



PIMA COUNTY  
HUMAN RESOURCES  
150 WEST CONGRESS  
TUCSON, ARIZONA 85701  
(520)724-2728

**NOTICE OF CANCELLATION**

**PIMA COUNTY MERIT SYSTEM COMMISSION/  
LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

**JUNE 13, 2012 MEETING**

Notice is hereby given to the general public that the Pima County Merit System Commission/Law Enforcement Merit System Council meeting scheduled for June 13, 2012 has been CANCELLED.

Questions regarding the cancellation of this meeting can be directed to Linda King, Pima County Human Resources Department, 724-8174. Copies of the agenda may be obtained by contacting Donna Tobias at 724-2728.

Dated this 13th day of June 2012.

A handwritten signature in cursive script that reads "Linda King".

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Linda King, Employment Rights Supervisor  
Pima County Human Resources Department

Copies posted: County Administration Building  
1<sup>st</sup> and 5<sup>th</sup> Floors, "A" and "B" Levels

PIMA COUNTY MERIT SYSTEM COMMISSION/  
LAW ENFORCEMENT MERIT SYSTEM COUNCIL

An Open Meeting of the Pima County Merit System Commission/Law Enforcement Merit System Council will be held on **June 11, 2012, June 12, 2012 and June 13, 2012 convening at 9:00 a.m., (or at other such time to which the hearing may be continued)**, in the Board of Supervisors Conference Room, located on the 1st floor, 130 West Congress, Tucson, Arizona to discuss the business of the Pima County Merit System Commission and the Pima County Law Enforcement Merit System Council.

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**AMENDED AGENDA**

- A. Roll Call
- B. Pledge of Allegiance
- C. Approval of Minutes
  - 1. Open Meeting Minutes of April 5, 2012
  - 2. Open Meeting Minutes of April 6, 2012
  - 3. **Open Meeting Minutes of May 4, 2012**
  - 4. **Open Meeting Minutes of May 21, 2012**
  - 5. Executive Meeting Minutes of April 5, 2012
  - 6. **Executive Session Minutes of May 21, 2012**
- D. Other Business
  - Discussion and Action:*
- E. Hearing and Decision on Appeal
  - Hearing Officer Report:*
- F. Appeal Hearing
  - Discussion and Action:* Rudy Moreno v Transportation
    - 1. Motion to Dismiss Lack of Subject Matter Jurisdiction**
    - 2. Motion to Dismiss for Non-Appearance at Pre-Hearing Conference**
- G. Legal Consultation
- H. Executive Session

The Pima County Merit System Commission/Law Enforcement Merit System Council may conduct one or more Executive Sessions concerning any matter on the Open Meeting Agenda for any or all of the following purposes:

- (a) discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee, or employee of the County of Pima, pursuant to A.R.S. §38-431.03(A)(1); and/or
- (b) discussion or consideration of records exempt from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law, pursuant to A.R.S. §38-431.03(A)(2); and/or
- (c) discussion or consultation for legal advice with the attorney or attorneys for the Commission/Council, pursuant to A.R.S. §38-431.03(A)(3); and/or
- (d) discussion or consultation with the attorneys for the public body in order to consider its position and instruct its attorneys regarding the Commission's/Council's position in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §38-431.03(A)(4).

I. Adjournment

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Pursuant to A.R.S. §38-431.02, notice is hereby given that a meeting will be conducted at the time and date set forth above, and on any subsequent date or dates to which this meeting or any hearing which is a party thereof may be continued. Questions regarding this meeting can be directed to Allyn Bulzomi, Pima County Human Resources Department, by calling (520) 724-2732. Copies of the agenda may be obtained by contacting Donna Tobias at 724-2728 or at [www.pima.gov/hr/commissions.html](http://www.pima.gov/hr/commissions.html).

Should you require ADA accommodations, please contact Employment Rights five days prior to the meeting at (520) 724-2728.

