

**Judicial Merit Commission – Regular Quarterly Meeting  
Tang Conference Room, Law Library, Third Floor  
101 West Jefferson, East Court Building  
Tuesday, September 9, 2008**

**General Session Meeting Minutes**

The Judicial Merit Commission met on Tuesday, September 9, 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, 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), 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 Director, Human Resources, Diana Clarke, Attorney for Court Administrative Services, Alisa Blandford, Assistant Attorney General, and Janet Baca, Human Resources Analyst.

**II. Approval of Executive Session Meeting Minutes**

The Chair entertained a motion to approve the Executive Session minutes of June 3, 2008.

**Motion: Commissioner Oberstein moved to approve the minutes of the June 4, 2008, Executive Session as redacted. Commissioner Cayer seconded the motion. The minutes were unanimously approved.**

**Approval of Quarterly General Session Meeting Minutes**

The Chair entertained a motion to approve the minutes of the June 3, 2008, Quarterly General Session meeting minutes.

**Motion: Commissioner Cayer moved to approve the minutes of the June 3, 2008, Quarterly General Session as redacted. Commissioner Oberstein seconded the motion. The minutes were unanimously approved.**

**III. Merit Commission Membership**

1. Recognition of Service - Harry Kaminsky - Commissioner Davis recognized former member Harry Kaminsky and expressed the Commission's appreciation for his service rendered during his term. Commissioner Davis invited other Commission members to speak in recognition of Commissioner Kaminsky's service, if they wished.

**Motion: Commissioner Cayer moved that the Commission send Commissioner Kaminsky an expression of its appreciation for his contributions to the Commission. Commissioner Oberstein seconded the motion. The motion was unanimously approved.**

2. Extension of Terms of Existing Members - The Chair noted receipt of correspondence from Presiding Judge Barbara Mundell, through Secretary Hanley, adjusting the terms of service for Commission members. Judge Mundell agreed with concerns that the terms of members would be staggered so the Commission would not lose the bulk of experience at any one time. The Commission thanked the Presiding Judge for considering their request and accommodating it.
3. Introduction of New Member - Secretary Phillip Hanley presented new member, Maria Hoffman, to the Commission. Ms. Hoffman is Director of the Legislative Office of Family Advocacy and works closely with the Governor's office. She has served on a number of boards and commissions for many years and brings a wealth of experience to the Commission. Commissioner Hoffman was welcomed by all.

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

Jason Sterner v. Court Technology Services - Secretary Hanley stated the hearing has been concluded in this matter and the Hearing Officer's report was received on April 2, 2008. Mr. Sterner did not seek an appeal to the hearing officer's recommendation. Therefore, Secretary Hanley asked that the Commission vote to adopt, modify or reject the Hearing Officer's recommendation.

Discussion ensued regarding whether it was necessary for the Commission to vote if there has been no appeal. Secretary Hanley stated it was the Court's preference that the Commission do so to officially record that a final decision was rendered to the hearing officer's report.

Further discussion ensued as to whether Mr. Sterner was timely notified of his right to appeal and the time constraints. Secretary Hanley advised the Judicial Branch does have documentation that Mr. Sterner was notified of his right to appeal and the timeframe within which to do so. However, there has been no response from Mr. Sterner.

**Motion: Commissioner Oberstein moved the Commission recognize that Mr. Sterner had been accorded his due process rights, that the appropriate administrative steps had been taken, and that Mr. Sterner had not, in a timely manner, pursued his rights and had thus allowed his appeal to lapse. Therefore, the discipline applied to him is final. Commissioner Cayer seconded the motion. Motion was unanimously approved.**

#### **V. Update of Appeal Guidelines and Procedures**

Secretary Hanley provided drafts of a proposed Appeal Award Guide and Decision and Order for the Commission to review and consider. The proposed guide aimed to meet the Court's needs to establish a clear record of the Commission's decisions.

Discussion ensued.

Commissioner Smetana inquired as to whether the form should be discretionary. For example, if the Commission adopts the findings of the hearing officer without modifications, does it need to fill out the form?

Secretary Hanley stated that the Judicial Branch would like to see the proposed document forms executed in each and every appeal.

Further discussion ensued as to the items and wording of the Appeal Award Guide. The Commission agreed that any document it considers will always remain advisory. The Commission agreed also that it would retain the right to offer whatever language it deems appropriate on a case-by-case basis and not be bound by boilerplate language.

