

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, JANUARY 22, 2015
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 Special Meeting of November 17, 2014, were approved on motion by Commissioner Lazar, and seconded by Commissioner Vandenberg. The minutes of the Regular Business Meeting of December 11, 2014, were approved on motion by Commissioner Vandenberg, seconded by Commissioner Lazar.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** –
 - A. Continue Investigative Hearing regarding the Criminal Justice Attorneys' Association of Ventura County's request pertaining to lateral transfer procedure utilized to fill vacancy for Attorney III position within the District Attorneys' Office; Case #14-281-03-02. (continued from November 17, 2014)

Christina Vanarelli appeared as counsel for CJAAVC, along with Margaret Coyle, Vice-President of CJAAVC. Matthew Smith, Assistant County Counsel, and Chuck Hughes, the Chief Assistant Deputy District Attorney, appeared on behalf of the District Attorney's Office and the County of Ventura. Kelly Shirk, Ventura County Human Resources Director, was also present, as previously requested by the Commission. Ms. Shirk was asked to respond to questions from Commissioners. However, before any questions were addressed to Ms. Shirk, Commission Vandenberg raised a point of order.

MINUTES
Civil Service Commission
January 22, 2015

Commissioner Vandenberg stated that the Criminal Justice Attorneys' Association recently filed a civil suit involving the same facts presented to the Commission for investigation and expressed concern that moving forward with the investigation at this time would impact the pending civil case. As such, Commissioner Vandenberg moved that the Commission suspend taking any further action while the civil case is pending. Vice-Chair Becker seconded the motion, after which the Commission discussed the issue.

Commissioner Lazar commented that the current request before the Commission appears to be broader in scope than that of the civil action which deals with a specific hiring decision. The Commission is being asked to determine if County Human Resources in fact is following the Personnel Rules and Regulations and County hiring practices and policies with respect to the lateral transfer rule. To the extent that the County is not, or cannot, follow the County rules and policies, the Commission is obligated to report to the Board of Supervisors and suggest changes to assist Human Resources in implementing the rules in accord with the Civil Service Ordinance.

Vice-Chair Becker stated that in making a determination regarding the investigation, the Commission would have to analyze the language of the rule and how it is being implemented by County staff. He further stated that the Commission's interpretation of the rules could impact the civil case. In response to an inquiry from Commissioner Lazar, Mr. Orellana stated that it would be up to the court to decide whether or not to take judicial notice of the results of the Commission's investigation and that he could only speculate on whether that might happen.

Chair Merricks commented that the issue presented both by the investigation and the litigation is how much latitude Human Resources or a department within Ventura County has to laterally transfer a person from another county into a particular job under the Civil Service Ordinance and agreed that the Commission should defer further investigation until completion of the civil case.

Responding to a question from the Commission regarding the causes of action in the lawsuit, Ms. Vanarelli stated that the complaint contains one cause of action for declaratory relief and alleges facts that are very similar to the arguments set forth in the request for investigation filed by her client with the Commission. CJAAVC's position in both forums is that the rules only allow for transfers within the County of Ventura and outside candidates must go through the competitive hiring process. CJAAVC is specifically asking the court to invalidate the recent hiring, by transfer, of an individual from a management position in the Fresno District Attorney's Office to an Attorney III position within the Ventura County District Attorneys' Office.

Commissioner Lazar stated that, based upon the representation made by Ms. Vanarelli, she would now support the motion by Commissioner Vandenberg. The Chair then asked if the County had any comments on the pending motion. Mr. Smith stated that he had no comment and would simply await the Commission's decision on the pending motion.

MINUTES
Civil Service Commission
January 22, 2015

The Chair then called for a vote and the motion that the Commission suspend taking any further action on the pending investigation while the civil case is pending in court passed by unanimous vote.

B. Request from Stephen Millich, Outside Law Advisor, to amend contract terms for 2015/2016 fiscal year. (continued from December 11, 2014)

Ms. Shaw stated that she had spoken to Mr. Millich regarding his original request and he was amenable to the Commission considering a raise to the hourly rate rather than an annual retainer. Mr. Cooper had expressed to Ms. Shaw that he would like consideration of being reimbursed for travel expenses and mileage. Vice-Chair Becker indicated it would be appropriate to increase the hourly rate but still wanted to discuss instituting an increase to coincide with some time frame or seniority basis. In response to Commissioner Lazar, Ms. Shaw indicated that the attorney contracts expire on June 30, 2015, so any changes to the contract should be discussed and finalized by April to allow adequate time for the new contracts to be drafted and approved.

