

1 Scott M. McNair  
(Plaintiff, Pro Per)

2 [REDACTED]  
Phoenix, Arizona [REDACTED]

3 [REDACTED]  
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  
10 V.  
11 MARICOPA COUNTY DEPARTMENT  
OF TRANSPORTAION, ET AL,  
12 Defendants

**CASE No. LC2003-000539-001**

**MOTION TO AMMEND COMPLAINT**

13  
14 **I. 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 JRAD<sup>1</sup> 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. SCOPE OF MOTION**

21 By this Motion and for the reasons contained herein, the Plaintiff does hereby seek to amend his  
22 Complaint through the amendments contained herein.

23 **III. AMENDMENT #1**

24 The Plaintiff seeks to add Maricopa County as a Defendant to the Complaint.

25 Maricopa County (County) was a Defendant in the original case before the State of Arizona Personnel  
26 Board (No. 02-56). Maricopa County was listed as a Defendant due to the acts of the Maricopa County  
27 Board of Supervisors and other officials and management of the County. The acts for which they are named  
28 as defendants are separate from those of the individual Defendants (Medlin, Peterson, & Ramsey).

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<sup>1</sup> JRAD refers to the Arizona Rules of Procedure for **J**udicial **R**eview of **A**dministrative **D**ecisions.

1 The County was named as a party of record in the proceedings before the State of Arizona Personnel  
2 Board, and therefore in accordance with A.R.S. § 12-908, they are automatically defendants in this action.

3 The statute reads:

4 **12-908. Parties**

5 In an action to review a final decision of an administrative agency, the agency and  
6 all persons, other than the plaintiff, who are parties of record in the proceedings  
7 **shall be made defendants.**

8 Failure to list and serve the County as defendant was an oversight on the part of the Plaintiff (a non-  
9 attorney). The Maricopa County Department of Transportation (MCDOT), which is an agency within  
10 Maricopa County, has already been listed and duly served in this matter.

11 In as much as the County would be represented by the same counsel, and is already aware of this action,  
12 there is no prejudice to the County in any form. The addition of the County as a party is merely a technical  
13 matter, and is intended to insure that justice is served.

14 Since Mr. Daniel Brenden of the Office of Counsel for Maricopa County has already accepted service  
15 and filed a response on behalf MCDOT. The County therefore has knowledge of the action and is in no way  
16 prejudiced by being added as a defendant.

17 The Plaintiff also requests that the Court waive any formal requirement for the County to be served with  
18 summons and complaint, as such would be served upon the same counsel now defending them in this action,  
19 and therefore be redundant and costly.

20 The Court is granted discretion in its applying formal requirements in these proceedings. Such is stated  
21 in J.R.A.D. 13:

22 **RULE 13. WAIVER OF FORMAL REQUIREMENTS**

23 Upon a showing of exceptional circumstances or lack of training in the law of a party not represented  
24 by counsel... the court may modify the procedural requirements of these rules in order to insure that a  
25 fair and just determination of the administrative appeal on its merits can be made.

26 Since the County is automatically a party in these proceedings as defined by A.R.S. § 12-908, and  
27 already aware of this action, the waiver of the “*procedural*” requirement of having the County served with  
28 summons is well within the Court’s discretion, and doing so will “*insure that a fair and just determination*  
29 *of the administrative appeal on its merits can be made*”.

1 **IV. AMENDMENT #2**

2 In the section entitled “VII. HEARING OFFICER’S FINDINGS, DECISIONS, & REASONS SUBJECT  
3 TO REVIEW”, the Plaintiff seeks to amend by adding:

4 20) The County lacked legal authority and grounds to file its “Second Motion to Dismiss”, and hence  
5 any decision granting such was in error.

6 **V. AMENDMENT #3**

7 In the section entitled “X. RELIEF SOUGHT”, the Plaintiff seeks to amend by adding:

8 7) Treble damages for all lost wages and other damages realized by McNair.

9 **VI. AMENDMENT #4**

10 In the section entitled “X. RELIEF SOUGHT”, the Plaintiff seeks to amend by adding:

11 8) Any other award, damages, relief, or action the Jury and/or Court deems as appropriate.

12 **VII. MEMORANDUM & POINTS OF AUTHORITY**

13 In McNair’s original Complaint before this Court (Superior Court), he specifically stated that he wished  
14 to reserve the right and be granted the opportunity to amend his complaint. The relevant section from  
15 Plaintiff’s complaint is cited as:  
16

17 **VI. RIGHT TO AMMEND**  
18 The Plaintiff reserves the right to amend this complaint and subsequent cause  
19 of action, to add counts for relief relevant to the nature of this action.  
20

21 This motion is being made as allowed by the *Rules Of Procedure For Judicial Review Of Administrative*  
22 *Decisions* and the *Arizona Rules of Civil Procedure*.

23 The action currently before the Court was filed pursuant to Title 12, Chapter 7, Article 6 of the Arizona  
24 Revised Statutes. Accordingly, it is therefore subject to the Rules of Civil Procedure as stated in the  
25 following statute:

26 12-914. Rules of civil procedure  
27 Where applicable, the rules of civil procedure in superior courts, ... shall apply to all  
28 proceedings except as otherwise provided in this article.  
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1 This is further supported by JRAD 1.(b) which specifies:

2 **RULE 1. SCOPE OF RULES**

3 (b) Except to the extent inconsistent with these rules, the Arizona Rules of Civil  
4 Procedure and the Local Rules of Practice for the superior court in the county in  
5 which an administrative appeal is filed shall apply to proceedings held pursuant to  
6 title 12, chapter 7, article 6, A.R.S.

7 Under ARCP<sup>2</sup> Rule 15(a), “*leave to amend shall be freely given*”. See also, *MacCollum v. Perkinson*,  
8 185 Ariz. 179, 913 P.2d 1047 (App.1996).

9 Furthermore, McNair is entitled to damages as provided by A.R.S. § 38-532.D, which reads in part:

10 **D.** An employee or former employee against whom a prohibited personnel practice is  
11 committed may recover attorney fees, costs, back pay, general and special damages and  
12 full reinstatement for any reprisal resulting from the prohibited personnel practice as  
13 determined by the court

14 Since no trial has yet been set, there is no prejudice to the Defendants in amendment at this time.

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18 **VIII. CONCLUSION**

19 The *Rules Of Procedure For Judicial Review Of Administrative Decisions* and the *Arizona Rules of Civil*  
20 *Procedure* govern this matter before the Court. Since this motion to amend is supported by such rules,  
21 which require that “*leave to amend shall be freely given*”, is supported by authority, and is in no way  
22 prejudicial to the Defendants, the Court is therefore compelled to grant this Motion to Amend in order to  
23 insure that justice will be served and to: “*insure that a fair and just determination of the administrative*  
24 *appeal on its merits can be made*”.

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<sup>2</sup> ARCP refers to *Arizona Rules of Civil Procedure*.

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RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of JULY 2003.

By \_\_\_\_\_

Scott M. McNair  
Plaintiff (Pro Per)

ORIGINAL and copy of the foregoing FILED this 23<sup>rd</sup> 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 23<sup>rd</sup> day of JULY 2003 to Defendants:

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By \_\_\_\_\_

Scott M. McNair  
Plaintiff (Pro Per)