

COUNTY OF VENTURA
civil service commission
BOARD OF REVIEW AND APPEALS



Commissioners
Don Becker
Alyse M. Lazar
Haywood Merricks III
Joyce A. Taylor
James Vandenberg

MINUTES
REGULAR BUSINESS MEETING
THURSDAY, OCTOBER 23, 2014
9:30 a.m.
County of Ventura Government Center
Hall of Administration
LOWER PLAZA ASSEMBLY ROOM

- I. **CALL TO ORDER** - Chair Merricks called the meeting to order at 9:30 a.m.
- II. **ROLL CALL** - Commissioners present: Chair Merricks, Vice-Chair Becker, Commissioners Vandenberg, Lazar and Taylor. Staff present: Cheryl Shaw, Commission Assistant and Roberto Orellana, Law Advisor to the Commission.
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MINUTES FOR APPROVAL** – The minutes of the Regular Business Meeting of September 25, 2014, were approved on motion by Commissioner Lazar, and seconded by Commissioner Vandenberg.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** – Status Report, Anthony Sheppard (IT Services) #13-102-19-04.

Joseph Randazzo, Assistant County Counsel, made a special appearance on behalf of Thomas Temple, counsel for IT Services. Mr. Randazzo stated he had been notified that a settlement in the matter has been reached. Chair Merricks directed Ms. Shaw to keep the matter on the Commission’s agenda as old business until a notice of settlement is filed.
- VII. **NEW BUSINESS** – None.
- VIII. **REQUEST FOR HEARING** – None.
- IX. **REQUEST FOR INVESTIGATION** – Criminal Justice Attorneys’ Association of Ventura County request for investigation relating to procedure utilized to fill vacancy for Attorney III position within District Attorneys’ Office, Case #14-281-03-02.

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Christina Stokholm appeared as counsel for the Criminal Justice Attorneys' Association of Ventura County (CJAAVC). Matthew Smith, Assistant County Counsel, appeared on behalf of the District Attorney's Office and the County of Ventura.

With regard to the response letter filed by the District Attorney's Office, Ms. Stokholm stated that although the appointment of that individual, Mr. Kennan, did raise questions within the District Attorney's office, the concern is that there currently exists a very deep pool of qualified individuals from which the appointment could have been made, yet Mr. Kennan was appointed via a lateral transfer from a different County. Ms. Stokholm argued that Civil Service Ordinance, section 1345-1.4.7 provides that vacancies within the classified service must be filled either by promotion, or by departmental, county-wide open examination. To permit someone to fill a position without utilizing the competitive process is counter to the Ordinance. The District Attorney's argument relies on an administrative procedure that was approved by the County Executive Officer but was not approved by the voters or the Board of Supervisors.

In addition, Ms. Stokholm asserts that if the County has always utilized the lateral appointment procedure to hire individuals to the classified service as they contend, then that is all the more reason for the Commission to investigate this practice. CJAAVC further disputes that elimination of the lateral transfer procedure would negatively impact recruitment and appointments of qualified persons, as the procedures outlined in the civil service system act as a check to insure that the mandates of the Civil Service Ordinance is followed. Those mandates require hiring the best person for the job based on merit and the competitive process. Ms. Stokholm urged the Commission to undertake an investigation as the County should not be allowed to circumvent hiring through the competitive process as it is conceivable that open positions could otherwise be filled by motives such as the granting of political favors and the like. CJAAVC is requesting that the Commissioner recommend to the Board of Supervisors that any person desiring a lateral transfer to Ventura County be required to compete for the position as required by the County's Personnel Rules and Regulations and the County Civil Service Ordinance.

In response to Vice-Chair Becker's question, Ms. Stokholm stated that the Deputy Sheriff Lateral Transfer job posting example referenced in CJAAVC's request letter does provide that a candidate who meets the entrance requirements is not assured either continuance in the process or placement on an eligible list. Vice-Chair Becker pointed out that the Administrative Policy Manual section regarding Lateral Transfer from Outside the County Service, submitted by the District Attorney's Office, requires certain conditions be met in order to effectuate a lateral transfer from another public agency, and questioned whether these conditions had been met with regard to the appointment of Mr. Keenan. Commissioner Vandenberg inquired whether or not the entire issue of lateral transfers should be addressed by the collective bargaining process rather than by an investigation by the Commission. Ms. Stokholm stated that the Civil Service Commission was vested with the right to investigate any aspect of the civil service system and CJAAVC contends this is a county-wide issue and not just one specific to individual bargaining units.

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Mr. Smith argued that the reason this issue is before the Commission is due to CJAAVC's desire to challenge the transfer of the particular individual who was subject to the appointment. He stated that the lateral transfer procedure is an important tool which allows Ventura County to seek qualified individuals from other public agencies, and that the first version of the transfer procedure dates back to 1964. Mr. Hughes, the Chief Assistant Deputy District Attorney, who was also present, was hired by the lateral transfer process. Ms. Smith stated that and according to Kelly Shirk, the Director of Human Resources, the lateral transfer process is used approximately six times per year County wide for filling positions.

Mr. Smith argued the Personnel Rules and Regulations are very clear in that Section 714 specifically provides for lateral transfers as an alternative to appointments from an eligible list. Further, section 1006 defines "transfer" as a change from one public agency to another, which the District Attorney contends includes a transfer from a county, district, city or municipality.

