

CIVIL SERVICE COMMISSION MINUTES

December 6, 2024

An adjourned 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:

Bryan J. Fletcher
A. Melissa Johnson
Will Rodriguez-Kennedy

Absent:

P. Kay Coleman

Comprising a quorum of the Commission

Support Staff Present:

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

Approved
Civil Service Commission
January 15, 2025

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
ADJOURNED REGULAR MEETING MINUTES
DECEMBER 6, 2024**

- 2:00 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: CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION (GOV. CODE SEC. 54956.9(a)) Christopher L. Ludmer, Esq., on behalf of **2023-031**, Public Defender Investigator II, and **2023-032**, Public Defender Investigator II, alleging discrimination by the Office of the Public Defender.
- B. Commissioner Rodriguez-Kennedy: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) **2024-001**, former Residential Care Worker II, 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: Fletcher, Johnson, Rodriguez-Kennedy

Absent: Coleman

B. **APPROVAL OF MINUTES:** Regular meeting of November 6, 2024.

Motion by Commissioner Rodriguez-Kennedy to approve the minutes of November 6, 2024; seconded by Commissioner Johnson. Motion passed with all in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

There was one request to speak by Christopher L. Ludmer, Esq.; but Mr. Ludmer withdrew this request.

E. **FORMATION OF CONSENT AGENDA**

Item Nos. 1 & 2 were automatically pulled for discussion.

Item Nos. 3-5 were available for approval on the Consent Agenda.

Motion by Commissioner Johnson to approve the Consent Agenda; seconded by Commissioner Rodriguez-Kennedy. Motion passed with all in favor.

F. **DISCUSSION ITEMS**

AGENDA ITEMS

DISCRIMINATION

Findings

1. Commissioner Rodriguez-Kennedy: Christopher L. Ludmer, Esq., on behalf of **2023-031**, Public Defender Investigator II, and **2023-032**, Public Defender Investigator II, alleging discrimination by the Office of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

The Civil Service Commission appointed Commissioner Will Rodriguez-Kennedy, as its member to be the investigating officer in the matter of the discrimination complaints submitted by Employee 2023-031 and Employee 2023-032 ("Employees"), Public Defender Investigator IIs. Employees alleged discrimination based on age and race by the Office of

the Public Defender ("Department") regarding their non-selection for the classification of Public Defender Investigator III. Additionally, Employee 2023-031 alleged discrimination based on protected activity (retaliation). In accordance with the established rules and procedures of the Commission, the matter was concurrently referred to the Office of Ethics and Compliance ("OEC") for investigation.

On the same date Employees filed their discrimination complaints, August 11, 2023, Employees also filed Petitions to Appeal Selection Process regarding their non-selection for the Public Defender Investigator III classification. In it, Employees allege the Department's selection process decisions were biased, and retaliatory. Since the Employees learned they were not selected on July 19, 2023, their petitions should have been filed with the Commission office by August 3, 2023. The petitions were filed on August 11, 2023, making them eight (8) days late. According to the Employees' representative, the delay was caused by "inadvertence" and that they "were not given any notice related to the failure to promote of any deadline to file an appeal with the Civil Service Commission or any other County body, or even the right to do so." Additionally, the Employees' representative states that while Employees "were informed of the promotion decisions on July 19, 2023, both were unaware of the identities of the other applicants who were rejected until much later (on or about July 27, 2023). They needed this information, in part, to compare with themselves and with the candidates promoted to have a clearer picture of the full scope of the effects of the selection process."

In the interest of fairness and due process, the Commission should determine that good cause exists to accept the late petitions.

Since the allegations in the Petitions to Appeal Selection Process were substantially similar and related to the allegations in the discrimination complaint, the Petitions were held in abeyance pending the outcome of the discrimination investigation.

The OEC concluded the discrimination investigation and has reported its findings to the Commission. The Investigating Officer has received and reviewed OEC's report and has taken into consideration all documentation submitted in this matter. The Investigating Officer concurs with OEC's Report and has concluded that: Employees' allegations of discrimination based on age and race are unsubstantiated.

Additionally, Employee 2023-031's allegation of discrimination based on protected activity (retaliation) is unsubstantiated. However, there is a preponderance of evidence to support that non-job-related factors were used in the selection process for Public Defender Investigator III, which, if true, would be a violation of Charter Section 901 and Civil Service Rule VI.

Civil Service Rule 6.1.3 states: "If OEC finds probable cause of a violation of Charter Section 901... the Commission shall conduct a hearing".

It is therefore recommended that:

1. Employees' matters proceed to a hearing under the provisions of Civil Service Rule VI regarding the finding of probable cause that non-job-related factors were used in the selection process for Public Defender Investigator III.
2. Employees' late Petitions to Appeal Selection Process (Rule X) be accepted and granted, and the hearing be held in conjunction with the Rule VI hearing.
3. That Commissioner Rodriguez-Kennedy be assigned as the hearing officer to conduct the hearing.
4. That the Commission approve and file this report with a finding of probable cause to believe that the Employees may have been discriminated against; and
5. That a copy of this report, the discrimination complaints, the report of OEC, and the Petitions to Appeal Selection Process be served upon the parties within five working days of this decision.

