



COUNTY COUNSEL MEMORANDUM

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DATE: March 26, 2019
TO: County of Santa Barbara Legislative Program Committee
FROM: Michael C. Ghizzoni, County Counsel *Michael C. Ghizzoni*
RE: Santa Barbara County Civil Grand Jury Request for Committee Support to Amend Penal Code section 908.1

The Santa Barbara County Civil Grand Jury, through its Foreperson Rande Downer, requested County Counsel assistance in seeking the Committee's support for an amendment to California Penal Code section 908.1, which states in relevant part as follows: "A person selected as a grand juror to fill a vacancy...may not vote as a grand juror on any matter upon which evidence has been taken by the grand jury prior to the time of the person's selection."

The negative consequences of Section 908.1 for civil grand juries include:

- Difficulty attracting replacement grand jurors once they learn they may not be allowed to vote on jury actions; and
- Difficulty obtaining the 12 votes necessary for jury action if the number of original jurors is reduced through illness, resignation, or other reason.

The requested change is to insert the word "criminal" before "grand juror" and "grand jury" so the provision would not apply to civil grand jurors:

A person selected as a **criminal** grand juror to fill a vacancy pursuant to this section may not vote as a **criminal** grand juror on any matter upon which evidence has been taken by the **criminal** grand jury prior to the time of the person's selection.

Recommendation:

That the Legislative Program Committee 1.) Receive the Grand Jury's request; and 2.) Direct that the County's legislative advocate pursue amendments to Penal Code section 908.1 to reflect that the voting requirement is only applicable to criminal grand jury voting.

Background:

Presumably the intent of Section 908.1 was to protect the due process rights of the accused when a district attorney seeks an indictment from a criminal grand jury. However, the provision is not expressly limited to criminal grand juries, so implicitly includes civil grand juries, which differ greatly from civil grand juries in their purposes and procedures.

In 2002, the California Grand Jurors' Association (CGJA) recommended that the Legislature amend Section 908.1 to apply only to criminal matters. (35 Loy. L. A. L. Rev. 609, 634 (April 2002).) CGJA pointed out, "The hearsay rule does not apply in civil investigations and it is frequently the case that jurors do not hear a full presentation of 'evidence' prior to the full panel discussion preceding a vote to further an investigation or issue a report." However, when the Legislature amended Section 908.1 the following year, it did not make that change.

Please let me know if you have any questions.

cc: Grand Jury Foreperson Downer