

TESTIMONY OF MARC KARDELL

BEFORE THE

LANE COUNTY

BOARD OF COMMISSIONERS

TABLE OF CONTENTS

Annual Reviews 2009, 2010, 2011—selected comments	1
Kardell Records Request / General Judgment.....	12
Kardell—Pohling—Lusby Testimony Excerpts	14
<i>Register-Guard</i> story 12.15.2011.....	19
Constituent Emails.....	23



**SHORT FORM
PERFORMANCE
EVALUATION**

NAME Marc Kardell		DUE DATE 12/24/11
DEPARTMENT NAME County Counsel		EMPLOYEE ID# 5369
TITLE Assistant County Counsel 3	STEP 56	UNION NON-REP

REASON FOR EVALUATION 6 MONTH ANNUAL MERIT

OVERALL PERFORMANCE RATING

INSTRUCTIONS: Prior to completing the overall performance rating section, the employee should be rated on the individual performance factors that are significant to his/her position. To determine the overall performance rating, consider both the employee's performance level in each performance factor and the importance of the factor rating in the employee's position.

NOTE: IF YOU WISH TO ADD AN ADDITIONAL PERFORMANCE FACTOR IN THE "OTHER" CATEGORY, PLEASE CONTACT YOUR HUMAN RESOURCES ANALYST.

Overall work performance meets job expectations and job standards. This performance contributes to the achievement of departmental/unit goals and objectives.

SUCCESSFUL

Overall work performance is consistently above expectations and job standards. This performance enhances the achievement of departmental/unit goals and objectives.

EXCEEDS EXPECTATIONS

Overall work performance clearly exceeds expectations and job standards by an exceptional degree. This high level of performance is continually maintained.

EXCEPTIONAL

(NOTE: Manually click your cursor after the colon -- do not tab in or out of comment fields)

RATER'S COMMENTS: This evaluation is based on input from others as I don't have a lot of first-hand experience working with Marc. I can say, he was very easy to work with on the DA's office contract with Karpel and I have since come to find that Marc has a great, dry sense of humor.

Goals and objectives for coming year were formulated and discussed YES NO

1 RATER	TITLE County Counsel	SIGNATURE <i>[Signature]</i>	DATE 1/3/12
---------	-------------------------	---------------------------------	----------------

2 REVIEWER	I HAVE REVIEWED THIS REPORT WITH THE FOLLOWING COMMENTS:		

	TITLE County Counsel	SIGNATURE	DATE
--	-------------------------	-----------	------

3 DEPARTMENT HEAD	I HAVE REVIEWED THE REPORT OF THE IMMEDIATE SUPERVISOR WITH THE FOLLOWING COMMENTS:		
	Thanks for your patience and assistance, Marc.		

	TITLE County Counsel	SIGNATURE <i>[Signature]</i>	DATE 1/3/12
--	-------------------------	---------------------------------	----------------

4 EMPLOYEE	COMMENTS:		

	I HAVE REVIEWED THIS REPORT AND DISCUSSED IT WITH MY RATING SUPERVISOR. MY SIGNATURE DOES NOT NECESSARILY INDICATE AGREEMENT.		DATE
	X <i>[Signature]</i>		1-8-12

RECEIVED
JAN 11 2012
LANE COUNTY
HUMAN RESOURCES

TO THE EMPLOYEE: THE OVERALL EVALUATION IS THE SUMMARY JUDGEMENT OF YOUR PERFORMANCE, ASSIGNED BY YOUR SUPERVISOR AND REVIEWED BY THE PERSONS WHOSE SIGNATURES APPEAR ABOVE. YOU HAVE FIVE (6) DAYS FROM THE DATE YOU SIGN THIS REPORT TO APPEAL YOUR EVALUATION WITH YOUR DEPARTMENT HEAD. APPEALS SHOULD BE MADE IN WRITING AND CONTAIN SPECIFIC REASONS FOR DISAGREEMENT. IF YOU FAIL TO RECEIVE SATISFACTION FROM YOUR DEPARTMENT HEAD, YOU MAY REQUEST A REVIEW BY THE HUMAN RESOURCES DIRECTOR. SUCH REQUEST IS TO BE MADE WITHIN FIVE (6) DAYS AFTER RECEIVING THE RESPONSE FROM THE DEPARTMENT DIRECTOR. PLEASE SEE ADMINISTRATIVE PROCEDURE MANUAL 3-48.

