

civil service commission

BOARD OF REVIEW AND APPEALS



Commissioners

James Vandenberg - Chair
Patricia S. Parham - Vice Chair
Donald Becker
Alyse M. Lazar
Vincent R. Stewart

**MINUTES
REGULAR BUSINESS MEETING
Thursday, February 28, 2019
9:00 a.m.
County of Ventura Government Center
Hall of Administration
LOWER PLAZA ASSEMBLY ROOM**

- I. **CALL TO ORDER** – Chair Vandenberg called the meeting to order at 9:00 a.m.
- II. **ROLL CALL** - Commissioners present: Chair Vandenberg, Vice-Chair Parham, Commissioners Becker and Lazar. Staff present: Cheryl Shaw, Commission Assistant, Roberto R. Orellana and Grant Burton, Law Advisors, and Mike Curnow (IR).
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MINUTES FOR APPROVAL** – The minutes of the Regular Business Meeting of January 24, 2019, were approved on motion by Commissioner Lazar and seconded by Vice-Chair Parham.
- V. **PUBLIC COMMENTS** – None.
- VI. **OLD BUSINESS** – None.
- VII. **REQUEST FOR HEARING** – Esmeralda Reynoso (Health Care Agency), Case # 19-257-18-01, regarding Administrative Officer I promotional process.

Esmeralda Reynoso was present with her representative Laura Espinosa from the League of United Latin American Citizens (LULAC). Assistant County Counsel Marina Porche was present for the County along with Deputy Executive Officer Matthew Escobedo.

MINUTES
Civil Service Commission
February 28, 2019

Ms. Espinosa made comments to the Commission regarding the history of LULAC. Ms. Reynoso introduced herself stating that she has worked for the Ventura County Probation Agency for 23 years and gave a brief background of her professional experience stating that she has been in the United States since she was 18 and obtained both a bachelor and masters' degree and considers herself a proud County employee.

Chair Vandenberg requested clarification as to the issues that Ms. Reynoso was requesting the Commission review. Ms. Espinosa indicated that there was initial confusion in the documents submitted regarding the examination that was being appealed and corrected the record by providing the correct recruitment number of 0034PDO-18AA. She also stated that, regardless of the arguments made in the opposition papers submitted by the County, the County was aware what examination was in question due to correspondence exchanged between the parties. She also stated that Ms. Reynoso was unaware at the time she prepared her appeal documents that she could request an investigation in addition to appealing the examination process.

With regard to the examination, Ms. Espinosa stated that the examination process was skewed against Ms. Reynoso and the questions and her responses to the examination questions clearly show that she had the skills to perform the work in a job classification for which she had previously applied on six occasions.

Ms. Espinosa went on to comment that Ms. Reynoso has been essentially blackballed by the County with respect to any promotions, as she has been denied promotions 27 times. She also stated that Ms. Reynoso's applications appear to be discussed in a free and disparaging manner which is a blatant breach of confidentiality. She further stated that, as evidenced in submitted correspondence from Mr. Escobedo, non-merit factors are used by some managers during promotional examinations.

In response to a question from Chair Vandenberg regarding the more recent promotional process for which Ms. Reynoso had applied, Ms. Espinosa stated that the position was given to another employee even though Ms. Reynoso was the more qualified candidate. Ms. Espinosa continued with her comments and presentation to the Commission regarding the Reynoso appeal request and stated that, with respect to the County's comments in its papers, all past union grievances, workers compensation cases and lawsuits initiated by Ms. Reynoso were an exercise of her legal rights.

Ms. Reynoso then addressed the Commission, stating that for the past six years she has been harassed and discriminated against by County personnel and feels that those engaging in such harassment have violated the County's code of ethics. She stated that

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MINUTES
Civil Service Commission
February 28, 2019

she does not want to waste anyone's time, but she believes that employees should be promoted based on merit and she is not afraid to speak up as the issue is not about revenge; it is about accountability, fair treatment and justice. She stated the County sued her for damages in court for filing frivolous claims and she denied the offer of money to walk away from the case as she is not a troublemaker but is exercising her legal rights. She stated that the Commission's investigation into hiring practices, which she requested in 2008, had resulted in a letter of recommendations from the Commission to the Board of Supervisors but that none of those recommendations had been implemented.

Ms. Porche then objected, on behalf of the County, to the opening remarks of both Ms. Reynoso and Ms. Espinoza, asking the Commission not to consider the facts alleged by both those speakers not found in the documents filed by the petitioner. She further stated that, with respect to both an oral examination appeal and a request for investigation, the petitioner has the burden of proof and, further, that under the County's Personnel Rules and Regulation (PRR), section 2303, the County must be presented with a letter of appeal which meets the requirements outlined in that section.

Commissioner Lazar pointed out that the Commission has the authority to allow a petitioner to amend a petition.

Ms. Porche stated that the petition submitted is flawed as an examination appeal under PRR section 524 must be based on allegations of the lack of appropriateness, correctness, or the presence of fraud, favoritism or other non-merit factors in the examination and that the petition submitted does not describe any of these factors. She pointed out that the County's responsive papers include a four-page investigation report and analysis done by County Human Resources that was given to Ms. Reynoso and outlines in detail the reasons she was not awarded the promotion.

