

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-033194

08/21/2009

HONORABLE DONALD DAUGHTON

CLERK OF THE COURT
R. Aguilera
Deputy

ANDREW P THOMAS, et al.

LEAH S FREED

v.

MARICOPA COUNTY BOARD OF
SUPERVISORS, et al.

THOMAS K IRVINE

MINUTE ENTRY

On August 17, 2009 and August 18, 2009, Oral Argument was held on Plaintiff's Motion for Summary Judgment re: Count One and Defendant's Counterclaim and Defendant's Motion for Partial Summary Judgment re: Count One and Counterclaim. The Court took these two motions under advisement. Before the arguments commenced, the Court asked counsel for each party if he agreed that there were no general issues of material fact which would preclude the granting of either of these motions. Each counsel stated on the record that he agreed there were no general issues of material fact.

On August 18, 2009, Oral Argument was also held on Defendant's Motion for Partial Summary Judgment re: Count Two and Plaintiff's Cross-Motion for Summary Judgment re: Count Two.

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Having now reviewed these Motions, Responses, Replies, Exhibits submitted by each party, the arguments of counsel and being fully informed in the premises,

THE COURT FINDS as follows:

- Andrew P Thomas, in his official capacity as Maricopa County Attorney is subject to and required to follow the Arizona Rules of Professional Conduct, Rule 42, Rules of the Supreme Court of Arizona and specifically those provisions of the Rule dealing with client conflicts. No statute passed by the Arizona Legislature has or could relieve the County Attorney of the obligation to comply with those rules.
- The conduct of the County Attorney in his relationship with the Defendant/Counterclaimant, Maricopa County Board of Supervisors, has not complied with those professional obligations during the time frame involved in this litigation.
- It is the contention of the County Attorney that it is he who determines if there is a conflict in any given situation and if he determines that there is a conflict it is he who selects counsel for his client the Maricopa County Board of Supervisors. There is no support for the contention under Rule 42 Rules of the Supreme Court of Arizona.
- The Board of Supervisors was therefore legally entitled to take the actions it took on December 5, 2008 and December 23, 2008. Although it is the opinion of this Court that the actions of the Maricopa County Board of Supervisors on December 23, 2008 were appropriate at the time, the Board of Supervisors must bear in mind that when the County Attorney follows the Ethical Rules in his relationship as attorney for Maricopa County and the Board of Supervisors, his office will then be the appropriate attorney of record for Maricopa County in those cases in which no conflict of interest exists.

THE COURT FURTHER FINDS there are no genuine issues of material fact and that Defendants are entitled to summary judgment as a matter of law on Plaintiff's Complaint and Defendants/Counterclaimants Counterclaim.

IT IS THEREFORE ORDERED granting the Maricopa County Board of Supervisors' Motion for Partial Summary Judgment re: Count One and Counterclaim.

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IT IS FURTHER ORDERED denying Plaintiffs/Counterdefendant's Motion for Partial Summary Judgment re: Count One and Counterclaim.

On March 16, 2009, Mike Anthony Scerbo, Public Information Officer of the Maricopa County Attorney's Office sent a letter to Richard De Uriarte, Public Information Officer of the Maricopa County Board of Supervisors, under the letterhead of the Maricopa County Attorney formally requesting certain documents under A.R.S. Section 39-121 through 39-121.3, the Arizona Public Records Law.

On March 12, 2009, the Maricopa County Board of Supervisors issued a "Policy for Information Request".

A.R.S. Section 39-121 establishes a right to receive public records but does not define a process by which such records will be produced. The Maricopa County Board of Supervisors is the governing body of Maricopa County and is entitled to establish a reasonable process for its compliance with its obligation to provide public records under A.R.S. Section 39-121. The County Attorney made no effort to comply with the "Policy for Information Request" and in fact offered to provide legal advise as to their implementation when the Chief Deputy, Maricopa County Attorney, suggested that the County Attorney's Office could provide the Board with the standard advice on what does and doesn't constitute a public record. The Defendant/Counterclaimant, Maricopa County Board of Supervisors, had the authority under A.R.S. Section 11-101, 11-102, 11-201, and 11-251 to promulgate the "Board Directive Related to Public Records Requests" adopted on January 21, 2009.

The County Attorney has made no effort whatsoever to comply with what appear on their face to be reasonable procedures for the production of public records. Therefore, he has no standing to challenge the refusal of the Maricopa County Board of Supervisors to comply with his record request.

THE COURT FINDS there are no genuine issues of material fact and that Defendant's/Counterclaimant's are entitled to summary judgment as a matter of law on Defendant's/Counterclaimant's Motion for Summary Judgment re: Count Two of Plaintiff's Complaint.

IT IS THEREFORE ORDERED granting Defendant/Counterclaimant's Motion for Summary Judgment re: Count Two of Plaintiff's Complaint.

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IT IS FURTHER ORDERED denying Plaintiffs/Counterdefendant's Motion for Partial Summary Judgment re: Count Two.

IT IS FURTHER ORDERED directing counsel for Defendants/Counterclaimants to lodge with the Court a final declaratory judgment consistent with this minute entry within ten (10) days of the date of this order. If objections to the proposed form of order are filed by Plaintiffs/Counterdefendants, a hearing will be held on those objections on **September 24, 2009 at 9:30 a.m.** before:

THE HONORABLE DONALD DAUGHTON
JUDGE OF THE SUPERIOR COURT
MARICOPA COUNTY
125 WEST WASHINGTON
OLD COURTHOUSE, COURTROOM 309
PHOENIX AZ 85003

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>