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ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CHRISTOPHER P STARING

CASE NO. C20132985

DATE: May 16, 2014

CECILIA CRUZ
Plaintiff

VS.

ROGER RANDOLPH and
RICHARD MIRANDA
Defendants

**UNDER ADVISEMENT RULING**

**IN CHAMBERS RE: NEW TRIAL, RULE 60(c) RELIEF AND ATTORNEY FEES**

In this special action brought pursuant to A.R.S. § 39-121.02(A), Plaintiff Cecilia Cruz seeks both attorney fees and a complete reopening of the proceedings in the form of relief pursuant to Rules 59(a) and/or Rule 60(c), Arizona Rules of Civil Procedure. This ruling encompasses the pending Rule 59 and 60 motions, as well as the new trial on the issue of attorney fees, which was completed on April 1, 2014.

This litigation arises from Ms. Cruz's May 12, 2013 request for access to public documents concerning the City of Tucson's ("COT") consideration of a conveyance of El Rio Golf Course ("El Rio") to Grand Canyon University ("GCU"). The May 12 request (Exhibit E) consisted of the following:

> All hard-copy documents, electronic documents and metadata, correspondence, notes of meetings and telephonic conversations, meeting dates and persons attending said meetings, and emails relating to the sale, lease, gifting, development of a Grand Canyon University (aka and dba Grand Canyon Education) campus on the current El Rio Golf Course site. Be advised that this request encompasses:
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> 1. all City departments and entities and personnel, including City Council members and City Council Ward offices and staff, Mayor's office and staff, and
> 2. feasibility, financial-impact studies and any other study conducted by the City of Tucson or any agency acting on behalf of, or funded wholly or in part by, the City of Tucson, or requested by the City of Tucson or any agency acting on behalf of, or funded wholly or in part by, the City of Tucson, and
> 3. incentives of any kind, including but not limited to tax incentives, offered or discussed, orally or in writing, formally or informally, regarding Grand Canyon University, aka and dba Grand Canyon Education.
> 4. Petition signatures gathered by City staff and/or others on a petition sheet calling for El Rio Golf Course to be converted to a park, including but not limited to a petition entitled "Petition to support an open space park at El Rio/ Peticion para apoyar un parque publico en El Rio."

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Judicial Administrative Assistant

It is important to reiterate that this case is about whether COT has complied with the access obligations imposed by Arizona law. It is not about the pros and cons of conveying El Rio to GCU. This is because the public records statutes impose transparency obligations in plain, neutral language. *See also Bolm v. Custodian of Records of TPD,* 193 Ariz. 35, 39, ¶ 10, 969 P.2d 200, 204 (App. 1998) ("A person's right to public records under the Public Records Law is not conditioned on his or her showing, or a court finding, that the documents are relevant to anything.").

Ms. Cruz brought suit against Defendants, who are high ranking officials within COT. This is permissible under A.R.S. § 39-121.02(A). Throughout the case, however, COT has provided the entire defense. It also has defended its own actions, including the actions of multiple departments, in briefings and arguments before the Court. Significantly, COT has expressly represented that it will pay any award of attorney fees and costs imposed in this case. Thus, for ease of reference hereafter, when "COT" is used in this ruling, it will encompass the City of Tucson and Defendants.[1]

**1. The August 16, 2013 Ruling**

As discussed in the August 16, 2013 Under Advisement Ruling, A.R.S. § 39-121 states: "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." Further, there is unequivocal legislative intent favoring access to public records, as well as extensive case law supporting transparency in government. *See, e.g., Carlson v. Pima Cnty.,* 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984) (The public records disclosure statutes "evince a clear policy favoring disclosure."); *Cox Ariz. Publ'ns, Inc. v. Collins,* 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993) (noting "the strong policy favoring open disclosure and access").[2]

The August 16 Ruling also discusses the issue of attorney fees in public document cases, including that A.R.S. § 39-121.02(B) provides that the Court "may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed." Trial courts have broad discretion with regard to the issue of attorney fees. *Democratic Party of Pima Cnty. v. Ford,* 228 Ariz. 545, 548, ¶ 9, 269 P.3d 721, 724 (App. 2012). That includes the discretion to deny fees even if a party has substantially prevailed. *Id.* at 547-48, ¶ 8, 269 P.3d at 723-24. Also included within the Court's discretion is the ability to consider COT's level of cooperation in connection with Ms. Cruz's document request. *Id.* at 549, ¶ 14, 269 P.3d at 725.

