

Solano County

*675 Texas Street
Fairfield, California 94533
www.solanocounty.com*



Agenda - Final

Wednesday, April 8, 2015

6:30 PM

Solano County Board of Supervisors Chambers

Civil Service Commission

SOLANO COUNTY CIVIL SERVICE COMMISSION

*Regular Meeting
April 8, 2015
Wednesday - 6:30 p.m.
Board of Supervisors Chambers*

TO THE PUBLIC

In compliance with the Americans with Disabilities Act (ADA of 1990), the County will provide accommodations for persons with disabilities who attend public meetings. If you have the need for an accommodation such as interpreters or materials in alternative format, please contact Antoinette Rasmussen at 707-784-6180.

If you wish to address the Commission on a matter not listed on the Agenda, you may do so under Items from the Public. The subject matter must be within the jurisdiction of the Commission.

If you wish to address any item listed on the Agenda, please submit a Speaker Card to the Recording Secretary of the Commission before the Commission considers the specific item. Cards are available on the podium in the Board Chambers.

Please limit your comments to five minutes.

For items not listed on the Agenda, please see Item #3, Items from the Public.

1. Call to Order/Roll Call
2. Pledge Of Allegiance
3. Items from the Public

This is your opportunity to address the Commission on a matter not heard on the Agenda, but it must be within the subject matter jurisdiction of the Commission. Please submit a Speaker Card before the first speaker is called and limit your comments to five minutes. Items from the public will be taken under consideration without discussion by the Commission and may be referred to staff.

4. Approval of Minutes of the Commission Meeting of March 11, 2015
5. Communications
6. Information Items (No Action Required by Commissions)
7. Additions to, or deletions from, the Agenda
8. Approval of the Agenda

SCHEDULED CALENDAR

(All items under Scheduled Calendar require Commission Action)

[CSC 15-0025](#) Affirm the decision of the Director of Human Resources that the petition for modification of representation unit for Unit 19, Executive and Senior Management is appropriate.

[CSC 15-0022](#) Approve the minutes of Commission meeting of March 11, 2015

Attachments: [3-11-15 Minutes](#)

[CSC 15-0023](#) Request for a Civil Service Commission Hearing on an allegation of workplace discrimination and consider the appointment of a Hearing Officer.

[CSC 15-0024](#) Request for a Civil Service Commission Hearing on an allegation of workplace discrimination and consider the appointment of a Hearing Officer.

MISCELLANEOUS ITEMS

9. Commission/Staff Comments

Adjourn

To the Civil Service Commission meeting of May 13, 2015 at 6:30 P.M., Board Chambers, 675 Texas Street, Fairfield, CA



Agenda Submittal

Agenda #: **Status:** Agenda Ready

Type: CSC-Document **Department:** Civil Service Commission

File #: CSC 15-0025 **Contact:** Marc Fox, 784-2552

Agenda date: 4/8/2015 **Final action:**

Title: Affirm the decision of the Director of Human Resources that the petition for modification of representation unit for Unit 19, Executive and Senior Management is appropriate.

Governing body: Civil Service Commission

District:

Attachments:

Date	Ver.	Action By	Action	Result
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HUMAN RESOURCES' RECOMMENDATION:

The Director of Human Resources recommends that the Civil Service Commission makes a final determination that the proposed Unit 19, Executive and Senior Management, unit modification petition is appropriate.

SUMMARY:

On October 15, 2014, the County received a petition requesting modification of the Unit 19, Executive and Senior Management, bargaining unit, represented by Professional and Technical Engineers, Local 21 ("Union"), to include the Deputy Compliance and Quality Assurance Manager. The Union provided additional information on October 30, 2014. Following discussions between the Director of Human Resources and the Union's authorized representative, the Director of Human Resources finds that a community of interests exists for inclusion of the Deputy Compliance and Quality Assurance Manager in Unit 19, Executive and Senior Management. Presently, the Deputy Compliance and Quality Assurance Manager is an unrepresented classification.

DISCUSSION:

Following the Director of Human Resources determination regarding the appropriateness of the petition, the Director provided notice, in accordance with the County's Employer-Employee Relations Rules and Regulations (EERRR), to employees in the proposed unit and to any person or employee organization that has filed a written request for such notice.

The EERRR also provides that within thirty days of the date notice is given to the employees, a second employee organization may challenge the appropriateness of the proposed unit modification and may petition for the establishment of a different unit. No such petitions were received.

