

1 Scott M. McNair
(Plaintiff, Pro Per)
2 [REDACTED]
3 Phoenix, Arizona [REDACTED]
4 [REDACTED]

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
12 OF TRANSPORTATION, ET AL,
13 Defendants

CASE No. LC2003-000539-001

**PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

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 J.R.A.D.¹ Rule 13, the Plaintiff does hereby request that the Court waive and/or
18 modify any formal procedural requirements in order to insure McNair due process and equitable justice, and
19 to insure that a fair and just determination can be made

20
21 **II. SCOPE OF MOTION**

22 The Plaintiff does hereby move the Court for DEFAULT JUDGMENT against the following
23 Defendants:

- 24 • Maricopa County
- 25 • Maricopa County Department of Transportation
- 26 • Kenneth Medlin
- 27 • Terry Peterson
- 28 • Jennipher Ramsey

¹ J.R.A.D refers to the *Arizona Rules of Civil Procedure for Judicial Review of Administrative Decisions*.

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III. MEMORANDUM AND POINTS OF AUTHORITY

McNair filed this action for Judicial Review of Administrative Decision as an appeal of a decision from the State of Arizona Personnel Board (Board).

McNair's original "*whistleblower complaint*" with the Board was denied after a Motion to Dismiss was filed by Maricopa County. That motion was filed by Mr. Daniel Brenden of the Office of County Counsel for Maricopa County.

In that motion, Mr. Daniel Brenden asserted that McNair's complaint should be dismissed because it was not filed within the TEN-DAY STATUTORY LIMIT set forth in A.R.S. 38-532 (H).

McNair filed a response to that motion before the Board, asserting numerous reasons why the strict ten-day limit should not be applied, including assertions that McNair was entitled to equitable tolling.

The Hearing Officer for the Board, Harold J. Merkow, refused to consider any argument for the extension of time, and granted the County's motion. Thereby dismissing McNair's complaint on the grounds that McNair failed to file his complaint within the time limits set by statute.

Following this, Merkow recommended that the Board dismiss McNair's complaint on the grounds that McNair failed to file his complaint within the time limits set by statute.

McNair was then given the opportunity to file an Objection to the Hearing Officer's Recommendation with the Board. McNair did so, again asserting numerous points by which his complaint should have been tolled differently and that his complaint should be given an extension of time for filing.

On April 29 2003, a public meeting of the Board was held to accept final argument of McNair's complaint, and to allow the Board to make a determination of such.

On April 29 2003, Mr. Daniel Brenden appeared on behalf to the County, and asserted to the Board that McNair filed his complaint late and therefore it should be dismissed.

On April 29 2003, the Board dismissed McNair's complaint on the grounds that it was not filed within the time limit specified by statute.

In accordance with A.R.S. § 12-904, on June 5 2003 McNair filed this action with the Superior Court of Arizona within the 35 days allowed by such.

1 On June 16 2003, an officer of the Maricopa County Sheriff's Office served defendants Maricopa
2 County, Medlin, Peterson, and Ramsey with summonses and copies of that complaint.

3 According to A.R.S. §12-907, the Defendants were required to file an answer to the complaint within
4 **twenty days** of being served. The statute reads as follows:

5
6 12-907. Appearance of defendants
7 Within **twenty days** after service of the summons and complaint, the defendant agency
8 and all other defendants shall answer the complaint.

9 Defendants Maricopa County, Kenneth Medlin, Terry Peterson, and Jennipher Ramsey, where therefore
10 required to file an answer no later than July 6 2003.

11 On July 9 2003, **twenty-THREE days** after being served, Mr. Daniel Brenden filed an answer on behalf
12 of Maricopa County, Kenneth Medlin, Terry Peterson, and Jennipher Ramsey.

13 The answer filed by Mr. Daniel Brenden on behalf of the defendants was **THREE DAYS LATE**.

14 Therefore, the Defendants failed to file an answer within the time limits set by statute.

16 IV. DISCUSSION

17 McNair is not an attorney.

18 Mr. Daniel Brenden is an attorney.

19 McNair's original complaint before the Board was dismissed due to Brenden's assertion that McNair
20 failed to file within the time limits imposed by statute.

21 The Board and its Hearing Officer have continually refused to consider any extension of time for
22 McNair's complaint, and have held McNair to the strictest standards of the law.

23 As an attorney, Mr. Brenden is required to be knowledgeable of the law, and the Court is required to
24 hold an attorney (Brenden) to an even higher standard than a non-attorney (McNair).