Ms. Shaw stated that the current contract rate for the Commission's outside law advisors is \$160 per hour. By comparison, County Counsel, which provides legal services for the Commission as well as other County agencies, charges \$190 per hour. Chair Merricks asked whether or not the rate would have to be approved by the Board of Supervisors. Ms. Shaw stated that she would have to discuss the matter in more detail with fiscal but felt that as long as the number of hearings remains relatively small, the rate increase could be incorporated into the contracts without affecting the Commission's overall annual budget.

Commissioner Vandenberg stated that the hourly rate should be raised but was not amenable to adding reimbursement for mileage and travel expenses. He also said that he did not support any seniority pay as the position of outside law advisor is not a County position but an outside vendor contract. Commissioner Lazar agreed that the Commission should support the raise to \$190 per hour as this may alleviate the difficulty in filling vacancies which the Commission experienced when it last advertised the position. With respect to the mileage issue, Ms. Shaw stated that the current contracts contain a 4-hour minimum provision so that if one of the law advisors is requested to be present in Ventura, they are paid a minimum of four hours for that appearance. Mr. Orellana clarified that County Counsel is not actually paid on the \$190 rate, it is merely a cost allocation figure used by the Auditor Controller's office to recoup fees for services rendered by County Counsel to other agencies.

In response to an inquiry from Commissioner Lazar, Ms. Shaw stated that the Commission's performance reviews of its law advisors are conducted in March or April each year, prior to contract renewal. Vice-Chair Becker stated that if, at that time, the Commission did not want to renew a contract, they simply should chose not to do so and not pay a lower rate to any outside advisor. In response to a question from the

MINUTES
Civil Service Commission
January 22, 2015

Commission, Mr. Orellana explained that performance reviews could be discussed in closed session but anything to do with salary or budget must be done in open session under the terms of the Brown Act.

Upon motion by Commissioner Vandenberg, seconded by Vice-Chair Becker, the Commission voted unanimously to raise the hourly contract rate for the outside law advisors to \$190 per hour effective with contract renewal.

VII. NEW BUSINESS – Calendar review regarding Commission’s 2015 regular business meeting dates.

Ms. Shaw stated that, after reviewing the calendar of meeting dates for 2015, it does not appear that there are any meeting date conflicts except for the September 24th meeting as Yom Kippur is set to begin on the 22nd. Commissioner Lazar noted that the issue is one both for Commissioners and those appearing before the Commission, After determining that the Yom Kippur observance would have concluded before the regular meeting date, the Commission directed staff to keep on calendar the regular business meeting on September 24th but to not schedule any hearings earlier that week.

VIII. REQUEST FOR HEARING – None.

IX. REQUEST FOR INVESTIGATION – None.

X. INFORMATIONAL – None.

XI. COMMISSION/STAFF COMMENTS –

- A. Presentation of quarterly report to Board of Supervisors regarding Commission’s activities and hearings.

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

- B. Review draft notice to be included with the service of Decisions and Orders of the Commission when an appeal hearing involves confidential information of non-party officers’ personnel records subject to the decision in *Copley Press Inc. v. Superior Court*.

Mr. Orellana reminded the Commission that, in view of the recent California Supreme Court’s decision that administrative bodies, such as the Civil Service

MINUTES
Civil Service Commission
January 22, 2015

Commission, can hear and decide *Pitchess* motions, Ms. Shaw and he had been tasked with drafting a notice to protect the privacy rights of non-parties to the disciplinary appeal process whose records may be introduced into evidence during such hearings. The Notice would only need to be added to Commission decisions when a record of a closed hearing before the Commission contains information relating to third parties protected by the *Copley Press* decision.

Upon motion by Vice-Chair Becker, seconded by Commissioner Vandenberg, staff was directed to append the Notice to any decisions and orders if the record contains information regarding non-parties that may be subject to confidentiality under the terms of the *Copley Press* case. Ms. Shaw was further directed to circulate the Notice to the Commission's outside legal advisors. Mr. Orellana noted that the Notice could be amended in any case to which it might apply and that the Commissioners should look to their law advisors on each such matter for direction in that regard.

C. Technology and website update.

Ms. Shaw stated that she has completed training to resume maintenance of the Commission's website. She also indicated that she was continuing to work with IT and the fiscal analyst to provide budgeting for the purchase of tablet style computers for appeal hearings, on which tablets briefs and exhibits could be downloaded to reduce the volume of paper otherwise needed for the Commissioners to conduct such hearings. In response to questions from the Commission, Ms. Shaw noted that conversion to a computerized system will greatly reduce paper usage and the tablet technology will allow Commissioners to electronically make and review notes on documents on the tablets.

XII. ADJOURNMENT – The meeting was adjourned at 10:30 a.m.