The proposed unit modification is to add one classification to Unit 19, Executive and Senior Management. This classification has one authorized position. The Union submitted a petition (application for membership) signed by the employee in this classification.

The final step is for the Civil Service Commission to make the final determination on the appropriateness of the representation unit.

ALTERNATIVES:

The Commission could find that a community of interests does not exist for inclusion of the Deputy Compliance and Quality Assurance Manager classification in Unit 19, Executive and Senior Management; however, this alternative is not recommended as both the County and the Union agree for inclusion of this presently unrepresented classification into Unit 19.

OTHER AGENCY INVOLVEMENT:

None.



Solano County

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Agenda Submittal

Agenda #: **Status:** Agenda Ready
Type: CSC-Document **Department:** Civil Service Commission
File #: CSC 15-0022 **Contact:**
Agenda date: 4/8/2015 **Final action:**
Title: Approve the minutes of Commission meeting of March 11, 2015

Governing body: Civil Service Commission

District:

Attachments: [3-11-15 Minutes](#)

Date	Ver.	Action By	Action	Result
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**MINUTES OF THE SOLANO COUNTY
CIVIL SERVICE COMMISSION**

Regular Meeting
Wednesday, March 11, 2015
Board of Supervisors Chambers
County Administration Center
Fairfield, CA 94533

1. Call to Order/Roll Call

President Neal called the meeting to order at 6:30 p.m. Roll was called, and the following Commissioners were present: Commissioner Neal, Commissioner Booe, Commissioner Riley, Commissioner Burton, and Commissioner Tedford. Commission Staff present were Marc Fox, Director of Human Resources and Commission Secretary and Antoinette Rasmussen, Recording Secretary. JoAnn Parker, Deputy County Counsel was absent.

2. Pledge of Allegiance

3. Items from the Public

Steve Christie thanked the Commission for hearing the petition for bargaining unit modification last month. Mr. Christie stated that this was a learning experience for the employees and in the future he would like the Commission to reflect on what has come about.

4. Approval of the Minutes of the Commission Meeting of February 11, 2015

Comissioner Booe distributed meeting minute corrections prior to the start of the meeting. A motion to approve the minutes of the February 11, 2015, as corrected, was made by Commissioner Riley with a second by Commissioner Booe. The motion to approve the minutes as corrected carried 5/0.

5. Communications

There were no communication items.

6. Information Items (No Action Required by Commission)

There were no information items.

7. Additions to, or deletions from, the Agenda

There were no additions to or deletions from the Agenda.

8. Approval of the Agenda

A motion was made to approve the agenda by Commissioner Booe with a second by Commissioner Burton. The motion to approve the agenda carried 5/0.

SCHEDULED CALENDAR

CSC 15-0015: Request to Establish the Class of Capital Projects Coordinator – Senior and Revise and Retitle the class of Small Projects Coordinator.

Director of Human Resources Marc Fox recommended approval of the request to establish the class of Capital Projects Coordinator – Senior and to revise and retitle the class of Small Projects Coordinator. Mr. Fox stated that the Human Resources Department worked with the General Services Department and the impacted unions. The Small Projects Coordinator is represented by Unit 10, Stationary Engineers, Local 39. The Capital Projects Senior would be represented by Unit 7, SEIU, Local 1021. Mr. Fox explained that General Services is moving from the architectural services model and toward a capital improvement project management model. Mr. Fox pointed out that in the audience Human Resources Analyst Carlise Mickens and Deputy Director of General Services Kanon Artiche were there to answer any questions the Commission might have.

Commissioner Booe noted that under the heading of other agency involvement on the staff report it states that SEIU did not provide any objections. Commissioner Booe asked if a response was received from SEIU. Human Resources Analyst Carlise Mickens responded that a response was not received from SEIU. Commissioner Booe then asked without a response was received, how does the Commission know if the union had objections. Director of Human Resources Marc Fox explained that the union would have made known of any objections. Mr. Fox elaborated that it is not unusual for a union to not reply if they have no objections. Commissioner Booe asked if the Human Resources Department has received a response from Local 39. Mr. Fox stated that the County had a meeting with the Local 39 field representative and that at the conclusion of the meeting the union had no objections. Commissioner Riley asked if Mr. Fox requested the meeting with Local 39 and Mr. Fox responded that Local 39 requested the meeting.

