

**Subject:** Grand Jury Tampering/PC 934-936.5  
**From:** Gene Forte <geneforte@badgerflats.com>  
**Date:** Thu, 07 Apr 2011 22:19:19 -0700  
**To:** grandjury@co.merced.ca.us, Grand Juror Tomsha [REDACTED]  
**BCC:**

April 7th, 2011

Dear Grand Juror Foreperson Ellington & Grand Juror Tomsha,

You will find attached the Penal Codes that Merced County Counsel James Fincher clearly violated in giving his opinion that the Grand Jury should vote to terminate the Grand Jury investigation that he was a subject of. You will also see that the Grand Jury should have already availed itself to PC 936.5.

I am trying rationalize as to how it was voted upon by the majority of the Grand Jurors to investigate the complaint....and how now there was a majority of votes to terminate the investigation based upon some alleged breach of confidentiality by me based upon the legal opinion of the subject of the complaint James Fincher.

I also want to correct a statement I made earlier to Grand Juror Tomsha. After double checking with two Grand Jury experts and a former Grand Jury foreperson I was informed that I could tell anyone, anything I wanted about what Grand Jurors told me.

I incorrectly stated to Grand Juror Tomsha that I could not tell people what Grand Jurors told me.

The confidentiality issue is a one way street for Grand Jurors only. It does not apply to the complainant (me) or witnesses.

With that said, Grand Juror Tomsha had told me earlier that she would be sending me a copy of a letter that she was going to email this evening to Grand Jury Foreperson Ellington.

The letter was to specify that the on-going Grand Jury investigation was voted upon to be terminated due to my alleged breach of confidentiality and that the legal opinion that I did so, and to terminate the investigation due to such, was given by Merced County Counsel James Fincher.

I would very much appreciate a prompt response to this very serious matter.

Thank you again for all of your efforts and hopefully all of this will be addressed....and there will be no further obstruction of the investigation by the subjects of the complaint.

Gene Forte

<b>PC 934-936.5.pdf</b>	<b>Content-Type:</b> application/pdf
	<b>Content-Encoding:</b> base64

CALIFORNIA CODES  
**PENAL CODE**  
SECTION 934-936.5

**934.** (a) The grand jury may, at all times, request the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney General. Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

(b) The Attorney General may grant or deny a request for advice from the grand jury. If the Attorney General grants a request for advice from the grand jury, the Attorney General shall fulfill that request within existing financial and staffing resources.

935. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the district attorney, or assistant district attorney, or deputy district attorney, or anyone employed by or connected with the office of the district attorney, is being investigated by the grand jury, such district attorney, or assistant district attorney, or deputy district attorney, or all or anyone or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity but only as a witness, and he shall only be present while a witness and after his appearance as such witness shall leave the place where the grand jury is holding its session.

936. When requested so to do by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury.

The services of such special counsel and special investigators shall be a county charge of such county.

936.5. (a) When requested to do so by the grand jury of any county, the presiding judge of the superior court may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence of the investigation to the grand jury.

(b) Prior to the appointment, the presiding judge shall conduct an evidentiary hearing and find that a conflict exists that would prevent the local district attorney, the county counsel, and the Attorney General from performing such investigation. Notice of the hearing shall be given to each of them unless he or she is a subject of the investigation. The finding of the presiding judge may be appealed by the district attorney, the county counsel, or the

Attorney General. The order shall be stayed pending the appeal made under this section.

(c) The authority to appoint is contingent upon the certification by the auditor-comptroller of the county, that the grand jury has funds appropriated to it sufficient to compensate the special counsel and investigator for services rendered pursuant to the court order. In the absence of a certification the court has no authority to appoint. In the event the county board of supervisors or a member thereof is under investigation, the county has an obligation to appropriate the necessary funds.