EVALUATION FORM RELEVANCE and RATINGS

PERFORMANCE FACTOR: (S) Successful = 2; (EE) Exceed Expectations = 3; (E) Exceptional = 4

FACTOR RATING: (E) Essential = 4; (I) Important = 3; (R) Relevant = 2; (C) Contributory = 1

(Choose one rating for each category)

FACTOR RATING	PERFORMANCE FACTOR	FACTOR	CONSIDER
(1)(E) Essential=4	(EE) Exceeds Expectations=3	ADAPTABILITY:	ability to adapt to new tasks and procedures or stressful situations.
(2)(E) Essential=4	(S) Successful=2	COMMUNICATIONS:	degree to which employee effectively expresses her/himself orally and/or in writing, and the degree to which employee effectively listens and understands others.
(3)(I) Important=3	(EE) Exceeds Expectations=3	COOPERATION:	working relationships; participation in teamwork situations.
(4)(R) Relevant=2	(S) Successful=2	CULTURAL COMPETENCY:	degree to which employee makes meaningful efforts to maintain a respectful and inclusive work environment and to participate in learning opportunities; e.g. diversity training.
(5)(E) Essential=4	(EE) Exceeds Expectations=3	DEPENDABILITY:	amount of supervision required to get the job done and meet deadlines.
(6)(I) Important=3	(E) Exceptional=4	INITIATIVE and FOLLOW THROUGH:	degree to which an employee is a self-starter; ability of employee to effectively use available work time.
(7)(E) Essential=4	(EE) Exceeds Expectations=3	KNOWLEDGE:	knowledge of required duties; knowledge of equipment used, policies and procedures.
(8)(E) Essential=4	(EE) Exceeds Expectations=3	QUALITY:	acceptability and quality; nature and quantity of errors; thoroughness of work.
(9)(E) Essential=4	(EE) Exceeds Expectations=3	QUANTITY:	ability to provide performance required to maintain department standards under normal conditions.
(10)(R) Relevant=2	(EE) Exceeds Expectations=3	WORK HABITS:	observance of work hours and rules.
(11)(C) Contributory=1	(S) Successful=2	WORKPLACE SAFETY:	consider degree to which employee's work exhibits safe working procedures; compliance with safety guidelines.
(12)		OTHER _____: <i>(Please see instructions at the beginning of this form prior to inserting an additional factor)</i>	

(NOTE: Manually drop your cursor into the section – do not tab in or out of fields below)

A. List two (2) specific examples that demonstrate the most outstanding contributions and/or achievements of this person with regard to his/her job performance.

1. Marc handles all of the issues for Assessment and Taxation. He is responsive and reliable. He has handled some cases of first impression that led to good case law for the rest of the state in the areas of Enterprise Zone Disqualification and a "willful evader."
2. Marc has been responsive and reliable for the other departments he handles as well, but more importantly, Marc has been willing to pick up complex issues outside of his area and take the lead with them when asked and with good results.

- B. Describe in order of importance two (2) specific examples of things this person could improve upon in order to increase his/her job performance.
1. The only comment received on areas of improvement related to being more patient in dealing with people. Even that comment recognized the tremendous workload Marc carries and the occasional bad day.
 2. Learn to use all the tools available such as Westlaw and the soon-to-be purchased database.

NOTE: For a detailed explanation of each category, refer to the full Lane County Performance Evaluation Form.

- C. List goals and objectives for the coming year:
Goals and objectives remain the same as previous the previous year.



**SHORT FORM
PERFORMANCE
EVALUATION**

NAME Marc Kardell		DUE DATE 12/15/10 12 25
DEPARTMENT NAME County Counsel		EMPLOYEE ID# 5369
TITLE Assistant County Counsel 3	STEP 5	UNION NON-REP

REASON FOR EVALUATION 6 MONTH ANNUAL MERIT

OVERALL PERFORMANCE RATING

INSTRUCTIONS: Prior to completing the overall performance rating section, the employee should be rated on the individual performance factors that are significant to his/her position. To determine the overall performance rating, consider both the employee's performance level in each performance factor and the importance of the factor rating in the employee's position.

NOTE: IF YOU WISH TO ADD AN ADDITIONAL PERFORMANCE FACTOR IN THE "OTHER" CATEGORY, PLEASE CONTACT YOUR HUMAN RESOURCES ANALYST.

Overall work performance meets job expectations and job standards. This performance contributes to the achievement of departmental/unit goals and objectives.

SUCCESSFUL

Overall work performance is consistently above expectations and job standards. This performance enhances the achievement of departmental/unit goals and objectives.

EXCEEDS EXPECTATIONS

Overall work performance clearly exceeds expectations and job standards by an exceptional degree. This high level of performance is continually maintained.

EXCEPTIONAL

(NOTE: Manually click your cursor after the colon -- do not tab in or out of comment fields)

RATER'S COMMENTS: Marc, I've been very impressed by your work this past year. You have been exceedingly helpful and have grown in your ability to interact well with a variety of clients. Good job!

