

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

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MARICOPA COUNTY EMPLOYEES MERIT SYSTEM COMMISSION

SCOTT M. MCNAIR,
Complainant,

v.

MARICOPA COUNTY, Andrew
Kunasek, David Smith, Fulton Brock,
Mary Rose Wilcox, Max Wilson, Don
Stapley, Richard Romley, David
Smith, John Doe, and Jane Doe,
Respondents.

**RESPONSE TO MOTION FOR
DEFAULT JUDGMENT AND CROSS
MOTION TO DISMISS**

Respondents through undersigned Counsel hereby move to dismiss
Complainant's Motion fur Default Judgment and Cross Motion to Dismiss.

Motion For Default Judgment

Complainant's claim that the Merit Commission failed to timely schedule a hearing is not supported by the authority cited. Complainant relies on Title 41 of the Arizona Revised Statutes to support his claim, but Title 41 applies to State Government and not Counties. The Merit Commission is not governed by A.R.S. § 41-785 as Claimant asserts.

The Merit Commission was not required to provide Complainant with a copy of A.R.S. § 38-532. Complainant's reliance on the A.R.S. § 38-532.G is flawed because job applicants and former independent contractors do not qualify for whistleblower status under that statute. Furthermore, Complainant has not produced evidence that he suffered any prohibited personnel action as required by the statute.

Any delay in the conduct of the hearing is due to Complainant's own actions.

The complaint in this case was filed on or about June 14, 2004_ subsequent letters Complainant demanded a change in venue and later motioned to disqualify Respondents' counsel. Both matters had to be resolved prior to hearing the case.

If Complainant's claim suffers any prejudice it is due to the delay caused by Complainant's own actions.

II. **Jurisdiction**

The Maricopa County Employee Merit System ("Merit System") does not

1 have jurisdiction over contract employees or job applicants such as the
2 Complainant.

Maricopa County pursuant to A.R.S §§ 11-351 through 356 created an
4 Employee Merit System. The purpose of the Merit System is to provide a
uniform and equitable system of personnel administration for employees in the
Maricopa County classified service. (Merit System Resolution, "Resolution" Sec.
1,2)

The term "Classified Service" does not include contract employees.
(Resolution, Sec. 6)

10 The term "County Service" does not include persons who perform
11 services on an independent contractor basis. (Resolution, Sec. 5)

12 Job applicants are not employed by the county and are not in County
13 Service or Classified Service. (Resolution, Sec. 5, 6)

14 III. **Standing**

15 Only employees who are in Classified Service have standing to appear
16 before the Merit Commission.

17 Complainant was not in Classified Service. Job applicants and
18 independent contractors are not in "Classified Service". (Resolution, Sec.5, 6)

19 Complainant admits that he is not an employee and further asserts he
20 was denied consideration for employment by the County. (Complaint Sec. I. §§
21 2-14)

22

1 **Conclusion**

2 The Merit Commission does not have jurisdiction over independent
3 contractors or job applicants and the Complainant does not have standing to
4 bring this claim.

5 RESPECTFULLY SUBMITTED this c.28th day of September 2004.

6 RICHARD M. ROMLEY
7 MARICOPA COUNTY ATTORNEY

8 BY: *DAW Brenden*
9 DUEL
10 MARY C. CRONIN
Deputy County Attorneys
Attorneys for Respondents

11 ORIGINAL of the foregoing hand-delivered
this 28th day of September 2004, to:

12 Janice Stratton
13 Merit System Commission Administrator
301 West Jefferson Street, Suite 219
14 Phoenix, Arizona 85003

15 and COPY mailed this same day to:

16 Scott M. McNair
[REDACTED]
17 Phoenix, Arizona [REDACTED]
Complainant Pro Per

18 and COPY mailed and electronically
19 mailed this same day to:

20 David Gering, Esq.
Hearing Officer
1628 E. Southern, #9-303
21 Tempe, Arizona 85282

22 *Joseph Caronado*



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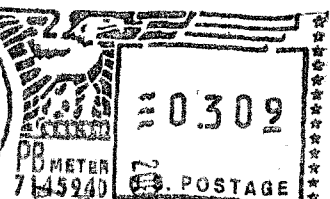
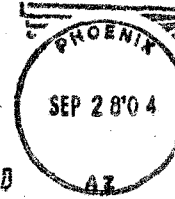
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