

**Judicial Merit Commission – Regular Quarterly Meeting  
Tang Conference Room, Law Library, Third Floor  
101 West Jefferson, East Court Building  
Tuesday, September 4, 2007**

**General Session Meeting Minutes**

The Judicial Merit Commission met on Tuesday, September 4, 2007 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, 3<sup>rd</sup> Floor.

Commissioners present were Thomas J. Davis (Chair), Carol Smetana, Robert Oberstein and N. Joseph Cayer. Also present were Phillip E. Hanley, Secretary to the Commission; Danna Quinn, Assistant Human Resources Director; Gary Bridget, Employee Relations Administrator, Billie Berry, Human Resources Specialist, and Janet Baca, Senior Employee Relations Analyst. Commissioner Harry Kaminsky was not in attendance.

**I. Meeting Convened**

The meeting convened at approximately 2:02 p.m.

**II. Approval of the Regular Meeting Minutes**

The Chair entertained a motion to approve the minutes of the June 12, 2007 quarterly meeting.

**Motion: Commissioner Cayer moved to approve the minutes of the June 12, 2007, General Session as redacted. Commissioner Smetana seconded the motion. Commissioner Oberstein abstained due to his absence from the June 12, 2007 meeting. The minutes were approved with one abstention.**

Secretary Philip Hanley requested the Commission to deviate from the agenda due to the presence of Mr. Scot Claus, legal counsel to the Commission.

The Commission agreed.

Mr. Claus introduced himself to the Commission and staff and provided his business contact information. Mr. Claus thanked the Commission for the opportunity to serve it and said he looks forward to working with it. He encouraged the Commission to contact him with any questions it may have at any time. Mr. Claus then departed and the Commission resumed its regular agenda.

Commissioner Davis noted that in comments distributed via-e-mail dated 28 August 2007, Mr. Claus raised a question regarding Executive Session minutes for the June 12, 2007 meeting. Mr. Claus asked with regard to Section V, "If there was, in fact, an approved motion to adjourn to Executive Session that has been inadvertently omitted from the draft minutes, then this omission should be corrected and Section V redacted to show an Executive Session occurred". Discussion ensued and all were in agreement that no Executive Session was held during the June 12, 2007 quarterly meeting.

**III. Appeals Pending Hearing and Decision  
Barbara Lang (Hernandez) v. Adult Probation**

Secretary Hanley advised the Commission that the Barbara Lang (Hernandez) hearing is still scheduled to go forward; however, it has again been rescheduled due to an unexpected death in the Hearing Officer's family. The Court is hopeful this matter will be completed sometime later in September or the first of October. This is the first time the hearing was tentatively set to go that opposing parties did not request the delay. The previous delays were by mutual agreement of the parties.

Commissioner Davis asked the status of Ms. Lang as her appeal is reaching the six month deadline date for completion of the hearing. Secretary Hanley advised that, at this point, Ms. Lang is terminated. Commissioner Davis expressed concern that should there be a move to reinstate Ms. Lang with back pay, the longer the hearing is delayed, the more liability and weight will accrue and the larger the sum is going to be, which might become a prejudicial factor. He stated he knows the Court is fully aware of this factor but wanted to express his concern, which was duly noted by Secretary Hanley.

Secretary Hanley then introduced to the Commission Danna Quinn, Assistant Human Resources Director; and Janet Baca, Senior Employees Relations Analyst, who was recently selected to replace Helen Sterbach, and will be working with Gary Bridget.

**IV. Breakdown of County Employees (i.e., number, location)**

Commissioner Davis stated that at the last meeting of the Commission, the Secretary provided employee survey data and, in the course of discussions, questions arose about the disposition of the various employees in the Court. As a result, Secretary Hanley was asked to provide a more detailed breakdown of Court employees.

Secretary Hanley stated the Judicial Branch is comprised of four separate but combined functions: Adult Probation, Juvenile Probation, Superior Court and The Limited Jurisdiction or Justice of the Peace Courts. The Court has 1,178 employees in Adult Probation, 1,072 employees in Juvenile Probation, 1,329 employees in the Trial/Superior Court, and 267 employees in the Justice Court, for a total of 3,846 full-time employees. This breakdown does not include unfilled positions, which are always affected by turnover, but does reflect the number of employees the Court has day in and day out. The number of authorized and budgeted positions may be slightly higher, because the Court is never quite at full strength.

In looking at the numbers provided, Commissioner Davis noted that as Adult and Juvenile Probation comprise close to two-thirds of the total employees, it is understandable that most disciplinary cases come to the Commission from those divisions.

