

CIVIL SERVICE COMMISSION MINUTES

FEBRUARY 3, 2021

A meeting of the Civil Service Commission was held at 2:37 p.m., via Teleconference.

Present via Teleconference:

A.Y. Casillas
Bryan Fletcher
Melissa Johnson
Ira Sharp
Peter B. Smith

Comprising a quorum of the Commission

Support Staff Present via Teleconference:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

Approved
Civil Service Commission
March 3, 2021

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING MINUTES
FEBRUARY 3, 2021**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters
and Pending Litigation

2:30 p.m. OPEN SESSION: Teleconference.

Notice pursuant to Government Code Section 54954.2.

**CLOSED SESSION AGENDA
Videoconference - Not open to public**

- A. Commissioner Johnson: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Edward J. Southcott, Esq., on behalf of **2020-018**, Crime Prevention Specialist, appealing an Order of Immediate Suspension by the Sheriff's Department.

**OPEN SESSION AGENDA
Teleconference**

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Casillas, Fletcher, Johnson, Sharp, Smith

B. **APPROVAL OF MINUTES:** Regular meeting of January 6, 2021.

Motion by Commissioner Johnson to approve the minutes of January 6, 2021; seconded by Commissioner Smith.

Motion carried with all Commissioners in favor.

C. **NON-AGENDA PUBLIC COMMENT:**

None.

D. **AGENDA ITEM DISCUSSION:**

The Commission Secretary noted that item #4 has been pulled for discussion by the public.

E. **FORMATION OF CONSENT AGENDA**

Items Nos. 1, 2, 5, and 6 formed the Consent Agenda.

Motion by Commissioner Casillas to approve the Consent Agenda; seconded by Commissioner Johnson.

Motion carried with all Commissioners in favor.

F. **DISCUSSION ITEMS**

Items Nos. 3 & 4 have been pulled for discussion.

AGENDA ITEMS

CONFIRMATION OF ASSIGNMENT

1. Commissioner Johnson: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-004**, former Accounting Technician, appealing a Final Order of Removal and Charges from the Department of General Services.

Confirmed.

2. Commissioner Fletcher: Bradley Fields, Esq., on behalf of **2021-005P**, former Deputy Sheriff, appealing an Order of Termination and Charges from Sheriff's Department.

Confirmed.

DISCIPLINE

Findings

3. Commissioner Johnson: Edward J. Southcott, Esq., on behalf of **2020-018**, Crime Prevention Specialist, appealing an Order of Immediate Suspension by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee 2020-018 appealed an Order of Immediate Suspension suspending him from the position of Crime Prevention

Specialist in the Sheriff's Department. The Commission appointed Commissioner A. Melissa Johnson, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission.

The causes of discipline were failure of good behavior and acts incompatible with and or inimical to the public service relating to allegations that while acting as an officer of a Homeowners Association ("HOA") he embezzled approximately \$60,000.

Employee has been employed by the County since 1996. At the time of his immediate suspension Employee was employed as a Crime Prevention Specialist ("CPS") with the Department. As a CPS for the Department, Employee performed non-sworn support duties that include educating individuals and community groups on crime prevention methods and techniques. In particular, Employee's duties include contacting victims of property crimes, business crimes, and crimes of violence to recommend security devices in homes or businesses; educating members of the public with regard to such matters as internet safety, fraud, senior safety, home and business security, child safety, gangs, school safety, crime intervention, and emerging crime trends; organizes neighborhood watch groups; and, generally, working closely with citizens and law enforcement personnel in order to attempt to identify ways by which the public might be targeted by sophisticated criminals and their ever-evolving means taking advantage of unsuspecting residents and business owners, along with offering advice on how to avoid becoming targets of such crimes.

On August 26, 2019, a criminal complaint was filed by the San Diego District Attorney, charging Employee with two (2) felonies: (1) alleging a violation of Penal Code section 487(a), grand theft of personal property; and (2) alleging a violation of Penal Code section 508, fraudulent appropriation by clerk, agent, or employee, i.e., embezzlement. The charges relate to allegations that between February 2009 through March 2016 Employee stole and embezzled money from an HOA while he was an officer of the HOA and while he had access to the HOA's bank accounts. Employee entered a plea of not guilty to the charges and maintains his innocence to the present.

Thereafter the Department initiated its Internal Affairs investigation ("IA Investigation") into allegations that Employee failed to act in conformance with law, related to the criminal charges.

On March 5, 2020, the court conducted a preliminary examination of the charges, at which the prosecutor presented evidence to support the charges. At that proceeding the Employee was entitled to cross-examine the prosecutor's witnesses and to present and examine his own evidence and witnesses. Following this preliminary examination, the court found probable cause to believe the Employee guilty of the offenses of which he is charged and ordered Employee to answer to the charges.

