

**KENTUCKY PERSONNEL BOARD
MINUTES OF JANUARY 14, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Cecil F. Dunn on January 14, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Cecil F. Dunn, Chairman
M. Suzanne Cassidy, Vice Chair
David F. Hutcheson, Jr., Member
Larry B. Gillis, Member
David B. Stevens, Member
Wayne "Doug" Sapp, Member
Susan Gardner, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Swearing in of reappointed Board member David F. Hutcheson, Jr.

The first order of business was to swear in Mr. David F. Hutcheson, Jr., who was reappointed to the Board by Governor Steven Beshear. Mr. Hutcheson, sworn in by General Counsel Boyce A. Crocker, will serve for a term ending on January 1, 2015.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD DECEMBER, 10, 2010**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Dunn asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded, and the motion carried 7-0. The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek advised that the Board members have been provided a copy of the Franklin Circuit Court Order issued in *Lowell Grubb v. Justice and Public Safety Cabinet* (09-CI-438) affirming the Personnel Board's decision.

As of January 13, 2011, Mr. Sipek advised that Mr. Crocker was certified as a mediator through the Kentucky Employees Mediation Program (KEMP). The mediation program has been very helpful to the Board and Mr. Crocker will be involved in mediation of matters before an appeal has been filed with the Personnel Board.

Mr. Sipek stated that the process for interviewing for the vacant Administrative Specialist III position has commenced. Mr. Sipek stated that he hoped to have the position filled by the next Board meeting.

At the conclusion of Mr. Sipek's report, Chairman Dunn called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

Secretary Tim Longmeyer and the Hon. Dinah Bevington, Executive Director for the Office of Legal Services, came forward to present the Cabinet's report.

Secretary Longmeyer stated that he was newly appointed as Secretary of the Personnel Cabinet. He stated he was honored to hold the position and will support the merit system. He stated he holds the work of the Board in highest regard and thanked the Board for their service.

Ms. Bevington reported that all the agencies have been contacted concerning initial probationary periods [101 KAR 1:325] to see if there are any changes. She stated that she has about five changes at this time and will submit them at the next meeting. Mr. Sapp requested that the information be provided to the members prior to the next Board meeting, as it would be helpful to the Board.

At the conclusion of the Personnel Cabinet's report, Chairman Dunn asked the parties to come forward for the first oral argument.

5. **ORAL ARGUMENTS**

A. Fredericka Caldwell v. Cabinet for Health and Family Services
(Request by Appellant)

Ms. Caldwell was unable to appear for oral argument and requested a continuance via telephone. There was no objection by the Appellee. Mr. Sapp moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 7-0.

B. Barbara Carden, et al. v. Public Protection Cabinet (7 appeals)

Before oral arguments commenced, both Mr. Gillis and Ms. Gardner recused themselves from discussion for personal reasons that were explained on the record.

Present for oral argument were the Appellants, Barbara Carden, James Stetson, Mark Hardin, Bradley Johnson, Ronnie Ray, Michael Stewart and Brandon Cissel, and counsel for Appellee, the Hon. Gordon Slone. The parties answered questions from the Board.

C. ~~Jennifer Quarles v. Cabinet for Health and Family Services~~
Moved to February

D. Bennett D. Smith v. Justice and Public Safety Cabinet

Present for oral argument were counsel for Appellant, the Hon. Matt Lynch, and counsel for Appellee, the Hon. Angela Cordery. The parties answered questions from the Board.

E. Thomas Waters v. Justice and Public Safety Cabinet

Present for oral argument were counsel for Appellant, the Hon. Philip Kimball, and counsel for Appellee, the Hon. Tyra Redus. The parties answered questions from the Board.

6. **MOTIONS**

- A. Jennifer Quarles v. Cabinet for Health and Family Services
--Appellee's Motion for Leave to File Late Response to Exceptions

Mr. Sipek advised that the exceptions were timely filed with the Board, but the Appellee did not receive them in time. Mr. Sipek recommended that the Board approve the request.

Dr. Stevens moved to approve Appellee's Motion for Leave to File Late Response to Exceptions. Ms. Gardner seconded and the motion carried 7-0.

- B. Betty Runner v. Cabinet for Health and Family Services (2010-127)
--Appellant's Motion to file Reply to Appellee's Exceptions

Mr. Sipek advised the Board that there is no provision under the Kentucky Revised Statutes or regulations for filing a reply, only exceptions and response to exceptions. Mr. Sipek recommended that the Board deny the request.

