

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, June 3, 2008**

General Session Meeting Minutes

The Judicial Merit Commission met on Tuesday, June 3, 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.

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 and Robert Oberstein. Also in attendance were Phillip E. Hanley, Secretary to the Commission, Gary Bridget, Employee Relations Manager, and Billie Berry, Human Resources Specialist.

II. Approval of Regular Meeting Minutes

The Chair entertained a motion to approve the minutes of the March 4, 2008 regular quarterly meeting session.

Motion: Commissioner Cayer moved to approve the minutes of the March 4, 2008, General Session as redacted. Commissioner Oberstein seconded the motion. The minutes were approved with 2 in favor and 1 abstention.

Commissioner Davis raised a point for discussion. With regard to a five person commission, the Merit Rules requires a quorum of three members to transact business. Once this quorum has been reached, all actions of the Commission are carried out by a majority vote. All were in agreement.

Approval of Special Session Minutes

The Chair entertained a motion to approve the minutes of the April 1, 2008 Special Session which was an appeal hearing.

Motion: Commissioner Cayer moved to approve the minutes of the April 1, 2008, Special Session as redacted. Commissioner Oberstein seconded the motion. The minutes were approved with 2 in favor and 1 abstention.

III. Changes to Judicial Merit Commission Membership

Commissioner Davis noted that Commissioner Carol Smetana's term of service would end the last day of June, 2008, and she has consented to be reappointed for another term beginning July 1, 2008. He also noted that Commissioner Harry Kaminsky's term of service will end on August 24, 2008; however, Commissioner Kaminsky has declined to be reappointed.

Secretary Hanley stated that recruitment to fill the vacancy is in progress. After a brief discussion on the recruitment procedure, it was the consensus of the Commission and staff to have a full commission in place by the September, 2008 meeting.

Commissioner Davis also noted that the term of service for a majority of the remaining Commission members will expire on the same date, June 30, 2009. Should these members decide not to be reappointed, the Commission and the Court would lose considerable experience all at once and would make the Commission unnecessarily vulnerable. To the degree possible, it was suggested that the Court stagger the term of service dates as it consider appointments going forward. All were in agreement. Secretary Hanley advised he would consult with Presiding Judge Barbara Mundell and request that she issue new Administrative Orders staggering the expiration dates by extending the existing terms to six month or one year increments.

IV. Appeals Pending Hearing/Decision

There are no appeals pending for hearing or decision. Secretary Hanley briefed the Commission on the disposition of the three appeals listed on the agenda.

The Barbara Lang (Hernandez) v. Juvenile Probation Department appeal was heard before the Board in a Special Hearing on April 1, 2008. The Commission modified the Hearing Officer's recommendation with an order of reinstatement with back wages, a 30-day suspension and a demotion to the next lower level position. Subsequent to the hearing, Ms. Lang immediately resigned her employment. The return of back wages has been complied with in accordance with the Commission's directive. The Court administration is not aware of any lingering issues.

Sheldon Payne v. Juvenile Probation. After initially scheduling a hearing in this matter, Mr. Payne withdrew his appeal via counsel. Mr. Payne has accepted the terms of his dismissal with the stipulation he will not apply for any positions with the Judicial Branch in the future.

A hearing was held in Jason Sterner v. Court Technology Services on February 13, 2008. The Hearing Officer recommended the dismissal be upheld. No opposition was received to this decision and the matter is effectively closed.

The Commission inquired into the type of release each employee signed indicating acceptance of the determination of their appeal. Secretary Hanley advised that the Court does not have a release or procedure to document acceptance or final determination of a decision or award by the Commission subsequent to an appeal hearing, other than what is recorded in the minutes. Discussion ensued.

Secretary Hanley said the Court does have a procedure to document voluntary/involuntary termination of service and asked if the Commission would consider establishing a procedure to outline the terms and conditions of an award at the conclusion of an appeal hearing in an effort to provide a clear interpretation of the Commission's directives. This would also document the parties understanding and acceptance, the disposition of all relevant issues associated with the directive, and an acknowledgement that said Order was complied with.

The Commission stated that employers generally follow their established rules and procedures to document termination of employment and suggested the Court should do likewise, regardless of the reason for termination.

The Commission also recommended that upon receipt of an employee's letter of resignation, or termination, that the Court forward a written acknowledgment documenting same and itemizing the terms and conditions, such as effective date, return of property, required signatures, wages due, etc. Additionally, it was suggested that the Court create a separate document, or release, to be executed by the employee and the Court upon distribution of final wages, acknowledging said conditions were fully complied with and accepted.

