

**Judicial Merit Commission – Regular Quarterly Meeting
Tang Conference Room, Law Library, Third Floor
101 West Jefferson, East Court Building
Tuesday, December 4, 2018**

General Session Meeting Minutes

The Judicial Merit System Commission met on Tuesday, December 4, 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, 3rd Floor.

I. Meeting Convened

The meeting was called to order at 2:08 p.m. with the following Commissioners in attendance: Commissioners Craig Waugh (Chair), Roger Geddes, Lauren Eiler, Kristin Hoffman, and Yvonne Hunter. Also in attendance were Danna Quinn, Secretary to the Commission, Jennifer Fish, Human Resources Director, and Billie Berry, Human Resources Associate.

II. Approval of the Minutes

Commissioner Waugh called for a motion to approve the minutes of the 11 September 2018, Quarterly Meeting and the 2 October 2018, Special Session.

Motion: Commissioner Hunter moved to approve the Quarterly General Session Minutes of 11 September 2018 and the Special Session Minutes of 2 October 2018.

Commissioner Waugh and Commissioner Eiler proposed a revision to the General Session Minutes on page 8 of 13, second paragraph, line 10, that the spelling of the word “ownness” be corrected to “onus”.

Commissioner Waugh proposed that the first sentence of the second paragraph on page 9 of 13 of the General Session Minutes be revised to read, “Commissioner Waugh stated the specific authority given the Hearing Officer in the Appellant’s Guide to hear and consider motions is fine as long as it does not overreach” and strike the rest of that sentence.

Motion: Commissioner Hunter moved to accept the Quarterly General Session Minutes of 11 September 2018, as amended, and the Special Session Minutes of 2 October 2018.

Commissioner Eiler seconded the motion. The motion passed by a vote of all in favor, none opposed, and no abstentions.

III. Appeals for Notification of Status

Secretary Quinn reported the appeal of dismissal filed by Terrence Sims v. The Juvenile Probation Department was assigned to Hearing Officer Douglas Erickson. Secretary Quinn reported that a settlement agreement has been reached in the matter and the Court is awaiting its execution and receipt.

IV. Appeals Pending Hearing/Decision

Secretary Quinn reported an appeal of dismissal was filed in the case of Cecilia Ballesteros v. The Juvenile Probation Department. Secretary Quinn reported the appeal was recently received and was in the process of being assigned to a Hearing Officer.

V. Introduction of New Secretary to the Commission

Secretary Quinn reported that she was retiring from the Court after 32 years of service and introduced Jennifer Fish as the new Human Resources Director and Secretary to the Commission. The Commission welcomed Jennifer Fish as Secretary to the Commission and expressed congratulations and appreciation to Secretary Quinn for her years of support and guidance provided to the Commission.

VI. Proposed Changes to Judicial Merit System Resolution and Rules, Hearing Officer's Handbook, and Appellant's Guide

Commissioner Waugh stated he has received the General and Special Session discussion transcripts regarding proposed changes to these documents, as well as the audio recordings; however, has not had an opportunity to go through the proposed changes. Commissioner Waugh stated his intent to produce a complete set of revised documents for discussion at the Commission's next meeting in an effort to confirm the proposed changes and get input from the Commission's counsel. Commissioner Waugh stated that once all proposed changes have been reviewed and approved by counsel, the Commission will prepare a letter of recommended changes to the Presiding Judge.

In the interim, Commissioner Waugh stated the Commission had requested staff research a few questions that arose from its previous discussions. Secretary Quinn reported as follows:

1. **Review leave policies for definition of military, armed services, or armed forces.** Secretary Quinn stated she did not have an opportunity to research the leave policies to determine if a different definition of military, armed services, or armed forces is contained therein, however, a response will be provided at the next quarterly meeting.

Commissioner Eiler stated she believed there is an Arizona statute relating to military or armed services and will research it to provide the number at the next quarterly meeting.

2. **What is the turnaround time for ordering transcripts? Can a transcript be available within 14 days?** Staff reported that depending on the length of the hearing, on average,

the turnaround time for receipt of a transcript is within one week after close of the hearing, and in some instances, as early as three days.