Goals and objectives for coming year were formulated and discussed YES NO

1 RATER	TITLE County Counsel	SIGNATURE <i>[Signature]</i>	DATE 12/3/10
---------	-------------------------	---------------------------------	-----------------

2
REVIEWER

I HAVE REVIEWED THIS REPORT WITH THE FOLLOWING COMMENTS:

TITLE County Counsel	SIGNATURE <i>[Signature]</i>	DATE 12/3/10
-------------------------	---------------------------------	-----------------

3
DEPARTMENT
HEAD

I HAVE REVIEWED THE REPORT OF THE IMMEDIATE SUPERVISOR WITH THE FOLLOWING COMMENTS:

TITLE County Counsel	SIGNATURE <i>[Signature]</i>	DATE 12/3/10
-------------------------	---------------------------------	-----------------

4
EMPLOYEE

COMMENTS:

I HAVE REVIEWED THIS REPORT AND DISCUSSED IT WITH MY RATING SUPERVISOR. MY SIGNATURE DOES NOT NECESSARILY INDICATE AGREEMENT. <input checked="" type="checkbox"/> <i>[Signature]</i>	DATE 12-1-10
---	-----------------

TO THE EMPLOYEE: THE OVERALL EVALUATION IS THE SUMMARY JUDGEMENT OF YOUR PERFORMANCE, ASSIGNED BY YOUR SUPERVISOR AND REVIEWED BY THE PERSONS WHOSE SIGNATURES APPEAR ABOVE. YOU HAVE FIVE (5) DAYS FROM THE DATE YOU SIGN THIS REPORT TO APPEAL YOUR EVALUATION WITH YOUR DEPARTMENT HEAD. APPEALS SHOULD BE MADE IN WRITING AND CONTAIN SPECIFIC REASONS FOR DISAGREEMENT. IF YOU FAIL TO RECEIVE SATISFACTION FROM YOUR DEPARTMENT HEAD, YOU MAY REQUEST A REVIEW BY THE HUMAN RESOURCES DIRECTOR. SUCH REQUEST IS TO BE MADE WITHIN FIVE (5) DAYS AFTER RECEIVING THE RESPONSE FROM THE DEPARTMENT DIRECTOR. PLEASE SEE ADMINISTRATIVE PROCEDURE MANUAL 3-48.

FORM MUST BE SIGNED IN NUMBERED SEQUENCE.

DEC 1 10 2010

EVALUATION FORM RELEVANCE and RATINGS

PERFORMANCE FACTOR: (S) Successful = 2; (EE) Exceed Expectations = 3; (E) Exceptional = 4

FACTOR RATING: (E) Essential = 4; (I) Important = 3; (R) Relevant = 2; (C) Contributory = 1

(Choose one rating for each category)

FACTOR RATING	PERFORMANCE FACTOR	FACTOR	CONSIDER
(1) (E) Essential=4	(EE) Exceeds Expectations=3	ADAPTABILITY:	ability to adapt to new tasks and procedures or stressful situations.
(2) (E) Essential=4	(S) Successful=2	COMMUNICATIONS:	degree to which employee effectively expresses her/himself orally and/or in writing, and the degree to which employee effectively listens and understands others.
(3) (I) Important=3	(EE) Exceeds Expectations=3	COOPERATION:	working relationships; participation in teamwork situations.
(4) (R) Relevant=2	(S) Successful=2	CULTURAL COMPETENCY:	degree to which employee makes meaningful efforts to maintain a respectful and inclusive work environment and to participate in learning opportunities; e.g. diversity training.
(5) (E) Essential=4	(EE) Exceeds Expectations=3	DEPENDABILITY:	amount of supervision required to get the job done and meet deadlines.
(6) (I) Important=3	(E) Exceptional=4	INITIATIVE and FOLLOW THROUGH:	degree to which an employee is a self-starter; ability of employee to effectively use available work time.
(7) (E) Essential=4	(EE) Exceeds Expectations=3	KNOWLEDGE:	knowledge of required duties; knowledge of equipment used, policies and procedures.
(8) (E) Essential=4	(EE) Exceeds Expectations=3	QUALITY:	acceptability and quality; nature and quantity of errors; thoroughness of work.
(9) (E) Essential=4	(EE) Exceeds Expectations=3	QUANTITY:	ability to provide performance required to maintain department standards under normal conditions.
(10) (R) Relevant=2	(EE) Exceeds Expectations=3	WORK HABITS:	observance of work hours and rules.
(11) (C) Contributory=1	(S) Successful=2	WORKPLACE SAFETY:	consider degree to which employee's work exhibits safe working procedures; compliance with safety guidelines.
(12)		OTHER _____: <i>(Please see instructions at the beginning of this form prior to inserting an additional factor)</i>	

(NOTE: Manually drop your cursor into the section -- do not tab in or out of fields below)

A. List two (2) specific examples that demonstrate the most outstanding contributions and/or achievements of this person with regard to his/her job performance.

- 1) Your continued good work on the tax foreclosures has been most appreciated.
- 2) The work on Healthy San Francisco, the resolution of Gillette, and your work most recently on the Karpel contract and the ballot counting machines contract.

