



# CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Herlinda Sotomayor  
Appeal of Demotion  
Tucson City Courts Department  
September 6, 2019**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 AM on Friday, September 6, 2019 at City Hall, 255 W. Alameda, 1<sup>st</sup> Floor Conference Room in Tucson, Arizona, for an Appeal of Demotion filed by Herlinda Sotomayor from the Tucson City Courts Department.

Present were Chairperson Becky Montañó, Commission Members Carol West and Paul Fimbres. Staff present: Donna Aversa, Legal Counsel; Elsa Quijada, HR Administrator, Secretary; and Armida Saufley, Executive Assistant of Human Resources, Recording Secretary.

Linda Hatfield, CWA President, represented Ms. Sotomayor. Jacinta Figueroa, Principal Assistant City Attorney, represented the Tucson City Courts Department. Nancy Fraire of City Courts was also present.

This appeal was held in Open Session, but the rule was invoked.

Witnesses sworn during hearing:

- |                        |                       |
|------------------------|-----------------------|
| 1. Nancy Fraire        | 4. Herlinda Sotomayor |
| 2. Manuela Baker       | 5. Alice Rudolph      |
| 3. Savas (Tony Rivera) |                       |

Per Exhibit A, actions Ms. Sotomayor knew or reasonably should have known would result in disciplinary action are as follows:

## **I. ACTIONS THAT WOULD RESULT IN DISCIPLINARY ACTION:**

Ms. Sotomayor is a tenured City Court employee and has received significant training over the course of your career in Court and City rules, policies and procedures. As such, Ms. Sotomayor knew or should have known that engaging in the following listed conversation was unacceptable. She demonstrated disregard for acceptable workplace behavior, rather than stopping the dialogue, she was a willing participant. The language Ms. Sotomayor used was both unprofessional and demeaning. An individual with Ms. Sotomayor's tenure should be setting a more appropriate tone and example.

When given the opportunity to explain her behavior, Ms. Sotomayor indicated she felt that she was attacked and that she was always willing to help but she does not get the help. Ms. Sotomayor recognized the inappropriateness of her conduct and stated that the sexual comments and nasty language was not okay to use. It is disturbing that despite Ms. Sotomayor's awareness that her behavior violated Court and City policies, and that she should not be discussing other employees or members of the judiciary using derogatory language, Ms. Sotomayor did so in such a way that another co-worker felt compelled to record the dialogue. Ms. Sotomayor has been



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with City Court for 6 1/2 years, and trained on City Administrative Directives and the Judicial Code of Conduct. There is no justification for her conduct.

On 6/26/2019 Ms. Sotomayor met with her manager Ms. Manuela Baker and the video team supervisor to address Ms. Sotomayor's integrity and her unprofessional conduct. She was informed that on 6/25/2019 her direct supervisor submitted the following notes:

**Sandra:** [In regards to Judge Panuco], I still can't believe she's a lesbian.

**Herlinda:** [In regards to Tuesday's requested time off] I never should've fucking told him anything.

**Sandra:** You should've just called in.

[In regards to Desiree and her ankle injury] We offered to help Desi and her crippled ass and she keeps taking advantage of us..."Do this, get that."

"Fuck, I'm busy." Yesterday, I knew what PIPS was; I just didn't want to do it. That sounds like a lot of work that I'm not trying to do. Have Jim do it.

**Herlinda:** We've been helping her stupid ass all fucking week, pulling her files.

**Sandra:** What gets me is she tells others she can put weight on it but to us says she can't fucking walk.

**Herlinda:** Have her little bitch do it for you.

**Sandra:** Her little Sarah.

**Herlinda:** "Sarah wants me to go to the doctor." Do it for yourself.

[To Denisse] Sorry, we're just bitching.

**Sandra:** We don't get to - It's either Desi here or now that Maria is gone...

**Herlinda:** What makes me sad is that they keep saying we're such a team.

**Sandra:** We're not a team.

**Herlinda:** If that were me and I were to ask Desi for help, she would've given me a stupid excuse of "I'm doing cites" or something like she has in the past.

That sucks because we're like "Hey Desi, need any help?" and we help her.

And then the shit with her defending Tony and I'm like "-are you kidding me?" or this thing with Tuesday instead of him helping me he tells me, "Well, ask her if she'll switch with you."

But his stupid ass could put someone else to [go to the] jail- him being a fucking supervisor..."ask Denise to switch with you."

And his response was "because I hate telling people what to do"

Fuck you! You're telling me what to do every fucking day.



