

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, DECEMBER 11, 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, Roberto Orellana, Law Advisor to the Commission, and Jim Dembowski (IR).
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MINUTES FOR APPROVAL** – The minutes of the Regular Business Meeting of October 23, 2014, were approved on motion by Vice-Chair Becker, and seconded by Commissioner Taylor.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** – Ms. Shaw stated that the notice of settlement regarding the appeal of Anthony Sheppard, Case #13-102-19-04, has been received.
- VII. **NEW BUSINESS** – Request from Stephen Millich, Outside Law Advisor, to amend contract terms for 2015/2016 fiscal year.

The Commission undertook a discussion regarding Mr. Millich's written request, dated October 28, 2014, to modify his contract to provide for a \$500 monthly retainer. Mr. Orellana indicated that the January 28, 2011, Arbitration Advisory Opinion regarding enforcement of non-refundable retainer provisions, forwarded by Commissioner Lazar, was instructive on explaining the different types of retainer agreements. A true retainer is non-refundable in that the money paid is considered earned upon receipt regardless of the work that is done. A refundable retainer is one in which work is billed against the retainer deposit and then refunded if in excess of the work actually billed. Mr. Orellana cautioned that with respect to the law advisor's contracts, creating a true retainer

agreement could be problematic due to the expenditure of public funds and, therefore, a finding would need to be made that payment of the retainer was in the public interest.

Commissioner Vandenberg stated that he would like to see the contract for both of the outside law advisors contain the same terms and inquired whether Lee Cooper, the Commission's other outside law advisor, had made any requests. Ms. Shaw stated that Mr. Cooper had informed her that he would like to see included both mileage and accommodation reimbursement terms. Vice-Chair Becker suggested that the contracts could be modified to reflect a change in rate based upon years of service. Chair Merricks expressed that his preference would be to increase the hourly rate, rather than providing any retainer.

Commissioner Lazar suggested that staff contact Mr. Millich to see if he was amenable to some other change in contract terms, such as an increased hourly rate, that did not include payment of a retainer. The remaining members agreed with the suggestion and Ms. Shaw was directed to call Mr. Millich to explore other options and to agendize this matter for further review and possible action at the January meeting.

VIII. REQUEST FOR HEARING – None.

IX. REQUEST FOR INVESTIGATION – None.

X. INFORMATIONAL – Commissioner Vandenberg inquired as to whether Commissioners were considered County employees in that the per diem payments received now reference an employee number. Mr. Orellana stated that they were paid per-diem volunteers.

XI. COMMISSION/STAFF COMMENTS – Question and answer session regarding California Supreme Court decision in *Riverside County Sheriff's Department v. Jan Stiglitz*, filed December 1, 2014, relating to *Pitchess* motions.

Ms. Shaw thanked Vice-Chair Becker for forwarding the California Supreme Court decision to the office for distribution. Mr. Orellana stated that the opinion was well-reasoned and discussed in detail all arguments regarding allowing *Pitchess* motions to be brought before administrative bodies, and that the Supreme Court's conclusion is that bodies, such as the Civil Service Commission, can hear and decide *Pitchess* motions.

He further stated that, since the Commission already is holding confidential hearings for peace officers (pursuant to the *Copley Press* decision), the confidential nature of non-party officers' personnel records would be maintained during such proceedings, unless a closed hearing was waived by the petitioner. Mr. Orellana warned that the content of

such documents (whether found in transcripts and exhibits, or otherwise) may need to be filed under seal for any matters that are not closed or are appealed to the Superior Court. Commissioner Lazar agreed, and note that a petitioner entitled to a closed hearing under *Copley* can request the hearing be open to the public and reiterated that there are specific statutory procedures that have to be followed with regard to bringing a *Pitchess* motion. Mr. Orellana noted that, unlike the normal situation (where only a party's records were at issue), the Commission needs to do what it can to protect non-parties' records from improper disclosure whenever they permit their use after a *Pitchess* motion is heard.

Following a further brief discussion regarding filing records under seal, staff was directed to draft language to be included in decisions and orders rendered in confidential closed appeal hearings regarding the need for the parties to file documents under seal to protect the confidentiality of non-parties' records.

Ms. Shaw reported that the closed disciplinary appeal hearing held this week has concluded and the parties notified of the decision. She also stated that the new recording equipment, which she tested earlier this week, is working well and should substantially improve the sound quality of the recordings of the Commission's meetings and hearings. Ms. Shaw noted that she has completed scanning all of the Commission's historical minutes dating back to 1977 and is currently working on scanning older minute orders and decisions of the Commission. She will be attending training next week on the County's new website platform so she can resume maintenance of the Commission's website, a function was temporarily unavailable due to a system upgrade.

Ms. Shaw then reminded Commissioners that future requests for each of them to file Form 700 Statements of Economic Interest would be made by the Clerk of the Board of Supervisors, who now is the filing officer for such forms, pursuant to the recent amendment to the Commission's Conflict of Interest Code.

Vice-Chair Becker pointed out that, in the future, Commissioners should be mindful of language used by the Supreme Court in the *Riverside County Sheriff's Department v. Jan Stiglitz* case, discussed earlier, when interpreting statutes and ordinances, that is, if the language is unambiguous then the words' plain meaning controls and, whenever possible, significance must be given to every word in pursuing the legislative purpose and, as is required of courts, Commissioners should avoid a construction of such language that renders any words surplusage.

XII. ADJOURNMENT – The meeting was adjourned at 10:15 a.m.