B. Describe in order of importance two (2) specific examples of things this person could improve upon in order to increase his/her job performance.

- 1) Continue to work on listening to the comments and advice from other attorneys in the office as well as other county employees, and don't discount it out of hand. You have done much better in this regard this past year, and it has been appreciated by the other attorneys in the office.
- 2)
- 3) Make sure you take time for yourself. You are probably here the most out of all of the attorneys. Take more weekend days off, and make sure you schedule in some vacations. The work is still going to be here, regardless of how much you work.

NOTE: For a detailed explanation of each category, refer to the full Lane County Performance Evaluation Form.

C. List goals and objectives for the coming year:

To be worked on collaboratively and attached to this document.



SHORT FORM PERFORMANCE EVALUATION

NAME Marc Kardell		DUE DATE 6/13/09
DEPARTMENT NAME County Counsel		EMPLOYEE ID# 5369
TITLE Assistant County Counsel 3	STEP 7	UNION NON-REP

REASON FOR EVALUATION 6 MONTH ANNUAL MERIT

OVERALL PERFORMANCE RATING

INSTRUCTIONS: Prior to completing the overall performance rating section, the employee should be rated on the individual performance factors that are significant to his/her position. To determine the overall performance rating, consider both the employee's performance level in each performance factor and the importance of the factor rating in the employee's position.

NOTE: IF YOU WISH TO ADD AN ADDITIONAL PERFORMANCE FACTOR IN THE "OTHER" CATEGORY, PLEASE CONTACT YOUR HUMAN RESOURCES ANALYST.

Overall work performance meets job expectations and job standards. This performance contributes to the achievement of departmental/unit goals and objectives. <input type="checkbox"/>	Overall work performance is consistently above expectations and job standards. This performance enhances the achievement of departmental/unit goals and objectives. <input checked="" type="checkbox"/>	Overall work performance clearly exceeds expectations and job standards by an exceptional degree. This high level of performance is continually maintained. <input type="checkbox"/>
SUCCESSFUL	EXCEEDS EXPECTATIONS	EXCEPTIONAL

(NOTE: Manually click your cursor after the colon - do not tab in or out of comment fields)

RATER'S COMMENTS: Marc, I have been very pleasantly surprised this past 10 months. I know that you put all of your energy and heart into being hired as County Counsel, and that it was very difficult for you when I was hired. You overcame your disappointment and have grown in your importance in this office and to me. I appreciate the work you do and how you keep me up to date on issues that may come up with the Board, and have been impressed with your interactions with other staff members, the Board, and others in the past months. Good job!

Goals and objectives for coming year were formulated and discussed YES NO

1 RATER	TITLE County Counsel	SIGNATURE	DATE
---------	-------------------------	-----------	------

2 REVIEWER	I HAVE REVIEWED THIS REPORT WITH THE FOLLOWING COMMENTS:		
	RECEIVED JUL 09 2009 LANE COUNTY HUMAN RESOURCES		
	TITLE County Counsel	SIGNATURE	DATE

3 DEPARTMENT HEAD	I HAVE REVIEWED THE REPORT OF THE IMMEDIATE SUPERVISOR WITH THE FOLLOWING COMMENTS:		
	TITLE County Counsel	SIGNATURE	DATE

4 EMPLOYEE	COMMENTS:		
	TITLE County Counsel	SIGNATURE	DATE

4 EMPLOYEE	I HAVE REVIEWED THIS REPORT AND DISCUSSED IT WITH MY RATING SUPERVISOR. MY SIGNATURE DOES NOT NECESSARILY INDICATE AGREEMENT:		
	X		
			DATE 6-12-09

TO THE EMPLOYEE: THE OVERALL EVALUATION IS THE SUMMARY JUDGEMENT OF YOUR PERFORMANCE, ASSIGNED BY YOUR SUPERVISOR AND REVIEWED BY THE PERSONS WHOSE SIGNATURES APPEAR ABOVE. YOU HAVE FIVE (5) DAYS FROM THE DATE YOU SIGN THIS REPORT TO APPEAL YOUR EVALUATION WITH YOUR DEPARTMENT HEAD. APPEALS SHOULD BE MADE IN WRITING AND CONTAIN SPECIFIC REASONS FOR DISAGREEMENT. IF YOU FAIL TO RECEIVE SATISFACTION FROM YOUR DEPARTMENT HEAD, YOU MAY REQUEST A REVIEW BY THE HUMAN RESOURCES DIRECTOR.