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- Sandra:** Why doesn't he ask Desi to go, she won't be crippled by then?
- Herlinda:** I think he wants to see if people are helping each other- that's what he's trying to prove.
- Sandra:** If he'd stopped eating Kimberly Cronin's ass he'd see that we help each other.
- Herlinda:** Yeah, whatever. Yeah.
- Sandra:** He pisses me off.
- Herlinda:** No, he pisses me off. He could've sent one of these dumbasses [reference to Denise or James] to go.  
Instead he made it a big deal.
- Denisse:** But if Desi has the most [COJET] hrs...?
- Sandra:** Exactly! But it's his Fuck Buddy or Ass Buddy or whatever you call it.
- Herlinda:** [In Spanish] They prefer that I suffer trying to switch with someone.
- Denisse:** Why don't you just ask on days you're back up to observe in courtrooms for COJET?
- Herlinda:** Fuck that. I don't give a shit about COJET.
- Sandra:** No, they better not come back at the end of the year, "Well you don't have your hours..."
- Herlinda:** What sucks is downstairs they used to do it for us, huh?
- Sandra:** Yeah, they say pick whatever the fuck you want and they'd make it work. You could have up to three classes in a day.  
Up here, it's like "Oh yeah, whatever."  
That's why I don't even email him anything, email Carina- she's the COJET lady.
- Herlinda:** Here I am like a fucking monkey, doing everything and he can't even help me switching the days.
- Sandra:** What are you going to do, call out? I'd call out.
- Herlinda:** I can't because he fucking knows.
- Sandra:** I said- If you know you're going to the jail, don't even bother asking- let whoever is here fucking figure it out.  
He's being a dick, making it impossible.
- Denisse:** If you tell Manuela, she'd say you knew what you signed up for.
- Sandra:** [Imitating Manuela] "Back in my day, I did everything at the same damn time. I was at the jail giving birth to my kids or some shit like that."  
[In regards to James] He sounds like a fuckin' cow.



**Herlinda:** Not only that but I'm not even fucking talking to him. He doesn't have to react to my comment.

**Sandra:** Jim, stop- just stop talking.

**Herlinda:** Shut the fuck up.

**Sandra:** He's something else.

**Herlinda:** He just screwed me. Totally, you know?

**Sandra:** Yeah, 'cause he's an idiot.

**Herlinda:** It's not like I'm asking for a Saturday or Sunday. It's a fucking Tuesday.

Ms. Sotomayor is being demoted and moved to Public Services because she failed to comply with the established policies outlined in the Judicial Code of Conduct and the Tucson City Court Personnel Rules and Policies concerning her unprofessional conduct as a city and judicial employee.

The above establishes just cause for discipline for violating Tucson City Court Personnel Rules and Policies and City of Tucson Administrative Directive:

**Principles and Rules**

All employees must observe the following basic principles and rules of conduct throughout their employment with the Court. Failure to observe basic principles and rules of conduct, as specified in this policy and in City Code §10-3, may result in disciplinary action up to and including discharge:

- a. **Canon 1; Rule 1.2 Promoting Confidence in the Judiciary:** A judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
  - i. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both professional conduct and personal conduct that affects the public perception of the court.
  
- b. **Canon 2; Rule 2.3 Bias, Prejudice, and Harassment:** A judicial employee shall perform court duties without bias or prejudice and shall not manifest bias or prejudice by words or conduct, or engage in harassment in the performance of court duties. This includes but is not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.
  - i. A judicial employee who manifests bias or prejudice in the conduct of court business impairs the fairness of the judicial process and brings the judiciary into disrepute.



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- ii. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics... A judicial employee must avoid conduct that may reasonably be perceived as prejudiced or biased.
  - iii. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socio-economic status, or political affiliation
  - iv. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court, Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.
- c. **Canon 2; Rule 2.5 Competence, Diligence, and Cooperation, B.** A judicial employee shall reasonably cooperate with other judicial employees, judges and court officials in the conduct of court business.
- i. Prompt disposition of the court's business requires judicial employees to be punctual in attending to their duties and cooperative with co-workers, judges, and litigants and their lawyers. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay."
- d. **Canon 2; Rule 2.8 Professionalism:** Judicial employees shall be patient, respectful, and courteous with litigants, jurors, witnesses, lawyers, co-workers, and others who work in the court or contact the court.