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[1] Because they are parties, the judgments for attorney fees, costs and sanctions shall be entered against "Defendants." Rule 15(b), however, allows amendment to conform to the evidence, upon motion by a party, even after entry of judgment. *See Smith v. Continental Bank,* 130 Ariz. 320, 323, 636 P.2d 98, 101 (1981).

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Judicial Administrative Assistant

In the August 16 Ruling, the Court granted Ms. Cruz's petition in part and denied it in part. Specifically, the Court rejected COT's argument concerning the need to withhold from production certain documents concerning the potential conveyance of El Rio. The Court, however, denied Ms. Cruz's request for access to documents subject to the attorney-client privilege. The Court also denied Ms. Cruz's request for attorney fees.

**2. The July 8, 2013 Representation that COT had "Fully Responded."**

When it issued the August 16 Ruling, the Court was operating under the belief that only a small number of documents remained at issue, and that all those documents had been submitted to the Court for *in camera* review. (August 16, 2013 Ruling, p. 2; July 23, 2013 RT, p. 173.) Indeed, in its July 8, 2013 Motion to Dismiss, Response to Order to Show Cause and Motion for Protective Order, COT asserted: "The City has now **fully responded** to Plaintiff's public records request, except that it has withheld approximately seven documents from release." (July 8, 2013 Motion, p. 3, emphasis added.) This representation, which will be referred to as "the July 8 representation," as well as those made during the July 23 trial, defined the scope of the July 23 trial, and, therefore, the substance and scope of the Court's August 16 Ruling.

While "fully" is not synonymous with "perfectly," the only reasonable interpretation of the July 8 representation was that COT had complied with its obligations under the public records access statutes, withholding from production only a limited number of documents it had identified as being subject to colorable arguments precluding them from production. There was nothing equivocal about the July 8 representation.[3] Also, Rule 11(a), Arizona Rules of Civil Procedure, imposes important obligations on attorneys filing motions. Rule 11(a) requires the signing attorney to have a "belief formed ***after reasonable inquiry*** [that a representation] is well grounded in fact..." (Emphasis added.)

It is now clear that the July 8 representation was not remotely accurate. In fact, the record supports the conclusion that COT either knew the July 8 representation was false, or knew its efforts in response to Ms. Cruz's request were so inadequate it could not have had any confidence in the accuracy of the representation. As discussed below, COT's actions, including the July 8 representation, unreasonably expanded and delayed these proceedings to an extent necessitating sanctions pursuant to A.R.S. § 12-349(A).

[2] The August 16 Ruling contains a more detailed discussion of public records law and extensive findings of fact.

Susan Foster
Judicial Administrative Assistant

**3. Post-Trial Motion Practice**

On August 27, 2013, pursuant to Rule 59(a), Arizona Rules of Civil Procedure, Ms. Cruz moved for a new trial "on the attorneys' fees and costs issues." (August 27, 2013 Motion, p. 1.) In that motion, Ms. Cruz argued the Court had abused its discretion by prematurely denying attorney fees and costs in the August 16 Ruling.

On September 30, 2013, Ms. Cruz filed her Second or Supplemental Motion for New Trial. In the September 30 filing, Ms. Cruz asserted: "This motion, now filed by the plaintiff, is a broad motion that is based upon the emerging information after the July 23, 2013 hearing that shows the defendants lied to this court and the plaintiff as part of a scheme to conceal from discovery important public records known to defendants to have been requested." (September 30, 2013 Motion, p. 1.) Ms. Cruz asserted that COT, despite claiming that all but a few responsive documents had been released, had withheld hundreds of pages of documents. (September 30, 2013 Motion, p. 2.)