Ms. Porche urged the Commission to deny the current request for a hearing and any future petitions as the petitioner could not meet her required burden of proof. Additionally, Ms. Porche stated that the current petition lists a litany of allegations dating back to 2012, however, the petitioner is not permitted to raise any issues prior to August 6, 2014, when petitioner released the County from any liability for acts prior to that date. Ms. Porche then read into the record excerpts of a Superior Court minute order which dismissed a prior lawsuit filed by Ms. Reynoso making allegations found in her petition papers.

Ms. Porche urged the Commission to deny petitioner's request for an examination appeal hearing as the petition lacked any germane complaint. She argued that undertaking a full

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MINUTES
Civil Service Commission
February 28, 2019

investigation, which she acknowledged is within the discretion of the Commission, could be extremely time-consuming and asked the Commission to consider whether the investment of resources to undertake such an investigation was wise. Ms. Porche also stated there has been a lack of candor on the part of the petitioner, as petitioner should have informed the Commission of her 18 prior complaints that the Superior Court found lacked merit. Further, she indicated that the County had sound business reasons for taking the actions it did in regard to the oral examination and that no contrary reasons have been set forth by the petitioner. Finally, Ms. Porche requested that the Commission deny the request for investigation due to procedural “sandbagging” by petitioner.

Ms. Espinosa took issue with the remarks made by Ms. Porche and stated that she did not believe this meeting was a formal evidentiary hearing but solely an informal presentation about the petitioner’s request. The facts presented in the petition clearly show a pattern of improper practices. With respect to an investigation, Ms. Espinosa stated the Commission could investigate various issues, such as how many applicants and those hired and promoted in the past five years included persons of color or LGBTQ individuals. The Commission could further direct all County agencies to adhere to the findings made by the Commission in its investigation in 2008 and to maintain the confidentiality of all applicants. Ms. Porche responded that the petitioner had no grounds or standing to raise such issues as they were not raised in the petition.

Chair Vandenberg stated that there had been many topics covered in the parties’ comments which stretch beyond an appeal related to a promotional exam process. In response to his questions, Ms. Espinosa stated that Ms. Reynoso had filed an EEOC complaint with respect to a medical accommodation, but that Ms. Reynoso had not filed a complaint with the EEOC relating to the promotional examination process and there is no active Superior Court case pending. Ms. Reynoso clarified that the last Superior Court case was dismissed without prejudice on a summary adjudication motion but that was because her attorney failed to conduct discovery. Ms. Porche stated that, as to the 18 issues raised in the Superior Court action, the ruling on the summary adjudication motion would be *res judicata* (binding on petitioner) as to any of those issues.

Vice-Chair Parham noted that it appeared from the documents submitted that Ms. Reynoso passed the oral examination and was placed on an eligibility list.

Chair Vandenberg stated that he understood that Ms. Reynoso was upset about what had occurred during the promotional process but that the presentation made was much more far reaching. He further stated that, if the petitioner feels there was an issue with a

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specific promotional process, then the Commission could consider that, but he thought the current petition is not specific enough in that regard to warrant granting an appeal.

In response to a question from Commissioner Lazar, Mr. Burton stated that the petition was confusing in that the relief requested appears centered on a requested investigation but also references a specific examination process. He advised that the Commission has the authority, with respect to an examination appeal, to grant a hearing on the appeal or to deny the petition and permit a timely amendment.

Following further comments from the Commissioners with respect to the specificity of the petition presented, on motion by Chair Vandenberg, seconded by Commissioner Becker, the Commission voted unanimously that the permit failed to provide a basis for granting an appeal but to permit the petitioner to file an amended petition within 14 days.

VIII. REQUEST FOR INVESTIGATION – None.

IX. NEW BUSINESS – None.

X. INFORMATIONAL

A. Overview of new statute (SB 1421) regarding Public Access to Peace Officer Records.

Mr. Orellana stated that the new law may require disclosure of some of the Commission's records from some of its closed sessions. The reach of the statute is currently being litigated all over the state, including in a Ventura County Superior Court case regarding records which predate January 1, 2019, when the statute became effective. Currently, those records are blocked from public disclosure by order of the Superior Court. Various issues raised in these lawsuits include the definitions of terms used in the statute that are undefined, such as what constitutes a "sustained finding" and such judicial interpretations will impact what records may be subject to disclosure. Once some of these issues are clarified, Mr. Orellana invited the Commission to have its Assistant agendaize an update on what records would be considered public records under SB 1421. He stated that Assistant County Counsel Emily Gardner would handle such public records requests on behalf of the Sheriff. He further stated that the Commission is defined as an agency of the County, based on a prior Supreme Court decision (*Copley Press*) so there is no conflict for County Counsel to advise which Commission records are considered public records of the

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MINUTES
Civil Service Commission
February 28, 2019

County, and that it is the County's decision whether to disclose any records pursuant to public records requests directed to the Commission.

XI. COMMISSION/STAFF COMMENTS – Ms. Shaw stated that an application had been received by Supervisor Zaragoza's office as a replacement for Commissioner Merricks but that an appointment date decision had not yet been determined. She also stated that her performance evaluation would be on the Commission's agenda for the next regular business meeting.

XII. ADJOURNMENT – The meeting was adjourned at 10:23 a.m.

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