

1 Scott M. McNair
2 (Plaintiff, Pro Per)

3 Phoenix, Arizona
4

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 TRIAL DE NOVO AND
TRIAL BY JURY

13 **I. PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS**

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

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

19 **II. DEMAND FOR TRIAL DE NOVO**

20 In accordance with JRAD Rule 11 and A.R.S. § 12-910(C), the Plaintiff does hereby Motion the Court
21 to grant a "*Trial De Novo*" in this matter.
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¹ JRAD refers to the Arizona Rules of Procedure for **J**udicial **R**eview of **A**dministrative **D**ecisions.

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2 **III. REASONS FOR TRIAL DE NOVO**

3 The Plaintiff asserts that he is rightfully entitled to receive a “*Trial De Novo*” by provision of law, as
4 specified in A.R.S. § 12-910(C).

5 A.R.S. § 12-910(C) reads in part:

6 “For review of final administrative decisions of agencies that are exempt
7 from sections 41-1092.03 through 41-1092.11, pursuant to section 41-
8 1092.02, the trial shall be de novo if trial de novo is **demande** in the
9 **complaint** or answer of a defendant other than the agency and if a
hearing was not held by the agency...”

10 A review of the Complaint filed in this Court by the Plaintiff will clearly show that he demanded a
11 “*Trial De Novo*” in such.

12 The Court will note that this action is the result of a final administrative decision of an agency exempted
13 by A.R.S. § 41-1092.02, namely the State of Arizona Personnel Board.

14 For clarification, A.R.S. § 41-1092.02 reads in part:

15 A.R.S. § 41-1092.02 Appealable agency actions; application of procedural rules;
16 exemption from article
17 A. This article applies to all contested cases as defined in section 41-1001 and all
18 appealable agency actions, **except** contested cases with or appealable agency
actions of:
6. The state personnel board.

19 In examination of the record of the administrative proceeding that gave rise to this action, the Court will
20 find that the Plaintiff was never afforded a hearing of his appeal filed with the State of Arizona Personnel
21 Board.

22 The Plaintiff has therefore satisfied all statutory requirements and as such he is entitled to exercise a
23 demand for a “*Trial De Novo*”.

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2 **IV. DEMAND FOR TRIAL BY JURY**

3 In accordance with A.R.S. § 12-910(C), the Plaintiff hereby demands that the “*Trial De Novo*” be held
4 as a “*Trial By Jury*”.

5 **V. REASON FOR TRIAL BY JURY**

6 A.R.S. § 12-910(C) reads in part:

7 On demand of any party, if a trial de novo is available under this
8 section, it may be **with a jury**, except that a trial of an administrative
9 decision under section 25-522 shall be to the court.

10 Since the Plaintiff is entitled to and has demanded a “*Trial De Novo*” as shown in previous sections
11 of this Motion, it is therefore his statutory right to demand and receive a “*Trial By Jury*”.

12
13 **VI. CONCLUSION**

14 After reviewing the points set forth in this Motion, the Court must conclude that the Plaintiff’s demand
15 for a “*Trial De Novo*” and “*Trial By Jury*” is a right afforded him by statute and must therefore be granted.

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18 RESPECTFULLY SUBMITTED this 7TH day of JULY 2003.

19 By _____

20 Scott M. McNair

21 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

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

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By _____

Scott M. McNair

Plaintiff (Pro Per)