KENTUCKY PERSONNEL BOARD
MINUTES OF AUGUST 9, 2019

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Crall on August 9, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Brian J. Crall, Chair
Mark O. Haines, Vice Chair
Beverly H. Griffith, Member
William J. Byrley, Member
Catherine J. Monteiro, Member
Tanya Lawrence, Member
Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Cynthia Perkins, Administrative Section Supervisor
Gwen McDonald, Administrative Specialist

(Richard Waite was not present pending his status as a Board member being resolved.)

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD JULY 12, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Crall asked for any additions or corrections. Mr. Haines moved to approve the minutes as submitted. Ms. Lawrence seconded and the motion carried 5-0. The Board members signed the minutes.

(Chair Crall does not vote, unless noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek pointed out a change in the Board's agenda: both the Southworth and Parmley appeals were moved to the September agenda upon request by the parties. He also noted the upcoming Attorney General's Hearing Officer training is scheduled in October and invited the Board to attend the training, if they wished to do so.

4. **REPORT OF THE PERSONNEL CABINET**

LaDonna Koebel, Personnel Cabinet's Chief of Staff, presented to the Board on behalf of the Personnel Cabinet. She noted the Cabinet had received the Southern Legislative Conference's Star Award for its work on the My Purpose system, specifically with the recruitment and talent management suite, especially with the capability of being able to embed commericals for different agencies.

She announced that at the recent National Association of State Personnel Executives conference, the Personnel Cabinet swept almost all awards. Secretary Stephens won the Eugene Rooney Award for Leadership. The Cabinet also won the Advancing the HR Profession award for its annual EEO conference.

Finally, Ms. Koebel discussed the upcoming EEO Conference on Leadership and Diversity. She invited all to attend, noting there were different breakout sessions for different interest groups: legal, diversity, and leadership. The conference is scheduled for September 18 and 19, 2019, at the Kentucky International Convention Center, with keynote speaker Tamika Catchings. (Attendance records were exceeded last year.) Ms. Koebel's presentation included a brief commercial airing on the Louisville television stations about the EEO conference.

Chair Crall congratulated the Cabinet on its awards.

5. **MOTIONS**

A. Anne Sanchez v. Cabinet for Health and Family Services (2018-210)
--Appellant's Request for an Extension
--Appellant's Amended Request for an Extension
--Appellant's (Second) Request for an Extension
--Appellant's Exceptions and Request for Oral Argument (Tendered)

Neither of the parties were present, nor did they request to present to the Board. Mr. Sipek explained the law regarding exceptions and extensions of time for the Board. Ms. Monteiro moved to deny Appellant's request for extension of time. Ms. Griffith seconded and the motion carried 5-0.

B. ~~Adrienne Southworth v. Governor's Office & Office of Lt. Governor~~
~~--Governor's Office Motion for the Personnel Board to Hear the Appeal in This Matter and to Hold This Matter in Abeyance Pending the Board's Determination in Appeal No. 2019-037~~
~~--Appellant's Motion to Strike~~

Moved to September

6. **ORAL ARGUMENTS**

A. Michael L. Frost, et al. v. Transportation Cabinet and Personnel Cabinet (Appellants' request)

Present for oral arguments were the Hon. Paul Fauri, counsel for Appellants, Christopher Cox, Patrick Fitzgerald, and Charles Childress, the Hon. Richard Guarnieri, counsel for Appellants, Curtis McKiddy, Don Nolan, Craig Napier, Roy Allen, Robbie Hatcher, Shannon Smith, Gene Gregory, Jeffrey Crowder and John Farmer, the Hon. Ed Logan, counsel for the Appellee Transportation Cabinet, and the Hon. Catherine Stevens, counsel for the Appellee Personnel Cabinet.

B. ~~Amanda Parmley v. Transportation Cabinet (Appellant's request)~~
Moved to September

7. **REQUEST FOR INVESTIGATION**

Department of Veterans Affairs
--Ray Harris' request to rescind retirement
--Veterans Affairs' Notice of Appearance – Hon. Dennis Shepherd

Appellant Ray Harris was not present. The Hon. Dennis Shepherd, counsel for Appellee, the Department of Veterans Affairs, stated he was prepared to answer questions for the Board about the request for investigation.