On October 30, 2013, the Court granted Ms. Cruz's motion for new trial on the issue of attorney fees and costs. (October 30, 2013 Ruling, p. 2.) The October 30 Ruling included the following:

> ...[T]he Court notes that, at least at this juncture, it is difficult to reconcile the position of Defendants (and the City) at trial with their actions since the August 16 Ruling. For example, at and before trial, Defendants asserted that only a small number of responsive documents were being withheld from production. Those documents were identified at pages 2-3 of the August 16 Ruling. Defendants offered to submit the 'seven documents' at issue for an *in camera* inspection. ... **At the October 28, 2013 oral argument, however, defense counsel acknowledged that since August 16 several hundred pages of documents have been located and produced by the City, including perhaps as many as 800 pages of documents that were produced on October 25, which was the Friday before the hearing [on Ms. Cruz's motion for new trial].** These developments raise questions concerning the nature and sincerity of the efforts made in response to Plaintiff's document request, before and after trial.

(October 30, 2013 Ruling, p. 2, emphasis added.) In the October 30 Ruling, the Court left in place the remainder of the August 16 Ruling.[4] (October 30, 2013 Ruling, p. 3.) The Court, however, allowed Ms. Cruz to depose COT concerning the retention and existence of documents responsive to her request, and the efforts made by COT in response to the request. (October 30, 2013 Ruling, p. 3.)

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[3] On April 1, 2014, the COT Attorney who signed the motion containing the July 8 representation, asserted: "It was my belief, at the time, that we probably had fully responded, but I wasn't positive." (April 1, 2014 RT, p. 40.) That is not a reasonable reading of the July 8 representation.

[4] Pursuant to Rule 59(c)(1), the Court treated Ms. Cruz's August 27 and September 30 filings as one motion for new trial.

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Judicial Administrative Assistant

On December 16, 2013, Ms. Cruz filed the pending Motion for New Trial, Request for a Hearing. In the December 16 Motion, Ms. Cruz seeks to reopen the trial proceedings on the substance of her document request, seeks further discovery from COT, asserts misconduct on the part of COT, and argues that the Court erred by granting her earlier motion for new trial only insofar as it pertained to the issues of attorney fees and costs.

On December 19, 2013, Ms. Cruz filed her Supplemental Memorandum in Support of Plaintiff's Motion for a New Trial. As with her earlier motion for new trial, and pursuant to Rule 59(c)(1), the Court treats the December 16 and December 19 filings as one motion.

On December 26, 2013, Ms. Cruz filed her Rule 60(c) Motion to Relieve Plaintiff from a Final Judgment, Order or Proceeding. In that filing, Ms. Cruz asserted that the motion was in the alternative to her pending motion for new trial, noting: "Defendants have since raised the objection to the use of Rule 59, Arizona Rules of Civil Procedure[,] as they claim the court's earlier ruling on the merits has foreclosed the use of a Rule 59 motion." (December 26, 2013 Motion, p. 1.)

On December 16, 2013, Ms. Cruz also filed her Application for Attorneys' Fees, complying with the Court's October 30 order that she file any such application by December 16.

**4. Analysis**

**A. Ms. Cruz's Rule 59 Motion is Untimely.**

Rule 59(d) provides that "[a] motion for new trial shall be filed not later than 15 days after entry of the judgment." The deadline for filing a motion for new trial is strictly enforced. *Welch v. McClure,* 123 Ariz. 161, 164, 598 P.2d 980, 983 (1979).

Ms. Cruz's current Rule 59 motion seeks a new trial in the form of a complete reopening of the substance of her petition for special action. The trial of Ms. Cruz's petition occurred on July 23, 2013, and the August 16 Ruling triggered her deadline for seeking a new trial. Ms. Cruz, in fact, sought a new trial in the motion that was resolved in the October 30 Ruling. [5] Ms. Cruz filed her current Rule 59 motion on December 16, 2013, four months after the August 16 Ruling. Ms. Cruz's current Motion for New Trial is **DENIED** as untimely.

[5] The October 30 Ruling granting a new trial on attorney fees and costs, but otherwise leaving the August 16 Ruling in place, was an appealable order. *Davis v. Davis,* 195 Ariz. 158, 161, ¶ 12, 985 P.2d 643, 646 (App. 1999). Neither Ms. Cruz nor COT appealed from that ruling.

