

CIVIL SERVICE COMMISSION MINUTES

November 3, 2021

A meeting of the Civil Service Commission was held at 2:30 p.m., via Videoconference/Teleconference.

Present via Videoconference:

Bryan J. Fletcher
Melissa Johnson
Will Rodriguez-Kennedy
Ira Sharp
Peter B. Smith

Comprising a quorum of the Commission

Support Staff Present:

Todd Adams, Executive Officer
Morgan Foley, Commission Legal Advisor

**Approved
Civil Service Commission
December 1, 2021**

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION
REGULAR MEETING AGENDA
NOVEMBER 3, 2021**

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

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

Notice pursuant to Government Code Section 54954.2.

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

- A. Commissioner Fletcher: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Bradley Fields, Esq., on behalf of **2021-005P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

ORDER OF BUSINESS

A. **ROLL CALL**

Present: Fletcher, Johnson, Rodriguez-Kennedy, Sharp, Smith

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

Motion by Commissioner Johnson to approve the minutes of October 6, 2021; seconded by Commissioner Rodriguez-Kennedy.

Motion carried with all Commissioners present in favor.

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

None.

D. **AGENDA ITEM DISCUSSION:**

None.

E. FORMATION OF CONSENT AGENDA

Items Nos. 2, 3, 5, and 6 formed the Consent Agenda.

Motion by Commissioner Rodriguez-Kennedy to approve the Consent Agenda; seconded by Commissioner Johnson.

Motion carried with all Commissioners present in favor.

F. DISCUSSION ITEMS

Items No. 1 and 4 were pulled for discussion.

AGENDA ITEMS

TELECONFERENCED PUBLIC MEETINGS

1. Approval of Teleconferencing Meeting Option for October 6, 2021, Commission Meeting and Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

After hearing a presentation from the Commission's Legal Advisor, Morgan Foley, Esq., on AB 361, a motion was made by Commissioner Smith to approve the continuation of teleconferencing meetings Pursuant to Government Code Section 54953(e); seconded by Commissioner Rodriguez-Kennedy.

Motion carried with all Commissioners present in favor.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Johnson: **2021-675**, former Senior Treasurer-Tax Collector Specialist, appealing a Final Order of Removal and Charges by the Treasurer-Tax Collector.

Confirmed.

3. Commissioner Rodriguez-Kennedy: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2021-676**, Office Assistant, appealing a Final Order of 90-Day Suspension and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINE

Findings

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

FINDINGS AND RECOMMENDATIONS:

Employee 2021-005P appealed an Order of Termination and Charges terminating him from the position of Deputy Sheriff (Class No. 5746) in the Sheriff's Department. The Commission appointed Commissioner Bryan J. Fletcher, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission.

The Department's causes of discipline were conduct unbecoming, immorality, three charges of incompetency, and acts which are incompatible with and/or inimical to the public service.

Employee was first hired by the Sheriff's Department in December of 2000, as a detentions deputy. He later was assigned as a law enforcement deputy and thereafter transferred to patrol from 2004-2008. After a short period with the emergency planning detail in 2008 he was then assigned to the Vista Courthouse in 2008 and remained in that position until late December of 2020.

On May 29, 2020, Employee texted five separate messages to Department employees: Deputy E B, Deputy M C, Deputy M V, Sergeant M N, and Lieutenant D B; each containing a Meme image depicting George Floyd, lying on his stomach, with a naked African American adult male, in a seated position, photoshopped as sitting on the back of Mr. Floyd's head. The African American male's penis is shown hanging down around Mr. Floyd's neck. The Meme did not contain any sort of caption.

Approximately one and one-half hours after receiving the Meme from the Employee, Deputy E B forwarded it to a retired Sheriff's Deputy, D L, with the message, "BTW: some dickheads [sic] passing the following pic around." Deputy E B sent the Meme to Mr. D L to show what was being sent around their group of friends, because he felt disheartened and disappointed that a co-worker would believe that sending it was right; that it was okay to do make Mr. Floyd's death a "racial thing"; that Department personnel think it is okay to send such an image; that it was funny; and that deputies support law enforcement no matter what.