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

DISCIPLINE

Findings

2. Commissioner Rodriguez-Kennedy: **2024-001**, former Residential Care Worker II, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Appellant 2024-001 ("Employee") appealed a Final Order of Removal and Charges removing her from the class and position of Residential Care Worker II in the Health and Human Services Agency ("Department") was presented to the Civil Service Commission. The Commission appointed Commissioner Will Rodriguez-Kennedy, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, the matter was duly noticed; and a hearing was held on November 7, 2024.

The causes of discipline were negligence, inefficiency, and conduct unbecoming an employee of the County for sleeping on the job and failure to adequately supervise a youth at Polinsky Children's Center.

The appeal in this matter was filed on January 9, 2024, by Employee's representative, SEIU Local 221. As early as January 25, 2024, the Employee was aware that SEIU Local 221 would not be representing them in this matter. Subsequently, multiple attempts were made by staff to contact Employee to confirm that she still wanted to go forward with her appeal. Initially, Employee stated that she wanted to proceed with the appeal. However, she was not productively responsive to staff's attempts to schedule a hearing. Since March 2024, Employee did not respond to staff's many emails and phone calls. On one occasion, the Commission Secretary was able to make phone contact with Employee. The Commission Secretary explained to her why she was calling, and Employee hung up on her.

Staff continued to call and email Employee, but there was no answer or response to the many attempted contacts. Finally, staff sent letters on two separate occasions to Employee's mailing address, but again there was no response. In the letter (which staff also emailed her) Employee was informed that if she failed to contact us, her appeal may be considered abandoned. Staff still did not receive a response, and staff had not been informed of any forwarding address for Employee. Staff prepared a staff report for the Commission to consider deeming Employee's appeal abandoned and placed the item on the agenda of the Commission's August 7, 2024, regular meeting. Copies of the staff report, and meeting agenda were sent to Employee's last known email and mailing addresses notifying her of the recommendation to deem her appeal abandoned. One hour before the August 7th Commission meeting, Employee emailed the Commission office stating, "I am not

Abandoning my appeal" and further requested that staff "Please stop harassing me with repeated emails and phone calls when I have expressed, I will contact you when I am ready to appeal." After consulting with the Hearing Officer and the Commission's legal advisor, it was decided to take the item off the agenda and give Employee one more opportunity to participate in her hearing.

Thereafter, the Commission's Executive Officer informed Employee that staff would schedule the hearing forthwith. Employee was informed that if she is non-responsive to staff's attempts to contact her, the hearing date will be set without Employee's input. Additionally, Employee was made aware that if she refused or failed to appear at the hearing, the Commission may dismiss the appeal and affirm the order of removal."

The Commission Secretary reached out to Employee on several occasions, both by phone, email and US mail, about setting the hearing, but there was no response. Subsequently, on September 4, 2024, Employee's hearing was set for Thursday, November 7, 2024. The scheduling letter was sent to Employee via email and US mail. Again, there was no response or acknowledgement from the Employee.

Approximately two weeks before the hearing date, there were additional attempts by staff to contact the Employee about the hearing but there was no response.

On November 7, 2024, at 9:00 a.m., the time and place set for the hearing, the Employee was not present. The hearing was convened at 9:15 a.m. and after noting the Employee was not present the hearing was recessed until 9:30 a.m., to allow ample time for the Employee to appear for her hearing. After resuming, the Department was asked to summarize their attempted contacts with Employee and whether she responded. Ramona Maag, Senior Departmental Human Resources Officer, stated they attempted contact by phone and email on October 30, November 5, and November 6, 2024, including two times via text. Employee did not respond to any of those attempted contacts. The Department moved to have its exhibits 1-16 outlining the Department's case in support of the Final Order of Removal and Charges be accepted into evidence. There being no opposition due to the Employee's absence from the proceeding, the Hearing Officer granted the motion.

Based on the evidence presented by the Department and the circumstances recited herein, the Hearing Officer, having

found Employee failed to appear for her hearing after being duly noticed, cited Civil Service Rule 7.7.5 which provides that "[i]f the employee refuses to appear or fails to appear, the Commission may... dismiss the appeal and affirm the order of... removal." The hearing was adjourned.

Based on the above, it is hereby recommended that:

1. The Commission determine that Employee's appeal be dismissed for failing to appear at the duly noticed hearing.
2. The evidence presented by the Department supports the charges set forth as the causes of discipline therein, and herein.
3. The Department's Final Order of Removal and Charges be affirmed; and
4. 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.

EXTENSION OF TEMPORARY APPOINTMENTS

3. Health and Human Services Agency

2 Quality Assurance Specialists: **2024-058** and **2024-059**

1 Laboratory Assistant: **2024-060**

1 Communicable Disease Investigator: **2024-061**

RECOMMENDATION: Ratify

4. Assessor/Recorder/County Clerk

2 Assessment Clerks: **2024-062** and **2024-063**

RECOMMENDATION: Ratify

Ratified.

INFORMATION

5. **2024-029**, former Human Services Specialist, withdrawal of complaint alleging discrimination by the Health and Human Services Agency. (Commissioner Coleman)

Withdrawn.

ADJOURNED: **2:55 p.m.**

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.