

**CIVIL SERVICE COMMISSION MINUTES**

**January 4, 2023**

A meeting of the Civil Service Commission was held at 2:40 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**  
**February 1, 2023**

**SAN DIEGO COUNTY CIVIL SERVICE COMMISSION  
REGULAR MEETING MINUTES  
JANUARY 4, 2023**

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

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

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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)) **2021-536**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.
  
- B. Commissioner Rodriguez-Kennedy: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(B)) Amanda M. Gracia, Esq., on behalf of **2022-202P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

**OPEN SESSION AGENDA  
Videoconference/Teleconference**

**ORDER OF BUSINESS**

A. **ROLL CALL**

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

B. **APPROVAL OF MINUTES:** Regular meeting of December 7, 2022.

**Motion by Commissioner Johnson to approve the minutes of December 7, 2022; seconded by Commissioner Sharp.**

**Motion carried with all Commissioners present in favor.**

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

None.

D. **AGENDA ITEM DISCUSSION:**

None.

E. **FORMATION OF CONSENT AGENDA**

Item Nos. 1, 3, 4, 7 and 8 formed the Consent Agenda.

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

**Motion carried with all Commissioners in favor.**

F. **DISCUSSION ITEMS**

Item Nos. 2, 5, & 6 are pulled for discussion.

**AGENDA ITEMS**

**TELECONFERENCED PUBLIC MEETINGS**

1. Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e).

RECOMMENDATION: Approve motion to find, pursuant to Government Code section 54953(e)(3), the Civil Service Commission has reconsidered the circumstances of the State of Emergency and state and local officials continue to recommend measures to promote social distancing.

**Approved.**

**ELECTIONS**

2. Election of President and Vice President of the Civil Service Commission for 2023.

**Commissioner Sharp motioned to nominate Commissioner Johnson as the President and Commissioner Smith as the Vice President of the Civil Service Commission for 2023; seconded by Commissioner Rodriguez-Kennedy.**

**Motion carried with all Commissioners in favor.**

## **CONFIRMATION OF ASSIGNMENT**

3. Commissioner Johnson: Greg Thedell, Advocacy Center Organizer, SEIU Local 221, on behalf of **2023-001**, Office Assistant for Health and Human Services Agency, alleging discrimination by the Health and Human Services Agency.

**Confirmed.**

4. Commissioner Rodriguez-Kennedy: Amanda Gracia, Esq., on behalf of **2023-002P**, former Deputy Sheriff-Detentions/Court Services, appealing an Order of Termination and Charges.

**Confirmed.**

## **DISCIPLINE**

### **Findings**

5. Commissioner Fletcher: **2021-536**, former Human Services Specialist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency.

### **FINDINGS AND RECOMMENDATIONS:**

Employee 2021-536 appealed a Final Order of Removal and Charges removing him from the position of Human Services Specialist ("HSS") in the Health and Human Services Agency ("Department"). The Commission appointed, Commissioner Bryan J. Fletcher, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. A hearing was held on August 26 and November 17, 2022.

The causes of discipline were acts that are incompatible with or inimical to the public service, conduct unbecoming an employee of the County, and failure of good behavior.

S.C. was a customer of the Department's Self Sufficiency program to implement CalWORKs. She previously lived in Texas and was a victim of domestic violence leading her to flee her home in Texas for California with her three minor children. Her abrupt departure left her without legal and medical documents. She also left behind birth records of her third child. As a result of her inability to provide such records her CalWORKs benefits were less than she believed they should be, so she appealed the reduction in benefits.

The Department's Program Specialist II, Ms. J-V, was assigned to assist her in her appeal and conducted a recorded telephonic interview with S.C. on June 17, 2021. S.C.'s statements to Ms. J-V, while recorded, were not given under oath. Copies of portions of the recording, and transcripts of the same, were admitted into evidence at the hearing.

The Employee was employed with the Department as an HSS starting August 18, 2017, and in June of 2021 he was assigned to the Customer Service Unit at the Northeast Family Resource Center.

The Deputy Director in the Department responsible for the implementation of CalWORKs, testified that while he was employed in the Department the Employee's work was required to be performed in the NFRC during normal business hours. She further testified that there is never a reason to contact CalWORKs customers outside of regular business hours unless an employee first receives a supervisor's approval to do so. No evidence of his supervisor's approval of overtime was presented by the Employee.

