

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, March 6, 2018**

General Session Meeting Minutes

The Judicial Merit System Commission met on Tuesday, March 6, 2018, 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, 3rd Floor.

I. Meeting Convened

The meeting was called to order at 2:00 p.m. with the following Commissioners in attendance: Commissioners Craig Waugh (Chair), Lauren Eiler (telephonic), Roger Geddes, and Yvonne Hunter.

Also in attendance were Danna Quinn, Secretary to the Commission, Jennifer Fish, Human Resources Manager, and Billie Berry, Human Resources Associate.

II. Approval of the Minutes

Commissioner Waugh called for a motion to approve the minutes of the 5 December 2017 Quarterly General Session.

Motion: Commissioner Hunter moved to approve the minutes of the 5 December 2017 Quarterly General Session, as amended.

Commissioner Eiler seconded the motion. The motion passed by a unanimous vote, none opposed, and no abstentions.

III. Appeals for Notification of Status

Secretary Quinn reported a hearing was scheduled in the *Ezenwa Ukeagu v. Adult Probation Department* appeal of a 30-day suspension before Hearing Officer Stacy Gabriel on February 14, 2018. A Settlement Agreement was entered into among the parties on February 8, 2018, with the provision that appellant's suspension stand, and the department would grant appellant conditional approval of secondary employment for six months provided the secondary employment is outside of the department's normal business hours of 8:00 a.m. to 5:00 p.m. After the six month period, the appellant may request approval of secondary employment on an unrestricted basis.

IV. Appeals Pending Hearing/Decision

Commissioner Waugh stated that the appeal of *MaKayla Nunlee Smiley v. Maryvale Justice Court* was scheduled for decision before the Commission. Commissioner Waugh advised that a Notice of Consideration letter was forwarded to Ms. Smiley informing her that discussion and consideration of her appeal would take place in Executive Session pursuant to Arizona Revised Statutes Section 38-431.03(A)(1) unless she informed the Commission that the discussion and consideration should occur in public meeting. Staff reported Ms. Smiley responded she had no objection to discussion of her appeal in Executive Session.

Secretary Quinn advised the Commission that representatives of the Justice Court Human Resources Department were present.

V. Executive Session

Motion: **The Chair moved to suspend the General Session and enter into Executive Session pursuant to A.R.S. Section 38-431.03(A)(1) to discuss or consider the employment, promotion, demotion, dismissal or discipline of a public employee who has appealed the disciplinary action taken against that employee unless such employee demands that such discussion or consideration occur at public meeting.**

Commissioner Geddes seconded the motion.

The Motion was unanimously approved.

General Session Suspended.

Executive Session Convened.

Executive Session Ended.

General Session Re-Convened.

Motion: **The Chair moved to Modify the Findings of Fact and Conclusions of Law in the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation dated December 12, 2017, in the matter of *Makayla Smiley v. Maryvale Justice Court*, consistent with a document entitled Modifications which concerns Paragraphs 2, 3, 5, 6, 8, 10, 12, 14, 32-54 of the Hearing Officer's Findings of Fact, inserting a new paragraph 32 and 33, and modifying Conclusions of Law, paragraph 1 and paragraphs 5 and 6, all as set forth in a written document entitled Modification and dated March 6, 2018.**

Commissioner Geddes seconded the motion

The motion carried with a vote of 4 in favor, no abstentions, none opposed.

After discussion, the Commission completed its Judicial Merit System Commission Decision Summary in the subject appeal. The Commission agreed that the disciplinary action against the appellant was appropriate in this case, was not arbitrary, and was not taken without reasonable cause. The Commission agreed to modify the Findings and Conclusions of the Hearing Officer to be consistent with the Commission's Statement of Modifications dated March 6, 2018, and to dismiss Appellant's appeal.

The Commission issued its Judicial Merit System Commission Decision and Order, No. 18-001, outlining its decision.

