

RICHARD A. SMITH
ALLISON G. JACKSON
JOHN S. LOPEZ
AMY M. STOVER
HEATHER L. BURKE
TAMARA C. FALOR
MARIA M. HUITRON

Gerald R. Harland
(Partner 1952 - 2012)

Harland Law Firm LLP

ATTORNEYS AT LAW

212 G STREET, SUITE 201
EUREKA, CALIFORNIA 95501
(707) 444-9281
FACSIMILE: (707) 445-2961

Allison G. Jackson
ajackson@harlandlaw.com

FORTUNA

954 MAIN STREET
FORTUNA, CA 95540
(707) 725-4426
FACSIMILE: (707) 725-5738

October 20, 2025

Sent Via Email:

Savana M. Jefferson
Liebert Cassidy Whitmore
400 Capitol Mall, Suite 1260
Sacramento CA 95814
sjefferson@lcwlegal.com

Re: County of Humboldt / Michelle Bushnell - Investigation Report
HU355/001
Our File No. 10455.006

Dear Ms. Jefferson:

THE LEVEL OF DUE PROCESS NEEDED IS CONSTITUTIONALLY REQUIRED

The County's process is a form of administrative or quasi-judicial proceeding, and as such, general principals of due process apply not only for the provision of notice of the charges, but also for an *opportunity to be heard* before a decision is made by an impartial decision-maker as mandated by the Fourteenth Amendment of the U.S. Constitution and Article 1, Section 7 of the California Constitution (the government may not deprive any person of life, liberty or property without due process of law). The California Supreme Court also recognizes an individual's due process liberty interest to be free from arbitrary adjudicative procedures. *See People v. Ramirez*, 25 Cal. 3d 260, 263-264 (1979); *Saleeby v. State Bar*, 39 Cal 3d 547, 565 (1985); Code of Civ. Proc., section 1094.5(b). *See also Morongo Band of Mission Indians v. State Water Resources Control Board*, 45 Cal. 4th 731, 737 (2009). To be compliant with Supervisor Bushnell's constitutional due process rights, the individual accused must have a chance to present their side of the story, *which includes the right to call and cross-examine witnesses, present evidence, and make arguments*. In the matter at hand Supervisor Bushnell was not given the opportunity to do so because of the non-disclosure of witnesses involved.

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Not raised in prior correspondence, but now appropriate to be raised (because of the tenor of the letter in response to the correspondence raising concerns regarding due process and seeking redress of those inadequacies) is the involvement of the County Counsel as a member of the review committee which rendered the non-appealable decision on this matter. The circumstances underlying this matter involved the agenda process (a process in which the County Counsel plays a role as legal advisor) and, to our knowledge, the question of whether, in these circumstances, the County Counsel's role as legal advisor to Supervisor Bushnell rises to the level of embroilment has not been examined.

If there is an issue with the agenda, the County Counsel is consulted. The information provided to Supervisor Bushnell does not enlighten as to the role the County Counsel played in the activities leading to the formal complaint, and per the LCW letter, the County's process does not require the "restate[ment] of each administrative step taken prior to the investigation. . ." even though these "steps are documented in County Records." This concern about the involvement by County Counsel is raised because of the apparent combination of advocacy and decision-making roles built into the process used in this matter. An advocate is a partisan for a particular client or point of view, but this advocacy role is inconsistent with true objectivity - a constitutionally necessary characteristic of an adjudicator. *See Morongo Band of Mission Indians v. State Water Resources Control Board*, 45 Cal. 4th 731, 737 (2009) ("When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. (*Witlow v. Larkin* (1975) 421 U.S. 35, 46 (citation omitted) A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. (*People v. Harris* (2005) 37 Cal. 4th 310, 346 (citations omitted); *see Hass v. County of San Bernardino* (2002) 27 Cal. 4th 1017, 1025 (citations omitted) ["When due process requires a hearing, the adjudicator must be impartial."]. . .").

Here, there are no "rules mandating internal separation of functions and prohibiting ex parte communication" (*Morongo Band of Mission Indians v. State Water Resources Control Board*, 45 Cal. 4th 731, 741 (2009)), and because of these circumstances, there cannot be adequate separation and prohibition of ex parte communication because County Counsel is one of the decision makers and this "creates the substantial risk that the advice given to the decision-maker, 'perhaps unconsciously' . . . will be skewed.'" *Howitt v. Superior Court*, 3 Cal. App. 4th 1575, 1586 (1992).

In addition, the use of County Counsel as a decision maker under these circumstances raises the ethical duties County Counsel owes to each member of the

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Board of Supervisors, including Supervisor Michelle Bushnell. These owed fiduciary duties are of the very highest character and are owed to County Counsel's client – which is the Board of Supervisors – including Michelle Bushnell, who was acting in her official capacity when the alleged complaints arose. *See Cox v. Delmas*, 99 Cal. 104, 123 (1893). The Supreme Court has held that the duty to the client is paramount and cannot be trumped by a duty to another person. *See Beck v. Wecht*, 28 Cal.4th 289, 297 (2002) (Duty of “‘undivided loyalty and total devotion’ owned to the client.”).

In addition to the problematic position taken by County Counsel as part of the panel regarding the formal complaint, there is also a significant problem with the CAO as a member of the review three-person committee which rendered the non-appealable decision on this matter. Nobody that is part of an investigation gets to see the entire complaint form. The CAO as part of both the investigation and the review committee violates this as she was both part of the investigation and was interviewed and saw the entire complaint form. This is another significant problem with how this matter has been dealt with.

As to the assertion that the investigative report is protected by the attorney client privilege, that privilege lies with the Board of Supervisors and Supervisor Bushnell when acting in her official capacity; she is one of the members who hold that privilege. You have failed to provide any legal authority to support the implication that Supervisor Bushnell acting in her official capacity is somehow excluded. This also is not addressed in the Board's Rules upon which this process is asserted to be based.

CONCLUSION

What is proposed is the scheduling of a public hearing without first affording Supervisor Bushnell the level of due process required by the State and Federal Constitutions, and based upon a decision influenced by County Counsel who cannot be both the advocate for the County and an impartial decision maker involving a subject matter for which his official duties, by definition, embroiled him in the events underlying the quasi-judicial decision County Counsel participated in as a decision maker. That Supervisor Bushnell has been denied the right to information required for the full preparation for the cross-examination of witnesses and presentation of evidence and arguments in rebuttal to these witnesses is an unacceptable denial of the constitutionally required due process. Failure to address these problems, as set forth above in my letter, will likely result in addressing them in Superior Court. It may be prudent for all involved to have a redo of the three-person panel referring the matter out and reviewing the entire complaint. It may also be prudent to fix the formal policies and

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procedures to avoid this problem in the future. And, since failure to address this problem results in potential litigation, it also seems prudent to bring the matter in closed session before the entire Board.

Please do not hesitate to call if you have questions or comments.

Sincerely,

/s/ Allison G. Jackson

cc: Supervisor Rex Bohn
Supervisor Michelle Bushnell
Supervisor Mike Wilson
Supervisor Natalie Arroyo
Supervisor Steve Madrone