EVALUATION FORM RELEVANCE and RATINGS

PERFORMANCE FACTOR: (S) Successful = 2; (EE) Exceed Expectations = 3; (E) Exceptional = 4

FACTOR RATING: (E) Essential = 4; (I) Important = 3; (R) Relevant= 2; (C) Contributory = 1

(Choose one rating for each category)

FACTOR RATING	PERFORMANCE FACTOR	FACTOR	CONSIDER
(1)(E) Essential=4	(EE) Exceeds Expectations=3	ADAPTABILITY:	ability to adapt to new tasks and procedures or stressful situations.
(2)(E) Essential=4	(EE) Exceeds Expectations=3	COMMUNICATIONS:	degree to which employee effectively expresses her/himself orally and/or in writing, and the degree to which employee effectively listens and understands others.
(3)(I) Important=3	(S) Successful=2	COOPERATION:	working relationships; participation in teamwork situations.
(4)(R) Relevant=2	(S) Successful=2	CULTURAL COMPETENCY:	degree to which employee makes meaningful efforts to maintain a respectful and Inclusive work environment and to participate in learning opportunities; e.g. diversity training.
(5)(E) Essential=4	(EE) Exceeds Expectations=3	DEPENDABILITY:	amount of supervision required to get the job done and meet deadlines.
(6)(I) Important=3	(E) Exceptional=4	INITIATIVE and FOLLOW THROUGH:	degree to which an employee is a self-starter; ability of employee to effectively use available work time.
(7)(E) Essential=4	(S) Successful=2	KNOWLEDGE:	knowledge of required duties; knowledge of equipment used, policies and procedures.
(8)(E) Essential=4	(EE) Exceeds Expectations=3	QUALITY:	acceptability and quality; nature and quantity of errors; thoroughness of work.
(9)(E) Essential=4	(EE) Exceeds Expectations=3	QUANTITY:	ability to provide performance required to maintain department standards under normal conditions.
(10)(R) Relevant=2	(EE) Exceeds Expectations=3	WORK HABITS:	observance of work hours and rules.
(11)(C) Contributory=1	(S) Successful=2	WORKPLACE SAFETY:	consider degree to which employee's work exhibits safe working procedures; compliance with safety guidelines.
(12)		OTHER _____: <i>(Please see instructions at the beginning of this form prior to inserting an additional factor)</i>	

(NOTE: Manually drop your cursor into the section – do not tab in or out of fields below)

- A. List two (2) specific examples that demonstrate the most outstanding contributions and/or achievements of this person with regard to his/her job performance.
Your work on the condemnations for Springfield, the foreclosures for Assessment and Taxation, the Wood matter, Jim Gillette, Ray Robinson, and many more complicated, difficult and time consuming matters have all been conducted to a high degree of professionalism. The persons you have worked with, both inside and outside of the County, have commented on how much they valued the advice you gave them.
- B. Describe in order of importance two (2) specific examples of things this person could improve upon in order to increase his/her job performance.

- 1) Continue to work on listening to the comments and advice from other attorneys in the office, and don't discount it out of hand. You have done much better in this regard this past year, and it has been appreciated by the other attorneys in the office.
- 2) Make sure you take time for yourself. You are probably here the most out of all of the attorneys. Take more weekend days off, and make sure you schedule in some vacations. The work is still going to be here, regardless of how much you work.

NOTE: For a detailed explanation of each category, refer to the full Lane County Performance Evaluation Form.

C. List goals and objectives for the coming year:

To be worked on collaboratively and attached to this document.

documented in writing.

Discussed but not

WILSON Teresa J

From: RUTTLEDGE Edmund
Sent: Monday, February 28, 2000 7:54 AM
To: WILSON Teresa J
Subject: RE: Evaluation of Marc Kardell

Being in probationary status myself, I am not sure of the relative value of my comments. Nevertheless, I offer the following comments:

- ξ Marc has been very helpful to me in my new position of Labor Relations Manager. Where I have the experience of dealing within the labor relations "venue," Marc has provided me vital legal backup. Further, he has readily admitted when he doesn't know something and then proceeds to do his homework. This is preferred over the legal "guessing" I have experienced with some counsel in the past.
- ξ Marc has provided to me a good balance in attitude and approach. I learned my work through being engaged in 60's "radical" political action and later as a union organizer in Detroit, Michigan. I know that I can be aggressive in attitude and, on occasion, "creative" in approach. While I consider these as valuable attributes, they are not always conducive to County work. Marc, on the other hand, is measured and deliberate. He definitely keeps his crayon colors within the lines. In the limited opportunities he and I have had to work with each other, I have appreciated the synergy that seems to come out of the collaboration of our styles.
- ξ Marc's personality makes him easy person with which to work. He is friendly, genuine and has always made me feel like a valued "customer" of the County Counsel.

Ed Ruttledge
Labor Relations Manager
Lane County

-----Original Message-----

From: WILSON Teresa J
Sent: Thursday, February 24, 2000 10:04 AM
To: SNOWDEN Oliver P; STARR Craig; COLE John A; BURGESS Jane; MADDOX Donald E; KEEFER Bob; PERKINS Mike J; VANDEUSEN Charlie B; RUTTLEDGE Edmund; MCCAWLEY Cheryl L
Cc: KARDELL Marc H
Subject: Evaluation of Marc Kardell

I am in the process of preparing an evaluation for Marc Kardell. I would like to incorporate any comments you may have regarding his performance or suggestions to increase his effectiveness. Could you please send me your comments, or call me with them by March 8? I would be happy to meet with you, if you prefer. Unless you request otherwise, I will share your comments with Marc. Thank you in advance if you can take the time to do this.

