

CIVIL SERVICE COMMISSION MINUTES

November 6, 2024

A meeting of the Civil Service Commission was held at 2:30 p.m., in-person in room 402-A at the County Administration Center; 1600 Pacific Hwy.; and via Videoconference/Teleconference.

Present:

P. Kay Coleman
A. Melissa Johnson
Will Rodriguez-Kennedy

Absent:

Bryan Fletcher

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor.

Approved
Civil Service Commission
December 6, 2024

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
NOVEMBER 6, 2024**

- 1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation
- 2:30 p.m. OPEN SESSION: Attend in-person at the County Administration Center, 1600 Pacific Highway, 4th Floor, Room 402A, San Diego, California; or Videoconference/Teleconference.
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Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA
County Administration Center, Room 458**

Members of the public may be present at this location to hear the announcement of the closed session agenda.

CLOSED SESSION DID NOT TAKE PLACE DUE TO A LACK OF A QUORUM

- A. Commissioner Rodriguez-Kennedy: **2024-012**, former Deputy Public Administrator-Guardian, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

OPEN SESSION AGENDA

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Coleman, Johnson, Rodriguez-Kennedy

Absent: Fletcher

B. **APPROVAL OF MINUTES:** Regular meeting of August 7, 2024.

**Motion by Commissioner Coleman to approve the minutes of August 7, 2024; seconded by Commissioner Johnson.
Motion passed with all in favor.**

C. **NON-AGENDA PUBLIC COMMENT:**

Appellant 2024-008 addressed the Commission regarding his discrimination complaint which was filed with the Civil Service Commission on February 16, 2024, and referred to the Office of Ethics and Compliance (OEC) for investigation. Appellant stated that after his initial meeting with OEC, which occurred 46 days after he filed his complaint, he received several updates from OEC extending the completion date of their investigation, the last extension being 6-8 months. As of today, 264 days had passed since this matter has been submitted to OEC. Appellant understands that OEC is understaffed, but he feels that it is unfair to him for the investigation to take this long. Appellant requested that the Commission contact OEC and inquire when the investigation would be completed.

Todd Adams, Executive Officer for the Civil Service Commission, responded that OEC has informed him they expect to submit the completed report to our office by the end of this month (November) and that the findings of the investigation would most likely be on the January meeting agenda which will take place on January 15, 2025 since January 1, 2025 will be New Year's day.

D. **AGENDA ITEM DISCUSSION:**

Item No. 4 is automatically pulled for discussion.

E. FORMATION OF CONSENT AGENDA

Agenda Item No. 3 was withdrawn. Item No. 4 is automatically pulled for discussion.

Item Nos. 1, 2 and 5-7 are available for approval on the Consent Agenda.

Motion by Commissioner Coleman to approve the Consent Agenda; seconded by Commissioner Johnson.

Motion passed with all in favor.

F. DISCUSSION ITEMS

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENT

1. Commissioner Fletcher: Rico J. Dominguez, Esq., on behalf of **2024-044P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

2. Commissioner Coleman: **2024-045**, Administrative Analyst II, alleging discrimination by the Health and Human services.

Confirmed.

LATE APPEAL

3. James J. Cunningham, Esq. on behalf of **2024-046P**, Deputy Probation Officer, appealing an Order of Immediate Suspension and Charges from the Probation Department, which was filed two (2) days late.

RECOMMENDATION: Accept late appeal and assign Commissioner Johnson to be the hearing officer.

Withdrawn.

DISCIPLINE

Findings

4. Commissioner Rodriguez-Kennedy: **2024-012**, former Deputy Public Administrator-Guardian, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Appellant 2024-012 ("Employee") appealed a Final Order of Removal and Charges removing him from the class and position of Deputy Public Administrator-Guardian in the Health and Human Services Agency ("Department"). The Commission appointed Commissioner Will Rodriguez-Kennedy, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, a hearing was held on September 11, 2024.