1 BARBARA LAWALL  
2 PIMA COUNTY ATTORNEY  
3 CIVIL DIVISION  
4 By: Leslie K. Lynch  
5 Deputy County Attorney  
6 32 North Stone Avenue, Suite 2100  
7 Tucson, AZ 85701  
8 Telephone: 740-5750  
9 Facsimile: 620-6556  
10 Pima County Computer No. 35780  
11 Arizona Bar No. 009757  
12 *Attorney for Respondent*

9 **PIMA COUNTY MERIT SYSTEM COMMISSION**

10 RUDY MORENO,

11 Appellant,

12 vs.

13 PIMA COUNTY DEPARTMENT OF  
14 TRANSPORTATION,

15 Respondent.

**RESPONDENT'S MOTION TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION**

16  
17 COMES NOW Respondent, the Pima County Department of Transportation (hereinafter  
18 "DOT"), and brings this Motion to Dismiss Appellant, Rudy Moreno's (hereinafter "Moreno"),  
19 appeal for lack of subject matter jurisdiction on two grounds:

- 20 1. There is nothing to appeal because Moreno agreed to a demotion after a pre-  
21 action hearing for a proposed suspension; and  
22 2. Even if there were something to appeal, the appeal is untimely.

23 Pursuant to Merit Rule 14.1(A), matters which may be appealed include a suspension, a  
24 dismissal, or an involuntary demotion or reduction in pay.

25 Attached to Moreno's appeal is a memorandum from Ben Goff, Deputy Director of DOT,  
26 to Moreno. In that memorandum it is explained that at a pre-action meeting for a proposed

APR25'12 PM 3:41 PC NR

1 suspension, it was agreed that the proposed suspension would not go forward on the condition  
2 that Moreno go to the Employee Assistance Program (“EAP”) for a suggested counselor for  
3 anger management training and that Moreno would be required to attend all such counseling. In  
4 addition, it was agreed between DOT and Moreno that he would voluntarily demote to a non-  
5 supervisory position and that the special assignment pay for supervisory responsibilities would  
6 be discontinued. Moreno’s signature is on that agreement and dated March 19, 2012.  
7 Accordingly, there is nothing for Moreno to appeal because he agreed to the removal of his  
8 supervisory duties and its pay in return for the Department not going forward with the  
9 suspension.<sup>1</sup>

10 Moreover, the language of Moreno’s appeal involves grievance procedures, not an  
11 appeal. Moreno claims that he is appealing “misappropriate application of the Merit Rules 12, as  
12 well as Rule 8 . . .” and refers to an attached letter. The attached letter to the Merit System  
13 Commission, on SEIU letterhead and dated April 13, 2012, again states that this is an appeal “for  
14 the misinterpretation, misapplication, and incorrect enforcement of the Merit System Rules . . . .”  
15 Neither “misinterpretation, misapplication, and incorrect enforcement” of Merit Rules is the  
16 subject of an appeal, pursuant to Merit Rule 14.1(A). Employees may, pursuant to Merit Rule  
17 13.2(A), grieve “[m]isinterpretation, misapplication or unequal enforcement of Merit System  
18 Rules . . . .” If Moreno, despite his agreement, has an issue, his remedy (if any he has), by his  
19 own words, is one that is subject to grievance Rule 13, but is not the subject of an appeal under  
20 Rule 14.

21 In addition, even if Moreno had an appealable issue, his filing was untimely. Pursuant to  
22 Merit Rule 14.2(A), an appeal must be filed within ten (10) calendar days of receipt of notice of  
23 an appealable action. The March 19, 2012, memorandum was notice to Moreno that “I [Goff]  
24 am directing the DOT Signing Unit to honor your request to decrease your pay by the 5%  
25

26 <sup>1</sup> While Moreno tries to argue that the result of the pre-action was that no inappropriate behavior  
on his part was found, that claim is belied by the March 19 memorandum, which clearly states  
that: “It was found there was unprofessional behavior on your part as a Crew Leader by using  
profane language and not treating co-workers in a public setting in a courteous manner.”

