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CRAIG MOUSEL
State Bar Number 3354
SUNDBERG & MOUSEL
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Phoenix, Arizona 85007
Attorney for Defendant
Arizona State Personnel Board

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

SCOTT M. MCNAIR,)
Plaintiff,)
v.)
MARICOPA COUNTY DEPARTMENT)
OF TRANSPORTATION, STATE OF)
ARIZONA PERSONNEL BOARD,)
KENNETH MEDLIN,)
TERRY PETERSON,)
JENNIPHER RAMSEY,)
Defendants.)

NO: LC 2003-000539-00i ;
RESPONDING BRIEF OF THE
ARIZONA STATE PERSONNEL
BOARD

Pursuant to Rule 10(C) of the Arizona Rules of Civil Procedure, the Arizona State Personnel Board and its Member Defendants adopt the Responding Brief of Defendant Maricopa County. In addition, the Defendant Board adds the following response.

As the Board always does, when its answer is filed, the Board files the Record with the Court. What the Board considers to be an index" under the rules is filed at that time and either signed for by the Court or stamped in by the Court. This took place on July 2, 2003. The index " listed the following items:

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A. The original case file. This consists of all pleadings and letters for the Board together with anything else tendered to the Board and kept in the Board's file. The individual items were not listed but were all tendered in chronological order.

B. Tapes of the proceedings were tendered. A transcript is not made by the Personnel Board under A.R.S. § 41-785(B) which provides that the Record be transcribed by another entity (other than the Personnel Board) and that the requesting party shall transcribe the Record at the cost of the requesting party. Therefore, under the law, there is no transcript filed with the Court unless a party requests and prepares the transcript. Likewise, if Plaintiff is bringing this action under A.R.S. §38-532(1), there is no mechanism for filing a record with the Court nor is there any requirement at all relating to the record.

C. Respondent and Appellant's exhibits. All of the exhibits have been filed as part of the Record on appeal.

D. The minutes of the Board meeting. In short, everything the Board has, related to this case, has been filed with the Record. The fact that the word index is subject to a different definition by the Plaintiff, should not matter when everything related to the case has been filed with the Court and an additional copy has been handed to the judge in open court.

Thus, any argument concerning access to the Record breaks down in a twofold manner. First, access to the Record is available at the Personnel Board, at the Judge's office by checking out the same and finally, at the Clerk's

1 office. Second, access to a transcript of the proceedings is available by either
2 party acquiring copies of the tape and transcribing the same. The issue of lack
3 of access is insufficient to give success to an appeal.

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5 The standard of review raised by the Plaintiff is incorrect. The
6 standard of review is found in the Evans vs. State ex rel. Arizona Corporation
7 Commission 131 Ariz. 569, 573; 643 P.2d 14, 18 (App., 1982). That standard
8 states that if there is any evidence to uphold the decision of the Board, the
9 Court must uphold the decision of the Board. The Court may not substitute its
10 view of the evidence for that of the Personnel Board. See Siles v. Arizona
11 Department of Meal Estate. 193 Ariz. 374 (1998).

12
13 Based on the foregoing and succinctly stated, the only issue in this
14 matter is whether or not the Board properly found that it did not have
15 jurisdiction in this matter based on the facts presented. The fact presented is
16 that the Complaint was not timely filed within the tendering time period. It
17 was not so filed and, therefore, the Court should uphold the decision of the
18 Board that it lacks jurisdiction in this matter.

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20 Respectfully submitted this 29 day of April, 2004.

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24 SUNDBERG & MOUSEL

25 Arizona State Personnel Board
26 and its Members

27 Copy of the foregoing
28 maile this 29 day of
April 2004 to:

LAW OFFICES OF
SUNDBERG AND MOUSEL

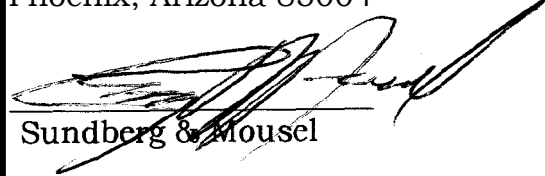
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honorable Michael D. Jones
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