Mr. Gillis moved to deny Appellant's Motion to File Reply to Appellee's Exceptions. Mr. Sapp seconded and the motion carried 7-0.

7. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Cassidy seconded. Chairman Dunn stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (10:46 a.m.)

Dr. Stevens moved to return to open session. Ms. Cassidy seconded and the motion carried 7-0. (11:34 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. ~~Fredericka Caldwell v. Cabinet for Health and Family Services~~
(Deferred to February)

B. Barbara Carden, et al. v. Public Protection Cabinet (7 appeals)

Mr. Sapp moved to note Appellee's exceptions, Appellant Johnson's response, Appellant Stetson's response, and oral argument and to accept the recommended order sustaining the appeals. Mr. Hutcheson seconded and the motion carried 5-0, with Ms. Gardner and Mr. Gillis recusing for personal reasons that were explained on the record.

C. ~~Jennifer Quarles v. Cabinet for Health and Family Services~~
(Moved to February)

D. Bennett D. Smith v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 7-0.

E. Thomas Waters v. Justice and Public Safety Cabinet

Ms. Cassidy moved to note Appellant's exceptions, Appellee's response and oral argument and to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 7-0.

F. Betty Runner v. Cabinet for Health and Family Services (10-127)

Ms. Cassidy moved to note Appellant's exceptions, Appellee's response and to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 7-0.

G. Peggy Washington v. Department of Education (10-161)

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

H. Diana Adams v. Energy and Environment Cabinet

Mr. Sapp moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 7-0.

I. Casey Chadwell v. Cabinet for Health and Family Services

Mr. Sapp moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

J. Luther Gilbert, Jr. v. Transportation Cabinet and Brian Nelson

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 7-0.

K. Rachelle Howell v. Department of Public Advocacy

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 7-0.

L. Dontrische Jarmon v. Cabinet for Health and Family Services

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

M. Richard Kincaid v. Cabinet for Health and Family Services

Mr. Sapp moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

N. James Mensing v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent the dismissal was reduced to a one-day suspension. Mr. Hutcheson seconded and the motion carried 7-0.

O. Darrell Sanderson v. Education and Workforce Development Cabinet
(2 appeals)

Mr. Sapp moved to accept the recommended order dismissing the appeals. Ms. Gardner seconded and the motion carried 7-0.

P. Valeria Vaughn v. Personnel Cabinet and Education and Workforce Development Cabinet

Dr. Stevens moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 7-0.

Q. Pamela West v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

R. Michael O'Leary v. Cabinet for Health and Family Services

Ms. Cassidy moved to accept the recommended order sustaining the appeal to the extent the Appellant will be reclassified for the period of July 1, 2009, thru October 15, 2009, with a 5 percent pay increase. Mr. Hutcheson seconded and the motion carried 7-0.

Show Cause Orders – Appeal Dismissed - No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

S. Darrell Clark v. Justice and Public Safety Cabinet

T. Robert Defevers v. Transportation Cabinet

- U. Jennifer Morris v. Cabinet for Health and Family Services
- V. Thaddeous Price v. Department of Agriculture (2 appeals)
- W. Kerry Verden v. Cabinet for Health and Family Services

Dr. Stevens moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Gardner seconded and the motion carried 7-0.

9. WITHDRAWALS

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Sapp seconded and the motion carried 7-0.

- A. Michael Goins v. Transportation Cabinet
- B. Danielle Herriford v. Justice and Public Safety Cabinet
- C. Julie Johnson v. Justice and Public Safety Cabinet
- D. Jeffrey Perkins v. Kentucky State Police
- E. Geetha Thangappan v. Finance and Administration Cabinet

10. SETTLEMENTS

Mr. Gillis moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties; sustaining the appeal to the extent set forth in the settlement. Dr. Stevens seconded and the motion carried 7-0.

- A. Nancy Bowman-Denton v. Department of Public Advocacy (mediated)
- B. John Morris v. Justice and Public Safety Cabinet

11. OTHER

Chairman Dunn asked if there were any other matters to discuss.

There being no further business, Ms. Cassidy moved to adjourn. Dr. Stevens seconded and the motion carried 7-0. (11:40 a.m.)

Cecil F. Dunn, Chairman

M. Suzanne Cassidy, Vice Chair

David F. Hutcheson, Jr., Member

Larry B. Gillis, Member

David B. Stevens, Member

Wayne D. Sapp, Member

Susan Gardner, Member