**V. Discussion - Proposed Change to Judicial Merit Resolution  
FLSA Disciplinary Suspension for Exempt Employees**

The Judicial Branch is proposing a revision to Section 16 of the Judicial Merit Rules which relates to the Fair Labor Standards Act (FLSA). Gary Bridget explained that the FLSA is the federal statute that governs overtime and exempt/non-exempt employees. Currently, the Judicial Merit Rules read that when a FLSA exempt employee (one not

entitled to overtime) is suspended, he or she must be suspended for no less than 40 hours. In this regard, the Court recently had a case where an appointing authority had to take disciplinary action against an exempt employee that was very similar to disciplinary action previously taken with a (non-exempt) employee, involving the same infraction. The exempt employee suffered much more serious consequences, because according to the Merit Rules, the appointing authority had to suspend the exempt employee for 40 hours while the non-exempt employee could be suspended for much less. In this one case, the non-exempt employee was suspended for one day without pay.

The proposed revision aims to promote fairness and equity in disciplinary measures available to the appointing authority under the 40-hour rule.

The Court has conducted research and spoken with the Assistant Attorney General to get her legal opinion on the FLSA. The Attorney General sees no reason why an exempt employee cannot be suspended for as little as a day. Going below a day may be problematic as an exempt employee, but for a full day it should be no issue whatsoever.

**Commissioner Cayer moved that the proposed change be adopted. Commissioner Oberstein seconded the motion that the Judicial Merit Rules be changed to read in the last line of Section 16.A. Reprimand, Suspension, Demotion, Dismissal of: “Employees exempt under FLSA shall not be suspended without pay for a period less than one full workday.**

Commissioner Davis inquired as to how the Court calculates pay for one full workday for exempt (non-salaried) employees. Mr. Bridget stated that exempt employees’ pay is calculated on an hourly basis. Secretary Hanley noted that Arizona Revised Statutes §41.710 - Employees of Public Agencies, governs public employment and pay.

**The motion was approved with three in favor, one opposed.**

## **VI. Discussion – Legal Counsel’s Review of Judicial Merit Commission’s Rules and Procedures**

The Commission is now officially represented by its own legal counsel and Commissioner Davis stated he wanted to discuss how said counsel might best be utilized. One item of discussion was whether counsel should undertake an audit of the Commission’s Rules and Procedures to check that they are current.

Discussion ensued whether such an audit would be reasonable, necessary and cost-effective.

The Commission agreed to have Secretary Hanley seek an opinion from the Attorney General’s office regarding the need for a review of the Commission’s Rules and Procedures.

## **VII. Discussion – Legal Counsel’s Attendance at December Meeting**

The Commission’s legal representative, Mr. Scot Claus, has suggested that he attend the next scheduled quarterly meeting on December 4, 2007 to give a primer on the Open

Meetings Law. Commissioner Davis stated he informed Mr. Claus he would raise the matter with Commission members, and discussion ensued.

The Commission agreed that there was no need at this time for such a primer.

### **VIII. Review of Combined Adult/Juvenile Probation Policy (Investigation of Employee Misconduct)**

Due to changes in Arizona Revised Statutes (ARS) 38.1101 (ARS) during the last Legislative session, Adult and Juvenile Probation have proposed to combine their policies No. 11.207 and 05-002 - Investigation of Employee Misconduct. The statute identifies how investigations are to be conducted by law enforcement and probation officers, and was revised to include surveillance officers as well. Gary Bridget provided an overview of the proposed revision.

Mr. Bridget stated that, for the Court's purposes, the statute outlines the procedures that deal with an employee's right to have representation when an employer reasonably believes that an investigation could result in disciplinary action under the Judicial Merit Rules, Reprimand, Suspension, Demotion, Dismissal. In effect, the Court has to notify the officers that they have these rights to representation under ARS 38.1101 and has to give them time to secure representation. This proposed combined policy is basically putting Juvenile and Adult Probation in line legally with the ARS as they were adopted. Mr. Bridget also pointed out that, although the revised statute calls for these rights to be extended to officers, both the Adult and Juvenile Probation Chiefs wishes to extend them to all of their employees, i.e., administrative and non-officer staff, as well. At the present time, both probation departments are soliciting comments on this proposed revised policy and the Court felt it was important to provide same to the Commission for its review and comments since it has to do with discipline and investigations.

The Commission offered responses and suggestions to the proposed language and announced its interest in reviewing the proposal as it becomes more developed.

### **IX. Call to the Public**

No response occurred.

### **X. Future Agenda Items**

Secretary Hanley advised the Commission of the staff's considering proposed changes to the Judicial Merit Rules to accommodate employees switching between classified and unclassified positions, as occurs especially with bailiffs and judicial assistants.

The Commission expressed its interest in discussing the proposed changes when they were drafted for review.

### **XI. Meeting Adjournment**

The Chair entertained a motion to adjourn.

**Motion: Commissioner Smetana moved to adjourn the meeting. The motion was seconded by Commissioner Cayer. The motion was unanimously approved. The meeting was adjourned at approximately 3:08 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, December 4, 2007 @ 2:00 p.m.  
                                  in the Tang Conference Room**