In June of 2021, the Employee contacted S.C. on his personal telephone at multiple times during non-business hours, including on June 7<sup>th</sup>; while S.C. was at a park with her children on Saturday, June 12<sup>th</sup>; on June 17<sup>th</sup>; and Sunday, June 20<sup>th</sup>. None of these contacts were approved by his supervisor and there is no evidence that these contacts were business-related. On the contrary, the statement of S.C. supports the Department's position that the Employee offered to get together for drinks and is more believable than the Employee's varying explanations. First, he offered one explanation to the Department's internal investigator, and later a different explanation to the Skelly officer when Employee stated that these conversations with S.C., while not business related, were "consensual." Most recently, at the hearing the Employee testified that the conversations were work-related only, denying a personal relationship, but instead calling it "a professional and cordial one." Yet he also stated that she told him about her domestic violence history and how she escaped that situation by leaving Texas, while he "walked her to her car." He posed the rhetorical questions, "How would I know about this? Unless it was a cordial friendship." He also testified that when S.C. was "irate" about her case, he suggested to S.C. that "maybe you'd like to go home, have a few drinks." When asked what he meant by that, he testified that he was thinking "Hey, you know what, just have some

coffee, maybe tea," as it was early in the morning. However, he did not explain these thoughts to S.C.

None of the telephone contacts with S.C. on June 7<sup>th</sup>, June 12<sup>th</sup>, June 17<sup>th</sup>, and June 20<sup>th</sup>, ever resulted in a case comment from the Employee in the CalWIN system.

The Employee accessed S.C.'s file on the CalWIN system 76 times between June 9 and June 11, 2021, yet he did not leave any case comments related to any of those 76 actions in accessing S.C.'s case file.

Both S.C. and the Employee acknowledged to the internal investigators that he told S.C. that he was "expecting a steak dinner," implying because of his help on her file, then later (under oath in the hearing) Employee claimed that S.C. had invited him to dinner, and he felt that was inappropriate.

As an HSS in the Department, the Employee is required to comply with the following County and Department codes, policies, agreements, and guidelines: Code of Conduct, Confidentiality Guidelines, Case Comments Guidelines, Declaration of Relationship, Access Agreement, Code of Ethics, and Administrative Manual policies on protection of County Information Systems. The Employee has received training on these requirements in one form or another, some on multiple occasions during his employment.

The Employee is guilty of acts incompatible with or inimical to the public service. He accessed a customer's confidential CalWORKs file using the CalWIN system for personal reasons, not for any legitimate business purposes. Using the information from those records the Employee obtained the customer's personal wireless telephone number and called her at least four times over a two-week period, while outside of business hours, with no valid business purpose.

These off-hours telephone calls, from the Employee's personal wireless phone, made customer S.C. uneasy (at best) and scared (at worst), particularly as she was a victim of domestic violence, and a single mother of three children, facts known to the Employee.

Further, the Employee knew that S.C. was in the process of appealing a denial of a portion of CalWORKs benefits. S.C. clearly feared that if she rejected the Employee's contacts, she was risking that the Employee would respond by jeopardizing her benefits appeal.

The Employee's actions in accessing confidential customer records without a valid purpose knowingly violated the Department Code of Conduct, Confidentiality Guidelines, Case Comments Guidelines, Declaration of Relationship Policy, Access Agreement, Code of Ethics, and Administrative Manual policies on protection of County Information Systems.

The Employee is guilty of conduct unbecoming an employee of the County by willingly disregarding and violating County and Department policies, guidelines, rules, and agreements, when he used County information systems to access S.C.'s confidential CalWORKs records through the CalWIN system for personal purposes.

Further, none of the Employee's off-duty telephone contacts, and none of his numerous times accessing S.C.'s confidential files, were memorialized with case comments, in violation of the Department's Standardized Case Comments guidelines.

Employee is guilty of failure of good behavior for knowingly violating County and Departmental policies to access confidential County information related to S.C. for personal reasons and without a need-to-know justification. His conduct in using S.C.'s personal information to develop a personal relationship is evidence of a violation of failure of good behavior.

