

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, March 4, 2008**

General Session Meeting Minutes

The Judicial Merit Commission met on Tuesday, March 4, 2008 for its regularly scheduled quarterly meeting. The meeting was conducted in the Tang Conference Room located at 101 W. Jefferson, East Court Building, Law Library, 3rd Floor.

Commissioners present were Thomas J. Davis (Chair), Carol Smetana, Harry Kaminsky, and N. Joseph Cayer. Also present were Phillip E. Hanley, Secretary to the Commission, Gary Bridget, Employee Relations Manager, Billie Berry, Human Resources Specialist, and Attorney Grant Goodman, representing the public.

I. Meeting Convened

The meeting convened at 2:00 p.m. with notice that Commissioner Smetana would be arriving shortly.

II. Approval of the Regular Meeting Minutes

The Chair entertained a motion to approve the minutes of the December 4, 2007 quarterly meeting.

Motion: Commissioner Cayer moved to approve the minutes of the December 4, 2007, General Session as redacted. Commissioner Kaminsky seconded the motion. The minutes were unanimously approved 3-0.

III. Consideration of Quarterly 2008 September meeting date change

The Chair asked that the official heading of this item be changed to read "Consideration of Quarterly 2008 September meeting date change" rather than Confirmation as listed in the original agenda.

Upon reviewing the proposed 2008 meeting schedule at the December meeting, the Commission noted that the scheduled date of the September meeting was the Tuesday immediately following the Labor Day holiday. The Commission, therefore, agreed to move the meeting from September 2 to September 9 in anticipation of conflicts with holiday travel plans and/or related issues. Subsequent to the meeting, Commissioner Smetana notified staff and the Commission that she agreed to date for the September meeting created a conflict with her schedule. Commissioner Smetana requested the Commission consider reverting to the normal meeting date of September 2. All were in agreement.

Motion: Commissioner Cayer moved to change the date of the September, 2008 meeting from 9 September 2008 to 2 September 2008. Commissioner Kaminsky seconded the motion. The considered change was unanimously adopted.

IV. Appeals Pending Hearing/Decision

- A. Secretary Phillip Hanley provided the Commission with an update on the pending hearings and/or decisions.

1. Barbara Lang (Hernandez) v. Juvenile Probation Department

Secretary Hanley stated the Judicial Branch received the Hearing Officer's report and recommendation in the Lang (Hernandez) appeal on the morning of March 4, 2008. The Hearing Officer recommended the termination of Ms. Lang be upheld and her appeal be denied. Mr. Hanley further advised the Commission that Ms. Lang and/or her attorney will have an opportunity to present their case before the Commission, should they choose, but official notification of that decision had not been received by the Court as of the date of the meeting.

2. Nikkia Dansby v. Adult Probation Department

The hearing of Nikkia Dansby was held and concluded on December 18, 2007. The Hearing Officer recommended the termination decision be upheld. Secretary Hanley stated the time limit for Ms. Dansby to pursue a further appeal to the Commission has expired and the Judicial Branch is not aware of any further action.

3. Sheldon Payne v. Juvenile Probation

The hearing of Sheldon Payne was scheduled for February 13, 2008 but was adjourned at the request of appellant's counsel due to the illness of Mr. Payne's parents. This was the second request for adjournment by appellant, therefore, Hearing Officer Lieberman vacated the hearing until a firm date could be scheduled. As of this time, the hearing is pending.

4. Jason Sterner v. Court Technology Services

The hearing was held on February 13, 2008 and the Judicial Branch is awaiting the Hearing Officer's report and recommendation.

Commissioner Davis inquired as to the time frame in which the Hearing Officer has to submit his report. Secretary Hanley stated the Hearing Officer has 30 days after receipt of the transcript of the proceedings to submit his report and recommendations.