1 (\$15.8287 to \$15.075) Special Assignment Supervising pay for the supervisory duties and  
2 responsibilities effective April 8, 2012.” Although the effective date was set at April 8,<sup>2</sup> the  
3 notice of the action being taken (which Moreno now claims is an appealable action) was March  
4 19, 2012. Moreno had ten calendar days from March 19 to file an appeal (assuming his  
5 agreement was appealable), or until March 29, 2012. He did not file until April 13, 2012, or  
6 some fifteen days after his appeal was due. Any appeal, even if he had one, was untimely filed.

7 Accordingly, for the reasons delineated herein, DOT moves that this “appeal” be  
8 dismissed for lack of subject matter jurisdiction to hear this appeal.

9 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of April, 2012.

10 BARBARA LAWALL  
11 PIMA COUNTY ATTORNEY

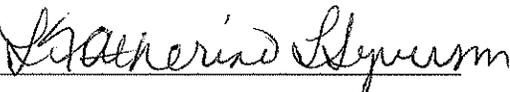
12 By:   
13 Leslie K. Lynch  
14 Deputy County Attorney

14 Original delivered this 25<sup>th</sup> day  
15 of April, 2012, to:

16 Commission Members  
17 Pima County Merit System Commission  
18 150 West Congress  
19 Tucson, AZ 85701

20 Copies mailed this 25<sup>th</sup> day of  
21 April, 2012, to

22 Jessica Lambertson  
23 1600 North Tucson Boulevard  
24 Tucson AZ 85716  
25 Representative for Appellant

26 By: 

<sup>2</sup> Merit Rule 14.2(A) does not give ten calendar days from the effective date, but ten calendar days from the “receipt of notice.”

PC HR 06/07/12 AM 11:51

1 BARBARA LAWALL  
2 PIMA COUNTY ATTORNEY  
3 CIVIL DIVISION  
4 By: Leslie K. Lynch  
5 Deputy County Attorney  
6 32 North Stone Avenue, Suite 2100  
7 Tucson, AZ 85701  
8 Telephone: 740-5750  
9 Facsimile: 620-6556  
10 Pima County Computer No. 35780  
11 Arizona Bar No. 009757  
12 *Attorney for Respondent*

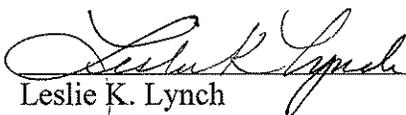
9 PIMA COUNTY MERIT SYSTEM COMMISSION

10 RUDY MORENO,  
11 Appellant,  
12 vs.  
13 PIMA COUNTY DEPARTMENT OF  
14 TRANSPORTATION,  
15 Respondent.

**RESPONDENT'S MOTION TO  
DISMISS FOR NON-APPEARANCE  
AT PRE-HEARING CONFERENCE**

16  
17 Respondent, Pima County Department of Transportation, by and through its undersigned  
18 attorney, moves for an Order dismissing the Merit Appeal of Rudy Moreno. This Motion is  
19 based on the attached Memorandum of Points and Authorities.

20 RESPECTFULLY SUBMITTED this 7th day of June 2012.

21 BARBARA LAWALL  
22 PIMA COUNTY ATTORNEY  
23 By:   
24 Leslie K. Lynch  
25 Deputy County Attorney  
26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On May 8, 2012, Respondent sent a request for discovery to Appellant's SEIU  
3 Representative, Jessica Lambertson, with a copy to Appellant. That letter also included a  
4 suggested date for the Pre-Hearing Conference, pursuant to Merit System Rule 14.3(E), which  
5 was Thursday, June 7, 2012, at 9:00 a.m. A true and correct copy of the letter is attached hereto  
6 as Exhibit "A." Respondent received no communication from Appellant or Appellant's  
7 Representative indicating that this was not a convenient date or asking that it be rescheduled.

8 The letter, identified previously herein, was sent by U. S. Mail and has not been returned  
9 to counsel for Respondent as "unclaimed" and presumptively was delivered to Appellant's  
10 representative, as well as the Appellant. Appellant's representative was given the option to  
11 reschedule the date for the Pre-Hearing Conference; however, made no such request. Neither  
12 Appellant, nor Appellant's representative, appeared at the designated time for the Pre-Hearing  
13 Conference. Appellant was notified of the date and time of the Pre-Hearing Conference.  
14 Appellant failed to appear or attend.

