CIVIL SERVICE COMMISSION MINUTES

February 19, 2003

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 310 at the County Administration Building, l600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Mary Gwen Brummitt
Marc Sandstrom
Gordon Austin

Comprising a quorum of the Commission

Absent was:

Sigrid Pate

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
February 19, 2003

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 310, 1600 Pacific Highway, San Diego, California 92101

Discussion Items	Continued	Referred	Withdrawn
5,6,10,17	**2,10**	**7,8,9**	**3,4**

COMMENTS Motion by Austin to approve all items not held for discussion; seconded by Brummitt. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this location to hear the announcement of the Closed Session Agenda

A. Commissioner Austin: **James L. Proffitt**, former Supervisor Deputy Public Administrator Guardian, appealing an Order of Removal and Charges from the Health and Human Services Agency.

B. Commissioner Newman: Everett Bobbitt, Esq., on behalf of **Daniel Ramirez**, Deputy Sheriff, appealing two (2) Orders of Suspension and Charges from the Sheriff's Department.

REGULAR AGENDA
County Administration Center, Room 310

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

1. Approval of the Minutes of the regular meeting of February 5, 2003.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: Ted Burnett, S.E.I.U. Local 535, on behalf of **Laura Dizon**, former Eligibility Technician, appealing a Final Notice of Automatic Separation for Failure to Return After Leave from the Health and Human Services Agency (HHSA).

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed below. (See No. 7 below.)

Staff recommendation approved.

WITHDRAWALS

3. **Cynthia Windsor,** candidate for Deputy District Attorney IV, appealing the selection process used by the Department of Human Resources (DHR) and the former District Attorney for the classification of Deputy District Attorney IV.

Withdrawn.

4. Commissioner Sandstrom: **Cynthia Windsor,** candidate for Deputy District Attorney IV, alleging political affiliation discrimination by the former District Attorney.

Withdrawn.

DISCIPLINES

Findings

5. Commissioner Austin: **James L. Proffitt**, former Supervisor Deputy Public Administrator Guardian, appealing an Order of Removal and Charges from the HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I – Incompetence (failure to follow Department's policies and procedures regarding the safeguarding and marshalling of client property); Cause II – Insubordination (violation of policy regarding mandated adult abuse reporting requirements; release of client's confidential case file to a private attorney); Cause III - Conduct unbecoming an officer or employee of the County (abuse of authority as a Supervising Deputy Public Administrator-Guardian); Cause IV – Discourteous treatment of the public or other employees; Cause V – Negligence resulting in significant risk of harm to the public or public service (inability or unwillingness to follow mandated procedures); Cause VI – Failure of good behavior; Cause VII – Act that is incompatible with or inimical to the public service. Employee was a Supervising Deputy Public Administrator Guardian in the Aging and Independent Services Division of HHSA at the time of his removal. Among other things, the Public Administrator Guardian is appointed as conservator for individuals who are unable to manage their affairs and who, as a result, are at a significant risk of harm. This appeal germinated from an investigation of a complaint by one of Employee's subordinate co-workers alleging that he had made a derogatory finger gesture at her back. The investigation generated other allegations and it was expanded to a comprehensive review of Employee's work and management style.

The Agency withdrew Cause III(B) and Cause III(C). Employee did not dispute the factual allegations, but instead disputed the conclusions drawn therefrom. The Agency presented several written policies concerning the treatment of conservator "estate" property. Employee contended that the policies and procedures gave him discretion under extraordinary circumstances, and as a supervisor he was provided some latitude in extraordinary property situations. The Agency presented testimony in an attempt to show that Employee's practice differed from the practice of others, however this testimony tended to show division-wide inconsistencies in practice. The current Deputy Director of the Aging and Independent Services Division has held the position for only 10 months and it appeared that the division-wide practice under her predecessor may have differed from the current practice.