25 Throughout all proceedings, the State has held McNair to the strictest timing standards of the law. The
26 Court is therefore compelled and bound by all sense of justice and fairness to hold the State (County &
27 Defendants) to at least the same standard that it holds McNair to, if not a higher one.

28 To hold McNair to the strictest standard of the law, and not hold the Defendants to the same standard is
29 blatantly prejudicial against McNair, and a denial of equitable justice in the truest sense.

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2 **V. CONCLUSION**

3 The Defendants failed to file an answer within the time limit clearly specified by law.

4 Since the State has previously dismissed McNair's complaint for being late, in the interest of fairness
5 and justice, it must therefore grant this Motion for Default Judgment against the Defendants for their late
6 filing.

7
8 **VI. RELIEF**

9 The Defendants terminated McNair's employment as an act of prohibited retaliatory conduct. As stated
10 in A.R.S. § 38-532, McNair is entitled to reinstatement, all lost wages, and other damages general and
11 special.

12 McNair's salary prior to his termination was \$57.00 per hour, or \$2280.00 per week. McNair was
13 terminated on June 30 2002. Between July 1 2002 and August 1 2003, 57 weeks have transpired, thereby
14 totaling \$129,960.00 for lost wages.

15 Since the termination of McNair's employment, he has been required to obtain health insurance that was
16 previously supplied by Maricopa County. The cost (damages) of this to McNair totals \$4,032.13 (through
17 August 2003). The total of lost wages and cost of insurance as of August 12003 comes to the amount of
18 \$133,992.13.

19 Under separate motion before the Court, McNair has made a request for "*treble damages*". This comes
20 to a total of \$401,976.39 in damages for lost wages and cost of insurance.

21 As specified in A.R.S. § 38-532, McNair's whistleblower complaint demanded that the Defendants
22 (Medlin, Peterson, & Ramsey) be terminated and each fined \$5,000.00 for each of their prohibited acts.
23 Since McNair's complaint was filed with the County on July 17 2002, the termination of the Defendants
24 should be retroactive to that date.

25 McNair has also asserted that he was; a) denied other employment opportunities, b) subjected to
26 additional prohibited acts committed by County personnel other than defendants Medlin, Peterson, &
27 Ramsey, and, c) that he is entitled to "*general and special damages*" as stated in A.R.S. § 38-532 (D).

28 With these and are other issues before the Court yet to be addressed, and since McNair had demanded a
29 Jury Trial in this proceedings, McNair requests that relief related to those issues be reserved for judgment
30 and award by a Jury.

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For the purpose of this motion, McNair requests the following relief be immediately awarded:

- 1) Effective August 1 2003, reinstatement of McNair to his previous position of Database Administrator for the Maricopa County Department of Transportation at a rate of \$57.00 per hour and all previous benefits, with an order protecting McNair against termination by the County prior to June 30 2004
- 2) Treble damages for lost wages and cost of insurance through August 1 2003 in the amount of \$401,976.39
- 3) Permanent termination of the employment of Kenneth Medlin by Maricopa County, retroactive to July 17 2002.
- 4) Permanent termination of the employment of Terry Peterson by Maricopa County, retroactive to July 17 2002
- 5) Permanent termination of the employment of Jennipher Ramsey by Maricopa County, retroactive to July 17 2002
- 6) On order for Kenneth Medlin to pay a civil fine to the State of Arizona General Fund of an amount of no less than \$10,000.00,
- 7) On order for Terry Peterson to pay a civil fine to the State of Arizona General fund of an amount of no less than \$5,000.00,
- 8) On order for Jennipher Ramsey to pay a civil fine to the State of Arizona General fund of an amount of no less than \$5,000.00,
- 9) An order for a Jury trial to be held to review and decide all other issues and to decide as to what other general or special damages and costs to award McNair, and other orders as the Court and Jury see fit.

RESPECTFULLY SUBMITTED this 23rd day of JULY 2003.

By _____
Scott M. McNair
Plaintiff (Pro Per)

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

Sunberg & Mousel
Attn: Craig Mousel
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(Counsel for Defendant,
The State of Arizona Personnel Board)

Office of the Maricopa County Attorney
Attn: Dan Brenden
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004
(Counsel for Defendants: Maricopa County &
Maricopa County Department of Transportation)

Maricopa County Department of Transportation
Attn: Kenneth Medlin
2901 W. Durango
Phoenix, Arizona 85009

Maricopa County Department of Transportation
Attn: Terry Peterson
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Phoenix, Arizona 85009

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2901 W. Durango
Phoenix, Arizona 85009

By _____

Scott M. McNair
Plaintiff (Pro Per)