V. Update regarding review of Merit Commission Rules and Regulations

The Commission has had a variety of questions regarding the interaction of its special counsel conducting an audit of the Judicial Merit Rules and as to whether the Rules are in compliance with current State law. During discussion at its December meeting, the Commission requested Secretary Hanley contact the Attorney General's Office and inquire as to their position in conducting an audit of the Merit Rules with regard to appropriateness and compliance with State law. Secretary Hanley was advised by the Attorney General's Office that it would be a conflict of interest for their office to provide legal advice to the Commission regarding the effectiveness of its Merit Rules, or conduct

an audit of same, given the fact they represent the organization in all matters of discipline that comes before the Commission.

Further discussion ensued as to whether an audit of the Merit Rules is warranted and should be pursued, or whether the Commission should operate on a case-by-case basis if some element of the Rules comes into question. Secretary Hanley reported he believes the Merit Rules, in their existing form, are meeting the needs of the Court and the Commission, however, several procedural developments are presently under consideration by the Court which may require a future revision. Upon final determination or a new Administrative Order from Presiding Judge, Barbara Mundell, he will be forthcoming with a recommendation to the Commission.

Discussion continued and the Commission ultimately agreed an audit at the present time would be counter-productive and to await the Court's final determination, or a new Administrative Order. It was also agreed that in order to provide a thorough review of the Merit Rules, a draft of any revisions would first be prepared by Court staff outlining any problems or issues that might need to be addressed and presented to the Commission for consideration.

VI. Proposed RIF and Sexual Harassment Policy Revisions

The Commission reviewed the proposed Reduction in Force and Sexual Harassment policy revisions submitted by staff. Extensive discussion ensued with regard to both policies and Commission members offered their comments, concerns and recommendations. The Commission was in agreement that the language in both policies concerning definitions, notice, employee/non-employee relations, reporting hierarchy, and responsibilities of all parties concerned should be tightened up so that they are more clearly defined. Secretary Hanley noted the recommendations of the Commission and advised he would resubmit a revised draft of the policies for further consideration. The Commission commended the staff on their excellent work and stated its overall view was that both policies are serviceable, and with revision to the language in the noted areas, the policies would serve the Court well.

VII. Fiscal Year Budget Update

Secretary Hanley advised he is awaiting a decision regarding the Court's budget for the next fiscal year. He also advised there is a possibility that the Court will encounter a significant reduction in funding resources for fiscal year 2009. The determining factor will be what happens with future economic forecasts relative to State sales tax revenues and the impact of the budget deficit the State of Arizona is facing.

VIII. Call to the Public

Attorney Grant Goodman responded to the call to the public. Mr. Goodman commended the Commission on the excellent job they are doing. He offered his observations of the proceedings from a lawyer's point of view emphasizing the importance of the public being heard in an expedited and efficient process.

Mr. Goodman stated his main purpose for attending the meeting was to provide the Commission with a copy of a Brief he recently filed with the U.S. Supreme Court. He stated the Brief reflects his view of problems he sees with merit selection of judges as

well as attorney conduct. Mr. Goodman asked if he was in the right place to present his Brief and requested to leave a copy with the Commission for consideration. Mr. Goodman was asked to forward a copy in pdf. format to the recording secretary for distribution to the Commission. Mr. Goodman then concluded his comments and thanked the Commission for an opportunity to be heard.

Discussion ensued. The Commission was initially of the opinion that the Attorney Goodman was not in the correct forum for his concerns to be addressed. It was the general consensus that the Commission would read the Brief once it was forwarded.

IX. Future Agenda Items

No future agenda items.

XI. Meeting Adjournment

The Chair entertained a motion to adjourn.

Motion: Commissioner Smetana moved to adjourn the meeting. The motion was seconded by Commissioner Kaminsky. The motion was unanimously approved. The meeting was adjourned at approximately 3:50 p.m.

The Commission held no Executive Session at this meeting.

Respectfully submitted,

Billie J. Berry
Staff to the Commission

For

Phillip E. Hanley
Secretary to the Commission

**Next Meeting: Tuesday, June 3, 2008 @ 2:00 p.m.
in the Tang Conference Room**