

SENATE JUDICIAL

EXHIBIT NO. 1
DATE 2/10/11
CASE NO. SB 17 18

CLERK OF DISTRICT COURT
RUTH REEVES

2010 MAY 27 AM 8:23

FILED

BY _____ DEPUTY

J.G. Shockley
P.O. Box 608
Victor, MT 59875
Telephone: 642-6647 or 642-3817
pro se

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

J. G. Shockley,
Petitioner,

vs.

Cascade County
Respondent.

Cause No. **ADV-10-0534**

Department No. **THOMAS M. MCKITTRIC**

PETITION

COMES NOW J. G. Shockley, pro se, and requests that the Court order the Cascade County Commission to provide to him certain documents related to Jason Carol, formally a detention officer in Cascade County. The documents requested are Carol's personnel records and all documents in anyway related to the termination of his employment as a detention officer, to include law enforcement reports and investigations; and in particular the rationale for paying to Carol a reputed \$18,000 as compensation for his termination.

FACTS

1. Shockley is a citizen of Montana and as such has an interest in the

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documents, including the fact they involve the expenditure of the public's money.

2. Detention officer Carol "tazed" an inmate in his charge, one R. A. It is alleged that this use of force was not authorized, nor required under the circumstances. The sheriff of Cascade County, David Castles, requested the county attorney, Brant Light, to charge Carol with a felony and terminated Carol's employment. The county commission subsequently paid to Carol \$18,000 for what was styled "wrongful termination". Carol was not charged by the county attorney.

3. In a letter dated 23 October 2009 to the chairman of the Cascade County Commission, and several times in telephone conversations with the current county attorney, John Parker, the Petitioner requested the documents related to the payment of \$18,000 to Mr. Carol, the investigation of his alleged misconduct, and the reason he was not prosecuted. The oral requests to Parker related to the personnel file of Mr. Carol, the documentation of Carol's alleged misconduct, and the reasons for paying him money related to his termination.

4. The county attorney informed the Petitioner that a court order was the only way that the material requested could be obtained.

LAW

1. Cascade County is a subdivision of the State of Montana authorized under 7-2-101, MCA, and is subject to the provisions of 2-6-102, MCA. It is a government agency within the meaning of Article II, Section 9 of the Montana

Constitution.

2. Documents generated by a public body are subject to public disclosure unless the demands of individual privacy clearly outweigh the public's right to know; *Becky v. Butte-Silverbow District 1*, 274 Mont. 131, 138, 906 P.2d 193, 197 (1995).

3. Jurisdiction is vested in this Court pursuant to 27-8-101, MCA, et seq., and the Montana Supreme Court in *Bozeman Daily Chronicle v. City of Bozeman*, 260 Mont. 218, 859 P.2d 356 (1993), clearly acknowledge the power of a district court to grant the Petitioner's request.

4. Carol was a detention officer at the Cascade County Detention Center and supervised inmates; he was "detention center staff" as defined by 7-32-2120, MCA.

5. The records related to Carol's termination, and the circumstances related to the payment of monies to him on behalf of Cascade County, are records generated by a public body; *Becky v. Butte-Silverbow District 1*, 274 Mont. 131, 138, 906 P.2d 193, 197 (1995). Furthermore, they are part of a settlement agreement and discoverable for that reason alone. However, the court should weigh the right to privacy provided Carol by Article II, Section 10, Montana Constitution with the public's right to know under Article II, Section 9 of that document, when determining whether or not the terms of the settlement agreement should be made

public as provided by 2-9-303(2), MCA; dissenting opinions in *Pengra v. State*, 14 P.3d 499 (Mont. 2000), __ Mt. ___, (2000).

6. Attorney fees and costs are authorized for this suit pursuant to both 2-3-221, MCA and 27-6-402, MCA; *Bozeman Daily*, supra.

ARGUMENT

Documents generated by a public body are subject to public scrutiny, *Becky*, supra, to include those relating to public employees, unless the employee's right to privacy is out weighted by the public's right to know what its government is doing; *Bozeman Daily*, supra. In this case Carol's employment was as a detention officer, analogous to that of a policeman, in relationship to the inmates who were his charges. Carol was terminated by the sheriff of Cascade County for using excessive force against a prisoner in his charge. The sheriff requested that the county attorney charge Carol with a felony for assaulting a prisoner; for whatever reason, Carol was not charged with a crime. However, it appears that Carol was paid \$18,000 as compensation for his "wrongful" termination.

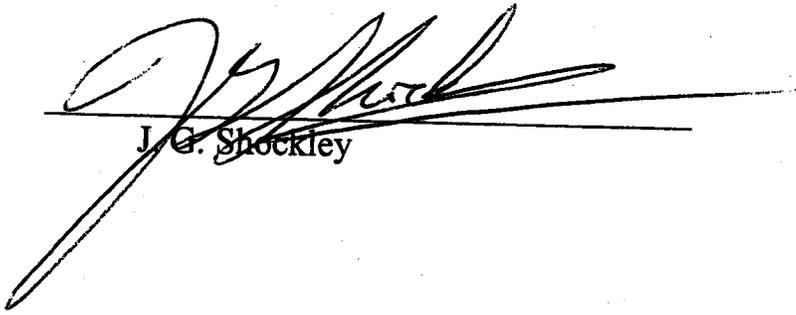
Bozeman Daily is not on "all fours", but close to the present situation. If the sheriff is correct, Carol, as did the policeman in the *Bozeman Daily* case, misused his position and was terminated. Carol was on duty at the time of his misconduct, the police officer in *Bozeman Daily* was not.

A detention officer, while on duty, has a diminished right to privacy in

regard to his personnel file if wrong doing is at issue. In a detention center the detention officer's position in relationship to the inmates is similar to the position of a police officer to the general public. In effect a detention officer is a law enforcement officer with the authority to use force when appropriate, but only when appropriate.

Taxpayer's money was paid to Carol. His employment was either terminated for misconduct while on duty, or Carol was improperly fired by the sheriff. The public has a right to know exactly why Carol was terminated; whether the sheriff was acting properly, or in the alternative, whether the county commission was spending tax dollars improperly. The misconduct of a detention officer while on duty is always of legitimate interest to the public and its interest clearly outweighs any expectation of privacy which Carol might have. The reasons for Carol being paid money for his termination of employment, when weighted in the balance, requires disclosure of the settlement agreement and the rationale for the agreement; *Penga, supra*.

Date this 27th day of May, 2010.



J. G. Shockley