Susan Foster
Judicial Administrative Assistant

**B. Ms. Cruz is Entitled to Relief Pursuant to Rule 60(c)(3).**

"[I]n proper circumstances an untimely motion for new trial [may] be treated as a motion for relief from judgment under rule 60(c)." *Welch,* 123 Ariz. at 164, 598 P.2d at 983. The "crucial factor" is whether Ms. Cruz's Rule 60(c) motion presents grounds for relief pursuant to Rule 60(c); if it does not, it cannot provide a substitute for relief pursuant to Rule 59, or stand on its own as a Rule 60(c) motion. *Id.* at 165, 598 P.2d at 984.

Ms. Cruz's Rule 60(c) motion asserts grounds for relief that may be granted pursuant to Rule 60(c)(3), which provides for relief "from a final judgment, order or proceeding for ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party...." Further, Ms. Cruz's Rule 60(c)(3) motion was filed less than six months after the August 16 Ruling. The timing of its filing was reasonable, particularly given COT's continuing, sporadic production of documents, as well as the record concerning the inadequacy of COT's efforts to respond to Ms. Cruz's request.

To obtain relief pursuant to Rule 60(c)(3), Ms. Cruz must (1) have a meritorious claim, (2) that she was prevented from fully presenting before judgment, (3) because of the adverse party's fraud, misrepresentation or misconduct. *See Estate of Page v. Litzenburg,* 177 Ariz. 84, 93, 865 P.2d 128, 137 (App. 1993). Further, "'[m]isconduct' within the rule need not amount to fraud or misrepresentation, but may include even accidental omissions." *Id.* The scope of Rule 60(c) "'is remedial and to be construed liberally, and because of the comprehensive sweep of [Rule 60(c)(3)] any fraud, misrepresentation, circumvention or other wrongful act of a party in obtaining a judgment so that it is inequitable for him to retain the benefit thereof, constitute grounds for relief within the intendment of [Rule 60(c)(3)].'" *Id.*

Clear and convincing evidence exists that COT engaged in "misconduct" sufficient to warrant relief pursuant to Rule 60(c)(3). Prior to the July 23 trial, COT made the July 8 representation. The effect of the July 8 representation was to focus the July 23 trial on whether Ms. Cruz was entitled to production of the "seven" withheld documents. COT's argument that the July 23 trial was always about only the "seven" withheld documents is unavailing given the scope of Ms. Cruz's May 2013 request, the totality of the language in her petition, and the July 8 representation. After COT's July 8 representation, why would the July 23 trial have been about anything other than the "seven?"

While both intentional and inadvertent acts may constitute "misconduct" under Rule 60(c)(3), the record raises serious questions concerning the integrity of COT's response to Ms. Cruz's May 2013 request. For example, Donald Parslow (COT's Deputy Director for Information and Technology) testified that his office had no involvement with responding to Ms. Cruz's document request prior to the July 23 trial. (December 5, 2013

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Judicial Administrative Assistant

Rule 30(b)(6) Deposition, pp. 4-5.) The IT department was not made aware of Ms. Cruz's request until August 15, 2013. (December 5, 2013 Rule 30(b)(6) Deposition, p. 7.) That was *three months* after Ms. Cruz made the request, and more than a month after the July 8 representation.

Mr. Parslow never saw Ms. Cruz's actual request until November 13, 2013, and the City Attorney's Office did not request assistance from IT with regard to Ms. Cruz's request until the middle of August. (December 5, 2013 Rule 30(b)(6) Deposition, pp. 14-15.) Mr. Parslow further testified that his department received a September 12 e-mail from Assistant City Attorney Dennis McLaughlin, authorizing the IT department to begin a search for e-mails responsive to Ms. Cruz's request. (December 5, 2013 Rule 30(b)(6) Deposition, pp. 25-27.)[6]

This last piece of testimony is particularly troubling in light of the fact COT's computer system automatically drops e-mail, likely resulting in the inability to retrieve e-mail after 180 days. (December 5, 2013 Rule 30(b)(6) Deposition, pp. 65-67.) Why would COT wait until September to authorize the retrieval of e-mail responsive to Ms. Cruz's May 12 request? Were significant e-mails lost because of the delay? The way to prevent such questions, as well as speculation concerning the answers, is to comply with the obligations imposed by the public records statutes.

