice, Long and Epperson, LLP. Why this name change, which was stipulated in Amendment 1, is repeated here is not known to the writers of this report.
- 2) Adding language that the Firm will perform additional services outlined in Resolution 2015-128 and will be paid an additional \$5,000 per month. The additional services referred to by the cited resolution involved assigning to County Counsel certain duties of the CAO, which was a vacant position at the time.

In all other respects the terms of the contract remained the same.

Amendment No. 3 was executed on November 1, 2019. This amendment changed only the name of the Firm, as referenced in the opening paragraphs of contract, from Prentice, Long and Epperson, LLP, to Prentice Long, PC. In all other respects the terms of the contract remained the same.

The contract was amended a fourth time on June 30, 2022. Amendment No. 4 increased the annual flat fee for Child Protective Services from \$60,000 to \$67,000 and changed the phrase “Child Protective Services (CPS)” in a heading in the contract to “Child Welfare Services (CWS).” In all other respects the terms of the contract remained the same.

The above contract information confirms that, for seven and a half years, County Counsel has been operating under an agreement that rewards litigation at a rate of \$200 per hour. In the absence of litigation, Prentice|Long currently stands to collect about \$200,000 per year in flat fees (assuming the fee associated with Resolution 2015-128 in Amendment No. 2 is no longer in effect). The firm, however, would approximately double that revenue if the County were to be involved in litigation sufficient to keep just one attorney engaged for 6 to 8 months of the year. It seems obvious that the terms of the agreement provide no motivation for the contractor to proactively minimize the risk that the County will be confronted with legal challenges.

Grand Jury review of the County Counsel contract raised additional questions that are worthy of mentioning. California Government Code §27641 states “The county counsel shall serve for four years from the time of his appointment and until his successor is appointed...” and that term of four years is reaffirmed in Trinity County Code 2.68.050. The fact that the current County Counsel has been in place for close to 8 years seems to conflict with both state and county code. The repeated modifications of the law firm’s name in three of the four contract amendments described above have the appearance of a technicality that could circumvent the term limit, if such a limit exists. In any event, the discrepancy between the four-year term for county counsels defined by statute and the time the current County Counsel has presided in Trinity County begs for an explanation.

Amendment No. 2 in which County Counsel was assigned certain responsibilities normally assigned to the CAO drew criticism from the 2016/2017 Grand Jury for several reasons. At present, we consider only their finding that the additional \$5,000 per month flat fee associated with that amendment appeared to have no ending date at which those responsibilities would be transferred back to the CAO. The 2016/2017 Grand Jury found that (Financial and Administrative Committee Final Report FAR 2016-2017-001):

“F8. “The BOS contracted with Prentice & Epperson LLP designating County Counsel to perform additional duties in the absence of a CAO without establishing an expiration date.”

The response from the County Counsel was, in part:

“Disagree wholly. The agreement terminates upon the hiring of a CAO.”

We cannot definitively claim this response to be incorrect, but we can confirm that neither Amendment No. 2 nor any subsequent amendment contains any language about terminating the agreement regarding the CAO duties. If such a termination occurred, it would behoove County Counsel to provide an explanation as to how and when.

FINDINGS

F1. A series of County ordinances enacted to regulate CCLs from 2016 through 2021 consistently failed to comply with CEQA requirements to identify and mitigate for the full range of environmental impacts associated with commercial cannabis cultivation. The BOS during that period relied on the current County Counsel for legal guidance.

F2. Failure of the County to properly address CEQA resulted in a lawsuit filed by concerned County residents (TAA) seeking to compel compliance. After an initial settlement in which the County paid \$95,000 in the litigant’s attorney fees in 2019, the County failed to honor terms of the settlement and ultimately was ordered to pay an additional \$339,185 in costs and attorney fees in 2021. The current County Counsel provided legal guidance to the BOS throughout this period.