Mr. D L at first "blew it off," then, after speaking with family members, decided that the Meme "pissed him off," and that he shouldn't be complicit with ignoring it. Mr. D L forwarded the Meme to Sergeant A G, who began an investigation. Mr. D L then shared the Meme with retired Deputy Sheriff W M. Mr. W M then texted the Staff Officer assigned to the Undersheriff to complain that the Meme was sent by the Employee. The Staff Officer then began an investigation which coincided with Sergeant A G's investigation.

The internal affairs investigation concluded that Employee violated multiple sections of the Sheriff's Policy and Procedure, including unbecoming conduct, immoral conduct, discrimination and sexual harassment, and failure to meet standards, and recommended Employee's termination. The recommendation was reviewed first, through a Skelly Conference, then up the chain of command, ultimately resulting in Employee's termination with six causes of discipline.

Cause I: The evidence supports a violation regarding conduct unbecoming, in that on May 29, 2020, while off duty and using his personal cell phone, Employee texted a vulgar, offensive, inappropriate, and insensitive meme of a naked African American male sitting on the head of George Floyd, with the naked man's penis draped over Mr. Floyd's neck to the personal cell phones of five separate colleagues. None of the recipients of Employee's texts had agreed, or consented, to receiving the Meme, and nearly all of those that responded made it clear that if the Employee intended a joke, that it was not appropriate.

In aggravation, Mr. Floyd's death was the result of strangulation by a Minneapolis police officer only four days prior to Employee's texting; in fact, the Meme is a well-known image of Mr. Floyd during the eight minutes and 46 seconds that transpired prior to his death, including the patrol car from the Minneapolis Police Department.

Further in aggravation, when Deputy E B responded an hour later with the message, "Too soon, they should that piece of shit cop sucking a dick while he's on his knees [sic]," Employee's response was immediate and unapologetic, stating, "Omg [E B]. Go vandalize cnn." This hardly supports Employee's sudden remorse the next morning when he called one recipient, Deputy M C, to apologize for sending the Meme to him. Employee explained this action by saying that if any of the recipients had responded, saying that they were offended, that he would have apologized, yet he did reach out to Deputy M C without having been told that Deputy M C was offended by the Meme.

Employee's additional argument, that he sent this on his own time, using his personal phone, and to the personal phones of the five recipients, is unavailing. Whether on or off-duty the expectation is that all employees of the Department should conduct themselves in an appropriate manner and should not bring discredit to themselves or the Department.

Cause II: The evidence supports a violation regarding immorality, for the same reasons stated above. The defense that it was intended as a joke does not mitigate that the Meme was a "shocking image." For whatever reason the Employee felt that the Image was funny enough to send to his five colleagues. Even assuming that the group shared some sort of "gallows humor," sharing such a shocking image violates accepted moral standards of the community and is an example of moral turpitude. Such moral turpitude would, and has, brought disrepute upon the Department, as reflected in the reaction from the news media, the NAACP, and the former Superior Court Commissioner who is now a Judge.

Cause III: The evidence supports a violation regarding incompetency, in that the act of sending the Meme was intended to shock the recipients. Whether the shock was intended as humor does not mitigate the conduct. The training all Departmental personnel receives related to sexual harassment prevention, and established laws, is that sexual harassment is not determined by the intent of the actor but instead is determined by the perception of a victim.

Further, discrimination and sexual harassment can be visual in nature, as is the Meme, so long as it is "derogatory" or "sexually oriented," in pictures. Employee admitted that discrimination and sexual harassment can be "anything . . . that could be offensive to another based on race, religion [or] sexuality."

