



September 28, 2015

Clarice Beck
Human Rights Bureau
Employment Relations Division
Montana Dept. of Labor and Industry
P.O. Box 1728
Helena, MT 59624

RE: Joshua Clark v. Missoula County, et al.

Dear Ms. Beck:

This letter is in response to Mr. Clark's September 14, 2015 offer of settlement and demand. While Missoula County would like to settle this matter amicably, Mr. Clark's demand is unreasonable, excessive, and unacceptable to Missoula County.

Missoula County disputes the findings of the Human Rights Bureau Investigator and disagrees with the premise behind Mr. Clark's damage statement. Even if Missoula County presumes that Mr. Clark is entitled to damages, an offer of settlement of \$750,000 is unreasonable because it is almost entirely based upon lost wages and benefits. The facts are that Mr. Clark was not terminated from his employment with the Missoula County Sheriff's Office nor was his pay ever reduced. Mr. Clark voluntarily left his employment and he simply cannot meet the elements of constructive discharge. Mr. Clark retired from the Sheriff's Department, with full pension, after completing only three patrol shifts at the same pay as when he was a captain. Constructive discharge requires that employment be "so intolerable that voluntary termination is the only reasonable alternative." Thus, even if Mr. Clark suffered from discrimination, his damages should not be calculated based on lost wages and benefits.

The highest damage award from HRB that Missoula County is aware of is a \$75,000 award arising from facts far more egregious than what Mr. Clark is alleging in this case. In light of Mr. Clark's demand of an amount ten times this figure, Missoula County is forced to conclude that he has no serious interest in settling this matter.

In light of the foregoing, Missoula County is willing to discuss settling this matter for an amount consistent with other HRB awards under similar conditions and circumstances and a commitment to take affirmative steps to develop policies in the Missoula County Sheriff's department regarding office reorganization when a new sheriff takes office.

Missoula County would welcome a revised offer from Mr. Clark removing damages relating to him voluntarily leaving his job. Missoula County declines to make a specific monetary counteroffer at this time.

Should you have further requests, questions, or comments, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Marks", with a long horizontal flourish extending to the right.

Jason Marks
Chief Deputy County Attorney

C: Rhoades and Seifert, P.L.L.C.