By his own admission, Employee was guilty of the finger gesture towards another employee, fully admitted his conduct, acknowledged its impropriety and expressed remorse. In considering discipline for this charge alone, the Agency indicated at the hearing that it merited a reprimand or a minor suspension. The Director and Deputy Director admitted that they did not take into consideration Employee's "above standard" performance ratings and it was conceded that progressive discipline was not implemented. The Agency was unable to prove most of its allegations that Employee violated policy and procedure. As the hearing progressed, it became apparent that Employee was engaged in diligent, conscientious, and above standard performance in the very same cases for which he was being charged with misfeasance by the Agency, and also revealed a flawed disciplinary process with the Division.

Employee is Guilty of Cause I(A)(2), incompetence, to the extent that he left client property in a van for two to three months; Cause IV, discourteous treatment of the public or other employees; Cause VI, Failure of Good Behavior, only as to Causes 1(A)(2) and IV; Cause VII, Act that is incompatible or inimical to the public service, only as to Cause 1(A)(2). Employee is not guilty of Causes I(A)(1), incompetence; Cause I(A)(2), incompetence, to the extent of the charges not addressed in this paragraph above; Cause I(A)(3), incompetence, and Cause I(B), incompetence; Cause II(A), insubordination; Cause II(B), insubordination; Cause III(A), conduct unbecoming an officer or employee of the County; Cause III(B), conduct unbecoming an officer or employee of the County; ; Cause III(C), conduct unbecoming an officer or employee of the County; Cause V, Negligence; Cause VI, Failure of Good Behavior, except to Causes 1(A)(2) and IV; Cause VII, Act that is incompatible or inimical to the public service, except as to Cause 1(A)(2). It is therefore recommended that the Order of Removal be modified to a three working-day suspension; that Employee be awarded back pay, benefits and interest from the date of removal to the date of the Commission's decision, minus any wages he received from outside employment and minus the three-day suspension referred to above; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Brummitt. Carried.

6. Commissioner Newman: Everett Bobbitt, Esq., on behalf of **Daniel Ramirez**, Deputy Sheriff, appealing two (2) Orders of Suspension and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Employee was presented to the Civil Service Commission. Prior to the commencement of the hearing, the parties entered into a Stipulation. It is therefore recommended that the Stipulation be accepted and the Withdrawal of Appeals be approved by the Commission and incorporated herein by reference; that the Orders of Suspension and Charges be reduced from a combined total of twenty (20) working days (170 hours), to ten (10) working days (85 hours) as described in the Stipulation; that Employee shall be awarded back pay, benefits and interest for ten (10) working days (85) hours; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Sandstrom. Carried.

DISCRIMINATION

Complaints

7. Ted Burnett, S.E.I.U. Local 535, on behalf of **Laura Dizon**, former Eligibility Technician, HHSA, alleging national origin and gender discrimination by the HHSA.

RECOMMENDATION: Assign Commissioner Newman as the Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See No. 2 above.)

Staff recommendation approved. Commissioner Newman assigned.

8. **James Atkins,** prospective Candidate for Deputy District Attorney V, alleging political affiliation discrimination by the former District Attorney.

RECOMMENDATION: Assign Commissioner Sandstrom as the Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Sandstrom assigned.

9. **Jane Via,** prospective Candidate for Deputy District Attorney V, alleging political affiliation discrimination by the former District Attorney.

RECOMMENDATION: Assign Commissioner Sandstrom as the Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. (See No. 10 below.)

Staff recommendation approved. Commissioner Sandstrom assigned.

SELECTION PROCESS

Complaints

10. **Jane Via**, prospective candidate for Deputy District Attorney V, appealing the selection process used by DHR and the former District Attorney for the classification of Deputy District Attorney V.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above. (See No. 9 above.)

Anthony Albers, Senior Deputy County Counsel requested to speak to this matter. Mr. Albers contends that this appeal is untimely, and as such, should not be held in abeyance, but should be denied. Larry Cook, Executive Officer explained that this appeal may or may not be timely due to the circumstances presented by appellant. He referred the Commission to Rule 10.2(b), and also explained that Ms. Via's Petition to Appeal Selection Process form was faxed to the Commission office the day of this Agenda, pursuant to staff's request.

Mr. Albers explained that should Ms. Via's appeal emanate from a provisional appointment, Rule 10 does not cover provisional appointments and questioned the remedy available. Following additional comments from the parties, the Commission decided to continue this matter to the soonest available meeting after the parties assess this appeal.