VI. Proposed Changes to Judicial Merit System Rules and Conformity to Hearing Officer's Handbook

Commissioner Waugh reiterated that this item continues to be carried on the agenda for discussion of proposed revisions to resolve some potential inconsistencies and ambiguities in the wording of the Judicial Merit System Rules. Commissioner Waugh inquired if the Commission wished to proceed or await discussion until all Commissioners were present. Commissioner Hunter advised she would like to proceed with discussion of a few general questions and thoughts regarding the Appellant's Guide and the Hearing Officer's Handbook. Lengthy discussion ensued.

Commissioner Hunter posed questions regarding several sections of the Judicial Merit System Resolution and Rules and the Appellant's Guide. Commissioner Hunter first suggested that in Section 10.03, Dismissals, Suspensions and Demotions, paragraph A, of the Merit Rules, the word "normally" should be removed or exceptions to the normal practice should be indicated so that the rule is clearer.

Regarding Section 5, Court Service, paragraph A of the Resolution, Commission Hunter questioned whether individuals providing services temporarily or on an on-call basis should be referred to as "temporary and on-call employees," as the word employee could be understood by some to mean that the Resolution and Rules apply to those individuals. Commissioner Hunter suggested including a separate statement regarding temporary or on-call employees stating, "temporary or on-call employees are not", because the way the Rule currently reads it looks like a temporary or on-call employee may be regarded as a contract or claim basis employee.

Commissioner Hunter stated that Section 2.08, Membership in Organizations, paragraph C. of the Rules read, "membership in such organization shall not be considered in any personnel action". Commissioner Hunter stated that there are some organizations that

might be considered unlawful, and suggested the wording should read that “membership in such a lawful organization or lawful organizations shall not be considered in any personnel action.”

In Section 2.07, Employment of the Disadvantaged, Commissioner Hunter asked who recognizes these individuals as being disadvantaged and whether the County relies on a formal group or organization that recognizes people as being disadvantaged.

Commissioner Hunter inquired with regard to Section 14.C.14, Possessing, dispensing, or being under the influence of alcohol, a narcotic, barbiturate, marijuana . . .”, whether the Rules have been updated to accommodate medical marijuana.

Secretary Quinn stated that medical marijuana would be covered under a policy as opposed to the Rules.

Commissioner Hunter inquired as to the meaning of the acronym COJET in Section 14.C.15. Commissioner Eiler advised it referred to the required training requirements of Court employees and means Committee on Judicial Education and Training.

In Section C.14.17, which deals with “Falsifying, destroying or altering court documents or other pertinent paperwork”, Commissioner Hunter suggested that section might be revised to read, “Falsifying, destroying or altering court documents or other pertinent paperwork outside of regular document destruction schedules, except as authorized.”

In Section 15, Appeal by Employee, Commissioner Hunter stated the Rules allow employees to have legal counsel or a non-attorney representative where applicable, however, the Appellant Guide, allows employees to have a legal representative in a closed hearing.

Commissioner Waugh stated that they serve the same function.

Commissioner Hunter stated it is not clear whether a legal representative is the same as a non-attorney representative and suggested this section could be expanded to give employees clear notice that they could have a non-attorney representative in a closed hearing.

Commissioner Hunter stated that under Rule 1, Definitions, Section 1.06, Armed Forces, the Rules do not recognize the National Guard, such as the Air National Guard and the Army National Guard, which are distinct branches of the military, in addition to the branches of service listed.

Commissioner Hunter then stated the Continuances paragraph in the Appellant’s Guide bleeds into other areas where the Hearing Officer can approve different things, such as issuing subpoenas for witnesses, and suggested the title be changed to General Procedural

Rules or Authority of the Hearing Officer to Grant Continuances, Issue Subpoena, and so forth.

Commissioner Waugh suggested it could be changed to Case Management.

Commissioner Eiler stated it was her view that Continuances is needed in the heading because it is something employees are looking for, especially those who are not familiar with the process and may wonder how to proceed if they cannot request a continuance or witnesses. Commissioner Eiler suggested that the title be changed to Continuances and Case Management because continuance is probably a helpful word, but adding case management would be more accurate in terms of what is discussed.

