

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JUANITA DAVIS,

Appellant,

v.

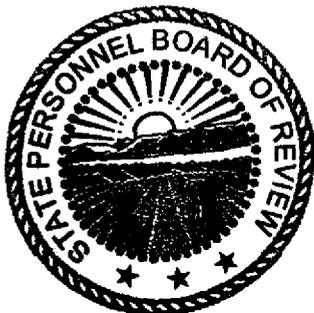
Case No. 10-REM-08-0209

MAHONING COUNTY PROSECUTOR,

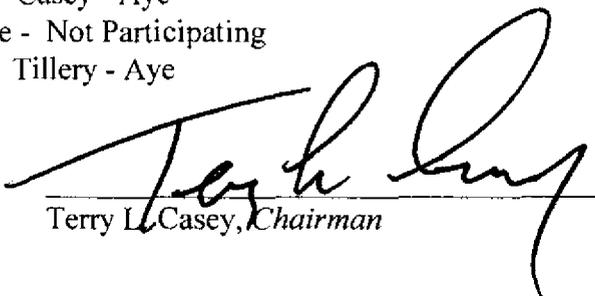
Appellee

ORDER

This matter came on for consideration on the motion of Appellant that the Withdrawal attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached withdrawal, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**. Accordingly, the above-referenced appeal is hereby **DISMISSED**.



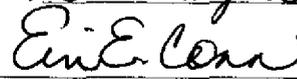
Casey - Aye
Lumpe - Not Participating
Tillery - Aye

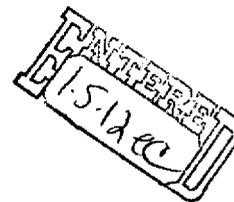

Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 05, 2012.


Clerk



BEFORE THE STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JUANITA DAVIS,

Appellant

vs.

MAHONING CTY PROSECUTOR,

Appellee

Case No. 10-REM-08-0209

ALJ James Sprague

STATE PERSONNEL
BOARD OF REVIEW
2012 JAN -3 PM 2:19

APPELLANT'S NOTICE OF DISMISSAL WITH PREJUDICE

COMES NOW THE APPELLANT, JUANITA DAVIS, and gives notice of her dismissal with prejudice of her appeal premised upon the settlement of the parties. A copy of the settlement agreement is attached and should be made part of the record and part of the Board's final order dismissing this appeal.

Respectfully submitted,



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E-mail: Jbjjurisdoc@yahoo.com
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent by regular U.S. Mail or hand delivered to Mr. Kevin Kralj, Esq., Assistant County Prosecutor, 21 West Boardman Street, Youngstown, Ohio 44503 on the 28 day of December, 2011 .


JOHN B. JURASZ

C:\AtOfc\JB\Civil\Davis Juanita\Voluntary dismissal revid 122711.wpd- Tue 27 Dec 2011 1003 pm 2203 hrs

F302

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement") is made and entered into this 28th day of November, 2011, by and between Juanita Davis ("Davis") and Paul J. Gains, the duly elected and acting Mahoning County Prosecuting Attorney, acting in his capacity as such and not in any personal capacity ("Gains").

WITNESSETH:

WHEREAS, Davis had been a long time employee of Gains and of previous County Prosecutors, and Gains terminated Davis' employment effective July 31, 2010; and

WHEREAS, Davis filed an appeal of the termination of her employment with the State of Ohio Personnel Board of Review ("SPBR") pursuant to law, said case being numbered Case No. 10-REM-08-0209; and,

WHEREAS, Davis and Gains have reached an agreement that will avoid the risks of litigation and any hearings for all parties and that will fully and finally settle all claims that each might have against the other; and

WHEREAS, the parties hereto are fully competent to enter into this contractual settlement agreement.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Davis and Gains do hereby agree as follows:

1. *Payment/Contributions.*

(A) Gains will cause the County of Mahoning, through lawful appropriations, to pay to Davis the sum of SIX THOUSAND DOLLARS AND NO CENTS (\$6,000.00). This payment to Davis is in settlement of her claims for damages that she has or may have under state or federal law in addition to any claim before the SPBR.

(B) The payment shall be made as a lump sum payment and paid directly to Davis. It is the intent and agreement of the parties hereto that the treatment of said lump sum payment is not a payment of wages subject to withholding taxes, but a payment of liquidated damages. Gains shall request the Mahoning County Auditor to issue an appropriate IRS form 1099 with respect to the payment.

(C) If a state, federal, or local taxing authority contacts Mahoning County and challenges the tax treatment of the lump sum payment, Davis shall be promptly notified in writing and allowed to fully participate in any such discussions with any state, federal, or local taxing authority. Davis is solely and exclusively responsible for the payment of all applicable income taxes assessed on the lump sum payment made to Davis under this paragraph, save and

except any taxes or other payments or contributions which would normally be paid by an employer.

