

**Judicial Merit Commission – Regular Quarterly Meeting  
Tang Conference Room, Law Library, Third Floor  
101 West Jefferson, East Court Building  
Tuesday, June 4, 2013**

**General Session Meeting Minutes**

The Judicial Merit Commission met on Tuesday, June 4, 2013, for its regularly scheduled quarterly meeting. The meeting was conducted in the Tang Conference Room located at 101 W. Jefferson Street, East Court Building, Law Library, 3<sup>rd</sup> 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), Craig Waugh, Logan Young, Carol Smetana, and Anna Baca.

Also in attendance were Phillip E. Hanley (Secretary); Gary Bridget, Assistant Human Resources Director; Jamie Harding, Employee Relations Administrator; Billie Berry, Human Resources Associate; David Kresin, Counsel for Appellant Nannette Hummel; Michael Cimino, Deputy Chief Adult Probation; Kirstin Story, Assistant Attorney General, Counsel for Judicial Branch Court Technology Department; Patrick Boyle, Intern/Attorney General's Office; and Barbarajo Hardge, Judicial Branch Court Technology Department Applications Manager.

**II. Executive Session**

The Commission convened Executive Session to discuss procedural matters at 2:03 p.m.

Executive Session concluded at 2:22 p.m.

General Session re-convened at 2:23 p.m.

**III. Approval of the Minutes**

Commissioner Davis called for a motion to approve the minutes of the 5 March 2013 Quarterly General Session and the 5 March 2013 Executive Session.

**Motion:** Commissioner Waugh moved to approve both the minutes of the Quarterly General Session and the Executive Session of 5 March 2013 as amended.

**Commissioner Smetana seconded the motion.**

**The minutes of the 5 March 2013 Quarterly General Session and 5 March 2013 Executive Session were unanimously approved.**

The Commission recognized representatives present for the parties in the appeal of Nannette Hummel v. Adult Probation Department. As the matter did not appear on the agenda, the Commission rearranged its agenda to advance Item VIII. Call to the Public as the next agenda item.

#### **IV. Call to the Public**

Attorney David Kresin responded to the call to the public on behalf of Appellant Nannette Hummel and Assistant Attorney General Michelle Kunzman responded on behalf of the Adult Probation Department. Both parties requested to be heard and each party was allotted five minutes to address the Commission, without rebuttal or any extension of time.

Assistant Attorney General Michelle Kunzman stated that the Adult Probation Department had no objections to the hearing officer's findings in this appeal or to Counsel Kresin's request that Ms. Hummel be reinstated to her former position with full seniority, back pay and benefits. The department did voice concerns regarding the request for reassignment to the same office space, desk and location.

Ms. Kunzman reiterated the Adult Probation Department's objection to Appellant Hummel's request for attorney's fees and argued that no statutory authority existed for the Commission to grant that request.

Attorney Kresin argued for Hummel's request for attorney's fees. He noted the exceptional 4-day hearing that required 185 exhibits and an in-depth analysis of Ms. Hummel's timesheets, computer logs, and various things in order to defend against the Adult Probation Department's charges.

Mr. Kresin argued that the authority to grant his request for attorneys' fees rests in Section 17 of the Judicial Merit System Resolution and Rule 11.16, which give the Commission the power to direct appropriate remedies after taking into consideration just and equitable relief; and such a grant would be just and equitable here because the hearing officer concluded that the Adult Probation Department's allegations against Ms. Hummel were arbitrary and without reasonable cause.

Attorney Kresin argued also that Ms. Hummel be reinstated as precisely as possible to her previous position, which included desk and office selections granted in accordance with seniority. To the extent Ms. Hummel lost such elements, she would lose something of value and such loss had a bearing also on her doing her job to the best of her ability, as the office location, for example, provided her with the least distraction.

The Commission thanked attorneys Kunzman and Kresin and reissued its Call to the Public. Receiving no further requests to be heard, the Commission closed the Call to the Public.

#### **V. Appeals for Notification of Status**

Secretary Hanley reported that Desiray Frausto v. Adult Probation Department was an appeal of termination. A settlement agreement was entered into among the parties prior to the scheduled hearing date and the appeal was withdrawn on April 16, 2013.

Mr. Hanley also reported that a hearing was held in the matter of Roline Luo v. Judicial Branch Court Technology Department on April 3, 2013. This matter also involved an appeal of a termination and the hearing officer recommended in her Findings of Fact and Conclusions of Law that the dismissal be sustained. No opposition was filed in response to the hearing officer's report, however, Ms. Luo did submit a statement that ". . . I do not want to have a further hearing before the Merit Commission. . . ."

The Commission then executed its Decision Summary in the Luo v. Judicial Branch Court Technology Department appeal.