The causes of discipline were acts incompatible with and/or inimical to the public service, conduct unbecoming, and failure of good behavior.

The Employee was a Deputy Public Administrator-Guardian for the San Diego County Department of Aging and Independence Services, Health and Human Services Agency, from July of 2022 until his separation on March 21, 2024.

In his role as Deputy Public Administrator - Guardian the Employee is expected to utilize an online search software licensed by the County from LexisNexis, called "Accurint." The Accurint system allows for a comprehensive search of public records compiled by LexisNexis, or retrievable from public records, to find out information related to a "client." For the purposes of the Department and this proceeding, "client" is defined to include either a deceased person identified by the County Medical Examiner and whose estate should be protected for the next of kin (public administrator), or a person whose health requires a conservator to care for the person, the person's estate, or both, and whose family members are unknown (public guardian).

The Accurint software system allows the Department's authorized staff (e.g., Deputies, Supervisors, and Managers) to seek information on a client to (1) if necessary, verify the identity of a decedent; (2) find relatives or next of

kin; and (3) as administrator of an estate, or as conservator, to locate assets and property of the client's estate.

The information that can be obtained from an Accurint search typically includes information of a sensitive nature, including Social Security Numbers, home addresses, private telephone numbers, dates of birth, names of parents and siblings, etc. Such information can be used to the detriment of the clients, or their next of kin. As a result, LexisNexis requires users to review their terms of use and understand what information users are authorized to receive in a search. It is reasonable to conclude that misuse of the system can result in a termination of the license for its use.

In addition to restrictions on use of the Accurint system the Department and County in general has access of other similarly sensitive personal information in its own records. Therefore, users of systems operated by the County are governed by equally restrictive rules, including that no employee of the Department is allowed to search themselves, members of their family, friends, or other persons not related to a valid business purpose.

In or around November 27, 2023, the Accurint Administrator for the Department received an email from LexisNexis Risk Solutions' Compliance Auditor, notifying the Department of questionable activities of the Employee in searching for "E.N." In order to verify the circumstances of the search Accurint Administrator for the Department conducted a check of the software's active systems, and found a total of 11 discrepancies where the Employee had searched himself, his spouse, his minor daughter, E.N. and his spouse, his brother's current wife, and his brother's ex-wife.

When questioned by the Department's investigator the Employee stated that he did not have any recollection of searching for E.N. on Accurint, but believes that he might have copied and pasted his name inadvertently while having two screens up at the same time, and one having a to-do list including a note to contact E.N. After Accurint Administrator for the Department found the other 10 inappropriate searches the Employee was interviewed by the investigator a second time. In that interview he stated that he didn't know how the search for E.N. extended to E.N.'s spouse K.N., with the excuse that he didn't understand how the Accurint system works.

The investigator then went through records that revealed that the Employee searched for himself six (6) more times over a period of just over one (1) year and questioned why the Employee needed to search for himself that many times over the one-year period. His only explanation is that he was learning the system at the beginning of that period but couldn't explain why he did it the other four or five times. When asked about the reasons for the other four (4) searches, the Employee's explanation was that he was trying to see how the software worked using different names, addresses, and when searching a minor.

Employee is guilty of acts incompatible with and/or inimical to the public service, in that the Employee used the County's data processing system and Accurint software to access personal information on himself (six times), his spouse (once), his minor daughter (once), E.N. and his spouse (once), his brother's current wife (once) and his brother's ex-wife (once), all over a period of one year, in violation of County and Department policies, and in violation of the terms of use of the Accurint software license.

While the Employee was, initially, being trained on the use of the Accurint system, his training did not include a right to "test" the system by searching himself, his family, or friends; further, the Employee had legitimate reasons to use the system for searching for next of kin of clients, as well as assets and properties that might have been owned by the clients, and those uses were ideal for training with the assistance of his assigned mentor and other staff.

