

1 Scott M. McNair (Complainant, Pro Se)

2 [REDACTED]
3 Phoenix, Arizona 85015

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4 MARICOPA COUNTY

5 EMPLOYEE MERIT SYSTEMS COMMISSION

7 SCOTT M. MCNAIR
Complainant

CASE NO. MC-WB-2004-1

8 V.

COMPLAINANT'S OBJECTIONS TO
HEARING OFFICER'S RECOMMENDATION

9 MARICOPA COUNTY, et al
10 Respondents

Assigned to Hearing Officer David Gering

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13 I. COMPLAINANT'S OBJECTION TO RECOMMENDATION

14 The complainant does hereby object to the *Hearing Officer's Findings of Fact, Conclusions*
15 *of Law, and Recommendation* submitted by David Gering on December 07 2004, and received
16 by the Complainant on December 13 2004.

17 The Complainant contends that Mr. David Gering's *Recommendation* is not supported by
18 substantial evidence, is contrary to substantial evidence in the record, is contrary to law, is
19 arbitrary and capricious, is an abuse of discretion, and therefore, the Commission is bound to
20 reject such.

21 II. STATEMENT OF FACTS

22 As shown by the record, through documents filed by Maricopa County with its own
23 agencies and with other government entities throughout the State of Arizona and the United
24 States Government, the Complainant was previously an employee of Maricopa County.

1 The record contains credible and substantial evidence showing that he was employed as a
2 Database Administrator, qualified to hold the position, and that his performance in such a
3 position was rated as above satisfactory and "outstanding".

4 Additionally, the record shows that management within the County has asserted that it
5 previously attempted to re-employ the Complainant as a Database Administrator after
6 terminating the Complainant's initial employment.

7 The record contains irrefutable evidence that the Complainant previously filed a "public
8 disclosure(s)" with "public bodies" within Maricopa County as defined by ARS 38-532 et. seq. It
9 also shows that the individual defendants were amongst the recipients of those "public
10 disclosures".

11 The record undeniably shows that the Complainant filed charges of retaliation and
12 discrimination against the County with the United States Equal Employment Opportunity
13 Commission, and litigation for such is being pursued for in US District Court.

14 The record shows that subsequent to such, the Complainant filed an application for
15 employment with Maricopa County as a Database Administrator and was denied the position
16 under the dubious guise that he was unqualified to hold a position that he had **previously held**
17 **for four years.** (A position in which on numerous occasions he had received praise and
18 commendations from County management for his outstanding performance.)

19 Subsequent to the denial of his application, the Complainant filed a timely complaint
20 against the individual defendants (Andrew Kunasek, David Smith, Fulton Brock Mary Rose
21 Wilcox, Max Wilson, Don Stapley, Richard Romley, David Smith, and/or other unidentified
22 County employees and officials) alleging that they had denied him proper consideration for
23 employment as retaliation for the Complainant's public disclosure, complaints to the EEOC of
24 discrimination, and subsequent pursuit of his right to due process.

1 All of these offenses are within the jurisdiction of the Maricopa County Employee Merit
2 Commission, and such jurisdiction was cited with specificity within the complaint.

3 The Complainant also cited relevant statute that clearly shows that the actions of the
4 defendants (Andrew Kunasek, David Smith, Fulton Brock Mary Rose Wilcox, Max Wilson, Don
5 Stapley, Richard Romley, David Smith, and/or other unidentified County employees and
6 officials), constitute criminal acts of a felonious nature.

7 Recognizing that the Commission's members are appointed by and serve at the leisure of
8 the Defendants, and that requesting the Commission to judge its own superiors would manifest
9 a blatant conflict of interest, the Complainant demanded a change of venue.

10 Of the greatest significance, is that the will record show that **the defendants failed to**
11 **appear at their own hearing and failed to deny the charges against themselves.**

12 III. MEMORANDUM

13 Rather than maintain the sanctity of their positions (or their own personal honor), the
14 Commission members ignored their oaths of office and the obvious conflict of interest, and
15 instead sought out a "*puppet hearing officer*" to assist them in their accomplice to the unlawful
16 acts of the defendants (Andrew Kunasek, David Smith, Fulton Brock Mary Rose Wilcox, Max
17 Wilson, Don Stapley, Richard Romley, David Smith, and/or other unidentified County
18 employees and officials).

19 In prior cases too numerous to cite, when defendants or appellants failed to appear at their
20 own hearing or failed to deny the charges against themselves, the hearing officer and the
21 commission issued judgments against the defendants either in default or summary form, citing
22 their failure to appear and/or deny the charges as enough grounds to substantiate such.

23 This commission and its puppet hearing officer, have deliberately violated any and all rules
24 of the merit system, all rules of procedure and evidence, and blatantly violated the

1 constitutional rights of the Complainant, including deliberately withholding the transcript of the
2 proceedings, with the premeditated intention of obstructing justice and denying the
3 Complainant any form of due process.

4 Such actions make the individual commission members, hearing officer, and others, **willing**
5 **accomplices to** the civil and criminal acts of the defendants.

6 While those involved (individual commission members, hearing officer, etc.) may believe
7 they are shielded from civil action under the principles of qualified or absolute immunity, they
8 should be reminded that since they knew, or should have known, that their actions were or are
9 illegal, any such protections are lost.

10 IV. CONCLUSION

11 The Commission (and its puppet hearing officer) deliberately engineered the proceedings in a
12 manner they believe will benefit those they are protecting (defendants).

13 No amount of legal or factual citation will convince this Commission to act in a judicious or
14 honorable manner, and therefore the Complainant will not waste such on them.

15 They are free to cement their stance as willing accomplices to the civil and criminal offenses of
16 the defendants, by ignoring the law, the evidence, and their obvious conflict of interest, and issue
17 a counterfactual decision that will benefit their own superiors.

18 Their actions and those of the unscrupulous hearing officer shall be forwarded to the judicial
19 commission and state bar, and atonement shall be sought in a non-prejudicial court of justice.

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21 This matter shall be appealed to a court of honor.
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SUBMITTED this 22nd day of DECEMBER 2004.

By: 

Scott M. McNair, Complainant (Pro Se)

ORIGINAL of the foregoing FILED via facsimile this day with:

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COPY of the foregoing mailed the 23rd day of DECEMBER 2004 to Counsel for

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