In mitigation, Employee relies on the fact that he didn't send it to any other persons, only the five friends who received it that evening. Yet he must have known that - just as he did, after receiving it from his girlfriend - any one of those individuals could forward the Meme on to others and exponentially increase the harm the Image causes. Because he never asked for their consent to receive the Meme, he had no knowledge what could happen once he pressed the "send" button five separate times. It is not reasonable for the Employee to assume that the wife, mother, father, daughter, or son of one of the recipients would never have access to their personal

phone, and could have opened the message, and felt discriminated or sexually harassed by it.

Cause IV: The evidence supports a violation regarding incompetency, in that by sending a vulgar and derogatory picture in the form of the Meme, the Employee expresses harassment concerning race and color, with sexual overtones. The Meme of a black man with stereotypically large genitalia, bestial power and strength is in line with caricatured depictions of black men dating back to slavery and beyond. The Meme mocks the death of Mr. Floyd - an African American who died at the hands of a white male police officer. Employee's conduct in forwarding it to his five colleagues perpetuates the notion that the lives of African Americans are somehow valued less than white persons in the minds of law enforcement.

Whether a bad joke, or bad judgment due to intoxication, the Employee has demonstrated incompetency by distributing this to the five recipients.

Cause V: The evidence supports a violation regarding incompetency, in that by his own admission Employee sent out the offensive Meme while in some state of intoxication. He has stated that he drank a bottle of wine that evening, prior to sending it out. He sent five separate texts to five fellow officers - three deputies, one sergeant, and one lieutenant.

Employee's conduct on May 29th is not acceptable, even though it occurred while off-duty. Sheriff's Department P&P section 2.30 states "Employees shall properly perform their duties and assume the responsibilities of their positions." The very next sentence explains the responsibilities of a deputy's position by requiring that employees of the Department "shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives" of the Department.

Cause VI: The evidence supports a violation regarding acts which are incompatible with and/or inimical to the public service, for all of the reasons stated in sustaining the violations in Causes I through V.

Employee is guilty of conduct unbecoming, immorality, three charges of incompetency, and acts incompatible with and/or inimical to the public service.

The Employee's conduct clearly reflected adversely on the Department. The fact that it was "circulated" among Departmental

personnel and non-Departmental personnel, and somehow leaked to the public (i.e., news media, NAACP, etc.), should not come as a surprise to the Employee or others. It is very reasonable to assume that the otherwise "private" texts to Employee's five colleagues would come to the public's attention in one manner or another, and Employee should never have sent them in the first place.

In his testimony, the former Superior Court Commissioner, now Judge, commented that the Meme furthers racial stereotypes, especially in June of 2020, and even though the conduct was off-duty it calls into question the ability of a member of the court's staff to perform work in a fair and unbiased manner. Therefore, returning the Employee to his prior assignment with the Superior Court would not be an acceptable option.

Placing Employee's conduct in context with the George Floyd incident (a mere four days prior); the subsequent and continued protests, especially locally; the continued calls for reform and defunding of law enforcement departments; and violence against law enforcement personnel in the line of duty, even while performing the simplest roles and responsibilities, the Sheriff's Order of Termination is appropriate.

Based on the findings and conclusions set forth above, Commissioner Fletcher recommended that the Order of Termination and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

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

Motion carried with all Commissioners present in favor.

OTHER MATTERS

Extension of Temporary Appointments

5. Health and Human Services Agency

5 Account Clerks: **2021-677 through 2021-681**

1 Pharmacy Technician: **2021-682**

2 Office Assistants: **2021-683 and 2021-684**

RECOMMENDATION: Ratify

Item No. 5 Ratified.

INFORMATION

6. **2021-371**, Public Health Nurse, withdrawal of appeal of a Final Order of Suspension and Charges from the Health and Human Services Agency. (Commissioner Smith)

Withdrawn.

ADJOURNED: 3:05 p.m.

ASSISTANCE FOR THE DISABLED:

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