The Commission accepted the proposed Appeal Award Guide as a recordkeeping document to be executed at the conclusion of any appeal hearing of the proceeding to summarize the decision. As a result, the Commission recommended titling the document "Judicial Merit Commission Decision Summary". The Commission suggested this document appear as a cover page on the appellant's file.

Secretary Hanley then advised the Commission that as the Judicial Branch further reviewed its administrative process, the only documentation it had following an appeal decision were the minutes of the meeting. He suggested the Commission issue an Order to memorialize its decision and the final disposition of the appeal.

Discussion then ensued with regard to the draft Decision and Order.

Commissioner Oberstein asked, with regard to the third "It is Ordered" on page 2 of the document, whether unemployment insurance is considered wages? He suggested that if it is the Court's intent to have an offset, the Court would need to specify standards for the offset.

Alisa Blandford of the Attorney General's Office stated that typically during a hearing no evidence is put on regarding back pay, earnings capacity, wages or compensation. She suggested a bifurcated hearing in those cases where both sides can put on evidence about back pay, earnings and compensation if the case raises the issue of an offset.

Commissioner Hoffman suggested making a distinction between wages and compensation.

Commissioner Davis noted that the proposed Decision and Order would become an official document from the Commission and could not be executed outside of the parameters of the hearing. The Commission would act by motion to adopt elements of the Decision and Order, which the Commission chairperson would ultimately sign at the Commission's direction.

Commissioner Cayer noted that there could be challenges to the Order if it were executed outside of the hearing, as it could lead to a decision that was not the intent of the Commission. All were in agreement.

Assistant Attorney General, Alisa Blandford noted that the offset issue raised questions about the application of an injured party's common law duty to mitigate damages. She

indicated that the Attorney General's Office would probably argue to apply such a duty as a rationale for an offset.

Commissioner Davis suggested that the Secretary draft a version of the paragraph treating offsets for submission and consideration at the next meeting and instead of wages, try income. He also suggested the beginning of the paragraph should read, "It is Further Ordered that in accordance with the established rules of the Judicial Branch," because that paragraph needs to reference the standard for determining whether outside employment is appropriate or inappropriate. He also suggested that same standard needs to be applied in the third paragraph as well.

Secretary Hanley stated that staff would incorporate the Commission's suggestions and provide another draft at its next meeting.

**VI. Consideration of Unemployment Compensation Insurance Monies When Awarding Back Pay**

Commissioner Oberstein raised a question regarding consideration of unemployment compensation insurance monies in calculating back pay awards. Would unemployment compensation be income, wages or what?

Secretary Hanley stated he was not sure, in this instance, what the correct determination should be.

Commissioner Davis asked Assistant Attorney General, Alisa Blandford if she would like to comment on whether unemployment compensation monies fall within the category of mitigation or not? Ms. Blandford advised she would want to research the issue.

Commissioner Oberstein stated unemployment compensation is considered an offset in labor arbitration on the basis that it is insurance against loss of income and you or your employer, or a combination of both, pay for that insurance premium. It is an income, so there is an offset for it.

Commissioner Davis asked that the Secretary, and Ms. Blandford, if she so desired, provide a statement in regard to the unemployment compensation question at its next meeting.

**VI. Status of Amendment to Reduction-In-Force (RIF) Policy**

Secretary Hanley advised that staff had previously submitted a draft of proposed revisions to the Court's RIF Policy for the Commission's review. At that time, the Commission made several recommendations and suggested it was incumbent upon staff to complete any revisions prior to actually needing to execute the RIF plan. Since that time, the County did a major rewrite of its RIF plan. Staff is currently working to merge the Commission's recommendations with those of the County, so the Court's policy follows suit with the larger County unit. Upon completion, staff will provide a copy to the Commission either by email or at a future meeting.

Commissioner Davis suggested the issue be listed as a future agenda item.

**VII. Executive Session**

The Commission held no Executive Session.

**VIII. Call to the Public**

No response.

**IX. Future Agenda Items**

1. Revised Judicial Merit Commission Decision Summary and Decision and Order.
2. Statement regarding consideration of Unemployment Insurance Compensation question.
3. Revised Reduction-In-Force (RIF) policy.

**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. Motion 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, December 2, 2008 @ 2:00 p.m. in the Tang Conference Room**