Commissioner Riley stated that the Commission needs to consider the opinions of the unions when making decisions regarding classifications. Mr. Fox then summarized what steps were taken. Mr. Fox explained; first correspondence was sent to both unions, one union did not reply and the other union had some questions. Mr. Fox stated that the County then met with the union, per its request, and at the conclusion of the meeting the union did not have objections.

President Neal asked Director of Human Resources Marc Fox if this is fully funded. Mr. Fox responded that he does not anticipate any difficulties with the Board of Supervisors in terms of their move to this model. The move to this model will potentially be presented to the Board of Supervisors during their March 24, 2015 meeting.

Commissioner Riley asked President Neal if the Commission would vote individually on these items or together. President Neal responded that they would vote on both of the items together.

A motion to approve the request to establish the class of Capital Projects Coordinator – Senior and revise and retitle the class of Small Projects Coordinator was made by Commissioner Booe with a second by Commissioner Burton. The motion to approve carried 5/0.

9. Commission/Staff Comments

Commissioner Riley stated that last month's meeting was educational for everyone and that he had made a comment regarding distractions during the meeting. Commissioner Riley stated that he believed that he was distracted from what the actual task was. Commissioner Riley explained that the actual task was to determine if there was a unique community of interests. Commissioner Riley asked, what is the process for handling a Sheriff Security Officer involved shooting and is there a specific policy in place. Commissioner Riley asked what steps are taken by the County and the bargaining unit as it relates to protecting those employees. Commissioner Riley stated that the Commission needs to rectify or at least explain to the employees that they are covered. Director of Human Resources Marc Fox responded that he will work with Deputy County Counsel Joann Parker, but he is not sure if this is within the purview of the Commission.

President Neal stated that he believes that the Commission can discuss the topic that Commissioner Riley addressed. President Neal asked Mr. Fox if the variety of employees that are armed, fall under the same purview as a Peace Officer. Mr. Fox responded that the County provides legal representation when an employee is working within the course and scope of employment. President Neal then stated that he believes that Commissioner Riley's question regarding policy and process for officer involved shootings is within purview of the Commission as it relates to the employees' rights in the County's jurisdiction, and that he would appreciate if Mr. Fox could look into this. Mr. Fox responded that he will work with Deputy County Counsel Joann Parker on this. President Neal then asked Mr. Fox to have Ms. Parker give him a call if she has any questions.

Commissioner Booe asked Director of Human Resources Marc Fox if an employee involved in an officer involved shooting could choose to seek outside legal representation. Commissioner Booe then asked if an outside attorney would do a better job. Mr. Fox responded that he believes that the employees that spoke at the last Commission meeting were speaking in terms of their personal liability and that Mr. Fox is not in a position to answer that question because it is the employees personal beliefs in terms of what they feel would better serve their own personal interests.

10. Adjourn

President Neal adjourned the meeting at 6:42 p.m.

Respectfully submitted,



Marc A. Fox
Director of Human Resources



Agenda Submittal

Agenda #: **Status:** Agenda Ready

Type: CSC-Document **Department:** Civil Service Commission

File #: CSC 15-0023 **Contact:** Marc Fox, 784-2552

Agenda date: 4/8/2015 **Final action:**

Title: Request for a Civil Service Commission Hearing on an allegation of workplace discrimination and consider the appointment of a Hearing Officer.

Governing body: Civil Service Commission

District: All

Attachments:

Date	Ver.	Action By	Action	Result
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HUMAN RESOURCES' RECOMMENDATION:

The Director of Human Resources recommends that the Civil Service Commission appoint a hearing officer in the matter of the March 2, 2015 complaint alleging a probationary employee ("**Employee M**") was released from employment on the basis of discrimination, pursuant to Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

Further, the Director of Human Resources recommends that the parties (County and the complainant, or complainant's representative, if any) mutually select a hearing officer. In the event the parties do not mutually select a hearing officer within twenty (20) calendar days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternatively strike one name and the remaining name will be the selected hearing officer.

SUMMARY:

On March 2, 2015, the Human Resources Department received a written request for a hearing before the Civil Service Commission, alleging her release from employment during the probationary period was on the basis of discrimination. The employee requested a Civil Service Commission hearing in accordance with Civil Service Rule 1.031. Further, the employee's representative has asked that a hearing officer conduct the hearing.