On March 19, 2020, as a part of its IA Investigation, Employee was interviewed by a Sheriff's Sergeant. Employee was accompanied by a representative of SEIU Local 221. Employee was served with the Department's Proposed Order of Immediate Suspension without pay and was given an opportunity to respond to the charges. Neither Employee nor his representative offered any response. Employee was then served with the Department's Order of Immediate Suspension without pay. Employee's criminal trial is scheduled to begin March 18, 2021.

Employee disputes that he has committed the crimes that he is being charged with, or that he has failed to conform with applicable laws. The pending charges are for crimes the nature of which raise serious questions whether Employee, as a CPS in the Department, should be performing services for, and having contact with, the public. Employee argues that the disciplinary action must be set aside until the Department conducts a proper pre-disciplinary (i.e., *Skelly*) conference, including first providing notice along with a copy of the charges, and offering him an opportunity to respond.

The Department asserts that the disciplinary action taken followed Section 7.2.1(b) of the County of San Diego Civil Service Rules ("Subdivision (b)"), which changes the "pre-removal safeguards" found in Section 7.2.1(a) of the Civil Service Rules ("Subdivision (a)") under emergency circumstances.

The testimony provided supports the use of Subdivision (b). Specifically, the Employee's own testimony is that part of his job duties as a Crime Prevention Specialist

included going to homes of residents, as well as stores or other commercial operations, to assess the owners' vulnerabilities to break-ins, theft, etc. It is reasonable to assume that the Department felt that Employee should not perform these duties, with the criminal trial pending.

The Department's decision to utilize the less common procedures found in Subdivision (b) rather than following the standard procedures found in Subdivision (a) is proper and reasonable, is supported by legal precedence, and does not violate Employee's Due Process rights.

The Department has proven Causes I and II. The Department has cause to believe Employee is guilty of failure of good behavior. Specifically, between 2009 and 2016, Employee, while acting as an officer the HOA and having control of the HOA's bank deposits and financial records, embezzled between \$40,000 and \$60,000, in violation of Penal Code sections 487 and 508.

The Department has proven Cause III. Employee is guilty of acts, which are incompatible with and/or inimical to the public service based upon the findings in Causes I and II. Employee's conduct and actions are inimical to the public service.

It is important to note that Employee is in a position of trust - not only within the Department but also in his role to assist victims, or potential victims, of property crimes, similar to those this Commission finds cause to believe he has committed. His duties included staying educated on the types of crimes that take advantage of persons who might not recognize that a crime such as theft of property, money, or identification, is taking place.

Whether Employee is convicted of those crimes will not be known for at least another six weeks; however, there is a preponderance of evidence presented that supports that he was responsible for the losses incurred by the HOA. It would prove a disservice to the residents of the County if the Department kept Employee in his position, or suspended him with pay, without a definitive verdict of his innocence being first obtained.

Based on the findings and conclusions set forth above, it is hereby recommended that the Order of Immediate Suspension be affirmed; and that the proposed decision

shall become effective upon the date of approval by the Civil Service Commission.

Motion by Commissioner Johnson to approve the Findings and Recommendations; seconded by Commissioner Smith.

Motion carried with all Commissioners in favor.

SELECTION PROCESS

Appeals

4. Fern Steiner, Esq., on behalf of **2021-006P**, Deputy Sheriff-Detentions/Court Services, requesting a hearing regarding the Department of Human Resources' scoring of his recruitment examination for the classification Sheriff's Sergeant-Detentions.

RECOMMENDATION: Deny Request

After hearing from the appellant and department, Commissioner Smith motioned to uphold staff's recommendation. Motion seconded by Commissioner Casillas.

Motion carried with all Commissioners in favor.

OTHER MATTERS

Extension of Temporary Appointments

5. Health and Human Services Agency

A. Extensions related to COVID-19:

9 Administrative Analysts I: **2021-007 through 2021-015**

3 Associate Accountants: **2021-016 through 2021-018**

2 Community Health Promotion Specialists I: **2021-019, 2021-020**

34 Human Services Specialists: **2021-021 through 2021-054**

1 Laboratory Assistant: **2021-055**

2 Licensed Vocational Nurses: **2021-056, 2021-057**

41 Office Assistants: **2021-058 through 2021-098**

- 1 Public Health Microbiologist: **2021-099**
- 6 Public Health Nurses: **2021-100 through 2021-105**
- 1 Senior Laboratory Assistant: **2021-106**
- 1 Senior Public Health Microbiologist: **2021-107**
- 36 Staff Nurses: **2021-108 through 2021-143**

B. Other Extensions:

- 1 Cashier: **2021-144**
- 17 Human Services Specialists: **2021-145 through 2021-161**
- 16 Residential Care Workers II: **2021-162 through 2021-177**

RECOMMENDATION: Ratify

Item No. 5: Ratified

INFORMATION

6. Edward J. Southcott, Esq., on behalf of **2020-021P**, Deputy Sheriff, withdrawing the appeal of an Order of Reassignment and Charges from the Sheriff's Department. (Commissioner Casillas)

Withdrawn.

ADJOURNED: 3:04 p.m.

ASSISTANCE FOR THE DISABLED:

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