**Motion:** Commissioner Waugh moved that the Commission enter an Order that disciplinary action against appellant was appropriate in this case, was not arbitrary, was not taken without reasonable cause, and that the Commission adopt the findings and conclusions of the hearing officer.

Commissioner Baca seconded the motion.

The motion was unanimously adopted.

The Commission next executed its Decision and Order in the Luo v. Judicial Branch Court Technology Department appeal.

**Motion:** Commissioner Waugh moved it is hereby ordered that the Commission adopt the findings, conclusions and recommendation of the hearing officer to sustain the termination.

Commissioner Smetana seconded the motion.

The motion was unanimously adopted.

#### **VI. Appeals Pending Hearing/Decision**

Secretary Hanley reported that the matter of Nannette Hummel v. Adult Probation Department involved an appeal of termination. A four (4) day hearing was held on January 22, January 23, February 14, and February 27, 2013. The hearing officer noted in her Findings of Fact and Conclusions of Law received on April 23, 2013, that the dismissal was arbitrary and made without reasonable cause. No opposition was received to the hearing officer's report and appellant counsel subsequently requested Ms. Hummel be reinstated with back pay and attorneys fees.

The Commission then executed its Decision Summary in the Nannette Hummel v. Adult Probation Department appeal.

**Motion:** Commissioner Waugh moved that disciplinary action against the appellant was not appropriate in this case, was arbitrary, and was taken without cause; that the Commission adopt the findings and conclusions of the hearing officer; and that the Commission modify the recommendation of the hearing officer to reinstatement with back pay effective from the date of termination to the date of re-employment. The Commission makes these findings based on the hearing officer's report, a review of the findings and conclusions of the hearing officer, evidence presented at that hearing, comments from both parties, and a determination that there is no need to further review the transcripts of this case.

Commissioner Baca seconded the motion.

The motion was unanimously adopted.

The Commission next executed its Decision and Order in the Nannette v. Adult Probation Department appeal.

**Motion:** Commissioner Waugh moved that it is hereby ordered that the Commission adopt the findings and conclusions of the hearing officer and modify the recommendation of the hearing officer to reinstatement with back pay effective from the date of termination to the date of re-employment.

Commissioner Young seconded the motion.

The motion was unanimously adopted.

Commissioner Waugh also requested that the Adult Probation Department submit a written report to the Commission within ten (10) days on what steps have been taken to reinstate Ms. Hummel. The Commission requested that the report include any changes in the nature of her position, what difficulties may have been encountered, and what solutions were being considered.

Commissioner Baca requested that the report reflect whether or not Ms. Hummel has received her back pay and, if not, when she would receive it and any other benefits that she is entitled to receive.

Commissioner Young queried whether Ms. Hummel's counsel has any remedy with regard to his request for attorneys' fees. Chairman Davis stated that whatever remedy may exist is outside of the purview of the Judicial Merit System Commission.

#### **VII. Discussion – Recommendations from Counsel to Reconcile Language in Merit Rules re Medical review of Circumstances**

This item was moved to Executive Session at 2:57 p.m.

General session reconvened at 3:20 p.m.

**Motion:** Commissioner Waugh moved that the Commission recommend to the Presiding Judge that Rule 11.01.B of the Judicial Merit System Rules be eliminated for consistency with Section 17.A. of the Judicial Merit System Resolution, which states that "any employee' holding regular status may appeal", and thus to provide for equitable treatment of all persons who want to appeal.

Commissioner Smetana seconded the motion.

The motion was unanimously adopted.

#### **VIII. Recognition of Service**

The Commission recognized Commissioner Young's term of service would expire on June 30, 2013, and was very pleased that he has agreed to serve another term on the Commission.

The Commission recognized Commissioner Smetana as a long, faithful, and constant member of the Commission and was deeply saddened that her services were concluding after this meeting. All acknowledged she will be greatly missed. The Commission presented Commissioner Smetana with a plaque in recognition of her good and excellent service from July 2004 to June 2013.

**IX. Future Agenda Items**

1. Commissioner Smetana inquired as to the recruitment status for a new commissioner.
2. Secretary Hanley reported that Court staff is in the process of recruiting a new Commission member and that he has received a healthy response of very good candidates. Secretary Hanley stated he will be able to recommend a panel of qualified candidates to Presiding Judge Norman Davis for consideration and appointment prior to the Commission's next meeting in September.

**X. Meeting Adjournment**

The Chair entertained a motion to adjourn.

**Motion: Commissioner Smetana moved to adjourn the meeting. Commissioner Young seconded the motion, and the Commission approved it unanimously.**

The meeting adjourned at 3:30 p.m.

Respectfully submitted,

Billie J. Berry  
Staff to the Commission

For

Phillip E. Hanley  
Secretary to the Commission

**Next Meeting: Tuesday, September 10, 2013 @ 2:00 p.m. in the Tang Conference Room**