DISCUSSION:

Civil Service Rule 1.031, Procedures for Filing a Complaint of Alleged Discrimination, provides three options for an individual to have his/her discrimination complaint heard:

1. File an informal or formal complaint at the department level; or
2. Request conciliation through the Affirmative Action Officer; or
3. File a request for a hearing before the Civil Service Commission, with the exception of harassment complaints which do not affect a tangible job benefit.

Note, the term "Affirmative Action Officer" is no longer used. With the exception of quotes from the Civil

Service Rules, the balance of this report will refer to the "Equal Employment Opportunity Officer" or "EEO Officer."

Section 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph A states:

"The complainant may appeal alleged discrimination to the County Civil Service Commission by filing a request for a hearing with the Director of Human Resources within thirty (30) days following the date the alleged discriminatory activity occurred, or within thirty (30) calendar days after the person became aware of it or within ten (10) days of discussing the matter with the departmental Affirmative Action Representative or within ten (10) calendar days of receiving a response from the appointing authority or within ten (10) calendar days of the issuance of the Affirmative Action Officer's letter regarding results of conciliation."

A complainant is not required to file an informal/formal complaint at the department level and then request conciliation through the EEO Officer before requesting a hearing before the Civil Service Commission. Rather, the complainant may request the hearing before the Civil Service Commission without seeking resolution at the department level and without seeking assistance through the EEO Officer.

Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer, permits the Commission to delegate hearing responsibilities to a hearing officer. The Civil Service Rules specify that the hearing officer minimally must be approved by the American Arbitration Association for employment law matters, or be an attorney with at least five years of practice in California with an emphasis in employment law. In utilizing services of a hearing officer, the Commission, however, is not delegating authority for rendering a decision. Rather, as outlined in paragraph #5 of this subsection, the delegated hearing officer provides the Commission a written record and a recommendation. The Commission renders the final written decision.

The Commission has previously delegated to a hearing officer.

- In September 2004, the Commission delegated to a hearing officer in the matter of an employee who alleged her release of employment during the probationary period was a pretext based on sex discrimination. At that meeting, the Commission directed the Director of Human Resources to retain a hearing officer. The staff report and the meeting minutes infer that the Director had discretion on whom to retain as the hearing officer.
- In April 2012 the Commission delegated to a hearing officer in the matter of an employee who alleged discrimination. At that April 2012 meeting, the Commission directed the County and employee to mutually agree on a hearing officer. To the extent that an agreement was not reached, the Director of Human Resources would provide a list of three names and the parties would alternatively strike names until one name remained, and that remaining individual would be the selected hearing officer.
- In March 2013 the Director of Human Resources recommended that Commission delegate to a hearing officer in the matter of two employees who alleged a failure to timely investigate discrimination complaints. At that March 2013 meeting, the Commission decided to not have a hearing officer and to hear the matter directly.

Because of the complexity of discrimination employment law and the potential liability, the recommendation is that the Civil Service Commission retain a hearing officer pursuant to the criteria listed under Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

The Director of Human Resources recommends, consistent with the Commission's prior direction that the parties (County and the complainant, or complainant's representative if any) mutually select a hearing officer.

In the event the parties do not mutually select a hearing officer within twenty days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternately strike one name and the remaining name will be the selected hearing officer.

ALTERNATIVES:

In this instance, the employee has filed formal complaints with the EEO Compliance Officer and the complaint is under investigation. The Commission could choose to not conduct a hearing until after the investigation has concluded; however, this alternative does not appear to be authorized under the Civil Service Rules as a complaint can be filed with the Commission within specific timeframes and those timeframes do not require the completion of the formal complaint investigation.

The Commission could choose not to approve the staff's recommendation and either select the hearing officer itself or provide discretion to the Director of Human Resources for the selection of the hearing officer (as appears to have been the case in 2004).

The Commission could choose not to approve the staff's recommendation and conduct the hearing itself. This alternative is not recommended because of the legal complexity of discrimination employment law. If, however, the Commission opts to conduct the hearing itself, the Director of Human Resources recommends that the Commission schedule the hearing for 6:30 p.m., Wednesday, May 13, 2015.

OTHER AGENCY INVOLVEMENT:

None.

Enclosure:

- Civil Service Rule 1.031, Procedures for Filing a Complaint of Alleged Discrimination
- Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level)

I.031 Procedures for Filing a Complaint of Alleged Discrimination

- A. Any aggrieved person who is a current or former County employee, and who elects to register a complaint of alleged discrimination may:
1. File an informal or formal complaint at the departmental level or
 2. Request conciliation through the Affirmative Action Officer or
 3. File a request for a hearing before the Civil Service Commission; with the exception of harassment complaints which do not affect a tangible job benefit.