(D) Failure of Mahoning County or Davis to prevail against the taxing authority shall not be deemed conduct which breaches or sets aside this agreement. Gains is under an obligation of good faith to contest a determination or ruling by a state, federal, or local taxing authority that said payment to Davis is wages subject to withholdings. However, if a determination is made by a state, federal, or local taxing authority that the lump sum payment is to be treated other than as intended by the parties, each party will be responsible for the portions of normal withholdings as if the payment were a wage payment, and shall save and hold harmless the other party with respect to the original party's share or obligation.

2. *Dismissal.* Davis shall dismiss, with prejudice, her appeal styled *Juanita Davis v. Mahoning County Prosecutor*, Case № 10-REM-08-0209, filed with, and at the time of the execution hereof, still pending before the State of Ohio, State Personnel Board of Review. Davis, upon payment of the settlement sum described above, shall take any and all action to dismiss and/or withdraw, with prejudice, all claims filed against Gains, and each of his predecessors, successors, assigns, agents, officers, directors, employees, representatives, attorneys and insurers, both individually and in their official capacities, and their respective heirs, executors and representatives, and all persons and/or entities acting by, through, under, or in concert with any of them or any combination of them. Davis agrees to hold the check in trust in her counsel's IOLTA account until confirmation of the dismissal of the appeal is received from the State Personnel Board of Review.

3. *Releases and Covenants Not to Sue.* In consideration of the payment being provided to Davis by Gains, Davis, for herself, her heirs, executors, administrators, assigns, and attorneys does hereby release, acquit and forever discharge Gains, his employees, and each of their predecessors, successors, assigns, agents, officers, directors, employees, representatives, attorneys and insurers, both individually and in their official capacities, and their respective heirs, executors and representatives, and all persons and/or entities acting by, through, under, or in concert with any of them or any combination of them of and from any and all charges, claims, demands, damages, lawsuits, actions or causes of action, of any kind or description whatsoever, administrative, in law or in equity, which Davis now has, has had, or may have against Gains, his employees, and each of their predecessors, successors, assigns, agents, officers, directors, employees, representatives, attorneys and insurers, both

individually and in their official capacities, and their respective heirs, executors and representatives, and all persons and/or entities acting by, through, under, or in concert with any of them or any combination of them resulting from any matter whatsoever arising prior to the date of this agreement arising out of her employment or termination by Gains. Davis, for herself, her heirs, executors, administrators, assigns, agents, attorneys and lien holders does hereby further covenant and agree not to bring, commence, prosecute, maintain, continue to maintain or cause or permit to be brought, commenced, prosecuted, maintained or continued to be maintained, any suit, action or administrative proceeding, either at law or in equity, in any court or administrative body of the United States or in any state thereof or elsewhere with respect to any matter embraced within this release of claims and covenant not to sue.

4. *Non-Admission.* Nothing in this Agreement is intended to be or should be read as an admission of wrongdoing either by Gains or by Davis. To the contrary, both parties expressly deny liability or wrongdoing; and, they are entering into this Agreement to avoid the costs and the uncertainty of a trial and of future litigation in this case.

5. *Acknowledgments.* By entering into this Agreement, Davis acknowledges, agrees and represents that:

(A) The claim pending before the SPBR is disputed both as to any relief due or any damages caused by Gains and Davis acknowledges no wrongful conduct on her part to warrant termination;

(B) Gains is not admitting any legal liability nor the violation of any state or federal law, statute, ordinance, rule or regulation;

(C) No promises or inducements that are not contained herein have been offered by either party, and the consideration furnished by each party to the other is full and adequate consideration for the releases set forth herein;

(D) This Agreement is entered into by Davis without reliance on statements made by Gains concerning the value of the Agreement but, rather having had ample time to consult with her own counsel.

6. *Severability and Enforcement.* This is the complete Agreement between the parties; no other terms or conditions shall apply. The entire understanding of the parties with respect to this matter is contained herein. Changes to the Agreement must be in writing and signed by both parties. The Agreement shall be governed by, interpreted under and enforced in accordance with the laws of the State of Ohio.

7. *Counsel.* Davis and Gains each acknowledge that they have had the opportunity to have been represented by an attorney throughout the duration

of the dispute between the parties and in conjunction with the preparation of this Settlement Agreement and Release.

8. *Binding Effect.* This Agreement shall be binding upon all parties hereto and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Gains and Davis, and to their respective heirs, administrators, representatives, executors, successors, assigns and related entities.

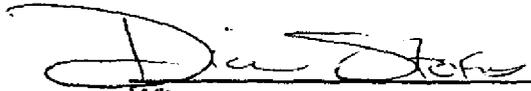
9. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed to be an original agreement, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding the fact that all the parties shall not have signed the same counterpart.

IN WITNESS WHEREOF, the parties have executed this agreement on the respective dates listed for each.

Date 11-28-11



PAUL J. GAINS, Prosecutor



Witness



Witness

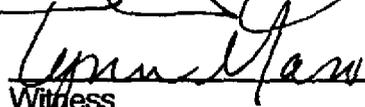
Date November 4, 2011



JUANITA DAVIS



Witness



Witness

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