## 2. Personnel Rules

### a. Rule 6: Rules of Conduct; 6.1 Principles and Rules

- i. 11. Conduct themselves in a manner, on and off duty that does not compromise their ability, or that of other employees, to perform assigned work and/or duties in an efficient, non-discriminatory, and professional manner.
- ii. 12. Conduct themselves in a manner, on and off duty that does not discredit the Court in a manner that affects its ability to perform its mission.
- iii. 13. Conduct themselves in a manner, on and off duty that does not cause the Court to question the employee's reliability, judgment or trustworthiness in carrying out assigned responsibilities.
- iv. 16. Promote harmony and cooperation among fellow workers.



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- v. 21. Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Court Rules and Regulations, the Arizona Code of Conduct for Judicial Employees and Civil Service Commission Rules that relate to their employment with the Court.
- b. **Rule 7: Disciplinary Actions; 7.2 Causes for Discipline**
- i. 5. Insubordination
  - ii. 6. Dishonesty
  - iii. 7. Unsatisfactory performance of duties
  - iv. 12. Conduct that is detrimental to the Court, other employees or the public
  - v. 13. Discourteous treatment of the public or court employees
  - vi. 14. Any violations of the Arizona Code of Conduct for Judicial Employees
  - vii. 22. Failure to follow the policies and procedures of the Court
  - viii. 24. Conduct, while either on or off duty, tending to cause discredit to the Court that affects its ability to perform its mission, or to question an employee's reliability, judgment, and trustworthiness in carrying out assigned responsibilities
1. **Administrative Directives**
- a. **Administrative Directive 2.02-5 RULES OF CONDUCT; II Policy A., 11.**  
Conduct themselves in a manner, on and off duty, that:
    - i. Does not compromise their ability, or that of other employees, to perform assigned work and/or duties in an efficient, non-discriminatory, and professional manner;
    - ii. Does not discredit the City or department in a manner that affects its ability to perform its mission;
    - iii. Does not cause the City or department to question the employee's reliability, judgment or trustworthiness in carrying out assigned responsibilities.
  - b. **Administrative Directive 2.02-5 RULES OF CONDUCT; II Policy A., 17.**  
Promote harmony and cooperation among fellow workers.
  - c. **Administrative Directive 2.02-5 RULES OF CONDUCT; II Policy A., 22.**  
Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Department rules and regulations, and Civil Service Commission Rules that relate to their employment with the City
  - d. **Administrative Directive 2.02-26 CUSTOMER SERVICE; II Policy:** All City employees shall treat their colleagues and members of the public professionally and respectfully through person-to-person, telephone and written communication



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- e. **Administrative Directive 2.02-26 CUSTOMER SERVICE; III General Rules: D.** Be professional, courteous, and respectful at all times. Avoid negative language and remain factual and objective.
  - f. **Administrative Directive 2.05-8 DISCRIMINATION/HARASSMENT POLICY; II Policy:** ...Adverse employment action or harassment because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or any other protected class status under applicable law is considered employment discrimination and constitutes a violation of this directive.
  - g. **Administrative Directive 2.05-8 DISCRIMINATION/HARASSMENT POLICY; III Definitions: D.** Harassment- verbal or physical conduct toward an individual because of her/his protected status set forth in Section II preceding, that:
    - i. Has the purpose or effect of creating a hostile, intimidating, or offensive working environment;
    - ii. Has the purpose or effect of unreasonably interfering with an individual's work performance
    - iii. Harassing conduct includes, but is not limited to:
      - 1. Epithets, slurs, negative stereotyping including that of language or accents, or threatening, intimidating, or hostile acts;
  - h. **Administrative Directive 2.05-8 DISCRIMINATION/HARASSMENT POLICY; III Definitions: G.** Sexual Harassment- Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
    - i. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
    - ii. Sexual harassment includes, but is not limited to:
      - 1. Sexually suggestive, obscene, or lewd comments and jokes

**DISCIPLINE:**

Ms. Sotomayor's actions provide just cause for an involuntary demotion from Senior Court Clerk to Court Clerk. Ms. Sotomayor is to report to Public Services management immediately. Ms. Sotomayor is advised that future violations will result in more serious disciplinary action, up to and including dismissal from employment. The effective date of Ms. Sotomayor's demotion is 7-15-2019.

