

COPY

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1 Scott M. McNair
(Plaintiff, Pro Per)

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3 Phoenix, Arizona



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5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 SCOTT M. MCNAIR
8 Plaintiff

9 V.

10 MARICOPA COUNTY DEPARTMENT
11 OF TRANSPORTAION, ET AL,
12 Defendants

CASE No. LC2003-000539-001

**MOTION FOR DISCOVERY AND
ADMISSION OF NEW AND
ADDITIONAL EVIDENCE**

13
14 **L PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS**

15 In that the Plaintiff (McNair) is neither represented by counsel nor had any formal legal training, he does
16 hereby request leniency from the Court for the form and content of this pleading:

17 In accordance with JRAD¹ Rule 13, the Plaintiff does hereby request that the Court waive and/or modify
18 any formal procedural requirements in order to insure McNair due process and equitable justice, and to
19 insure that a fair and just determination can be made

20 **II. AUTHORITY**

21 In accordance with JRAD Rule 11, the Plaintiff has filed a Motion for *Trial De Nova* Upon the granting
22 of such, JRAD Rules 10 & 12 authorize the Court to order Discovery and allow the admission of new and
23 additional evidence.

24 In specific, Rule 12 reads:

25 **RULE 12. DISCOVERY**

26 Only when the court has granted a request under Rule 10 or 11 of these rules,
27 permitting use of new or additional evidence or granting a trial de novo, may
28 discovery be permitted...

¹ JRAD refers to the Arizona Rules of Procedure for Judicial Review of Administrative Decisions.

1 This power of the Court to grant discovery and allow new evidence is further echoed in JRAD Rule 1.C,
2 which reads in part:

3
4 **RULE 1. SCOPE OF RULES**

5 (c) ...In the event...a trial de novo is permitted by the court, the court shall set forth the
6 manner and method of discovery to be utilized and shall direct which pretrial rules of
civil procedure shall apply.

7 Additionally, A.R.S. § 12-909(B) also authorizes the Court to accept additional evidence and testimony.
8 The statute reads in part:

12-909. Pleadings and record on review.

B. ...Notwithstanding section 12-904, subsection B, by order of the court or by stipulation
of all parties to the action, the record may be shortened or supplemented.

In reviewing A.R.S. § 12-911(A).6, the Court will find further authority to grant discovery and accept
new and additional evidence and testimony. It reads in part:

12-911. Powers of trial court

A. The superior court may:

6. Specify questions or matters requiring further hearing or proceedings and give
other proper instructions.

III. DISCUSSION

The Plaintiff, in his Complaint and in numerous pleadings before the Administrative Agency (Board),
continually asserted that he had been denied all opportunity to a) subpoena witnesses and evidence, b) give
testimony, and, c) submit evidence on his behalf, and that such resulted in an incomplete record thereby
denying McNair any resemblance to “due process.”

McNair has asserted in his Complaint and in pleadings before the Board, that the Board and the Hearing
Officer (Harold J. Merkow) had deliberately engineered the proceedings in a manner specifically to prevent
McNair from receiving due process by denying him all opportunity to present evidence, witnesses, and
testimony.

In pleadings to the Board, McNair continually advised the Board that Counsel for Maricopa County
(County), had repeatedly refused and ignored all discovery requests, and, had knowingly attempted to
unlawfully extort money from McNair for public records which he was entitled to for free.

1 The Board never allowed a hearing of the original Complaint/Appeal. Instead, it chose to allow the
2 County to withhold any and all evidence that would be useful to McNair and detrimental to the County.

3 Instead, the Board held a one-sided “Evidentiary Hearing”, with specific instructions intended to limit
4 McNair’s ability to gain access to any records and witnesses. An Evidentiary Hearing in which only the
5 County was allowed to introduce evidence and testimony.

6 The Court should also note that prior to the Evidentiary Hearing, McNair submitted a Motion to the
7 Board requesting the subpoena of witnesses to speak on his behalf at such. The Board categorically ignored
8 this Motion by never issuing any ruling upon a lawful pleading before such.

Throughout the Hearing Officer’s Recommendation to the Board (HOR), Merkow continually acknowledges how his and the County’s deliberate interference with discovery resulted in a detrimental effect on McNair’s attempt at due process. This is shown in the following excerpt from such:

HOR, pg. 5, FINDING OF FACT, item 9, *“He (Complainant) was unable to present any evidence at the February 10 jurisdictional hearing, that the County has been undertaking an ‘ongoing campaign’ of denial of discovery, disclosure and access to public records and that “McNair cannot present documents, evidence, or testimony if not given the opportunity to do so. Furthermore, McNair cannot present documents that the County refuses him access to or secrets from him in order to inhibit his right to due process and justice.”*”

While the law does permit the Rules of Civil Procedure to be “relaxed” in administrative hearings, clearly it must allow **both** parties the opportunity to present a case. McNair has never been allowed any opportunity to discovery or to present evidence, testimony, or witnesses, or any semblance of a case.

In his Complaint to this Court, McNair has asserted that both the Board and Merkow acted in a manner specifically designed to prevent McNair from lawful discovery and to deliberately inhibit him from introducing evidence into the record. By doing so, the Board and Merkow created a limited record upon which no just decision could be made. This situation is the basis of one of the claims contained in the Complaint before the Court. Contained in section IX Grounds For Relief, McNair asserts:

9) The State of Arizona Personnel Board’s decision is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, and is an abuse of discretion.

1 **IV. CONCLUSION**

2 Many of the issues and claims contained in McNair's complaint arise from the Board and County
3 withholding evidence. Since the Board based its decision upon incorrect and incomplete information that
4 was due to this willful interference with discovery and deliberate technical errors in the proceedings,
5 McNair's rights were adversely affected by design and resulted in injustice to him.

6 The Rules Of Civil Procedure relating to Judicial Review of Administrative Decisions give the Court
7 great leeway in the manner in which it may proceed, and allow for discovery and admittance of new
8 evidence and testimony.

In order for the Court to establish the validity of McNair's claims, establish to what extent his rights
where violated, determine as to how it must proceed, and to ascertain what relief to grant, it must order
discovery and accept new evidence and testimony.

Statute, and duty of the Court to make an informed and just decision upon the claims before it, compels
the ordering of discovery and acceptance of new evidence.

RESPECTFULLY SUBMITTED this 7TH day of JULY 2003.

By

Scott M. McNair

Plaintiff (Pro Per)

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ORIGINAL and copy of the foregoing FILED this 7TH day of JULY 2003 with:
Clerk of the Court
Superior Court of Arizona, Maricopa County
201 West Jefferson Street
Phoenix, Arizona

COPIES of the foregoing mailed this 7TH day of JULY 2003 to Defendants:

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By
Scott M. McNair
Plaintiff (Pro Per)