Mr. Parslow's testimony concerning the timing of communications with the IT department is made more striking by the November 18, 2013 Rule 30(b)(6) testimony of Christopher Kaselemis, COT's Economic Initiative Program Director. Mr. Kaselimis testified: "I understand that when we get a request like this, **we check with our IT department to get all the—all the computer files,** and I met with Mr. McLaughlin several times...." (November 18, 2013 Rule 30(b)(6) Deposition, p. 5, emphasis added.)

COT cannot reasonably claim Ms. Cruz's request came as a surprise. On February 19, 2013, Josh Brodesky of *The Arizona Republic* submitted a public records request concerning the El Rio matter, including, but not limited to, "documents such as reports, memos and emails." (Attachment 7 to Exhibit G.) COT, therefore, knew El Rio was a matter of community interest. Presumably, Mr. Brodesky's request caused COT to take stock of the existing documents. That should have simplified the process of identifying documents responsive to Ms. Cruz's request.

Given the clear legislative intent and strong public policy favoring access to public documents, Ms. Cruz had a meritorious claim concerning access to the documents she requested on May 12, 2013. Ms. Cruz was precluded from litigating the entirety of her document request as a direct result of the July 8 representation,

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which was either intentionally misleading or recklessly inaccurate. In short, the scope of the July 23 trial was defined by COT's "misconduct," as that term is contemplated by Rule 60(c)(3). Ms. Cruz's motion for Rule 60(c)(3) relief is **GRANTED.**

**C. The Appropriate Rule 60(c)(3) Relief is Amendment of the August 16 Ruling.**

Ms. Cruz wants the Court to reopen the proceedings to permit what would amount to a new trial on the entirety of her May 2013 document request, including permitting extensive discovery concerning the existence of additional documents. Arizona's public records statutes, however, do not support such relief. Moreover, the Court may amend its August 16 Ruling to include the entirety of Ms. Cruz's May 2013 request, with the exception of documents already identified as being subject to the attorney-client privilege.

When interpreting a statute, the goal is to give effect to the legislature's intent. *Indus. Comm'n. of Ariz. v. Old Republic Ins. Co.*, 223 Ariz. 75, 77, ¶ 6, 219 P.3d 285, 287 (App. 2009). A statute's language provides the most reliable indication of its meaning. *Id.* If the language is clear and unambiguous, a court need not employ other methods of construction. *Id.* at ¶ 7.

Section 39-121.02(A) provides: "Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body." Subsection B of the same statute provides: "The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed." Subsection B further states: "Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to section 12-349."[7]

Ms. Cruz made a public document request, and was denied access to public documents. She brought a special action pursuant to § 39-121.02(A), and received a ruling that ordered COT to produce documents at issue. Pursuant to Rule 60(c)(3), that ruling will now be amended, ordering COT to produce all documents requested in Ms. Cruz's May 2013 request, with the exception of documents already identified as being protected by the attorney-client privilege. The amended ruling will also contain the finding that Ms. Cruz substantially prevailed in her special action, and, as discussed below, is entitled to an award of attorney fees and costs. There will also be a sanction pursuant to A.R.S. § 12-349(A).

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[6] Mr. McLaughlin signed the July 8 representation. On July 8, he either knew or should have known whether he had communicated with the IT department.

[7] Section 39-121.02(C) creates "a cause of action against the officer or public body for damages resulting from the denial." Ms. Cruz has not made a claim for damages.

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Judicial Administrative Assistant

Ms. Cruz, therefore, has now obtained all of the applicable forms of relief provided to her by the plain language of § 39-121.02. There is no basis for additional trial proceedings concerning her May 12, 2013 request. Neither the public records statutes nor the Rules of Procedure for Special Actions authorize permitting additional discovery in these circumstances. They also do not contemplate boundless court oversight over COT's ongoing response to Ms. Cruz's request.[8]

**D. Ms. Cruz is Entitled to Awards Pursuant to § 32-121.02(B).**

Defendants assert that Ms. Cruz has not substantially prevailed in light of the fact that she unsuccessfully sought documents protected by the attorney-client privilege. In applying the rules of statutory interpretation, however, the Court may not disregard the word "substantially," which is not synonymous with "completely." The plain language of § 39-121.02(B) establishes that a petitioner may recover attorney fees and costs, even if she does not prevail in all respects. If the legislature intended to require that a party prevail in all respects, it easily could have expressed that intent through the use of the word "completely," or similar language.

