

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, December 2, 2008**

General Session Meeting Minutes

The Judicial Merit Commission met on Tuesday, December 2, 2008, for its regularly scheduled quarterly meeting. The meeting opened in the Tang Conference Room located at 101 W. Jefferson, East Court Building, Law Library, 3rd Floor.

I. Meeting Convened

The meeting was called to order at 2:00 p.m. with the following members in attendance: Commissioners Thomas J. Davis (Chair), N. Joseph Cayer, Robert Oberstein, Carol Smetana, and Maria Hoffman. Also in attendance were Phillip E. Hanley, Secretary to the Commission, Billie Berry, Human Resources Specialist, Danna Quinn, Assistant Human Resources Director, and Gary Bridget, Employee Relations Administrator.

II. Approval of Quarterly General Session Meeting Minutes

The Chair entertained a motion to approve the minutes of the September 9, 2008, Quarterly General Session meeting minutes.

Motion: Commissioner Cayer moved to approve the minutes of the September 9, 2008, Quarterly General Session as redacted. Commissioner Oberstein seconded the motion. The minutes were unanimously approved.

III. Judicial Merit Commission 2009 Meeting Schedule

The proposed 2009 meeting schedule was reviewed and approved by the Commission.

IV. Appeals Pending Final Decision

Jason Sterner v. Court Technology Services - Secretary Hanley advised that the Sterner hearing was discussed at the Commission's last meeting. He reiterated that Mr. Sterner did not submit opposition to the Hearing Officer's recommendation and, therefore, the Commission voted to accept the Hearing Officer's report. Mr. Hanley further stated that subsequent to the meeting, counsel and Assistant Attorney General, Alisa Blandford, requested a written Order of the proceeding to officially close her file. He, therefore, asked the Commission to consider executing an Order in this matter.

Discussion ensued. The Commission advised Secretary Hanley that, although they were advised of the matter, an appeal was not submitted to the Commission for decision. Since Mr. Sterner did not appeal the Hearing Officer's decision, there was no issue for the Commission to act on, and no basis for judgment to execute an Order in this matter. All agreed.

Joan W. Brown v. Judicial Branch Trial Courts - Secretary Hanley advised that this matter was initially scheduled for a hearing. However, by stipulation and agreement of the parties, the hearing has been set aside pending mediation of the matter before the

Equal Employment Opportunity Commission (EEOC). If the matter is not resolved in mediation, the hearing will go forth at that time. The Secretary advised he would keep the Commission advised as to the outcome.

Discussion ensued. Commissioner Davis inquired as to the Commission's prior decision regarding whether parties on their own, by agreement, could extend the time for a hearing. He reiterated that since there was nothing in the Merit Rules that seemed to suggest a time limit for extensions, the Commission had implemented a deadline because its objective is to hear disciplinary matters in an expedited manner.

Mr. Hanley confirmed, via prior meeting minutes, it was suggested the Commission adopt an order that no extension could be more than 15 days with a maximum of three extensions, even if the parties agree. Commissioner Davis inquired whether the Commission has adopted any further rule on the total number of days an extension might encompass and asked the staff to research the commission's minutes to determine whether such a rule existed. In the interim, the Commission suggested the Court forward a letter to the parties, and the EEOC, advising them of the provisions of Judicial Merit Rule 11.05 which states: "Every hearing shall commence within 45 days after assignment to the hearing officer", and the Commission's motion regarding extensions and delay of hearings.

Further discussion ensued regarding the distinction between an extension and the mediation process, the protocol of hearing delays, the EEOC's jurisdiction, and the Commission's jurisdiction once a matter has been referred to the EEOC. The Commission expressed concern regarding the possibility that an employee could toll the appeal clock, pursue a matter in another forum, and then come back to the Commission for remedy. Questions discussed were:

- a) Does the mediation process exhaust the Commission's time limit for appeals?
- b) If a party elects to pursue a matter with the EEOC, is the EEOC's decision final in the matter? or
- c) If one or both parties disagree with the EEOC's decision, do they have a right to re-petition the Commission for an appeal? If so, are they entitled to any further delays?
- d) Can an employee maintain simultaneous proceedings on the same issues in two different forums?

Secretary Hanley stated the Brown matter has not been referred to the EEOC for a decision. Rather, the parties have only agreed to use the voluntary assistance of the EEOC mediation service. He also stated that the Judicial Branch does not preclude an employee from simultaneously pursuing a complaint with the Court and the EEOC.

Further discussion ensued regarding the legal disposition of issues that are not within the EEOC's jurisdiction. Commissioner Davis stated he would like legal guidance with regard to simultaneous proceedings on the same issues. He also requested information on the procedure when issues are so inter-meshed as to be inseparable, and the Commission would have to await the decision of another forum to decide any remaining issues. The Commission also expressed concern about the possibility of other factors that could arise from such a proceeding. It was suggested that the Commission should

have a policy stipulating that it is available as a forum, and if an employee elects another forum, the decision of that forum is final.

Commissioner Oberstein stated the questions before the Commission have arisen in other venues, with some resolution, and it would be informative to the Commission to know what those resolutions were. The Commission, therefore, requested staff inquire into Best Practices on these issues and report their findings to the Commission.

At this point, the meeting was temporarily adjourned due to a building evacuation of the courthouse and resumed a short time later outside on the sidewalk outside the court building.

Discussion continued. The Commission again reiterated that it would like an expedited process in acting as the forum of first response. The Commission agreed to consider adopting a policy stating its position as the forum of first response in judicial merit disciplinary matters.

The Commission agreed also to consider asking its counsel to review and research the Commission's position and reach as the form of first response. The Commission further requested that staff ask counsel to forward the case law referenced in his "Analysis of Back Pay Deduction" letter dated December 1, 2008.

Commissioner Davis stated that since questions remain as to the current policy on extensions, no decision could be rendered at this time on time limits in the Brown mediation. The Commission asked the Secretary to advise the parties that any further extensions would have to be approved by the Commission on an *ad hoc* basis.

It was also suggested that the Secretary advise the Court's representative in the Brown mediation that if a settlement is agreed to, it is a settlement of any and all claims in this matter with the Court and the EEOC. It ends the process and the matter does not come back to the Commission. All agreed.

Secretary Hanley stated he would contact the Assistant Attorney General to advise her of the Commission's instructions.

V. Update of Appeal Guidelines and Procedures

Commissioner Davis advised he has suggested changes to the wording of the Draft Order and Summary and would forward same to staff. He suggested that if there are any other changes in wording, they be circulated among the members for review.

The remaining agenda items will be discussed at the next meeting.

VI. Executive Session

The Commission held no Executive Session.

VII. Call to the Public

None.

XI. Meeting Adjournment

The Chair entertained a motion to adjourn.

Motion: Commissioner Oberstein moved to adjourn the meeting. The motion was seconded by Commissioner Smetana. Motion unanimously approved. The meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Billie J. Berry
Staff to the Commission

For

Phillip E. Hanley
Secretary to the Commission

Next Meeting: Tuesday, March 3, 2009 @ 2:00 p.m. in the Tang Conference Room