WILSON Teresa J

From: SNOWDEN Oliver P
Sent: Thursday, March 02, 2000 2:18 PM
To: WILSON Teresa J
Subject: Marc Kardell

You asked some time ago for comments for Marc's evaluation. I have been busy and forgot to respond.

I have the highest praise for Marc's willingness and ability to respond to my repeated requests for advice, help, contracts, etc. I had intended to send you a note on a couple different occasions to complement Marc on his quick response to some urgent requests from me when I know he was busy with other issues. I know he'd like me to go away (he suggested that I take more vacation), but he has been extremely helpful and always in a timely manner. I think he's been an excellent addition to the County Counsel's office.

FILED
AT 7:12 O'CLOCK A.M

OCT X 4 2013

Circuit Court
For Lane County, Oregon
BY SW

RECEIVED
OCT - 3 2013
CIRCUIT COURT, LANE CO.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

MARC KARDELL,

Case No. 16-12-23395

Plaintiff.

v.

GENERAL JUDGMENT

LANE COUNTY;

(ORS 192.410-.505; Oregon Public
Records Act)

Defendant.

THIS MATTER, having come before the court on September 18, 2013 for trial to the court. Plaintiff Marc Kardell appeared personally and through his attorney, Margaret J. Wilson; Defendant Lane County was represented by Lane County Counsel, Stephen E. Dingle.

The court reviewed the stipulated facts submitted by the parties, the memorandums of law filed by the parties, the joint exhibits submitted by the parties, the public records that were produced to Plaintiff, and the Plaintiff's personnel file; and listened to oral argument by counsel. No witnesses were called by either party.

The court, having considered all the pleadings, stipulated facts, joint exhibits, evidence, and arguments by counsel, made the following finding of fact and conclusions of law: (1) Defendant Lane County's Affirmative Defense no. 6 (Failure to State a Claim) is denied; (2) Defendant Lane County violated the Oregon Public Records Act, primarily ORS 192.440(2); (3) Plaintiff Kardell made a public records request to Defendant Lane County, arguably that request

GENERAL JUDGMENT – Kardell v. Lane County
Page 1 of 2

1 was made on 9/21/13, but it is clear by a preponderance of the evidence that Plaintiff Kardell
2 made a public records request on 10/18/12; (4) Defendant Lane County produced public records
3 to Plaintiff Kardell on 1/02/13, and there's no longer a dispute about the completeness of that
4 response; (5) The amount of time taken for Defendant Lane County to produce public records to
5 Plaintiff Kardell was unreasonable, and the County's response was not timely; (6) It is not who
6 made the public records request or the purpose of the request that matters, it's that a public
7 records request was made and there's a strong policy in favor of keeping public records and the
8 business of the government open to the public; (7) The fact that Plaintiff Kardell was a former
9 county employee or the fact that he is a lawyer or even a person with potential claims against
10 Lane County doesn't provide Defendant Lane County a basis to hold off on disclosure or delay
11 the process of disclosing public records; and (8) Conditioning the release of public records on a
12 waiver of rights by Plaintiff Kardell is not an acceptable reason for Defendant Lane County to
13 delay responding to a public records request.
14

15 And based thereon, Plaintiff Kardell is the prevailing party, *in part*.

16 Now, therefore, it is hereby

17
18 ORDERED AND ADJUDGED that Plaintiff Kardell is the prevailing party ^(in part) in this matter
19 and Judgment shall be entered in his favor and against Defendant Lane County; ~~and~~ Plaintiff
20 Kardell ~~is entitled to~~ ^{may submit his request for} an award of his attorney fees, costs, and a prevailing party fee, pursuant
21 to the provisions of ORCP 68.

22 DATED this 4th day of October, 2013.


Honorable Josephine Mooney
Lane County Circuit Court Judge

23
24
25
26 GENERAL JUDGMENT – Kardell v. Lane County
Page 2 of 2

1
2
3 Excerpts of Marc Kardell Trial Testimony
4
5
6
7
8
9
10
11
12
13

14 Q Did anyone ever tell you you were being investigated?

15 A No. I read it later, though.

16 Q Where did you read it later?

17 A In a report from Ms. Poling and Mr. Jordan.

18 Q And who are they?

19 A Ms. Poling was the Economic Development -- I don't know what
20 her job title was when I was there. She ended up taking over
21 the department sometime after I left. So she became the
22 economic director.

23 Mr. Jordan was an investigator used by her to look
24 at what had occurred in Economic Development under
25 Mr. Mackenzie-Bahr.