Ms. Monteiro moved to deny the request for investigation. Mr. Haines seconded and the motion carried 5-0.

8. **REVIEW OF INTERIM ORDER – ORAL ARGUMENT**

A. Stephen Knipper v. Governor's Office (Appeal No. 2019-037)
--Appellee's Response to July 3, 2019 Interim Order
--Appellant's Response to July 3, 2019 Interim Order
--Appellee's Reply to Appellant's Response
--Appellant's Reply to Appellee's Response
--Lt. Governor's Office, Entry of Appearance and Provisional Petition for Intervention and Motion for Continuance
--Memorandum in Further Support of the Lieutenant Governor's Office's Provisional Petition to Intervene and Motion for Continuance
--Lt. Governor's Office Supplemental Memorandum
Moved From July Board

Present were the Appellant, Stephen Knipper, and counsel for the Appellee, the Hon. Carmine Iaccarino. Also entering his appearance was the Hon. Joshua Harp for the Office of the Lt. Governor. The parties and Mr. Harp answered questions from the Board.

9. **CLOSED SESSION/RETURN TO OPEN SESSION**

Ms. Monteiro moved the Board go into closed Executive Session for the purpose of discussing the entry of appearance made by Mr. Harp on behalf of the Office of the Lt. Governor. Ms. Griffith seconded. Chair Crall stated that a 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)(j), the Kentucky Open Meetings Act, the Board retired into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for that action were because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the August 9, 2019 meeting.] (11:08 a.m.)

Ms. Monteiro moved to return to open session. Ms. Lawrence seconded and the motion passed by acclamation. (12:22 p.m.)

Following the first closed session, Ms. Griffith moved that the Board: (1) recognize Mr. Harp's request to enter an appearance on behalf of the Office of the Lt. Governor, (2) recognize that the Governor's Office and Mr. Knipper may respond to the Office of the Lt. Governor's motion to intervene, pursuant to KRS 13B.060, (3) allow the Office of the Lt. Governor to tender a response to the July 3, 2019 Interim Order by August 26, 2019, and the other parties may file a reply to their response by September 5, 2019, and (4) move oral argument on the July 3, 2019 Interim Order to the September 13, 2019 Board meeting. Ms. Monteiro seconded and the motion carried 5-0.

Chair Crall stated this would defer the remaining motions before the Board in this matter until the September meeting.

10. SECOND CLOSED SESSION/RETURN TO OPEN SESSION

Ms. Monteiro moved that the Board go into Executive Session for the purposes of discussing complaints, and deliberations regarding individual adjudications. Ms. Lawrence seconded. Chair Crall stated that a 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)(j), the Kentucky Open Meetings Act, the Board retired into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action were because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the August 9, 2019 meeting.]

Further, pursuant to KRS 61.810(1)(c), the Board discussed of proposed litigation against or on behalf of the Board. Specifically, litigation relating to the status of the elected Personnel Board member position held by Richard Waite. (12:25 p.m.)

Ms. Monteiro moved to return to open session. Ms. Griffith seconded and the motion passed by acclamation. (12:58 p.m.)

11. 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. **Michael L. Frost (Withdrawn)**
Curtis Mckiddy (Appeal No. 2015-145),
Don Nolan (Appeal No. 2015-147),
Craig A. Napier (Appeal No. 2015-153),
Roy G. Allen (Appeal No. 2015-154),
Robbie D. Hatcher (Appeal No. 2015-155),
Shannon R. Smith (Appeal No. 2015-157),
Gene S. Gregory (Appeal No. 2015-160),
Jeffrey A. Crowder (Appeal No. 2015-159),
John R. Farmer (Appeal No. 2015-144),
Patrick Fitzgerald (Appeal No. 2015-243),
Christopher Cox (Appeal No. 2015-245), and
Charles Childress (Appeal No. 2015-247) v. Transportation Cabinet and

Personnel Cabinet (12 Appeals)

Mr. Byrley moved to defer this matter to the next Board meeting. Ms. Monteiro seconded and the motion carried 4-0. Ms. Lawrence abstained.