15 Pursuant to Merit System Rule 14.3 (E) and because Appellant failed to appear at the  
16 suggested Pre-Hearing Conference time and did not cooperate in this process, Respondent, Pima  
17 County Department of Transportation, moves to dismiss Appellant's Appeal in its entirety.

18 RESPECTFULLY SUBMITTED this 7th day of June, 2012.

19 BARBARA LAWALL  
20 PIMA COUNTY ATTORNEY

21 By: Leslie K. Lynch  
22 Leslie K. Lynch  
23 Deputy County Attorney  
24  
25  
26

1 Original delivered this 7<sup>th</sup> day  
2 of June, 2012, to:

3 Commission Members  
4 Pima County Merit System Commission  
5 150 West Congress  
6 Tucson, AZ 85701

7 Copies mailed this 7<sup>th</sup> day of  
8 June, 2012, to

9 Jessica Lambertson  
10 1600 North Tucson Boulevard  
11 Tucson AZ 85716  
12 Representative for Appellant

13 By: Katherine Syrum

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OFFICE OF THE  
Pima County Attorney  
Civil Division

32 North Stone Avenue  
Suite 2100  
Tucson, Arizona 85701-1412  
(520) 740-5750

Barbara LaWall  
PIMA COUNTY ATTORNEY

May 8, 2012

Ms. Jessica Lambertson  
1600 North Tucson Boulevard  
Tucson, AZ 85716

Re: Rudy Moreno v. Pima County Department of Transportation  
Merit Appeal

Dear Ms. Lambertson:

I am the Deputy County Attorney assigned to represent Pima County Department of Transportation in the above referenced Merit Appeal, which is currently scheduled for a Hearing on June 11, 12, and 13, 2012, at 9:00 a.m.

At this time, under MSR 14.3.C., I am requesting that you provide me with copies of the following documents:

1. All memoranda, writings, or other documents or printed or recorded materials prepared by or for the Appellant as a result of the events underlying the disciplinary action and pending appeal, except those which are protected by privilege. In the event any such memoranda, writings, or other documents are claimed by the Appellant to be privileged, the Appellant shall identify each such memorandum, writing, or other document, and inform the Commission and the Respondent.
2. Any and all documents which the Appellant intends to utilize as exhibits at the Hearing.

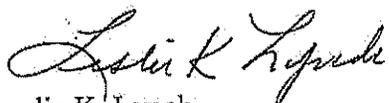
These documents must be provided to me no later than four (4) business days before the Hearing, as stated in MSR 14.3.C. You will need to provide this information to me by Tuesday, June 5, 2012. Please be advised that, pursuant to Pima County Merit System Rule 14.3.D, failure to comply with this discovery request may result in postponement of the Hearing and/or exclusion of evidence.

EXHIBIT A

Additionally, we need to schedule a Pre-Hearing Conference not less than two (2) business days before the Hearing, pursuant to MSR 14.3.E. I have taken the liberty of scheduling the required Pre-Hearing Conference for June 7, 2012, at 9:00 a.m. at my office, which is located at 32 North Stone Avenue, 21st Floor. If this date and time are not convenient for you, please call my office as soon as possible to reschedule.

If you have any questions concerning the above, please call me or my paralegal, Susan Montgomery, at 520-740-5750.

Very truly yours,



Leslie K. Lynch  
Deputy County Attorney

LKL/kat

cc:

Rudy Moreno  
Priscilla Cornelio, Director, Pima County Department of Transportation  
Donna Tobias, Human Resources

PIMA COUNTY MERIT SYSTEM COMMISSION/  
LAW ENFORCEMENT MERIT SYSTEM COUNCIL

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(Motion to Dismiss/Appeal Hearing)
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10 BARBARA LAWALL  
11 PIMA COUNTY ATTORNEY

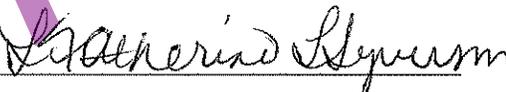
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24 Representative for Appellant

24 By: 

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