1 Q So this involves the Row River situation?

2 MR. HUNTER: Objection, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know that either of the
5 reports that I am thinking of involve the Row River
6 situation.

7 Q BY MR. ABRAMS: What did the report involve?

8 A Well, there was a report entitled Kardell's
9 Personal/Legal Advice Report.

10 Q Who made this report?

11 A I believe that was Jordan, but he quoted some portions
12 from Ms. Poling in that report.

13 ---

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4 **Excerpts of Glenda Pohling Testimony**

5

6 So these are the notes you typed up, right?

7 A Yes.

8 Q And down here you have bullet-pointed out all the things
9 you were going to say about Mr. Kardell?

10 A That was my recollection of working with Mr. Kardell.

11 Q One of the things you are saying that you want to
12 criticize him for is that -- to your disdain he had the
13 mindset to fight and defend the County's shortcomings to the
14 point of prevailing, correct?

15 A Yes. Would you like me to explain that?

16 Q Well, I'll ask you a question about it. You are welcome
17 to explain.18 But my question in particular is, you said the best
19 that you could do was to get three years of sanctions from
20 IFA, right?

21 A Yes.

22 Q And Mr. Kardell had at one point recommended fighting,
23 and you thought that was not worth pursuing, right?24 A He was fighting -- his recommendation was to fight the
25 findings based on his understanding of Lane Manual with the

1 consideration that we could prevail.

2 And I said prevail where? And he said we could
3 prevail in court, that we followed Lane Manual. And so the
4 sense that he felt that Lane Manual superseded the Federal
5 Grant Management Handbook as it's passed from the Federal
6 government down to the State and through us, was -- it was
7 ludicrous to think that you could do that.

8 If he had said to me, let's go through these
9 step-by-step and let's follow the rule of law in the Grant
10 Management Handbook and let's prevail there, that would have
11 been completely different.

12 But he was stuck on Lane Manual, and fighting the
13 State's monitoring report, not fighting the good fight for
14 getting it resolved.

15 Q But you are not a lawyer, are you?

16 A No.

17 Q And lawyers and clients sometimes disagree, right?

18 A Yes.

19 ---

20 Q Now you said shortly after you joined, you decided you decided you
21 didn't want to work with Mr. Kardell, correct?

22 A Upon my meeting with him is what made me decide that I did not want
23 to work with Mr. Kardell.

24
25

1
2
3 **Excerpts of Closing Argument by Attorney Gregory Lusby,**
4 **Attorney for Lianne Richardson and Lane County**
5
6
7

8 ... It was not a protected disclosure. And to
9 qualify as a disclosure entitled to protection under Oregon
10 whistleblower statutes, the disclosure must reveal
11 previously unknown conduct.
12
13
14
15

16 ... Another job he didn't get, because as he, himself,
17 testified, at least in some applications, he volunteered that he was
18 suing his former employer. Why would you do that? Boy, that's a
19 marvelous way to get someone interested in hiring you. Yeah, I have a
20 pending lawsuit against my immediate past employer, hire me. I can
21 think about why one might want to do that. One might not really want to
22 get employed.
23
24
25

JANUARY 29, 2014

SUBSCRIBER SERVICES

The Register-Guard

ARCHIVE

Complaints in county rift unsubstantiated, report says An investigator finds no evidence of retaliation by two commissioners against an administrator

By Matt Cooper

The Register-Guard

APPEARED IN PRINT: THURSDAY, DEC. 15, 2011, PAGE B1

Lane County Commissioners Rob Handy and Pete Sorenson said accusations that they were retaliating against county Administrator Liane Richardson were investigated by an outside agency and declared unfounded, confirming a report obtained Wednesday by The Register-Guard.

The two-month-old report is another chapter in what has been a bitter rift between the county's top executive and two members of the elected board to which she reports.

But Richardson has now apologized to Handy, and the commissioner struck a positive tone Wednesday, suggesting relations are on the mend.

“Some things have already improved since this report came out,” Handy said, “so maybe it was helpful as a wake-up call of some sort to Ms. Richardson.”

Friction between Richardson and the two commissioners dates to at least April, when Richardson notified Handy that he and Sorenson could be implicated in an investigation of practices in the county’s economic development division.

Both commissioners were cleared in October.

Richardson has accused Handy of holding a grudge against her for her role in a lawsuit brought against Handy, Sorenson and the board last year by former commissioner Ellie Dumdi and retired Eugene businessman Ed Anderson.

In July, Richardson e-mailed Human Resources Director Madilyn Zike and complained that Handy and Sorenson were retaliating against her, investigator Aaron Olson said in the report released to the newspaper. Olson works for Salem-based Local Government Personnel Institute, which offers labor relations help to cities and counties. The county hired the agency to investigate Richardson’s complaints that Sorenson and Handy were retaliating against her and undermining her.