**City's Exhibits Admitted**

**Exhibit A Tabs 1 – 9**

Tab 1 – Notice of Intent to Discipline, July 1, 2019

Tab 2 – Exhibit A



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- Tab 3 – Notice of Decision and Appeal Rights, July 11, 2019
  - Tab 4 – Personnel Action Request Form effective July 16, 2019
  - Tab 5 – Appeal Letter, July 17, 2019
  - Tab 6 – Supervisor's Notes of Audio
  - Tab 7 – Transcription of Audio
  - Tab 8 – Transcription of Audio (with identifying names and comments)
  - Tab 9 – Audio Recording

**Exhibit B Tabs 1 – 12**

- Tab 1 – City Court Personnel File
- Tab 2 – Manager's Personnel File
- Tab 3 – Supervisor's Personnel File
- Tab 4 – Training Records
- Tab 5 – Senior Court Clerk Job Description
- Tab 6 – Definition of Just Cause
- Tab 7 – Judicial Code of Conduct
- Tab 8 – City Court Personnel Rules
- Tab 9 – Administrative Directive, Rules of Conduct 2.02-5
- Tab 10 – Administrative Directive, Discrimination/Harassment, 2.05-8
- Tab 11 – Administrative Directive, Customer Service 2.02-26
- Tab 12 – Supervisor's Expectations

**Appellant's Exhibits – 1 through 3**

- Tab 1 – Administrative Directive 2.02-13 Employee Performance Appraisal
- Tab 2 – Administrative Directive 2.02-16 Disciplinary Review Process
- Tab 3 – CWA Union Agreement
- Tab 4 – Estimate for dental procedures from Western Dental

9:05 – 9:15 City's Exhibits A, B and Appellant's Exhibit 1 - 3 entered into evidence

9:15 – 9:20 Break

9:20 – 9:30 City's Opening Statement

9:30 – 9:35 Appellant's Opening Statement

City called first witness, Savas (Tony) Rivera, Supervisor

9:35 – 10:23 Mr. Rivera gave testimony

10:23 – 10:36 Break

10:36 – 11:01 Mr. Rivera continued testimony – Audio Recording heard

11:01 – 11:07 Mr. Rivera gave testimony on cross examination

11:07 – 11:08 Mr. Rivera gave testimony on redirect and witness was excused



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City called second witness, Manuela Baker, Interim Deputy Court Administrator

11:15 – 11:37 Ms. Baker gave testimony, no cross examination questions, the Commission asked clarifying questions and witness was excused

City called third witness, Nancy Fraire, Court Administrator

11:38 – 11:46 Ms. Fraire gave testimony

11:46 – 11:50 Ms. Fraire gave testimony on cross examination and witness was excused

11:50 City Rests

At 11:50 AM a motion made by Commissioner West, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 12:00 PM.

12:00 – 12:30 Lunch Break

Appellant called first witness, Herlinda Sotomayor, Appellant

12:36 – 1:12 Ms. Sotomayor gave testimony

1:12 – 1:23 Ms. Sotomayor gave testimony on cross examination

1:23 – 1:27 Ms. Sotomayor gave testimony on redirect

At 1:27 PM a motion made by Commissioner Fimbres, duly seconded, to go into Executive Session for legal advice pursuant to A.R.S. §38-431.03(A)(3) and was passed by a voice vote of 3 – 0. The Commission resumed the open meeting at 1:37 PM.

1:38 – 1:39 In open session, the Commission asked clarifying questions and witness was excused

Appellant called second witness, Alice Rudolph, Sr. Court Clerk

1:40 – 1:55 Ms. Rudolph gave testimony

1:55 – 2:02 Ms. Rudolph gave testimony on cross examination and witness was excused

2:02 Appellant Rests

City called rebuttal witness, Nancy Fraire, Court Administrator

2:03 – 2:06 Ms. Fraire gave rebuttal testimony

2:06 – 2:07 Ms. Fraire gave rebuttal testimony on cross examination

2:10 – 2:21 City closing statement

2:21 – 2:30 Appellant closing statement

2:30 – 2:32 City rebuttal statement



**Minutes of:** Herlinda Sotomayor  
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Date: September 6, 2019

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2:32 – 2:39 Civil Service Commission Deliberations

In open session at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, a motion by Commissioner Fimbres, duly seconded, that the appeal of Herlinda Sotomayor be sustained and that she be reinstated to her position of Sr. Court Clerk with no back pay considerations and a suspension without pay for a period of 80 hours, for the reason that while there was evidence that the employee engaged in improper conduct, which the Commission finds that the Appellant knew or should have known could lead to disciplinary action, there was no just cause for the disciplinary action which was imposed, was passed by a roll call vote of 3 to 0.

Hearing Adjourned at 2:40 PM.

*Becky Montano*

Becky Montano, Chairperson  
Civil Service Commission

10/21/19

Date