Motion by Sandstrom to continue this matter, seconded by Brummitt. Carried.

11. **Valerie Lough**, Paralegal I, Office of the District Attorney, appealing the selection process used by DHR and the Office of the District Attorney for the classification of Investigative Specialist II.

RECOMMENDATION: Continue to the next meeting pending input from the Office of the District Attorney and DHR. (See No. 14 below.)

Continued.

12. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, former Human Resources Analyst, DHR, appealing her non-selection for the classification of Senior Human Resources Analyst by DHR. (Held in abeyance since the Commission meetings of May 15, 2002 and September 18, 2002.)

RECOMMENDATION: Deny Request. (See No. 13 below.)

Staff recommendation approved.

INVESTIGATIONS

Complaints

13. Michelle A. Perfili, Esq., on behalf of **Cindy L. Mitchell**, former Human Resources Analyst, DHR, requesting an investigation into alleged improper personnel practices in DHR. (Held in abeyance since the Commission meetings of May 15, 2002 and September 18, 2002.)

RECOMMENDATION: Deny Request. (See No. 12 above.)

Staff recommendation approved.

CLASSIFICATION

Complaint

14. **Valerie Lough**, Paralegal I, Office of the District Attorney, requesting a classification review in the Office of the District Attorney for the classification of Paralegal I.

RECOMMENDATION: Continue to the next meeting pending input from the Office of the District Attorney and DHR. (See No. 11 above.)

Staff recommendation approved. Continued.

OTHER MATTERS

Extension of Temporary Appointments

15. Agriculture, Weights & Measures

3 Insect Detection Specialists I (Toby Lees, Warren Bacon, Tyler Roberts)

16. Department of Child Support Services

1 Imaging Technician Trainee (Kandy Mae Antolin)

17. Health and Human Services Agency

A. 2 Residential Care Worker Trainees (Sheila Mohammadian, Heidi Harjer)

B. 1 Residential Care Worker I (Victor Camacho)

C. 5 Protective Services Workers I (Patricia Rode, Lynare Robbins, Susan Amick, Wendy Curiel, Javier Perez)

D. 11 Protective Services Workers II (Francesca Lewy, Dennis Leggett, Barbara Ingram, Kendra Reed, Zephora Pitogo, Inga-Britt Ostrom, Rebecca Fernandez, Chandra Sanders, Mariana Brown, Julie Brumbaugh, Irma Espindola)

Commissioner Newman requested that Item No. 17 be pulled for discussion purposes. He expressed that the Commission most frequently treats the Extension of Temporary Appointments as a consent item. He noted that an explanation for these temporary extensions, beyond a six-month period, is often the reason "awaiting budgetary approval". He questioned the justification of these extensions when in fact permanent positions are in jeopardy due to the County's current financial pressures.

Carlos Arauz, Director of DHR, explained to the Commission that in positions such as PSW I's and PSW II's (17c and 17d above), the extension lists act as a sort of "waiting list" due to the high turnover of these positions. He further explained that in fact the budget is approved for up to 30 "waiting list" positions.

Larry Cook, Executive Officer, offered a brief history regarding these extensions and explained that they are approved by DHR prior to being placed on an agenda. He further informed the Commission that there is behind-the-scenes work that is done by staff pertaining to these extensions. Ralph Shadwell, Senior Deputy County Counsel added that pursuant to Rule 4.2.6, the Commission does not act as a "rubber stamp" approval, but does have the authority to ensure that extended temporary appointments are made for just cause. The Extensions are transmitted to the Commission for ratification, but the Commission may direct the appointing authority to terminate a certified temporary appointment list should just cause not be shown. The Commission will continue to monitor the Extension of Temporary Appointments.

18. County Library

1 Library Technician I (Eric Jones)

19. Department of Public Works

2 Public Works Trainees (Alberto Parra, Michael Anderson)

RECOMMENDATION: Ratify Item Nos. 15 - 19.

Item Nos. 15-19 ratified.

20. Public Input.

ADJOURNMENT: 3:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 19, 2003.