The Employee's conduct can only be described as knowing and willful violations of County and Department policies, rules, and guidelines. What is particularly troubling is that he participated in training on many of these policies, rules, and guidelines just weeks before his first violation.

Perhaps most importantly in determining the proper level of discipline is the Employee's efforts to attempt to develop a relationship with a single mother of three young children, who has limited support services and was in a vulnerable state throughout this process. It is the responsibility of the Employee to avoid personal relationships with customers, presumably just for these purposes. The Deputy Director testified that disclosing information of a personal relationship with the Declaration of Relationship is important because "It's there to protect the customer and the employee."

The Employee's testimony of the relationship being "consensual" is not only unsupported by any evidence but is also (if true) a violation of Department guidelines. Customer

S.C. was clearly concerned about the contacts and how the Employee's unsolicited telephone calls made her uneasy, and even frightened for her appeal, her family, and herself.

The Employee asserts that there is "precedence" for limiting discipline to a 60-day suspension, rather than removal. His assertion relates to unidentified prior disciplinary actions of another employee without any comparison to the circumstances of the past discipline with the actions of the Employee in this matter.

Based on the Employee's knowing and willful misconduct and coupled with his knowledge of the circumstances of the customer's struggles, which he obtained from the confidential information he inappropriately accessed, along with the customer's clear vulnerabilities, the Department's Final Order of Removal and Charges should be affirmed.

Based on the findings and conclusions set forth above, it is hereby recommended that the Final Order of Removal 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 Sharp.**

**Motion carried with all Commissioners in favor.**

6. Commissioner Rodriguez-Kennedy: Amanda M. Gracia, Esq., on behalf of **2022-202P**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee 2022-202P appealed an Order of Termination and Charges removing him from the position of Deputy Sheriff in the Sheriff's Department. The Commission appointed, Commissioner Will Rodriguez-Kennedy, to hear the appeal and submit findings, conclusions, and recommendations to the Civil Service Commission. Thereafter, a hearing was held on December 1, 2022.

The causes of discipline were three charges of incompetency and one charge of conduct unbecoming an officer or employee of the County.



The Employee stipulated to the charges set forth in each of the Causes, acknowledging that he was guilty of each as set forth in the Department's Order of Termination and Charges dated July 11, 2022. By stipulating to the charges, the Employee admits that the evidence from the investigation, the *Skelly* conference, and at the hearing (unless an objection was sustained) is sufficient to find that the conduct in question in fact occurred.

The evidence presented at the hearing, both oral and written, will be used to determine whether the Employee's discipline, termination, should be affirmed.

On Friday, November 26, 2021, at 6:25 p.m., the Employee was dispatched to a security check of a residential property located in Fallbrook (the "Property"). Sheriff's dispatch informed the Employee that the check was in response to calls from the nephew of the owner of the property; that both a neighbor and a gardener at the property reported seeing "subjects" inside the residence on the Property; that the security cameras around the property all showed that they were offline; and that the subjects told people they are just moving in.

While responding to the Property the Employee notified dispatch that he did not need "cover" with a second deputy and proceeded to the Property alone.

Upon arriving at the Property, the Employee encountered two subjects, identified by their initials C.M. and A.M. The Employee asked both subjects for identification. Although C.M. produced identification A.M. lied to the Employee about her identity, using her sister's name and birthdate while telling the Employee that her "temporary" license was not in her possession at that time.

In running the subjects' identifications for background and warrants, the response for A.M.'s false name came back clear of warrants or criminal history but the response for C.M. was that he had a 4<sup>th</sup> Amendment waiver for a prior felony conviction, that he was under active mandatory supervision for grand theft, and the name of his probation officer whom Employee should call.

While the Employee contends that he did not hear the complete report on C.M. when checking with dispatch for any outstanding warrants, in particular that he was unable to hear that C.M. had prior convictions for grand theft and residential

burglary, the dispatch audio recording of that information is not garbled and, even if it was on his end, the Employee did not ask dispatch to repeat the information. The Department contends that the recording from dispatch clearly reveals that that C.M. was a probationer on "active and mandatory supervision," and the name of C.M.'s probation officer.