Ms. Cruz substantially prevailed at the July 23 trial, and, as a result, is entitled to an award of attorney fees and costs pursuant to § 39-121.02(B). Although she sought privileged documents, the principal focus at the July 23 trial was whether COT could withhold the non-privileged documents showing the specifics of negotiations with GCU, including the financial details of possible El Rio conveyances. Ms. Cruz's assertion that she has substantially prevailed is further bolstered by the fact that she has now prevailed on her Rule 60(c) motion and, as a result, the August 16 Ruling is being amended to include the entirety of her May 12, 2013 request, with the exception of documents already identified as being protected by the attorney-client privilege.

Having determined that Ms. Cruz has substantially prevailed, and having considered her December 16, 2013 application for attorney fees and supporting materials, the Court concludes that a reasonable award of attorney fees pursuant to § 39-121.02(B) is $9,000.00. This amount equates to twenty-five hours of William Risner's time. Mr. Risner is Ms. Cruz's lead counsel. His hourly rate of $360.00 is reasonable, given his years of experience and his familiarity with public records litigation. Also, $9,000.00 is reasonable in light of the fact that Ms. Cruz is not responsible for all of the attorney fees incurred. (April 1, 2014 RT, pp. 68-69.) Further, at times, Ms. Cruz's litigation efforts have seemed to focus on matters other than obtaining documents. Finally,

[8] Nothing in this ruling should be construed as precluding Ms. Cruz from making additional requests for public documents pursuant to A.R.S. § 39-121, or from seeking any remedy provided for by law. Neither should this ruling be construed as relieving COT from any obligation imposed by law.

Susan Foster
Judicial Administrative Assistant

having considered her application, and pursuant to the discretion afforded by § 39-121.02(B), Ms. Cruz is awarded costs of $3,000.00.

**E. Ms. Cruz is Entitled to Sanctions Pursuant to A.R.S. § 12-349(A)(3).**

In addition to attorney fees pursuant to § 39-121.02(B), Ms. Cruz is entitled to recover pursuant to A.R.S. § 12-349(A), which provides that a court "*shall* assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and any political subdivisions of this state, if the attorney or party does any of the following: ... 3. Unreasonably expands or delays the proceeding ...." (Emphasis added.) As noted above, § 39-121.02(B) expressly contemplates instances where a petitioner is also entitled to recovery under § 12-349.

This is such an instance. Specifically, and pursuant to A.R.S. § 12-350, the Court finds that by making the July 8 representation, and by failing to comply with obligations imposed by the public records statutes, as well as its own procedures for responding to document requests, COT unreasonably expanded and delayed the proceedings, as contemplated by A.R.S. § 12-349(A)(3).

The immediate effect of the July 8 representation was to limit dramatically the scope of the July 23 trial. Had the July 8 representation not been made, the July 23 trial could have resolved any issues remaining from Ms. Cruz's May 2013 request. Moreover, had it known at the time of the July 23 trial that COT had yet to produce hundreds of pages of documents, as opposed to the "seven" withheld documents, the Court may have reached a different decision regarding Ms. Cruz's request for attorney fees.[9]

COT asserts that its continuing production of hundreds of pages of records has been voluntary, reflects a good faith effort, and belies the notion that the failure to respond fully in the first place led to an expansion of the proceedings. The argument is unpersuasive. For example, on at least two occasions after July 23, COT has produced documents at the eleventh hour before scheduled court hearings.[10] This timing more than suggests it was the approaching hearings that prompted the disclosures. COT's assertion of good faith is further diluted by the fact that the hearings would not have occurred without Ms. Cruz engaging in post-trial motion practice.