Employee is guilty of conduct unbecoming, in that as a Deputy Public Administrator - Guardian, the Employee was in a position of trust and served as a fiduciary to clients of the Department. More importantly, there is a responsibility to the public that the Employee, in the position of Deputy Public Administrator - Guardian, should respect the privacy rights of members of the public and should not use County equipment and software unless it is for appropriate business purposes. Eleven (11) non-business-related searches over a one-year period is not indicative of "training," and although some peers anecdotally mentioned that they were allowed to search themselves when first testing the software and system for accuracy, there was no need for the Employee to "test" the system for accuracy.

It is important to note that the Department should discontinue the practice of either passively allowing or even suggesting that employees are allowed to search themselves when first testing the software and system for accuracy as was suggested in the testimony of multiple witnesses. Doing so is a violation of County policy and creates an inconsistent message for staff. That being said, even if it were a mitigating factor the six times the employee searched for himself, it does not explain his searches for E.N. or his wife, nor his brother, his brother's wife, or his brother's ex-wife. These actions not only violated Civil Service Rules, they were also creepy.

Employee is guilty of failure of good behavior, in that the Employee was not forthright in the Department's investigation, making multiple excuses for conducting the 11 searches of six individuals, none of which acknowledged that he intended to locate information on persons, including himself.

There is no reason that the Employee could not have trained himself by searching on behalf of clients of the Department, whose files were assigned to him. While perhaps tedious, and slow (initially) there is no better way to learn than properly using the system. The Employee was not told by his supervisor that he could search himself, his friends, or family members as a part of training. On the contrary, even if he was told to do so, every banner, policy, and warning regarding the prohibition on such uses was ignored. If there was a question, he could have simply spoken with his supervisor to obtain permission to conduct the searches.

The Employee explains his conduct either as mistakes on his part (at best) or blames it on an effort by his employer to rid the office of complainers through deceit or bullying (at worst). Yet there is no evidence presented to support the notion that the Department did anything to remove employees who felt adversely affected by the reorganization or turned a blind eye to interdepartmental dissension. Testimony from his witnesses ranged from speculation to what appeared to be unsubstantiated ax grinding by (mostly) former employees.

The Employee does admit that he performed the searches that resulted in the notification from LexisNexis of unusual search activity on his part; however, in his defense, he attempts to explain them away, by comparing what occurred in 2019 and 2020 (when the Department was testing the efficacy of Accurint as a new search tool) with his training in using

the now-accepted software to perform his duties as a Deputy Public Administrator-Guardian.

The circumstances are not the same.

Accordingly, the Department has met its burden to establish the violations occurred and are not only inexcusable but are unacceptable. Employee can no longer be trusted to use County or Accurant data in a responsible manner for business purposes only. His failure to follow County policy and respect the public's privacy put at risk the County's licensing agreement to have access to the data it needs to perform important services for clients of the Public Administrator/Public Guardian. Therefore, Employee's removal from the position of Deputy Public Administrator-Guardian is appropriate.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of Removal and Charges be affirmed and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Rodriguez-Kennedy for approval of the decision by the Commission; seconded by Commissioner Johnson. Motion passed with all in favor.

SELECTION PROCESS

Findings

5. **2024-047**, Applicant, appealing the Department of Human Resources' removal of their name from the employment list for Deputy Probation Officer.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2 and their name have been returned to the employment lists.

Ratified.

EXTENSION OF TEMPORARY APPOINTMENTS

6. Health and Human Services Agency

1 Quality Assurance Specialist: **2024-048**

2 Office Assistant: **2024-049** and **2024-050**

5 Administrative Analysts I: **2024-051, 2024-052, 2024-053, 2024-054, and 2024-055**

1 Health Planning & Program Specialist: **2024-056**

RECOMMENDATION: Ratify

Item No. 6 Ratified.

7. Office of the Public Defender

1 Social Worker I: **2024-057**

RECOMMENDATION: Ratify

Item No. 7 Ratified.

ADJOURNED: 3:07 pm

ASSISTANCE FOR THE DISABLED: Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.