Olson said in the report that Richardson’s belief about retaliation against her by the two commissioners because of the lawsuit was “based on perception” and that there was no evidence found to validate the allegation of retaliation.

Olson investigated a number of accusations reported by Richardson, including the assertion that Handy called her a liar and said she was not to be trusted.

Olson declared the accusations unfounded, saying the evidence “does not support the allegation of retaliation.”

Richardson did not respond to a request for comment Wednesday.

However, she apologized to Handy in an Oct. 4 e-mail that was obtained by The Register-Guard.

The investigation “clearly indicates that you did not call me a liar to my staff,” Richardson said. “I apologize for believing those statements and for breaking off your attempt at finding a way for you and I to work together in a more positive manner.”

Handy said Richardson should reimburse the county for the cost of the investigation.

Sorenson estimated the cost at \$17,000 and called the investigation “an incredible waste of money,” but he said he was optimistic about improving relations with Richardson.

However, Commissioners Faye Stewart and Jay Bozievich defended Richardson, questioning the investigator’s report and citing what they felt has been problematic behavior by Handy.

Olson “got it wrong” in asserting that a complaint by Richardson prompted the investigation, Bozievich said.

Other employees raised the initial concerns about Handy’s treatment of the administrator, he said.

One reason employees complained, he added, was because Handy had responded to a request from Richardson for mediation between the two of them by having his attorney send Richardson a letter.

“It is not normal for an employer having their attorney (send a letter) to an employee,” Bozievich said.

Olson said in his report that the letter from Handy’s attorney “was not a form of retaliation but a response to an ongoing problem that needed intervention then and still does today.”

Stewart characterized Handy as unwilling to meet with Richardson to resolve problems. Olson didn't support Richardson's allegations, but Stewart said that "doesn't mean those concerns weren't just and she didn't have a valid point."

Commissioner Sid Leiken chalked the episode up to Richardson's inexperience in the top administrative post.

"This is just learning and growing into the position," he said.

ACCUSATIONS declared 'unfounded'

An investigator called "unfounded" the following accusations county Administrator Liane Richardson made against Commissioners Rob Handy and Pete Sorenson:

Handy and Sorenson are feeding questions to a Eugene Weekly reporter regarding decisions Richardson is making Handy, instead of asking Richardson questions directly, contacted members of her staff, and a reporter

Handy will not communicate with Richardson

Handy is communicating information that is not truthful about Richardson

Handy and Sorenson will not support Richardson as county administrator

Handy has called Richardson a liar and has said she is not to be trusted

Handy and Sorenson are retaliating against Richardson because of her role as county legal counsel in the Dumdi lawsuit against Handy, Sorenson and the board

From: ***
Sent: Monday, April 09, 2012 6:00 PM
To: BURGESS Jane
Subject: Re: Parvin Butte

Redacted discussion from constituent:

"Hi Jane.

". . . The next time you talk to Marc Kardell, tell him we think he is doing a great job.

My neighbor is an attorney who recently moved to Dexter from Utah to take an administrative position at the University of Oregon.

He told us last week that he was impressed with Mr. Kardell's writing. He said the county was fortunate to have him.

Thanks again for all you do, . . ."

From: BOZEIVICH Jay K

Date: Sep 12, 2011 at 10:33 AM

To: (name omitted)

CC: STEWART Faye H, LEIKEN Sid W, HANDY Rob M, SORENSON Pete,
RICHARDSON Liane I (CAO), TURNER TOM M

Subject: Re: rave

(name omitted),

You are welcome but I was only a catalyst to a dedicated staff that actually did the heavy lifting.

Our legal counsel spent many extra hours researching rules and regulations and then was here until 10:00 pm on Thursday night preparing for the hearing on Friday. Marc Kardell was instrumental in this from the legal side.....

From: (name omitted)

Sent: Sunday, September 11, 2011 12:15 PM

To: BOZIEVICH Jay K

Subject: RE: rave

Once the police arrived Friday night, they did a terrific job. The rave continued nearly all night Friday and I could hear it again Saturday morning. However, it stopped around 10 or 11 am. So its been peaceful and quiet since then. New musicians couldn't get in and the DJ's and musicians from Friday packed up and left, so a lot of the attendees left by Saturday afternoon....

Once again, I want to thank you for all your help. Last year, no one would listen to us and it was a disaster out here. You renewed my faith that the public can sometimes make a difference if they have good people to represent them (you), present their side and then enforce the law. I apologize that I got upset Friday when cars were piling in and the rave started about 1pm. We all thought our efforts had been fruitless at that point. Then when the Judge rule (sic) for us and all the officers arrived to enforce the injunction, we were actually stunned and delighted.

I know it took the efforts of people from different agencies to accomplish this and I plan to thank them all. However, I get the feeling that you are the one that really got the ball rolling. So many, many thanks.