The evidence does not support the Employee's statement that he looked in C.M.'s car in the carport of the residence. The body worn camera ("BWC") video is unable to confirm that the Employee ever stopped or even turned to look in the open passenger door when he arrived, or any time thereafter. Further the car had dark-tinted windows on each of the windows except the windshield. When the Employee arrived at 7:19 p.m. it was already dark outside. At one point, C.M. stood in front of the right rear passenger window while the Employee directed his handheld flashlight toward the car.

The Employee consistently informed C.M. and A.M. that they were trespassing on the Property. However, the Employee never used this situation to conduct a thorough investigation into the trespassers and their backgrounds, or to closely monitor what property was being removed by the trespassers.

For a period of approximately 37 minutes the Employee was in the residence on the Property, allowing the C.M. and A.M. to leave his sight frequently. During this time, he accepted their lie that they were collecting A.M.'s "personal belongings," even though the BWC video shows both subjects carrying various items outside to the car to take with them. These items included bags, boxes, a backpack, a duffel bag, a large tool bag, and pieces of luggage, none of which were ever inspected by the Employee, nor did he question them about their contents. The Employee can also see that items were stacked on the dining room table; and drawers were pulled open with contents strewn on the floor in front of the cabinets or dressers located nearby.

During the 37 minutes the Employee remained standing in the residence, and despite separate movements of C.M. and A.M. throughout the house, the Employee only briefly moves from his location in the dining room immediately adjacent to the front door to move into the adjacent kitchen, to assist A.M. in her placement of multiple wine bottles in a trash bag. The Employee never moves further to look through opened doors to other rooms, including an office. Like the drawers in the hallways and front room, the drawers of the desk in the office were discovered open with contents strewn on the floor.

At 11:15 a.m., on November 28, 2021, Sheriff's Deputy M.R. was dispatched to the Property to investigate a report of residential burglary. A real estate broker and friend of the owner of the Property told Deputy M.R. that the residence on the Property had been ransacked; that video surveillance reflects unknown parties on the Property and in the residence, as well as indications that a dog door was forcibly opened and likely the location of entry by the burglars.

Upon her arrival Deputy M.R. met with the property manager and friend of the owner of the Property who had been at the Property for two days waiting for deputies to respond to calls related to the burglary.

It was clear to Deputy M.R. that entry was made through the pried open dog door, then a series of doors leading through the garage to the residence. Each door had doorknobs removed and evidence that they were pried open.

Deputy M.R. and another deputy walked through the house and checked each of the rooms. Their BWC video reflect the house to be in complete disarray, including the rooms that the Employee's BWC video captured, were consistent with what he would have observed.

In collecting evidence in the house Deputy M.R. found a piece of mail addressed to A.M., at an address in San Diego.

Deputy M.R.'s investigation of the burglary, and recovered video surveillance footage, led her to connect the blue Hyundai four door sedan with the Utah license plate number called in by the Employee on November 26<sup>th</sup> to the illegal entry of the house as early as 11:00 a.m. on November 25, 2021. When a "be on the lookout" was placed for the Hyundai, it was picked up by a license plate reader in Carlsbad at 2:00 a.m. on November 29, 2021. It was stopped by Carlsbad police and the driver, A.M., was arrested. The vehicle was towed and stored, and after obtaining a search warrant for the vehicle, Deputy M.R. inspected the contents at the tow yard and inventoried the contents.

The contents of the vehicle included approximately \$20,000 in goods removed from the Property, much of which was removed on November 26, 2021, while the Employee was present. Included in the evidence was the Gucci handbag that A.M. removed in the Employee's presence.

Employee is guilty of incompetency by his actions in waiving cover when responding to a security check at night, failing to thoroughly investigate the persons located at the Property, failing to call for cover to assist in detaining them for further questioning while making a thorough inspection of the residence, failing to search the vehicle even though C.M. was subject to a 4<sup>th</sup> Amendment waiver, and failing to recognize a burglary in progress.

Employee is guilty of incompetency by his failure to submit a crime report for trespass or burglary in process. He failed to thoroughly contact those persons identified as having knowledge of the ownership and control of the Property and who had contacted the Department complaining of the unauthorized activities at the Property.