In response to Commissioner Lazar's inquiry, Mr. Smith agreed that the Commission has the authority to conduct investigations, but that in this particular instance it appears that CJAAVC is not questioning application of the Rules as much as trying to prohibit the appointment of a particular individual. Mr. Smith confirmed that the appointee, Mr. Keenan, has accepted the appointment but has not yet started work.

Commissioner Lazar's inquired whether any action taken by the Commission in this matter would affect the appointment of Mr. Kennan. Mr. Orellana stated that the Commission was being asked to undertake an investigation, the results of which would be reported to with recommendations to the Board of Supervisors. It is his understanding that Mr. Kennan would still be required to serve a probationary period, but further research would be needed to determine who, if anyone, could direct the District Attorney regarding hiring or retention of a particular employee. Mr. Orellana additional stated that the Commission had the authority to conduct any investigation which impacts the civil service system such as the one presented. He advised further briefing may be in order regarding the history of the Personnel Rules and Regulations and the fact that bargaining units, although having agreed to what is contained in the Rules can still modify them through the collective bargaining process. Also, the scope and recommendations of the investigation may be broader in that there are County employees who are not represented by bargaining units. Mr. Orellana further recommended the parties brief and analyze Ordinance Section 1345-1.7 which contains particular terms which are subject to ambiguity.

Vice-Chair Becker questioned whether or not the process outlined in Section 714 was even followed for the appointment of Mr. Keenan. He further stated that the fact the County has utilized the process for many years does not equate to the process being correct. He requested that the Commission be provided with documentary evidence and/or testimony regarding the issue of whether the Rules allow for the use of lateral

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transfers, what procedures are used or followed for implementing the procedure, and what is the definition of the term "public agency". He stated that the County of Ventura has an internal "public agency" which is the Fire Protection District and questioned whether it was possible the term is being used to refer to such internal public agencies rather than other county agencies and municipalities.

Commissioner Lazar also questioned the rigors of other county's hiring processes and whether or not they utilize a process as competitive as Ventura County as it is difficult to assess the issue of lateral transfer when the Commission has no information of if they are comparing equivalent or similar competitive hiring processes.

Mr. Orellana clarified in response to Commissioner Vandenberg, that the Personnel Rules can be superseded or modified by bargaining agreements an example of which is when disciplinary actions are subject to arbitration rather than brought before the Commission.

Vice-Chair Becker made a motion that the Commission conduct the investigation and that the parties bring forth evidence and testimony to supply the answers to the Commission's questions. Commissioner Lazar added that the parties should address the issue of whether or not the lateral transfer process is separate and distinct from the Personnel Rules or whether the two processes have to be considered together. Commissioner Taylor seconded the motion.

Mr. Smith argued that with regard to the questions raised by the Commission the District Attorney's argument is that there is no conflict between the Personnel Rules and Regulations the Civil Service Ordinance, as the Ordinance mandates what the Personnel Rules are to provide for, and Ordinance Section 1345-1.7 explain how vacancies shall be filled. The Ordinance simply does not prohibit the use of lateral transfers. He further stated that the Administrative Policy Manual sets forth various procedures regarding how the County is to implement the Personnel Rules. Vice-Chair Becker responded by stating that any administrative rules that are developed to effectuate the Personnel Rules still fall squarely under the Commission's purview.

Commissioner Vandenberg reiterated that he felt the issue of lateral transfers should be addressed by the collective bargaining process and that the Commission should not undertake an investigation.

Chair Merricks moved that the Commission grant the request for investigation and obtain additional facts from the parties to answer the specific questions the Commission has posed. The motion was seconded by Commissioner Lazar. Vice-Chair Becker withdrew his original motion. The Commission voted, 4-1 to conduct the investigation which will commence on Monday, November 17, 2014, at 9:00 a.m. Written briefs submitted by the parties must be received by Ms. Shaw no later than November 13, 2014.

X. INFORMATIONAL – None.

XI. COMMISSION/STAFF COMMENTS – Presentation of the Commission's quarterly activities report to the Board of Supervisors.

Upon motion by Commissioner Vandenberg, seconded by Commissioner Taylor, the Commission voted unanimously to direct the Chair to sign the quarterly report letter to the Board of Supervisors for its next business meeting.

Ms. Shaw also reported that she has completed scanning approximately 450 documents from the Commission's archived meeting minutes. Once the archived minutes are completed she will proceed to scan the archived Decisions and Orders of the Commission.

Ms. Shaw also reported that she recently met with Jon Lin of CEO IT Services in order to complete a technology wish list for the Commission's office. Currently IT Services plans to immediately replace the voice recorder used to record the Commission's meetings and hearings. There are also plans to replace the office laptop and printer next fiscal year.

Ms. Shaw also stated she received a request from Stephen Millich, one of the Commission's outside law advisors, asking the Commission to agendize for consideration a modification to his contract for next fiscal year which would eliminate the 4-hour minimum provision and replace it with a \$500 per month retainer provision to be credited against billings. The Chair directed Ms. Shaw to agendize the matter and to also prepare a memorandum summarizing the amounts paid to Mr. Millich over the past several years in preparation for a discussion regarding the matter.

XII. ADJOURNMENT – The meeting was adjourned at 10:45 a.m.