Also, at the very least, the testimony of Mr. Kaselimis and Mr. Parslow establishes that COT failed badly in adhering to its procedures for document requests, including failing to notify the IT department until

[9] At page 9, the August 16 Ruling states: "Here, the City provided a response to Plaintiff's request, only refusing to provide the small number of documents at issue....There is no evidence the City has acted frivolously or in bad faith in connection with this matter."

[10] As noted in the October 30 Ruling, COT produced *approximately 800 pages* of documents on Friday, October 25, which was three days before the October 28 hearing on Ms. Cruz's first motion for new trial. At the April 1, 2014 hearing, the Court learned COT produced a number of e-mails on March 21, 2014. The e-mails were authored prior to Ms. Cruz's May 12, 2013 request. (April 1, 2014 RT, pp. 25-26.)

Susan Foster
Judicial Administrative Assistant

approximately a month after the July 23 trial, and three months after Ms. Cruz's request. Section 39-121.01(E) requires that a government entity "promptly respond" to a request. It is an understatement to say that waiting three months to notify the IT department is not prompt. Significantly, Mr. Brodesky had made a similar public records request in February 2013. As of July 8, therefore, COT should have been able to assess accurately whether it had made a full response to Ms. Cruz's request.

The July 8 representation, and, at best, COT's slipshod approach to Ms. Cruz's request, unreasonably expanded and delayed the resolution of this matter, mandating an award pursuant to § 12-349(A)(3). *See Solimeno v. Yonan,* 224 Ariz. 74, 227 P.3d 481 (App. 2010) (affirming § 12-349(A)(3) sanction arising from defendant's failure to disclose trial testimony, necessitating mistrial). Thus, as a sanction pursuant to § 12-349(A)(3), and *in addition* to the award of attorney fees and costs pursuant to § 39-121.02(B), Ms. Cruz is entitled to an award of $15,800.00. This amount reflects a base award of $10,800.00 (the equivalent to an additional thirty hours of counsel's time), to which $5,000.00 has been added pursuant to the statute's discretionary doubling provision. The $10,800.00 amount is reasonable given the efforts expended by counsel, and the fact Ms. Cruz is not responsible for all of the fees in this matter. COT's actions in this instance, particularly in making the July 8 representation, justify the imposition of the discretionary sanction.

**IT IS HEREBY ORDERED** denying Ms. Cruz motion for new trial pursuant to Rule 59(a), Arizona Rules of Civil Procedure.

**IT IS FURTHER ORDERED** granting Ms. Cruz's motion for relief pursuant to Rule 60(c)(3), and amending the Court's August 16 Ruling to grant Ms. Cruz access to the entirety of the documents described in her May 12, 2013 request for public records, with the exception of documents already identified as being subject to the attorney-client privilege.

**IT IS FURTHER ORDERED** that COT shall fully comply with Ms. Cruz's May 12, 2013 request for public records **on or before June 4, 2014. On or before June 4, 2014,** COT shall file a notice with this Court, certifying that it has complied with the obligation of responding to Ms. Cruz's May 12, 2013 request.

**IT IS FURTHER ORDERED** granting Ms. Cruz's request for attorney fees and costs pursuant § 39-121.02(B). As the substantially prevailing party, Ms. Cruz is awarded attorney fees from Defendants in the amount of $9,000.00, and costs from Defendants in the amount of $3,000.00.

**IT IS FURTHER ORDERED** granting Ms. Cruz's request for sanctions pursuant to A.R.S. § 12-349(A). Pursuant to A.R.S. § 12-349(A)(3), and in addition to attorney fees and costs awarded pursuant to § 39-121.02(B), Ms. Cruz shall recover attorney fees from Defendants in the amount of $15,800.00.

Susan Foster
Judicial Administrative Assistant

**IT IS FURTHER ORDERED** that Ms. Cruz shall submit a proposed form of judgment concerning the awards of attorney fees and costs within ten (10) days hereof.

/s/
**HON. CHRISTOPHER P. STARING**
(ID: 6eed28d4-34bc-4cb0-aa72-83e751160d2d)

cc: Dennis P. McLaughlin, Esq.
Kenneth K. Graham, Esq.
William J. Risner, Esq.
Clerk of Court - Under Advisement Clerk

Susan Foster
Judicial Administrative Assistant