F3. As part of the 2021 Court Order in the TAA case, the County was ordered to desist from issuing or reissuing any CCL until CEQA compliance is achieved. Numerous Trinity County farmers found themselves unable to operate legally through no fault of their own, and several filed legal action against the County. In addition, numerous cannabis abatement cases against farmers who continued to operate without licenses were filed by the County. These cases, both by the County and against the County, have and continue to represent significant additional legal costs to the County.

F4. From FY2016-17 through FY2021-22, the County paid approximately \$4.5 million in legal costs. This total includes \$435,185 in settlements and award to litigants, \$94,641 paid to the Special Counsel retained for the TAA case, and nearly \$4 million paid directly to County Counsel.

F5. During the period considered herein (2016-2022), the BOS and County Counsel displayed a tendency to conduct public business in secret. The BOS failed to consistently report decisions and actions taken in closed session as stipulated in State and County statutes, and

County Counsel consistently invoked attorney-client privilege to conceal information ranging from services billed to the opinion of Special Counsel regarding the disposition of the TAA case.

F6. The 2016-2017 Grand Jury also found that the BOS failed to provide meaningful or accurate reports regarding business conducted in closed session. In particular, the 2016-2017 Grand Jury found that the BOS reported that closed sessions for personnel evaluations of County Counsel were held 11 times in the span of one year. Both the BOS and County Counsel responded to that finding with a flat denial, which we find to be demonstrably false.

F7. County Counsel advised the BOS to reject a potential \$30,000 settlement with TAA in 2021, ultimately resulting in a Court order for the County to pay TAA more than 10 times as much. In doing so, County Counsel stifled information casting doubt on County Counsel's advice and assumed full responsibility for the TAA case.

F8. County Counsel has been operating under the same contract for more than seven years, whereas State Government Code and County policy state that the term of County Counsel is four years.

F9. The contract under which County Counsel currently operates consists of base fees for assisting with certain County business, but also stipulates that County Counsel will bill for any litigation services at a rate of \$200 per hour. This contractual structure appears to incentivize legal actions that promote litigation, or at least could discourage actions that avoid unnecessary litigation.

RECOMMENDATIONS

While many of the details regarding exactly what went wrong with CCLs, the disposition of various legal cases, past invoicing, and overall secrecy could be subject to further investigation, we prefer to instead focus on how similar issues can be avoided in the future. We recognize that the majority of Supervisors seated during the 2016-2022 period considered in this report are no longer in office, and appeal to the new BOS to conduct business in a more transparent manner. The only major player present from that full period is County Counsel.

R1. We recommend that the BOS abide by State and County policy regarding transparency. While the Government Code recognizes the need to keep certain sensitive information confidential, the Brown Act makes it clear that secrecy is not intended to be the default mode of doing public business. Likewise, we recommend invoking attorney-client privilege selectively rather than as a blanket mechanism for the BOS and Counsel to avoid accountability.

R2. We recommend considering establishing County Counsel as a full-time salaried employee of the County. Cases of litigation that arise beyond the capacity of County Counsel would then be managed through separate contracts with private attorneys. This business model would help to separate actions that lead to or discourage litigation from the financial reward of prosecuting litigation, thereby removing the appearance of a conflict of interest.

R3. If the County determines that retaining a contractor to serve as County Counsel is necessary, consider restructuring the contract to remove the appearance of a conflict of interest by decoupling ordinary County business from litigation. This could perhaps be done with two separate contracts with competing legal firms.

R4. If the County determines that County Counsel must be retained through a contract similar to the current contract with Prentice|Long, we recommend that such contracts be valid for a limited term, such as four years, and that bids from competing legal firms be solicited at the end of each term.

RESPONSES REQUIRED

Pursuant to California Penal Code §933.05(b), the BOS should respond to each of the four recommendations listed above within 90 days of publication of this report. We encourage responses and/or comments from County Counsel as well, should Counsel choose to provide them.

GLOSSARY

BOS	Board of Supervisors
CCL	Commercial cannabis license
CEQA	California Environmental Quality Act
TAA	Trinity Action Association, Inc.
CPRA	California Public Records Act
EIR	Environmental Impact Report
CAO	County Administrative Officer
CGC	California Government Code