Commissioner Hunter stated that the Subpoenas paragraph of the Appellant's Guide, states, "When valid subpoena requests are received, the Court Human Resources Director requests that the Presiding Judge issue the subpoenas." Commissioner Hunter stated it is not clear who is supposed to make the determination that a valid subpoena request has been received since, in her view, Human Resource Directors may not be in a position to know whether or not there has been a valid subpoena request.

Commissioner Hunter also noted the Subpoenas paragraph states when making a subpoena request, appellants must have a letter containing the name, address and contact number of the person to be subpoenaed. Commissioner Hunter stated it is not clear whether you have to have name, address and contact phone number, or if you can have the name and address, or name and phone number to issue a subpoena. Commissioner Hunter suggested this should be clarified because you have a lay person and a Human Resource Director deciding whether or not you have completed enough information to have a valid subpoena request.

Commissioner Hunter noted the Subpoenas paragraph also states that "Subpoenaed employees shall be paid their base rate of pay." Commissioner Hunter asked whether employees are paid from the minute they leave their office, because it is not clear how that pay is outlined. Commissioner Hunter suggested it might be helpful to clarify how individuals will be paid or at least make a reference if it is clarified somewhere else.

Lastly, Commissioner Hunter noted the Depositions paragraph of the Appellant's Guide states, "If a witness does not reside within the County . . . they can have a deposition taken and used at the time of the hearing if the witness cannot take the stand". Commissioner Hunter stated it is not clear or outlined how you go about setting up a deposition, who pays for it, and this might be some of those things the Commission could clarify under procedures.

Commissioner Waugh stated it is outside of the subpoena power of the hearing officer or the Commission, and in his view, in terms of the use of depositions, this would mean instead of live testimony.

Commissioner Hunter suggested staff submit a Word document to the Commission with comments regarding an explanation of the questions raised.

Commissioner Waugh recommended that the first step would be to prepare the minutes of this meeting and use the minutes to research the questions posed for discussion at the next quarterly meeting. Commissioner Waugh urged Commissioners to mark up some of those questions with their own comments and forward them to staff for distribution to the Commission prior to the next meeting.

Commissioner Waugh expressed appreciation to Commissioner Hunter for her in-depth study of the Rules and the Appellant's Guide.

Commissioner Eiler suggested that as discussion of the proposed changes are carried to each meeting, it might be better served if the discussion is scheduled for a meeting that the Commission does not have a lot of substantive items on the agenda.

VII. Appointment of Counsel for 2018

Secretary Danna Quinn reported that the contract for Dickinson Wright, counsel to the Commission, has been approved for another year through December 31, 2018, with Scot Claus remaining as primary counsel to the Commission.

VIII. Hearing Officer Renewal Contract

Secretary Quinn reported that the contract for hearing officers assigned to the Commission is up for renewal and the Scope of Work is in the process of being drafted and finalized for solicitation. The Commission expressed a possible interest in some involvement in the selection process. Secretary Quinn advised the Commission's involvement in the selection process would have to be approved by the Presiding Judge and she would be willing to reach out to the Presiding Judge if the Commission wished.

IX. Executive Session

Minutes of the Executive Session provided under separate cover.

X. Call to the Public

A call to the public was made by Commissioner Waugh, and no response to the call was made.

VIII. Future Agenda Items

1. Proposed Changes to the Judicial Merit System Rules and Hearing Officer's Handbook.

2. Proposed Changes to the Appellant's Guide.

IX. Meeting Adjournment

The Chair entertained a motion to adjourn.

Motion: Commissioner Hunter moved to adjourn the meeting. Commissioner Eiler seconded the motion, and the Commission approved it unanimously.

The meeting was adjourned.

Respectfully submitted,

Billie J. Berry
Staff to the Commission

For

Danna M. Quinn
Secretary to the Commission

Next Meeting: Tuesday, June 5, 2018 @ 2:00 p.m. in 5th Floor Conference Room Ste 514