B. ~~**Amanda Parmley v. Transportation Cabinet (2017-234)**~~
Moved to September

C. **Joseph Johnson v. Justice and Public Safety Cabinet/Corrections (2018-257)**

Mr. Haines, having considered the record (with the Board having previously denied Appellant's Exceptions and Motion for Oral Argument), moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 5-0.

D. **Anne Sanchez v. Cabinet for Health and Family Services (2018-210)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffin seconded and the motion carried 5-0.

E. **Tracy Jones v. McCracken County Clerk (2019-132)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

A. Donna Blankenship v. Department of Education (2018-124)
B. John Collins v. Cabinet for Health and Family Services (2018-004) (**Remanded**)
C. Tracy Glascock v. Transportation Cabinet (2019-046)
D. Derek Mays v. Justice and Public Safety Cabinet/Corrections (2018-206 & 2019-001) (2 appeals)
E. Tammy Weaver v. Transportation Cabinet and Personnel Cabinet (2015-150)

Ms. Griffith moved to accept the recommended orders and to dismiss the appeals for failure to prosecute the appeals. Mr. Byrley seconded and the motion carried 5-0.

12. WITHDRAWALS

Ms. Monteiro moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Ms. Lawrence seconded and the motion carried 5-0.

A. Richard Ehling v. Justice and Public Safety Cabinet/Juvenile Justice (2019–059)
B. Ryan Northcutt v. Cabinet for Health and Family Services and Personnel Cabinet (2019-109)
C. John Shupp v. Energy and Environment Cabinet (2018-255)
D. Shelby Turek v. Department of Veterans Affairs (2019-098)
E. Edwin "Tyler" Young v. Justice and Public Safety Cabinet/Juvenile Justice and Personnel Cabinet (2019-106)
F. Barry Spencer v. Justice and Public Safety Cabinet/Corrections and Tiffanny Buckner (2019-011)
G. Jodi Williams v. Justice and Public Safety Cabinet/Corrections (2019-120)
H. Wael Ghanim v. Justice and Public Safety Cabinet/Juvenile Justice (2019-136)
I. Staci Crider v. Energy and Environment Cabinet (2019-008)

13. SETTLEMENTS

Ms. Griffith moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Mr. Byrley seconded and the motion carried 5-0.

A. Benita Lewis v. Cabinet for Health and Family Services (2019-034) (Mediation)
B. Mark Smith v. Finance and Administration Cabinet (2018-225)
C. Raymon Vinson v. Justice and Public Safety Cabinet/Corrections (2014-205) (**Remanded**) (Mediation)
D. Alexander Young v. Justice and Public Safety Cabinet/Corrections (2019-084) (Mediation)
E. Richard Lavender v. Cabinet for Health and Family Services (2019-023) (Mediation))

14. **OTHER**

Personnel Board Composition
--June 27, 2019 memo from Stafford Easterling to the Board
--July 30, 2019 Letter from Kentucky Retirement Systems (KRS)
--July 30, 2019 Letter from Steve Wolnitzek to KRS
--July 30, 2019 Letter from Steve Wolnitzek to Stafford Easterling

Mr. Haines moved that the Board request a Declaratory Order from the Franklin Circuit Court regarding Mr. Waite's service on the Board. Mr. Byrley seconded and the motion carried 5-0.

Mr. Sipek stated the Personnel Board received an Open Records Request from the Tourism, Arts and Heritage Cabinet for the documents regarding Mr. Waite. Mr. Sipek will contact Mr. Waite to inform him of the request. Mr. Sipek and Mr. Easterling will respond to the request.

Mr. Sipek again noted the Attorney General's Hearing Officer training and the upcoming EEO conference. The Board will be further informed regarding these opportunities through email.

Mr. Sipek requested authorization to raise Ms. Gwen McDonald's salary to midpoint. Ms. Monteiro moved to raise Ms. McDonald's salary to midpoint. Ms. Lawrence seconded and the motion carried 5-0.

There being no further business, Ms. Lawrence moved to adjorn the meeting. Ms. Griffith seconded and the motion carried 5-0. (1:09 p.m.)

Brian J. Crall, Chair

Mark O. Haines, Vice Chair

Beverly Griffith, Member

William J. Byrley, Member

Catherine J. Monteiro, Member

Tanya Lawrence, Member