V. Review of Appeal Guidelines and Procedures

1. Merit Commission's Authority regarding future awards and reinstatement

Upon subsequent review of the Merit Rules, for clarification purposes, Secretary Hanley briefed the Commission on its full range of authority. In accordance with Section 11.16 and Section 11.17, the Commission has total discretion and authority to accept, reject or modify the Hearing Officer's report and recommendation, or to direct any remedial action it deems appropriate to achieve a fair and equitable decision. The Commission acknowledged full understanding of its authority.

Secretary Hanley reported that after the conclusion of the Lang hearing, several internal issues and differences of interpretation arose between the Court administration and opposing counsel. In an effort to avoid any future misunderstandings, he asked the Commission to consider developing a checklist for appeal hearings to define the terms and conditions of any future orders and to clearly state the specific intent of the Commission's Order and the time limit within which the Court has to comply.

2. Consideration of outside earnings when awarding back wages

Discussion continued with regard to the disposition of wages in an award of reinstatement with back pay. The Commission was in agreement that any such award is to be made at the pay level the employee was receiving at the time of discipline and should include wages and benefits.

A further question arose regarding monetizing benefits that had a monetary value and the time limit in which the Court has to comply with the Commission's Order of back wages. The Commission recommended that the Court, without exception, should apply its established rule for monetizing wages and benefits, and that there should be an offset of any earned wages. It was also suggested that the time limit for execution of an Order by the Commission should be within 30 days from its date of issuance.

To clarify the procedure with regard to reinstatement of employment, distribution of back wages, and modification of discipline, as directed by the Commission, it was suggested that an Order containing the relevant language be created at the conclusion of each hearing, to be signed by the Chair.

Secretary Hanley was asked to provide a draft of said Order for review at the next quarterly meeting. Secretary Hanley asked if he could enlist the assistance of counsel to the Commission in drafting the Order. The Commission had no objections.

3. Checklist regarding effective dates, payment dates, file expungement, etc.

This item was included in #2 above.

**VI. Amendment to Merit Rules
Court reporter classification (exempt, non-exempt, overtime)**

Secretary Hanley reported this item as an administrative issue, included here for informational purposes only. He advised the U.S. Department of Labor, under revised Fair Labor Standard Act guidelines, has determined Court Reporters are not exempt employees and are to be treated as professional hourly employees. Under the Definitions contained in the Judicial Branch Merit Rules, Court Reporters are classified as exempt from overtime. In order to comply with current state law, the Court will be submitting a request to the Presiding Judge for authority to amend the Merit Rules in this regard.

VII. Executive Session

Executive Session convened at 3:16 p.m.

VIII. General Session Resumed

General Session reconvened at approximately 3:20 p.m.

IX. Call to the Public

No response.

X. Future Agenda Items

1. Draft of the Order and checklist discussed at this meeting.
2. Commissioner Davis inquired as to the Secretary's report concerning the County budget and its impact on Court staffing. Secretary Hanley stated that at the present time, the Court administration is in good shape. He reported that through turnover and attrition, the Court was able to permanently eliminate about 100 vacant positions thereby avoiding any layoffs or reductions in force. At the present time, the Court administration believes it has sufficient resources to operate for the next fiscal year without further impact to staffing. The only uncertainty is the status of the State budget as it has the ability to tap resources from the County.
3. Commissioner Davis also inquired as to the status of revisions to the Reduction in Force (RIF) policy discussed at the previous meeting. Secretary Hanley advised that revision of the policy has been suspended at the present time since it was not needed as originally anticipated. It was the opinion of the Commission that any changes to policy should be completed, and in place, before they are

needed. The Secretary was advised of the difficulty of having two sets of rules to cover one RIF process and was urged to complete any revisions or changes the Court desired to the policy.

XI. Meeting Adjournment

The Chair entertained a motion to adjourn.

Motion: Commissioner Cayer moved to adjourn the meeting. The motion was seconded by Commissioner Oberstein. The motion was unanimously approved. The meeting was adjourned at 3:32 p.m.

Respectfully submitted,

Billie J. Berry
Staff to the Commission

For

Phillip E. Hanley
Secretary to the Commission

Next Meeting: Tuesday, September 9, 2008 @ 2:00 p.m. in the Tang Conference Room