An aggrieved person may enter the process at any of the three levels, but may not file at two or more levels simultaneously or attempt to go to a lower level.

- B. To file a formal complaint at the departmental level, to request conciliation through the Affirmative Action Officer or to request a hearing by the Civil Service Commission, a written complaint must be submitted. This must be done within thirty (30) calendar days following the date the alleged discriminatory activity occurred, or within thirty (30) calendar days after the day the person became aware of it or within ten (10) calendar days of informal discussion with the appropriate departmental Affirmative Action Representative. The complaint shall be written on forms provided by the Affirmative Action Officer, and shall include but not be limited to:

1. The name, address, occupation of the complainant.
 2. A specific designation of the person(s) or action(s) causing the alleged discrimination.
 3. A clear and complete description of the specific act(s) or omission(s) which are alleged to be discriminatory.
 4. A clear and complete statement of the relief or corrective action being sought.
 5. The complainant may provide his/her own representative, beginning with this step of the complaint process, by indicating the name, address, and occupation of the representative.
- C. A copy of the written complaint shall be provided to the respondent department head and the named respondent employee(s). The respondent department head and the named respondent employee(s) shall be given ten (10) calendar days to respond, in writing, to the allegations contained in the complaint.

I.034 Civil Service Commission Hearing (Final Administrative Review Level)

- A. The complainant may appeal alleged discrimination to the County Civil Service Commission by filing a request for a hearing with the Director of Human Resources within thirty (30) days following the date the alleged discriminatory activity occurred, or within (30) calendar days after the person became aware of it or within ten (10) days of discussing the matter with the departmental Affirmative Action Representative or within ten (10) calendar days of receiving a response from the appointing authority or within ten (10) calendar days of the issuance of the Affirmative Action Officer's letter regarding results of conciliation.
- B. Hearing by the Civil Service Commission
1. Within thirty (30) calendar days of the receipt of the request for a hearing, the Civil Service Commission shall schedule a hearing.
 2. The hearing shall be conducted in conformance with Section XIII of these rules.
 3. The Civil Service Commission shall take all evidence and testimony into account prior to rendering a final disposition regarding the complaint. The Civil Service Commission shall then render a final disposition within ten (10) calendar days.
- C. Hearing by a Hearing Officer
1. In the alternative, if the Civil Service Commission determines it would be appropriate, it may delegate hearing responsibilities to a hearing officer appointed by the Civil Service Commission.
 2. A hearing officer selected by the Commission shall meet the following minimum qualifications:
 - a. Shall be approved by the American Arbitration Association for employment law matters;
or
 - b. Shall be an attorney with at least 5 years practice in the State of California with an emphasis in employment law.
 3. The hearing officer will conduct a hearing in accordance with Section XIII of these rules.
 4. The hearing officer shall prepare a recommended decision and forward it to the Civil Service Commission no later than thirty (30) days after the matter was taken under submission by the hearing officer. The recommended decision shall set forth whether the charges of discrimination are substantiated and the reasons therefore.
 5. After receiving the recommendation of the hearing officer and reviewing the written record, the

Civil Service Commission may reject or modify the recommendation of the hearing officer. The Civil Service Commission shall render a final written disposition within ten (10) calendar days after taking the recommendation under consideration.



Agenda Submittal

Agenda #: **Status:** Agenda Ready

Type: CSC-Document **Department:** Civil Service Commission

File #: CSC 15-0024 **Contact:** Marc Fox, 784-2552

Agenda date: 4/8/2015 **Final action:**

Title: Request for a Civil Service Commission Hearing on an allegation of workplace discrimination and consider the appointment of a Hearing Officer.

Governing body: Civil Service Commission

District: All

Attachments:

Date	Ver.	Action By	Action	Result
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HUMAN RESOURCES' RECOMMENDATION:

The Director of Human Resources recommends that the Civil Service Commission appoint a hearing officer in the matter of the February 11, 2015 complaint alleging a probationary employee ("**Employee Y**") was released from employment on the basis of discrimination, pursuant to Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

Further, the Director of Human Resources recommends that the parties (County and the complainant, or complainant's representative, if any) mutually select a hearing officer. In the event the parties do not mutually select a hearing officer within twenty (20) calendar days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternatively strike one name and the remaining name will be the selected hearing officer.

