

ARIZONA STATE PERSONNEL BOARD

SCOTT M. McNAIR,

Complainant,

v.

HEARING OFFICER'S ORDER
ON MOTION TO DISMISS

MARICOPA COUNTY DEPARTMENT
OF TRANSPORTATION,

Respondent.

Complainant filed a Whistleblower complaint with the Arizona State Personnel Board, alleging that he was working in "State Service" with Maricopa County. A Motion to Dismiss was filed by Maricopa County on the basis that Maricopa County has an appropriate administrative body, the Maricopa County Employee Merit System Commission, to serve as the independent personnel body for complaints made under ARS, Section 38-532. A Response to the Motion was filed by Complainant and a Reply to Complainant's Response was filed.

Based on the pleadings filed herein, the undersigned DENIES the Motion to Dismiss and ORDERS that an evidentiary hearing be conducted into: 1). Complainant's actual employment status; 2). the extent to which the Maricopa County

Employee Merit System Commission accepts Whistleblower complaints from all employees of Maricopa County; 3). Maricopa County's basis for refusing to consider whether it had jurisdiction to hear Complainant's Whistleblower complaint; and, 4). whether Maricopa County has an *appropriate* independent personnel board to consider whistleblower matters arising under Title 38, Arizona Revised Statutes.

IT IS FURTHER ORDERED vacating the hearing currently set for January 29, 2003 and re-setting this matter for a jurisdictional hearing consistent with the above-referenced evidentiary matters on Monday, February 10, 2003 at 9:00 A.M. in the Offices of the Arizona State Personnel Board, 1400 W. Washington, Suite 280, Phoenix, Arizona.

IT IS FURTHER ORDERED that, pending resolution of the jurisdictional issues, no evidence will be received regarding any disclosures to public bodies or any reprisals taken from those disclosures.

DATED this 23rd day of January 2003.


HAROLD J. MERKOW
Hearing Officer

Copy of the foregoing Order mailed this
23^d day of January, 2003 to:

Scott McNair

Phoenix, AZ '
Complainant

Daniel Brenden
Deputy County Attorney
Maricopa County Attorney's Office
Division of County Counsel
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Phoenix, AZ 85004-2206
Attorney for Respondent