

AGN NO. 8-1/13

**REVISED MOTION BY SUPERVISORS MARK RIDLEY-THOMAS
AND SHEILA KUEHL**

March 12, 2019

**Evaluating the Legality of the Proposed "Truth and Reconciliation Commission"
and the Reexamination of Sheriff Discipline Cases**

With approximately 17,000 employees, the Los Angeles County Sheriff's Department (Department) patrols and provides services to the unincorporated areas of the largest county in the United States with a population of over 10.1 million, provides police services to over 40 cities in Los Angeles County (County), operates the Los Angeles Regional Crime Laboratory, provides security and services for the courts throughout the County, and runs the largest jail system in the country. The import of this massive law enforcement agency cannot be overstated.

Following many controversies over the past several years, including indictments against Department personnel and leadership, troubling incidents of jail violence, and federal monitoring, the Board of Supervisors (Board) and many stakeholder organizations have taken an active role to support reform within the Department. The Office of Inspector General was created in 2014 to provide independent oversight and monitoring of the Department and its jail facilities. In January 2016, the Board voted to establish the Sheriff Civilian Oversight Commission. The commissioners of this historic body are drawn from many disciplines, faiths, and backgrounds, and meet monthly to hear public input and make recommendations to the Sheriff and the Board on critical issues.

The Department has also taken action to support a high degree of staff professionalism and accountability. In 2013 and 2016, the Department developed guidelines to increase the discipline ranges for certain types of deputy misconduct. These

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changes originated, in part, from recommendations from the Citizen's Commission on Jail Violence as well as mandates from federal court-monitored settlement agreements. The revised guidelines included stricter discipline for, among other things, unreported uses of force, dishonesty, and second incidents of driving under the influence.

While the current Sheriff, along with the Association for Los Angeles Deputy Sheriffs (ALADS), has given attention to some reform efforts aimed at transparency and accountability like body-worn cameras, the Sheriff has also stated that some reforms implemented by the prior administration resulted in what he perceives as deputies being unfairly disciplined. To address this, the Sheriff announced the creation of what he has deemed a "Truth and Reconciliation Commission" (Commission) to review prior deputy terminations and rehire "wrongfully" discharged personnel. The Sheriff has stated that this effort could result in rehearing cases dating back to 2013, which could mean rehiring deputies and providing back pay.

The lack of clarity around a process for making what appears to be swift and consequential decisions is concerning. The Sheriff's decision to use the term "truth and reconciliation" is contrary to the underlying principles of the Truth and Reconciliation Commission as originally conceived in post-apartheid South Africa, which was a transparent process of restorative justice based upon public confession and forgiveness.

Instead, the Sheriff has been acting unilaterally to reinstate deputies before setting up a formal process like the Commission. In January 2019, the Sheriff entered into a settlement agreement with and rehired one such deputy, previously discharged from County service for allegations which included domestic abuse and stalking. However, pursuant to California law and the County charter, County Counsel, under the supervision of the County's Board of Supervisors, has exclusive authority over civil actions and proceedings involving the County or a County officer, including the Sheriff. The Sheriff has stated that there are other cases where he expects to review the Civil Service Commission's decisions. Other statements by the Sheriff strongly suggest he intends to act quickly and unilaterally on these cases.

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The Sheriff justifies this rehiring, in part, on a pending legal challenge to the 2013 and 2016 updated guidelines on discipline referenced above. When these new guidelines were implemented, ALADS challenged them before the County Employee Relations Commission (ERCOM). The ERCOM hearing officer found that the Department had prematurely implemented the guidelines without first meeting and negotiating with ALADS. However, the hearing officer did not rule on the merits of the revised guidelines, but only on the process by which they were adopted. ERCOM has not yet fully adopted the hearing officer's findings and recommendations or issued a final decision.

Despite this ongoing process before ERCOM, the Sheriff has proposed a "Truth and Reconciliation Commission" that will review and re-evaluate previous disciplinary decisions that used the revised 2013 and 2016 discipline guidelines. There is no agreement on the number of cases that would be eligible, though some estimates have it in the hundreds. The proposed function of the Commission raises several legal issues, including whether the Department has the legal authority to change final disciplinary findings from the Civil Service Commission that were made in conformance with State law, the County Charter, the County Code, and the County's civil service rules.

Given the ongoing ERCOM proceedings, it is premature for the Sheriff to implement policy regarding the revised disciplinary guidelines. Additionally, given the Board's fiduciary responsibility and the exclusive authority of the Board and County Counsel to control civil litigation, it is inappropriate for the Sheriff to unilaterally settle with individual deputies whose discipline has been upheld by the Civil Service Commission.

When the ERCOM decision has been finalized and if legal issues have been resolved, concerns regarding previous discipline should be addressed in a way that is transparent and takes advantage of the robust and knowledgeable oversight mechanisms currently in place, including the Civilian Oversight Commission and the Office of Inspector General, as well as other County leaders. Meaningful involvement by these bodies and stakeholders is critical to the public's trust in the Department.

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WE THEREFORE MOVE THAT THE BOARD OF SUPERVISORS:

1. Direct County Counsel to evaluate and report back to the Board of Supervisors (Board) in writing in 30 days on the legality on the Sheriff's proposed Truth and Reconciliation Commission (Commission) and any other similar processes or actions to re-evaluate discipline previously imposed on Sheriff's personnel.
2. Direct County Counsel to analyze and report back to the Board in writing on the merits of appealing the Employee Relations Commission (ERCOM) decision on behalf of the County when it becomes final.
3. Instruct the Sheriff to discontinue work on the Truth and Reconciliation Commission and any other similar processes or actions to re-evaluate discipline previously imposed on Sheriff's personnel, particularly those matters adopted by the Civil Service Commission and/or ERCOM, while County Counsel evaluates the legality of the Commission and until the ERCOM decision is final, including all subsequent appeals.
4. Instruct that, only upon finalization of the ERCOM decision and any subsequent appeals, as well as resolution of any legality issues, the Sheriff work with the Civilian Oversight Commission (COC), Inspector General (IG), and County Counsel to develop and implement a transparent, objective, and evidence-based protocol to evaluate previously-imposed employee discipline, if necessary and appropriate. This protocol should include clear and meaningful roles for non-Sheriff's Department (Department) stakeholders, including, at a minimum, the COC, IG, County Counsel, Public Defender, and the District Attorney, or their designees, in evaluating cases and rendering any decisions.
5. Direct the IG to continue to monitor and report back to the Board on a monthly basis outcomes and dispositions on disciplinary actions taken by the Department, as well as any efforts or actions taken by the Sheriff to implement the Commission or similar process to reevaluate discipline.
6. Direct the Auditor-Controller, ~~and~~ Chief Executive Office, Department of Human Resources and County Counsel to coordinate a review and notificationy to the

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Board when the Department requests to rehire or reinstate former employees who were discharged or probationary employees who have been released from service.

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