SUMMARY:

On February 11, 2015, the Human Resources Department received a written request for a hearing before the Civil Service Commission, alleging her release from employment during the probationary period was on the basis of discrimination. The employee requested a Civil Service Commission hearing in accordance with Civil Service Rule 1.031. Further, the employee's representative has asked that a hearing officer conduct the hearing.

DISCUSSION:

Civil Service Rule 1.031, Procedures for Filing a Complaint of Alleged Discrimination, provides three options for an individual to have his/her discrimination complaint heard:

1. File an informal or formal complaint at the department level; or
2. Request conciliation through the Affirmative Action Officer; or
3. File a request for a hearing before the Civil Service Commission, with the exception of harassment complaints which do not affect a tangible job benefit.

Note, the term "Affirmative Action Officer" is no longer used. With the exception of quotes from the Civil Service Rules, the balance of this report will refer to the "Equal Employment Opportunity Officer" or "EEO

Officer.”

Section 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph A states:

“The complainant may appeal alleged discrimination to the County Civil Service Commission by filing a request for a hearing with the Director of Human Resources within thirty (30) days following the date the alleged discriminatory activity occurred, or within thirty (30) calendar days after the person became aware of it or within ten (10) days of discussing the matter with the departmental Affirmative Action Representative or within ten (10) calendar days of receiving a response from the appointing authority or within ten (10) calendar days of the issuance of the Affirmative Action Officer’s letter regarding results of conciliation.”

A complainant is not required to file an informal/formal complaint at the department level and then request conciliation through the EEO Officer before requesting a hearing before the Civil Service Commission. Rather, the complainant may request the hearing before the Civil Service Commission without seeking resolution at the department level and without seeking assistance through the EEO Officer.

In this instance, the complainants have filed at least one complaint with the EEO Officer, which is being investigated.

Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer, permits the Commission to delegate hearing responsibilities to a hearing officer. The Civil Service Rules specify that the hearing officer minimally must be approved by the American Arbitration Association for employment law matters, or be an attorney with at least five years of practice in California with an emphasis in employment law. In utilizing services of a hearing officer, the Commission, however, is not delegating authority for rendering a decision. Rather, as outlined in paragraph #5 of this subsection, the delegated hearing officer provides the Commission a written record and a recommendation. The Commission renders the final written decision.

The Commission has previously delegated to a hearing officer.

- In September 2004, the Commission delegated to a hearing officer in the matter of an employee who alleged her release of employment during the probationary period was a pretext based on sex discrimination. At that meeting, the Commission directed the Director of Human Resources to retain a hearing officer. The staff report and the meeting minutes infer that the Director had discretion on whom to retain as the hearing officer.
- In April 2012 the Commission delegated to a hearing officer in the matter of an employee who alleged discrimination. At that April 2012 meeting, the Commission directed the County and employee to mutually agree on a hearing officer. To the extent that an agreement was not reached, the Director of Human Resources would provide a list of three names and the parties would alternatively strike names until one name remained, and that remaining individual would be the selected hearing officer.
- In March 2013 the Director of Human Resources recommended that Commission delegate to a hearing officer in the matter of two employees who alleged a failure to timely investigate discrimination complaints. At that March 2013 meeting, the Commission decided to not have a hearing officer and to hear the matter directly.

Because of the complexity of discrimination employment law and the potential liability, the recommendation is that the Civil Service Commission retain a hearing officer pursuant to the criteria listed under Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level), paragraph C, Hearing by a Hearing Officer.

The Director of Human Resources recommends, consistent with the Commission's prior direction that the parties (County and the complainant, or complainant's representative if any) mutually select a hearing officer. In the event the parties do not mutually select a hearing officer within twenty days, then the Director of Human Resources will provide a list of three names to the parties. Following a coin toss, each party will alternately strike one name and the remaining name will be the selected hearing officer.

ALTERNATIVES:

In this instance, the employee has filed formal complaints with the EEO Compliance Officer and the complaint is under investigation. The Commission could choose to not conduct a hearing until after the investigation has concluded; however, this alternative does not appear to be authorized under the Civil Service Rules as a complaint can be filed with the Commission within specific timeframes and those timeframes do not require the completion of the formal complaint investigation.