3. **Research origin of rule “Presentation of the hearing may not take longer than three days total for both sides, 12 hours each,” and the original concern that precipitated it. Can this 12 hour rule be taken out?** Secretary Quinn reported staff could not determine the origin of this rule and that it appears to have been in the Hearing Officer Handbook from its inception. Secretary Quinn advised she did have a preliminary discussion with the Court’s General Counsel about this item, and suggested that the Commission should make a recommendation to the Presiding Judge regarding whether or not the 12 hour rule could be taken out of the Handbook.
4. **Does the Commission have the authority to change the Hearing Officer’s Handbook?** Secretary Quinn stated the response she received to this question was that the Commission could recommend changes to the Presiding Judge for legal review by the Court’s representation, the Attorney General’s Office.

Commissioner Hunter inquired whether the Chairman would have an opportunity to participate in that legal review to answer questions or share with the Presiding Judge the Commission’s thoughts with regard to the proposed language changes.

Secretary Quinn stated it has been her experience that if the Presiding Judge or Attorney General has questions regarding recommended changes, the questions are put forth in writing to the Commission to answer. Secretary Quinn stated there is a possibility a sit down meeting could be arranged in the event there were a lot of questions which required a response.

5. **Do Hearing Officer’s receive motions directly from the parties?** Staff reported motions are served on all parties simultaneously, including the Hearing Officer, via electronic mail with a hard copy subsequently received via regular mail.

Commissioner Hunter inquired as to the Hearing Officer’s procedure in communicating with the parties in the event a response is due to a motion. Staff reported that the Hearing Officer normally schedules a telephonic conference among the parties to hear and rule on motions.

Discussion ensued regarding the type of motions received, whether procedural or dispositive, and whether or not the Commission wanted to recommend to the Hearing Officer how motions should be handled.

Commissioner Waugh stated, in his view, the Commission does not need to give specific guidance to Hearing Officers on how to handle procedural motions as long as all parties get a fair chance to weigh in on them. However, he stated that if a dispositive motion is received and the Hearing Officer was inclined to grant it, the Hearing Officer would need to make a Proposed Order to the Commission. Commissioner Waugh stated that if the

Hearing Officer denies the dispositive motion, the hearing would just take place and the final report issued in due course.

6. **Ascertain origin of the statements in the Hearing Officer Handbook and the Appellant's Guide which determined that the department has the burden of proof.** Secretary Quinn advised that the Court's General Counsel is currently researching this issue.

Commissioner Waugh inquired whether the Commission had privilege issues with regard to communications received from the Attorney General's Office.

Secretary Quinn stated it was her belief that the privilege would be between the Court's General Counsel and the Attorney General's Office since the Commission's question was posed to her. Commissioner Waugh stated that once the Commission received a report on the result of those communications, it could then seek advice from its counsel when making its recommendation.

7. **How did Appellant's Guide originate? Was it created by Commission?** Secretary Quinn reported that the Appellant's Guide predates her employment with the Court and research could not determine an answer as to its origination. Staff also reported that in researching old minutes of the Commission's meetings, the Appellant's Guide was first referenced in 1998, but there was no reference as to its author.

Commissioner Waugh stated the Appellant's Guide appears to have been tailored from another document and not drafted from scratch.

VII. JMC 2019 Proposed Meeting Schedule

Commissioner Waugh inquired whether Commissioners had a conflict with the proposed dates for the 2019 Quarterly Meeting Sessions of March 5, June 4, September 10, and December 3, 2019. No conflicts were noted.

Motion: Commissioner Waugh moved to set and approve the proposed meeting dates for 2019.

Commissioner Geddes seconded. The motion passed with a vote of all in favor, none opposed, no abstentions?

VIII. Executive Session

No Executive Session was held at this meeting.

IX. 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. Continued discussion of Item VI on the December 4, 2018 Agenda, Proposed Changes to the Judicial Merit System Rules, Hearing Officer’s Handbook, and Appellant’s Guide , with the exception of questions resolved.
2. Annual Report to Commission.

X. Meeting Adjournment

Motion: Commissioner Waugh 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

Jennifer L. Fish
Secretary to the Commission

Next Meeting: Tuesday, March 15, 2019 @ 2:00 p.m. in the Tang Conference Room