Employee is guilty of incompetency in that in responding to a security check at the Property and speaking with one of the reporting parties (the gardener) about suspicious activities in the residence, he failed to recognize a burglary in progress, and failed to properly identify and detain the suspects of the crime that evening, thereby preventing the removal of stolen property.

Employee is guilty of conduct unbecoming due to his failure to recognize a burglary in progress, detain the suspects following inquiry on the background checks, call for cover to make a thorough assessment of the residence and its exterior and interior conditions, collect evidence, and prevent the removal of stolen property, all of which is expected of a trained deputy such as the Employee by both the Department and the public.

The Employee has admitted to the violations of Causes I through IV, therefore, the facts described in this decision are necessary to determine the proper level of discipline.

The Employee testified that "In hindsight," he would have taken a number of different approaches to the handling of the security check at the Property that night. He recognized that his failure to properly respond began with his "waiver of cover," thereby making him the only deputy on site, at night, with at least two "subjects" who were suspected of at least trespassing. This failure created a wholly unacceptable safety issue when he unnecessarily placed himself in a potentially dangerous situation. There is no satisfactory explanation for this failure.

The Employee admits that he failed to conduct a proper investigation. Because he was without cover, he could not easily detain the subjects, he could not watch each of them when they separated, he could not be certain there were not others on the Property by searching each room and walking around the Property to inspect for any illegal point of entry. Even if he had cover, he did not make a thorough review of the Department's database, which would have revealed that A.M. was C.M.'s wife, a known acquaintance and felon, and her physical description and booking photo would match the woman who gave him a false name. He also recognizes that he should have contacted the probation officer assigned to C.M.

The Employee described being "bamboozled" by C.M. and A.M.'s story that they had rented the property on Craigslist and that they were just "moving in." When he informed them that they were not authorized to be on the Property and ordered them to leave he stood by and observed for 37 minutes as they took a bunch of odd items: A framed painting, a single light bulb, empty wine bottles, alongside several bags suspiciously filled to capacity, it would have been reasonable for the employee to ask "why?" Instead, the Employee was stunningly incurious and naive. A trained Deputy with six years of experience cannot afford to be incurious or naïve in the execution of their sworn duty.

Although the Employee admits his errors and identifies ways he should have performed in this matter, he continues to qualify such an epiphany as "in hindsight." Hindsight is not an acceptable standard for a deputy of 6 years' experience, who has investigated crimes such as this in his career. It is as if his errors, inaction, and conduct should be recognized as a learning experience, supporting lesser discipline.

The problem is that the Employee had a recent discipline in an unrelated matter, but which was also related to his incompetency in handling an investigation and failing to pursue the matter further. While the possible crime was different, it was just as serious as the present situation, and the discipline should have made him aware of the need - from the Department and the public - to investigate calls more thoroughly, and properly report the incident.

Based upon the evidence presented it would not be acceptable for the Commission to overrule the Department's decision to terminate the Employee and return him to his employment with the Department, even if re-assigned to either court or detention details. As pointed out by the Department, "crimes

occur at the jails and in the courthouse." Unfortunately, the Employee has not shown the competency to perform up to standards, wherever the assignment might be.

Based on the findings and conclusions set forth above, it is hereby 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 Rodriguez-Kennedy to approve the Findings and Recommendations; seconded by Commissioner Fletcher.**

**Motion carried with all Commissioners in favor.**

#### **OTHER MATTERS**

##### **Extension of Temporary Appointments**

#### 7. Registrar of Voters

2 Human Resources Assistants: **2023-003** and **2023-004**

RECOMMENDATION: Ratify

**Ratified.**

#### 8. Office of Emergency Services

1 Epidemiologist I: **2023-005**

RECOMMENDATION: Ratify

**Ratified.**

ADJOURNED: 3:14 p.m.

#### **ASSISTANCE FOR THE DISABLED:**

Agendas and records are available in alternative formats upon request. Contact the Civil Service Commission office at (619)531-5751 with questions or to request a disability-related accommodation. Individuals requiring sign language interpreters should contact the Americans with Disabilities Coordinator at (619)531-4908. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 24 hours in advance of the meeting so that arrangements may be made. An

area in the front of the room is designated for individuals requiring the use of wheelchair or other accessible devices.