The Commission could choose not to approve the staff's recommendation and either select the hearing officer itself or provide discretion to the Director of Human Resources for the selection of the hearing officer (as appears to have been the case in 2004).

The Commission could choose not to approve the staff's recommendation and conduct the hearing itself. This alternative is not recommended because of the legal complexity of discrimination employment law. If, however, the Commission opts to conduct the hearing itself, the Director of Human Resources recommends that the Commission schedule the hearing for 6:30 p.m., Wednesday, May 13, 2015.

OTHER AGENCY INVOLVEMENT:

None.

Enclosure:

- Civil Service Rule 1.031, Procedures for Filing a Complaint of Alleged Discrimination
- Civil Service Rule 1.034, Civil Service Commission Hearing (Final Administrative Review Level)

1.031 Procedures for Filing a Complaint of Alleged Discrimination

- A. Any aggrieved person who is a current or former County employee, and who elects to register a complaint of alleged discrimination may:
1. File an informal or formal complaint at the departmental level or
 2. Request conciliation through the Affirmative Action Officer or
 3. File a request for a hearing before the Civil Service Commission; with the exception of harassment complaints which do not affect a tangible job benefit.

An aggrieved person may enter the process at any of the three levels, but may not file at two or more levels simultaneously or attempt to go to a lower level.

- B. To file a formal complaint at the departmental level, to request conciliation through the Affirmative Action Officer or to request a hearing by the Civil Service Commission, a written complaint must be submitted. This must be done within thirty (30) calendar days following the date the alleged discriminatory activity occurred, or within thirty (30) calendar days after the day the person became aware of it or within ten (10) calendar days of informal discussion with the appropriate departmental Affirmative Action Representative. The complaint shall be written on forms provided by the Affirmative Action Officer, and shall include but not be limited to:

1. The name, address, occupation of the complainant.
 2. A specific designation of the person(s) or action(s) causing the alleged discrimination.
 3. A clear and complete description of the specific act(s) or omission(s) which are alleged to be discriminatory.
 4. A clear and complete statement of the relief or corrective action being sought.
 5. The complainant may provide his/her own representative, beginning with this step of the complaint process, by indicating the name, address, and occupation of the representative.
- C. A copy of the written complaint shall be provided to the respondent department head and the named respondent employee(s). The respondent department head and the named respondent employee(s) shall be given ten (10) calendar days to respond, in writing, to the allegations contained in the complaint.

I.034 Civil Service Commission Hearing (Final Administrative Review Level)

- A. The complainant may appeal alleged discrimination to the County Civil Service Commission by filing a request for a hearing with the Director of Human Resources within thirty (30) days following the date the alleged discriminatory activity occurred, or within (30) calendar days after the person became aware of it or within ten (10) days of discussing the matter with the departmental Affirmative Action Representative or within ten (10) calendar days of receiving a response from the appointing authority or within ten (10) calendar days of the issuance of the Affirmative Action Officer's letter regarding results of conciliation.
- B. Hearing by the Civil Service Commission
1. Within thirty (30) calendar days of the receipt of the request for a hearing, the Civil Service Commission shall schedule a hearing.
 2. The hearing shall be conducted in conformance with Section XIII of these rules.
 3. The Civil Service Commission shall take all evidence and testimony into account prior to rendering a final disposition regarding the complaint. The Civil Service Commission shall then render a final disposition within ten (10) calendar days.
- C. Hearing by a Hearing Officer
1. In the alternative, if the Civil Service Commission determines it would be appropriate, it may delegate hearing responsibilities to a hearing officer appointed by the Civil Service Commission.
 2. A hearing officer selected by the Commission shall meet the following minimum qualifications:
 - a. Shall be approved by the American Arbitration Association for employment law matters;
or
 - b. Shall be an attorney with at least 5 years practice in the State of California with an emphasis in employment law.
 3. The hearing officer will conduct a hearing in accordance with Section XIII of these rules.
 4. The hearing officer shall prepare a recommended decision and forward it to the Civil Service Commission no later than thirty (30) days after the matter was taken under submission by the hearing officer. The recommended decision shall set forth whether the charges of discrimination are substantiated and the reasons therefore.

5. After receiving the recommendation of the hearing officer and reviewing the written record, the Civil Service Commission may reject or modify the recommendation of the hearing officer. The Civil Service Commission shall render a final written disposition within ten (10) calendar days after taking the recommendation under consideration.